INVESTOOLS INC
Form 10-Q
November 09, 2006

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# Form 10-Q

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE**

**SECURITIES EXCHANGE ACT OF 1934**

**FOR QUARTER ENDED September 30, 2006**

**Commission File Number: 000-52012**

# INVESTOOLS INC.

(Exact name of Registrant as specified in its charter)

| **Delaware** | **76-0685039** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| **13947 South Minuteman Drive**<br>**Draper, UT**<br>(Address of principal executive offices) | **84020**<br>(Zip Code) |

Registrant s telephone number, including area code:

**(801) 816-6918**

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities and Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes x No o

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act.

Large accelerated filer o Accelerated filer x Non-accelerated filer o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes o No x

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date:

$.01 par value per share Common Stock: 45,133,116 as of November 3, 2006

**INVESTOOLS INC. AND SUBSIDIARIES**

Report on Form 10-Q

Quarter Ended September 30, 2006

**PART I - FINANCIAL INFORMATION**



**PART II - OTHER INFORMATION**

**PART I - FINANCIAL INFORMATION**

**Item 1. Consolidated Financial Statements**

**INVESTOOLS INC. AND SUBSIDIARIES**

**Condensed Consolidated Balance Sheets**

**(in thousands)**

**(unaudited)**

| | September 30, 2006 | December 31, 2005 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 32,660 | $ 11,466 |
| Marketable securities | 36,473 | 16,871 |
| Accounts receivable, net of allowance ($73 and $55) | 5,184 | 3,353 |
| Current portion of restricted cash | | 4,722 |
| Other current assets | 7,562 | 3,133 |
| **Total current assets** | 81,879 | 39,545 |
| | | |
| Long-term restricted cash | 373 | 366 |
| Goodwill | 18,085 | 18,085 |
| Intangible assets, net of accumulated amortization ($3,715 and $1,891) | 3,375 | 5,199 |
| Capitalized software development costs | 9,428 | 4,609 |
| Furniture and equipment, net of accumulated depreciation ($4,089 and $2,403) | 5,760 | 4,281 |
| Other long-term assets | 1,357 | 614 |
| | | |
| **Total assets** | $ 120,257 | $ 72,699 |
| | | |
| **LIABILITIES AND STOCKHOLDERS DEFICIT** | | |
| Current liabilities: | | |
| Current portion of deferred revenue | $ 131,037 | $ 68,215 |
| Accounts payable | 6,621 | 3,210 |
| Accrued payroll | 5,141 | 3,522 |
| Accrued tax liabilities | 7,700 | 7,359 |
| Other current liabilities | 10,038 | 4,193 |
| Current portion of capitalized lease obligations | 176 | 125 |
| **Total current liabilities** | 160,713 | 86,624 |
| | | |
| Long-term portion of deferred revenue | 22,249 | 9,301 |
| Long-term portion of capitalized lease obligations | 543 | 513 |
| Other long-term accrued liabilities | 264 | |
| **Total liabilities** | 183,769 | 96,438 |
| | | |
| Stockholders deficit: | | |
| Common stock $0.01 par value (45,133 and 44,754 shares issued and outstanding, respectively) | 451 | 447 |
| Additional paid-in capital | 127,600 | 131,162 |
| Accumulated other comprehensive loss | (19) | (116) |
| Deferred stock compensation | | (3,742) |
| Accumulated deficit | (191,544) | (151,490) |
| **Total stockholders deficit** | (63,512) | (23,739) |
| | | |
| **Total liabilities and stockholders deficit** | $ 120,257 | $ 72,699 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**INVESTOOLS INC. AND SUBSIDIARIES**

**Condensed Consolidated Statements of Operations**

**(in thousands, except per share amounts)**

**(unaudited)**

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | **2006** | **2005** | **2006** | **2005** |
| **Revenue** | $ 35,552 | $ 37,019 | $ 112,729 | $ 101,804 |
| **Costs and expenses** | | | | |
| Cost of revenue | 26,291 | 18,254 | 90,841 | 68,844 |
| Selling expense | 12,154 | 9,383 | 36,208 | 27,329 |
| General and administrative expense | 8,353 | 5,439 | 25,039 | 17,402 |
| Special charges | 195 | 18 | 3,185 | 58 |
| Total costs and expenses | 46,993 | 33,094 | 155,273 | 113,633 |
| Income (loss) from operations | (11,441) | 3,925 | (42,544) | (11,829) |
| **Other income (expense)** | | | | |
| Gain (loss) on sale of assets | | | 10 | (93) |
| Interest income and other, net | 646 | 108 | 1,581 | 397 |
| Other income | 646 | 108 | 1,591 | 304 |
| **Net income (loss) before income taxes and cumulative effect of accounting change** | (10,795) | 4,033 | (40,953) | (11,525) |
| Income tax benefit | (907) | (5) | (851) | |
| **Net income (loss) before cumulative effect of accounting change** | (9,888) | 4,038 | (40,102) | (11,525) |
| Cumulative effect of accounting change | | | 48 | |
| **Net income (loss)** | $ (9,888) | $ 4,038 | $ (40,054) | $ (11,525) |
| **Net income (loss) per common share basic** | $ (0.22) | $ 0.09 | $ (0.89) | $ (0.26) |
| Weighted average common shares outstanding basic | 45,111 | 45,009 | 44,999 | 44,996 |
| **Net income (loss) per common share diluted** | $ (0.22) | $ 0.09 | $ (0.89) | $ (0.26) |
| Weighted average common shares outstanding diluted | 45,111 | 46,790 | 44,999 | 44,996 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**INVESTOOLS INC. AND SUBSIDIARIES**

**Condensed Consolidated Statements of Cash Flows**

**(in thousands)**

**(unaudited)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | **2006** | **2005** |
| **Cash flows from operating activities:** | | |
| Net loss | $ (40,054) | $ (11,525) |
| Reconciling adjustments: | | |
| Depreciation and amortization | 3,510 | 1,814 |
| Deferred taxes | 84 | |
| Stock compensation expense | 833 | 402 |
| Provision for sales return reserve | 326 | 1,493 |
| Provision for lease termination | 213 | |
| (Recovery of) provision for bad debt | (32) | 51 |
| (Gain) loss on sale of assets | (10) | 93 |
| Impairment of capitalized software development | 1,464 | |
| Loss on marketable securities | 73 | |
| Changes in operating assets and liabilities, net of the effect of acquired businesses: | | |
| Accounts receivable | (1,799) | (1,175) |
| Restricted cash | | 2 |
| Other assets | (2,378) | (763) |
| Accounts payable | 1,437 | (845) |
| Deferred revenue | 76,137 | 24,201 |
| Accrued payroll | 1,619 | 1,144 |
| Other liabilities | 4,223 | (2,911) |
| Accrued tax liabilities | (394) | 1,097 |
| Net cash provided by operating activities | 45,252 | 13,078 |
| | | |
| **Cash flows from investing activities:** | | |
| Purchases of marketable securities | (23,403) | (2,636) |
| Proceeds from the maturity of marketable securities | 3,865 | 6,135 |
| Proceeds from the sale of equipment | 10 | 40 |
| Payments for capitalized software development costs | (4,540) | (2,238) |
| Purchases of furniture and equipment | (2,621) | (3,528) |
| Deferred acquisition costs | (1,323) | |
| Cash paid in business acquisitions, net of cash received | | (7,777) |
| Net cash used in investing activities | (28,012) | (10,004) |
| | | |
| **Cash flows from financing activities:** | | |
| Payments on capital leases | (112) | (40) |
| Changes in restricted cash | 4,715 | (3,219) |
| Repurchase of stock | (1,360) | (990) |
| Proceeds from exercise of stock options | 711 | 127 |
| Net cash provided by (used in) financing activities | 3,954 | (4,122) |
| | | |
| **Increase (decrease) in cash and cash equivalents** | 21,194 | (1,048) |
| **Cash and cash equivalents:** | | |
| Beginning of period | 11,466 | 10,736 |
| | | |
| End of period | $ 32,660 | $ 9,688 |
| | | |
| **Supplemental non-cash disclosures:** | | |
| Equipment financed with capital lease obligations | $ 193 | $ 691 |
| Licensing contracts financed with vendors | $ 350 | $ |
| Software development and deferred acquisition costs financed through accounts payable | $ 2,604 | $ |

| | | |
|---|---|---|
| Repurchase of stock | $ | $ 404 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**INVESTOOLS INC. AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(unaudited)**

**Basis of Presentation**

The Condensed Consolidated Financial Statements include the accounts of INVESTools Inc. (the Company or INVESTools ) and its wholly-owned subsidiaries. All intercompany transactions have been eliminated.

The accompanying Condensed Consolidated Financial Statements should be read in conjunction with the audited consolidated financial statements for the year ended December 31, 2005 included in the Company s Annual Report on Form 10-K.

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with Rule 10-01 of Regulation S-X for interim financial statements required to be filed with the Securities and Exchange Commission ( SEC ) and do not include all the information and footnotes required by accounting principles generally accepted in the United States. However, in the opinion of management, the information furnished reflects all adjustments, consisting of normal recurring adjustments, which are necessary to make a fair presentation of financial position and operating results for the interim periods. The results of operations for the three and nine-month periods ended September 30, 2006 are not necessarily indicative of the results to be expected for the full year.

**Merger Agreement**

On September 18, 2006, the Company and thinkorswim Group, Inc. ( thinkorswim ) entered into an Agreement and Plan of Merger pursuant to which INVESTools will acquire thinkorswim. Under the terms of the merger agreement, one of the Company s wholly-owned subsidiaries will be merged with and into thinkorswim. thinkorswim shareholders will receive approximately 50% of the merger consideration in cash and approximately 50% of the merger consideration in shares of the Company s common stock, representing approximately $170 million in cash and 19.1 million shares of stock. The Company estimates it will also incur approximately $15 million in transaction costs, subject to change by the time the merger closes, which the Company will add to the purchase price when accounting for the transaction. JPMorgan Chase Bank, N.A. and J.P. Morgan Securities Inc. will provide the Company a senior secured term loan of $125 million to fund a portion of the cash consideration and, separately, will also provide the Company with an unfunded committed senior secured revolving credit facility of $25 million. Following the transaction, thinkorswim shareholders will represent approximately 30% of the ownership of the Company, and thinkorswim will receive two seats on the Company s expanded, eight-member Board of Directors. thinkorswim employees will be eligible for a $20 million retention bonus pool which will be paid annually over a three-year period. In addition, thinkorswim employees will receive options to purchase 2.3 million shares of the Company s common stock. The options will vest over 4 years, and half of the options will have an exercise price equal to the market price at closing. The other half of the options will have an exercise price equal to 150% of the market price at closing.

The Company must obtain approval from its shareholders in order to issue the 19.1 million shares of common stock to be issued as part of the merger consideration. On November 2, 2006, the Company filed a preliminary proxy statement with the SEC in anticipation of holding a Special Meeting of shareholders in early 2007 to obtain the necessary shareholder approval. Additionally, prior to completion of the merger, thinkorswim will be required to make certain filings with the National Association of Securities Dealers.

The Company and thinkorswim also entered into a marketing agreement relating to the placement of thinkorswim s logo in the Company s Investor Toolbox website, preferred thinkorswim brokerage rates for the Company s students, and interface development for Company students to access thinkorswim s online brokerage platform. Under the terms of the agreement, thinkorswim will pay the Company a monthly fee of $0.2 million through the end of 2007, and the agreement will remain in force even if the parties cancel the merger transaction. For the three months ended September 30, 2006, the Company recognized $70,000 in revenue associated with this agreement.

**Revenue Recognition**

The Company recognizes revenue in accordance with Staff Accounting Bulletin ( SAB ) No. 104, *Revenue Recognition*, and Financial Accounting Standards Board ( FASB ) Emerging Issues Task Force ( EITF ) No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables* ( EITF 00-21 ). Revenue is not recognized until it is realized or realizable and earned. The criteria to meet this guideline are: (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred or services have been rendered, (iii) the price to the buyer is fixed or determinable, and (iv) collectibility is reasonably assured.

The Company sells its products separately and in various bundles that contain multiple deliverables that include educational workshops, online courses, on-demand coaching services, one-to-many coaching services, and ongoing support and tutorials, along with other products and services. In accordance with EITF 00-21, sales arrangements with multiple deliverables are divided into separate units of accounting if the deliverables in the arrangement meet the following criteria: (i) the product has value to the customer on a standalone basis; (ii) there is objective and reliable evidence of the fair value of undelivered items; and (iii) delivery or performance of any undelivered item is probable and substantially in the Company s control. The fair value of each separate element is generally determined by prices charged when sold separately. In certain arrangements, the Company offers these products bundled together at a discount. The discount is allocated pro rata to each element based on the relative fair value of each element when fair value support exists for each element in the arrangement. If fair value of all undelivered elements in an arrangement exists, but fair value does not exist for a delivered element, then revenue is recognized using the residual method. Under the residual method, the fair value of undelivered elements is deferred and the remaining portion of the arrangement fee (after allocation of 100 percent of any discount to the delivered item) is recognized as revenue. The Company provides some limited rights of return in connection with its arrangements. The Company estimates its returns based on historical experience and maintains an allowance for estimated returns, which has been reflected as an accrued liability. Each transaction is separated into its specific elements and revenue from each element is recognized according to the following policies:

| Product | **Recognition policy** |
|---|---|
| Workshop/workshop certificate | Deferred and recognized as the workshop is provided or certificate expires |
| Home study | Recognized upon delivery of home study materials to customer |
| Online course | Deferred and recognized over the estimated subscription period |
| Coaching services | Deferred and recognized as services are delivered, or on a straight-line basis over the subscription period |
| Website subscription and renewals | Deferred and recognized on a straight-line basis over the subscription period |
| Data licenses | Recognized monthly based on data usage |

**Deferred Revenue**

Deferred revenue arises from subscriptions to the websites, workshops, online courses, and coaching services because the payments are received before the service has been rendered. Deferred revenue is recognized into revenue over the period that the services are performed or the time that the contract period expires, as shown in the above table.

**Capitalized software development costs**

For internal use software the Company complies with The American Institute of Certified Public Accountants ( AICPA ) Statement of Position ( SOP ) No. 98-1, *Accounting For Cost of Computer Software Developed or Obtained for Internal Use*, and EITF No. 00-2, *Accounting for Website Development Costs*. In accordance with SOP 98-1, software development costs incurred as part of an approved project plan that result in additional functionality to internal use software are capitalized and amortized on a straight-line basis over the estimated useful life of the software. During the three and nine months ended September 30, 2006, the Company capitalized $2.8 million and $6.3 million, respectively, related to internal use software for both the development of the Investor Toolbox website, and the implementation of the Company s integrated enterprise resource planning and customer relationship management software solution.

Following a review of the then-existing user interface features component of the Investor Toolbox website, the Company wrote off $1.4 million of capitalized software development costs during the second quarter of 2006, in accordance with SOP 98-1 and Statement of Financial Accounting Standards ( SFAS ) 144.

**Reclassifications**

Certain amounts relating to capitalized software development costs as of December 31, 2005, and for the nine months ended September 30, 2005, have been reflected separately from furniture and equipment in order to conform with the current period s presentation.

**Marketable Securities**

The Company invests excess cash in marketable securities, primarily government backed securities with maturities ranging from one to 32 months. At September 30, 2006, the cost of these securities was $36.6 million. The Company has classified these marketable securities as available for sale under SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. Accordingly, the securities are recorded at fair value and any unrealized gains or losses are included in accumulated other comprehensive loss within stockholders deficit. Gains are recognized when realized and are recorded in the Company s Condensed Consolidated Statement of Operations in other income. Losses are recognized as realized or when management has determined an other-than-temporary decline in fair value has occurred. There were no realized gains recognized during the three and nine months ended September 30, 2006 and 2005. The Company recognized $0.1 million of unrealized losses on marketable securities in the nine month period ended September 30, 2006, as management determined an other-than-temporary decline in fair value had occurred for certain marketable securities. Certain of these securities were purchased at a discount or premium, which are being amortized into interest income over the maturity of the security. The Company recognized interest income of $0.7 million and $0.1 million in the three-month periods ended September 30, 2006 and 2005, respectively, and $1.5 million and $0.3 million during the nine-month periods ended September 30, 2006 and 2005, respectively. The market value of these marketable securities, reflected in the balance sheet at September 30, 2006, was $36.5 million. At September 30, 2006 and December 31, 2005, gross unrealized holding losses were $0 and $0.1 million, respectively.

**Inventories**

Inventories are stated at the lower of cost or market (using the first-in, first-out method). The Company s inventories consist of manuals and DVDs that comprise the Company s educational products. At September 30, 2006 and December 31, 2005, $0.3 million and $0.9 million, respectively, in net inventories were included as part of other current assets.

**Amortizable Acquired Intangibles**

Amortizable acquired intangibles with finite lives as of September 30, 2006 and December 31, 2005 were as follows (in thousands):

| | As of September 30, 2006 | | | As of December 31, 2005 | | |
|---|---|---|---|---|---|---|
| | Gross Carrying Amount | Accumulated Amortization | Weighted Average Remaining Useful Life | Gross Carrying Amount | Accumulated Amortization | Weighted Average Remaining Useful Life |
| Existing technology and other | $ 5,380 | $ (2,996) | 3.0 years | $ 5,380 | $ (1,407) | 3.2 years |
| Non competition | 890 | (719) | 1.3 years | 890 | (484) | 1.6 years |
| Total acquired intangibles | $ 6,270 | $ (3,715) | 2.9 years | $ 6,270 | $ (1,891) | 3.0 years |

For the three and nine-month periods ended September 30, 2006, amortization expense was $0.6 million and $1.8 million, respectively, as compared to $0.3 million and $1.0 million for the same periods in 2005. Estimated future amortization expense is as follows (in thousands):

| | |
|---|---|
| 2006 Remaining | $ 439 |
| 2007 | 774 |
| 2008 | 653 |
| 2009 | 644 |
| 2010 | 45 |
| Thereafter | |
| Total estimated amortization expense | $ 2,555 |

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**Non-Amortizable Acquired Intangibles**

As a result of the acquisition of Prophet Financial Systems, Inc. ( Prophet ) in January 2005, trademarks and trade names which are not amortized and have indefinite lives as of September 30, 2006 were $0.8 million.

**Stock-based Compensation**

The Company currently administers six stock-based compensation plans. These plans are administered by the Compensation Committee of the Board of Directors, which directly or through delegated authority selects persons eligible to receive awards and determines the number of shares and/or options subject to each award, the terms, conditions, performance measures, and other provisions of the award. Readers should refer to Notes 2 and 11 of the Company s Consolidated Financial Statements in its Annual Report on Form 10-K for the year ended December 31, 2005 for additional information related to these stock-based compensation plans.

*Stock Options*

INVESTools 2001 Stock Option Plan This plan is the only plan out of which the Company currently can grant options. The plan was approved by stockholders in December 2001. On June 15, 2006 stockholders approved a proposal amending the plan to increase the total number of shares available for grant under this plan for issuance to officers, directors and employees from six million to eight million. In connection with its proposed merger with thinkorswim, the Company filed a preliminary proxy statement with the SEC on November 2, 2006 that contained a proposal to increase the total number of shares available for grant under this plan to 12 million. Incentive options have typically been granted at fair market value of the Company s common stock at the date of grant, and generally expire ten years from the date of grant. The shares are issuable from the Company s authorized but unissued shares, or they may be issued out of treasury stock, if any. Based on awards previously granted to employees and directors, the number of shares available for future stock option grants were 4,125,662 at September 30, 2006.

Telescan Stock Option Plans The Company reserved 427,456 shares of its common stock for issuance under three stock option plans for the employees and former directors of Telescan, Inc., a wholly-owned subsidiary of the Company. No new options are being granted under these plans. Options granted under these plans were granted at fair market value at the date of grant and generally expire ten years from the date of grant. At September 30, 2006, there were 326,336 shares outstanding under this plan.

ZiaSun Stock Option Plan The Company reserved 1,296,600 shares of its common stock for issuance under one stock option plan for the officers, employees and former directors of ZiaSun Technologies, Inc., a wholly-owned subsidiary of the Company. No new options are being granted under this plan. Options granted under this plan were granted at fair market value at the date of grant and generally expire ten years from the date of grant. At September 30, 2006, there were 74,400 shares outstanding under this plan.

Prior to 2003 the Company accounted for stock option grants in accordance with Accounting Principles Board ( APB ) Opinion No. 25, *Accounting for Stock Issued to Employees* (the intrinsic value method), and accordingly recognized no compensation expense for stock option grants because the options exercise price equaled the fair market value of the Company s stock price on the measurement date. Beginning in 2003, the Company adopted the fair value expense recognition method available under SFAS No. 123, *Accounting for Stock-Based Compensation* ( SFAS 123 ) in accounting for options granted after 2002. Effective January 1, 2006, the Company adopted SFAS No. 123 (revised), *Share-Based Payment* ( SFAS 123(R) ) utilizing the modified prospective approach.

Under the modified prospective approach, SFAS 123(R) applies to new awards and to unvested awards that were outstanding on January 1, 2006 that are subsequently exercised, modified, repurchased, or cancelled. In addition, compensation cost recognized during 2006 includes compensation cost for all options granted prior to, but not yet vested as of January 1, 2006, based on the grant-date fair value estimated in accordance with the original provisions of SFAS 123, and compensation cost for all options granted subsequent to January 1, 2006, based on the grant-date fair value estimated in accordance with the provisions of SFAS 123(R). The total cost related to the Company s share-based compensation plans, recorded pursuant to the methods then in effect, was $0.9 million and $0.4 million for the nine months ended September 30, 2006 and 2005, respectively. In accordance with the

modified prospective approach, prior periods were not restated to reflect the impact of adopting the new standard.

The Company receives a tax deduction for certain stock option exercises during the period the options are exercised, generally for the excess of the fair market value of the underlying stock on the exercise date, over the exercise price of the options. Prior to the adoption of SFAS 123(R), the Company reported all tax benefits resulting from the exercise of stock options as cash flows from operating activities in its Condensed Consolidated Statements of Cash Flows. In accordance with SFAS 123(R), beginning January 1, 2006, the Company records in its Condensed Consolidated Statement of Cash Flows the tax benefits from the exercise of stock options as cash flows from financing activities. Net cash proceeds from the exercise of stock options were $0.7 million and $0.1 million for the nine months ended September 30, 2006 and 2005, respectively. The tax benefit potentially realizable from stock option exercises was $0.6 million and none for the same respective periods. However, the Company was not able to recognize this tax benefit due to its existing fully-valued net operating loss carryforward. Therefore, until the tax deduction reduces taxes payable, the realization of this tax benefit is not recognized, and cash flows from financing activities presented in the accompanying statement of cash flows do not include the tax effect of the option exercises.

Beginning in 2006, SFAS 123(R) requires the Company to recognize compensation expense related to options based on the estimated number of options that will ultimately vest. Accordingly, the Company is required to estimate what the forfeitures will be. The estimate of such forfeitures serves to reduce the compensation expense that would otherwise be recorded. Prior to 2006, the Company did not estimate such expense reductions for post-2002 awards, and accounted for forfeitures by reducing the recognized expense as they occurred. Changing this principle of accounting is required by the adoption of SFAS 123(R), and as a result the Company estimated the cumulative amount of potential pre-vesting forfeitures relating to unvested options as of January 1, 2006. The reduction in compensation expense that would have been recognized during prior periods resulting from this change in accounting principle was approximately $48,000, and was recognized during the three months ended March 31, 2006. The reduction in deferred tax assets associated with decreasing the estimated future tax deduction, which resulted from decreasing the related estimated option exercises, was offset by an equal reduction in the valuation allowance. Accordingly, there was no net tax effect recognized.

As a result of adopting SFAS 123(R) on January 1, 2006, the Company s loss before taxes, and its net loss for the nine months ended September 30, 2006, were both approximately $18,000 lower than if the Company had continued to account for options under the combination of APB Opinion No. 25 and SFAS 123 for its stock option plans. There was no change to basic and diluted loss per share. There were no remaining unrecognized costs that would, during 2006 and later, be included in compensation expense related to pre-2003 grants, and which were previously accounted for under APB Opinion No. 25. In addition, as mentioned in the preceding paragraph, SFAS 123(R) requires the Company to begin estimating forfeitures of options which have yet to fully vest. The effect on expenses of estimating forfeitures relating to the cost of unvested options results in lower compensation costs recognized than if SFAS 123(R) had not been adopted.

The Company was also required to calculate the additional paid-in capital ( APIC ) pool of excess tax benefits available to absorb tax deficiencies, if any, subsequent to the adoption of SFAS 123(R). The Company has elected to use the permitted short-cut method in determining this APIC pool. The result was that the Company has no APIC pool of tax benefits against which to absorb future tax deficiencies. Because of the Company s existing net operating loss carryover as mentioned above, there was no effect on the accompanying statement of cash flows as a result of changing the accounting principle by electing to use the short-cut method.

Another result of adopting SFAS 123(R) is that all unrecognized share-based compensation costs previously included as deferred stock compensation separately presented on the balance sheet has now been reclassified and included in additional paid-in capital.

The following table illustrates the effect on operating results and per share information had the Company accounted for all share-based compensation in accordance with SFAS 123 for the three and nine-month periods ended September 30, 2005 (in thousands, except per share amounts):

| | **Three Months Ended September 30, 2005** | **Nine Months Ended September 30, 2005** |
|---|---|---|
| Net income (loss) as reported | $ 4,038 | $ (11,525 ) |

| | | |
|---|---|---|
| Add: Option-based employee compensation reported in net loss, net of taxes | 150 | 401 |
| Deduct: Pro forma option-based compensation under the fair value method, net of taxes | (189) | (518) |
| Pro forma net income (loss) | $ 3,999 | $ (11,642) |
| Basic and diluted net income (loss) per share as reported | $ 0.09 | $ (0.26) |
| Basic and diluted net income (loss) per share pro forma | $ 0.09 | $ (0.26) |

The Company uses the Black-Scholes option pricing model to estimate the fair value of option awards with the following weighted average assumptions for the periods indicated (there were no options granted during the three months ended September 30, 2005):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2006 | 2005 | 2006 | 2005 |
| Dividend yield | | | | |
| Risk-free factors | 4.78% | | 5.06% | 4.00% |
| Volatility factors | 56.7% | | 55.9% | 62.0% |
| Expected lives | 6.3 years | | 6.3 years | 7 years |
| Weighted average fair value of options granted | $ 5.04 | $ | $ 5.30 | $ 2.42 |

The assumptions above are based on multiple factors, including historical exercise patterns of employees in relatively homogeneous groups with respect to exercise and post-vesting employment termination behaviors, and the expected future exercising patterns for those same homogeneous groups. During 2006, the Company used the simplified method for determining expected lives. The expected volatility is based upon a blend of the Company s historical volatility of its stock price, and the historical volatility of the stock price of one of the Company s industry peers.

The following table represents stock option activity for the nine months ended September 30, 2006:

| | Number of shares | Weighted-average exercise price | Weighted-average remaining contract life |
|---|---|---|---|
| Outstanding options at beginning of period | 4,052,193 | $ 2.35 | |
| Granted | 281,868 | $ 8.99 | |
| Exercised | (538,563) | $ 1.32 | |
| Expired | | | |
| Forfeited | (182,924) | $ 3.84 | |
| Outstanding options at end of period | 3,612,574 | $ 2.95 | 6.7 years |
| Outstanding exercisable options at end of period | 2,214,236 | $ 1.77 | 5.4 years |

At September 30, 2006, the aggregate intrinsic value of options outstanding was $28.6 million, and the aggregate intrinsic value of exercisable options was $20.5 million. The total intrinsic value of options exercised was $0.3 million and $0.2 million for the three months ended September 30, 2006 and 2005, respectively. The total intrinsic value of options exercised was $3.9 million and $0.3 million for the nine months ended September 30, 2006 and 2005, respectively.

At September 30, 2006, there was $3.9 million of unrecognized compensation cost related to options which is expected to be recognized over a weighted-average period of 1.6 years.

*Restricted Stock*

There are 500,000 shares of Company common stock available for issuance under the 2004 Restricted Stock Plan. The shares of

Company common stock awarded under the plan may be either previously authorized but unissued shares or issued shares which have been reacquired by the Company after their original issuance (including but not limited to shares purchased on the open market).

In December 2005, the Company issued 3,000 shares of restricted, forfeitable stock with a fair value of $5.40 per share to members of its Advisory Board. The restrictions on the restricted stock awards vest all at once at the end of 24 months. The fair value of the restricted stock awards is being amortized to compensation expense as the restrictions lapse and until the members performance obligation has been completed, in accordance with EITF No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The amount of unrecognized compensation cost as of September 30, 2006, and amount amortized as expense during the three and nine-month periods ended September 30, 2006, is not material to these Condensed Consolidated Financial Statements.

**Stock Repurchase Program**

In June 2004, the Board of Directors authorized a stock repurchase program under which the Company can repurchase up to 3.5 million shares of its common stock over a two-year period. In June 2006, the Board of Directors extended the program for an additional two years. In May 2006, the Company repurchased from one of the Directors 160,000 shares for $1.4 million, or $8.50 per share, under the terms of the program. The price of the shares was the closing market price on the date of repurchase, less a discount of 5%. There were no stock repurchases during the third quarter of 2006, and during the third quarter of 2005, the Company repurchased 343,400 shares for a cost of $1.4 million. As of September 30, 2006, a total of 1.6 million shares had been repurchased for a total cumulative cost of $5.0 million.

**Special Charges**

During the quarter ended June 30, 2006, the Company completed a review of the existing user interface features component of the ongoing Investor Toolbox development project. As a result of feedback from Company instructors and coaches, the Company determined to abandon the component and redevelop it. Accordingly, the Company wrote off the capitalized costs related to the existing user interface component in accordance with SOP 98-1 and SFAS 144. These costs totaled $1.4 million. Also during the second quarter of 2006, management accrued $1.0 million as estimated settlement costs involved with ongoing legal matters. When added to the $0.8 million incurred so far during 2006 for severance, lease termination, and other legal expenses, the total amount included in special charges for the nine months ended September 30, 2006 was $3.2 million.

**Comprehensive Loss**

Supplemental information on comprehensive income (loss) is as follows (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2006 | 2005 | 2006 | 2005 |
| Net income (loss) | $ (9,888) | $ 4,038 | $ (40,054) | $ (11,525) |
| Unrealized gain (loss) on marketable securities | 164 | (32) | 24 | (62) |
| Less: Reclassification adjustment for losses included in net loss | 73 | | 73 | |
| Net comprehensive income (loss) | $ (9,651) | $ 4,006 | $ (39,957) | $ (11,587) |

**Commitments and Contingencies**

*Lease obligations*

Equipment and facilities are leased under various non-cancelable operating leases and capital leases expiring at various dates through the year 2010. During the nine months ended September 30, 2006, the Company added $0.2 million in equipment financed with capital leases. At September 30, 2006, total assets under capital leases aggregated $0.9 million.

In January 2006, the Company ceased the use of leased office space in San Rafael, California, and moved all operations to its leased offices in Palo Alto, California, and Draper, Utah. In accordance with SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*, the Company recorded a liability of $0.2 million in lease termination costs related to the remaining lease payments, net of estimated sublease rentals. In June 2006, the Company subleased the property and reduced the

accrued liability by $19,000.

Future minimum lease payments under non-cancelable operating leases, related subleases, and capital leases at September 30, 2006, are as follows (in thousands):

| | Capital leases | Operating leases | Sub-lease income | Net operating leases |
|---|---|---|---|---|
| For the fiscal years: | | | | |
| 2006 Remaining | $ 55 | $ 296 | $ (47) | $ 249 |
| 2007 | 228 | 950 | (119) | 831 |
| 2008 | 227 | 790 | (40) | 750 |
| 2009 | 227 | 741 | | 741 |
| 2010 | 95 | 393 | | 393 |
| Total lease payments | 832 | $ 3,170 | $ (206) | $ 2,964 |
| Less: Amount representing interest (average of 8%) | 113 | | | |
| Present value of lease payments | 719 | | | |
| Less: Current portion | 176 | | | |
| Long-term portion | $ 543 | | | |

*Litigation*

From time to time the Company is involved in certain legal actions arising in the ordinary course of business. It is the opinion of management that such litigation will be resolved without a material adverse effect on the Company s liquidity, financial position or results of operations.

On March 4, 2003, a foreign national filed a complaint in the San Diego Superior Court against ZiaSun Technologies, Inc., one of the Company s wholly-owned subsidiaries. The complaint alleged that certain individuals, who were not parties in the lawsuit, persuaded the plaintiff to purchase shares of ZiaSun common stock and the complaint also alleged a failure to deliver a stock certificate. ZiaSun does not have any ownership or control of the third party brokerage house from whom plaintiff claims to have purchased stock. The plaintiff was seeking unspecified damages for the alleged fraud in the sale of the stock. In February 2005, the court awarded a summary judgment in the Company s favor. In March 2005, the plaintiff filed an appeal to continue to pursue this litigation. The court accepted his appeal in October 2005, and the Company filed a reply in November 2005. In May 2006 the Appellate court decided in favor of the Company. The Company considers it highly unlikely the California Supreme Court will agree to hear any further appeal by the plaintiff.

In October 2005, the Supreme Court of Queensland, ruled on a lawsuit filed on July 9, 2004, by the Australian Securities and Investment Commission (ASIC) against Online Investors Advantage, one of the Company s wholly-owned subsidiaries (OIA). The Court found that most of the claims pursued by ASIC had not been made out against OIA, but found for ASIC in respect to certain claims, all of which hinged on the Court s finding that OIA s website was a financial product , as that term is defined under the Australian Corporations Act. There were no penalties assessed against the Company as a result of this ruling. On October 31, 2005, the Court dismissed ASIC s claim regarding the repayment of money to participants at the workshops. Accordingly, $0.3 million of funds previously held in escrow were released to the Company. Given OIA s success on the majority of ASIC s claims, ASIC was ordered to pay 80% of OIA s legal costs. Given that ASIC succeeded in respect to a small number of its claims, OIA was ordered to pay 20% of ASIC s legal costs. On August 22, 2006, the Company accepted a net settlement offer from ASIC in the amount of $75,000.

In November 2005, Ross Jardine and True North Academy L.L.C. filed a lawsuit against the Company in the Third Judicial District Court, Salt Lake City, Utah. The lawsuit alleges that the Company abused Mr. Jardine s personal identity under Utah state law, his name and likeness, and appropriated the commercial value of Mr. Jardine s identity and violated his privacy. In January 2006, the Company filed its answer and counterclaim, and in February 2006 it filed a motion for summary judgment.

Both parties filed briefs on the matter. In August 2006, the standstill agreement in effect since June 2006 broke down. However, the parties intend further mediation efforts to resolve the matter.

In February 2006, the Company filed a complaint against Stock Investor.com, LLC, True North Academy, L.L.C., Wade Hallam, Leroy Hartman and Tony Montoya in the Fourth Judicial Court, Utah County, Utah. The complaint alleges breach of contract, tortuous interference, violation of the Utah Trade Secrets Act, common law unfair competition, violation of the Utah Unfair Competition Act, common law trademark infringement and trade name infringement, and civil conspiracy. The Company is seeking damages and injunctive relief. The defendants filed a counterclaim, and the standstill agreement between the defendants and the Company since June 2006 broke down. However, the parties intend further mediation efforts to resolve the matter.

In April 2006, the Company was contacted by Ablaise Ltd**.,** threatening litigation against the Company s wholly-owned subsidiary, Prophet Financial Systems, Inc., ( Prophet ) along with other companies, alleging patent infringement. The Company and the former majority shareholder of Prophet have reached a settlement agreement with Ablaise totaling $125,000. The Company will be responsible for paying $87,500 which was accrued as of September 30, 2006.

In February 2004, the Company entered into an Agreement and Plan of Merger with SES Acquisition Corp., dba 360 Group. Under the terms of the agreement, certain payments were scheduled to be paid during 2005 based on various earn-out performance conditions being met. The sellers filed suit on July 18, 2006 against the Company and 360 Group in the Superior Court of the State of California, alleging that pursuant to the Agreement and Plan of Merger between the Company, the sellers, and others, the Company was required to pay the sellers earn-out payments for 2005. The Company alleged that no such payments were required. The sellers claim they are entitled to more than $3 million. The Company intends to vigorously defend this action.

During early discussions related to the merger with thinkorswim, the Company had an understanding with a financing firm involving merger-related fees which would have an immaterial impact on the Company s financial statements. INVESTool s payment obligation is now in dispute, and the firm has indicated its intention to pursue collection of the fees when the Company closes the merger with thinkorswim. The Company believes the firm s claim is without merit.

The Company establishes liabilities when a particular contingency is probable and estimable. For contingencies noted above, the Company has accrued amounts considered probable and estimable.

The Company has applied for rulings from various states on the taxability of its products to determine if its sales tax policy is supported by the various state taxing jurisdictions. During the quarter ended September 30, 2006, the Company received rulings from a majority of the states to which it applied. Based on these rulings, the Company reversed $0.8 million of accrued sales taxes payable.

The Company is not aware of pending claims or assessments, other than as described above, which may have a material adverse impact on the Company s liquidity, financial position or results of operation.

**Net Income (Loss) Per Share**

Basic net income (loss) per share is computed using the weighted-average number of common shares outstanding during the period. Diluted net income (loss) per share is computed using the weighted-average number of common shares and dilutive common stock equivalents outstanding during the period. Potential common stock equivalents amounting to 3.6 million and 3.7 million for the three and nine months ended September 30, 2006, respectively, and 0.1 million and 1.9 million for the three and nine months ended September 30, 2005 are excluded from the computation because their effect was anti-dilutive.

The following table presents the calculation for the number of shares used in the basic and diluted net income (loss) per share computations (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2006 | 2005 | 2006 | 2005 |
| Weighted average shares used to calculate basic net income (loss) per share | 45,111 | 45,009 | 44,999 | 44,996 |

| | | | | |
|---|---|---|---|---|
| Options | | 1,781 | | |
| Weighted average common and potential common shares used to calculate diluted net income (loss) per share | 45,111 | 46,790 | 44,999 | 44,996 |

**Recently Issued Accounting Standards**

**In July 2006, the FASB issued Financial Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ( FIN 48 ). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a company s financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes*. FIN 48 provides guidance on recognizing, measuring, presenting and disclosing in the financial statements uncertain tax positions that a company has taken or expects to take on a tax return. FIN 48 is effective for the Company as of January 1, 2007. The Company is currently assessing the impact, if any, of FIN 48 on its consolidated financial statements.**

In June 2006, the EITF reached a consensus on EITF Issue No. 06-03, *How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That Is, Gross versus Net Presentation)* ( EITF 06-03 ). EITF 06-03 provides that the presentation of taxes assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer on either a gross basis (included in revenues and costs) or on a net basis (excluded from revenues) is an accounting policy decision that should be disclosed. The provisions of EITF 06-03 become effective as of January 1, 2007. The Company is currently evaluating the impact of adopting EITF 06-03 on the consolidated financial statements.

In September 2006, the SEC released SAB No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, ( SAB 108 ), which provides the SEC staff s views regarding the process of quantifying financial statement misstatements, such as assessing both the carryover and reversing effects of prior year misstatements on the current year financial statements. SAB 108 is effective for years ending after November 15, 2006. The Company is currently evaluating the impact of the adoption of SAB 108 on its consolidated financial statements.

Also in September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ( SFAS 157 ). SFAS 157 defines fair value, establishes a framework for measuring fair value, and requires enhanced disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the impact of the adoption of SFAS 157 on its consolidated financial statements.



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In July 2006, the FASB issued Financial Interpretation No. 48, Accounting for Uncertainty in Income Taxes ( FIN 48

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**Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations**

**Business Overview**

Our mission is to educate individual investors to make their own investment decisions by providing them with the service and support they need to successfully achieve their financial goals. We hope to accomplish this by integrating investment approaches, providing web-based tools, offering live and online learning opportunities, and by maintaining support designed to ensure their ongoing success. We have more than 264,000 graduates and 85,300 subscribers to our websites. Our products and services are built around the INVESTools Method , a unique integration of a disciplined investing process, web-based tools, personalized instruction and support. Our investor education products and services are offered in a variety of learning formats with courses ranging from beginning to advanced, thus addressing the needs of all investor levels.

**Merger Agreement**

On September 18, 2006, we entered into an Agreement and Plan of Merger with thinkorswim Group, Inc. ( thinkorswim ) pursuant to which we will acquire thinkorswim. Under the terms of the merger agreement, one of our wholly-owned subsidiaries will be merged with and into thinkorswim. thinkorswim shareholders will receive approximately 50% of the merger consideration in cash and approximately 50% of the merger consideration in shares of our common stock, representing approximately $170 million in cash and 19.1 million shares of stock. We estimate we will also incur approximately $15 million in transaction costs, subject to change by the time the merger closes, which we will add to the purchase price when accounting for the transaction. JPMorgan Chase Bank, N.A. and J.P. Morgan Securities Inc. will provide us with a senior secured term loan of $125 million to fund a portion of the cash consideration and, separately, will also provide us with an unfunded committed senior secured revolving credit facility of $25 million. Following the transaction, thinkorswim shareholders will represent approximately 30% of the ownership of INVESTools, and thinkorswim will receive two seats on our expanded, eight-member Board of Directors. thinkorswim employees will be eligible for a $20 million retention bonus pool which will be paid annually over a three-year period. In addition, thinkorswim employees will receive options to purchase 2.3 million shares of our common stock. The options will vest over 4 years, and half of the options will have an exercise price equal to the market price at closing. The other half of the options will have an exercise price equal to 150% of the market price at closing.

We must obtain approval from our shareholders in order to issue the 19.1 million shares of common stock to be issued as part of the merger consideration. On November 2, 2006, we filed a preliminary proxy statement with the SEC in anticipation of holding a Special Meeting of shareholders in early 2007 to obtain the necessary shareholder approval. Additionally, prior to completion of the merger, thinkorswim will be required to make certain filings with the National Association of Securities Dealers.

**Concentration Risk**

During the three and nine months ended September 30, 2006, we accessed approximately 56% and 58%, respectively, of our sales transaction volume through co-marketing (Success Magazine and NET Marketing Alliance) relationships. While the loss of the relationships with either of these parties could have a material adverse effect on our financial performance in the short-term, we are constantly pursuing new student acquisition channels and believe business from new and existing channels would eventually replace such lost volumes if they were to occur. There can be no assurance that we would be successful in establishing new channels.

**Revenue**

***Learning Formats***

**Depending on the brand under which the learning formats are marketed, the content and services available to students, i.e., length of workshop, types of coaching services or length of time over which services are performed, and access to certain Investor Toolbox features, may vary.**

- Preview Event We offer directly or through partners, a free event that introduces attendees to fundamental investing concepts and provides a broad overview of the financial markets. Depending on the brand under which the preview event is marketed, participants may receive a gift for attending. Attendees are offered an opportunity to purchase a more

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**comprehensive, live workshop, and an in-depth online or DVD-based home study program.**

- Workshops We offer one and two-day live, instructor-led investing workshops that cover topics ranging from fundamental investing principles to advanced strategies. The workshops provide hands-on experience using our proprietary Investor Toolbox website. The fundamental 5-Step Investing Formula workshop includes a six month subscription to the Investor Toolbox website as part of the workshop fee.

- Home Study/Online Courses We also offer all of our courses in an online or DVD-based home study format. The home study programs provide hands-on training using our proprietary Investor Toolbox website. The 5-Step Investing Formula home study and online course includes a six month subscription to the Investor Toolbox website as part of the course fee. Additional online courses on advanced topics are also available.

- Coaching Services  Our coaching service options offer investors individual, on-demand access to coaches via the telephone, or one-to-many online coaching and support. Offered in connection with both foundational and advanced courses, the sessions allow investors to learn at their own pace and apply what they are learning. On-demand and one-to-many coaching alternatives are subscription products offered in one to sixty-month time periods, depending on the related course.  One-to-many coaching services include weekly, topic-driven live webinar sessions (Trading Rooms), advanced strategy-based group discussions (Active Investor Talk), and market-based group instruction (Masters Talk).

- Interactive Workshops  Our interactive workshops provide students with an in-depth, personal learning experience and a low student-to-coach ratio. These courses are taught by our most experienced coaches and are delivered on-line or live at our Utah facility. They include stock, options, and currency training, as well as more advanced active investing courses.

- Ongoing Support and Tutorials (web subscriptions) As long as alumni maintain an active subscription to the Investor Toolbox website, they have access to student and technical support through a Live Chat online support option and through an 800-number hotline. Alumni can access a series of inexpensive or free topical, recorded online tutorials through our Investor Toolbox website. The click-on-demand tutorials are designed to walk graduates through the portion of the Investor Toolbox website that relates to the subject being covered.

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| | 2006 | 2005 | % Change | 2006 | 2005 | % Change |
| | (in thousands, except percentages) | | | | | |
| **Initial Education:** | | | | | | |
| Workshops | $ 3,111 | $ 4,685 | (34)% | $ 10,334 | $ 12,765 | (19)% |
| Coaching services | 38 | | % | 180 | 250 | (28)% |
| Home study / Online courses | 6,387 | 2,049 | 212 % | 16,641 | 3,372 | 394 % |
| Initial web time | 706 | 709 | 0 % | 2,336 | 2,162 | 8 % |
| Total initial education sales transaction volume | 10,242 | 7,443 | 38 % | 29,491 | 18,549 | 59 % |
| | | | | | | |
| **Continuing Education:** | | | | | | |
| Workshops | 7,772 | 6,047 | 29 % | 32,275 | 21,139 | 53 % |
| Coaching services | 17,627 | 13,456 | 31 % | 65,560 | 50,344 | 30 % |
| Home study / Online courses | 12,925 | 4,286 | 202 % | 34,032 | 15,145 | 125 % |
| Web time renewals | 6,301 | 5,966 | 6 % | 21,756 | 16,878 | 29 % |
| Other revenue | 1,742 | 1,347 | 29 % | 5,515 | 4,114 | 34 % |
| Total continuing education sales transaction volume | 46,367 | 31,102 | 49 % | 159,138 | 107,620 | 48 % |
| | | | | | | |
| Total sales transaction volume | 56,609 | 38,545 | 47 % | 188,629 | 126,169 | 50 % |
| Change in deferred revenue, net | (21,057) | (1,526) | 1280 % | (75,900) | (24,365) | 212 % |
| Total revenue | $ 35,552 | $ 37,019 | (4)% | $ 112,729 | $ 101,804 | 11 % |

In the previous table, sales transaction volume ( STV ), which is a non-GAAP financial measure, represents sales transactions generated in each period before the impact of recognition of deferred revenue from prior periods and the deferral of revenue from current period sales. We believe that STV is an important measure of business volume. See Cost of Revenue below for a further discussion of STV.

In the table above, initial education revenues consist of the initial sales to students at preview events, and sales to new students via our telesales groups. Once the student purchases this initial education, which consists primarily of the 5-Step Investing Formula and/or initial Currency Trading courses, they are considered a graduate. Continuing education revenues consist of sales of advanced products and web time renewals sold to graduates.

**Three Months Ended September 30, 2006 Compared To The Three Months Ended September 30, 2005:**

Revenue overall decreased by $1.5 million for the quarter ended September 30, 2006, when compared to the same period in 2005, as a result of an increase in the change in deferred revenue. As we continue to transition to more online courses offered over longer periods of time and one-to-many and subscription based coaching, the amount of deferred revenue continues to increase. Despite total reported revenue decreasing, during the three months ended September 30, 2006, there was a significant increase in the number of home study/online course sales and coaching sales compared to the same period in 2005. Also, the number of workshops held during the third quarter of 2006 increased from the number of workshops held during the third quarter of 2005. Home study/online course sales also increased as a result of increased telesales and internal telesales activities, particularly in the case of our online course products. Due to increased marketing and promotional efforts, we experienced growth in the number of sales leads received, and we have increased our internal sales force since a year ago. In addition, we experienced increased sales of our Active Investing Series and Currency Trader products.

Also contributing to these STV increases were price increases effective during September 2006 of selected bundled products and services. However, offsetting the increases in reported revenues were increases in deferred revenue, due to our ongoing transition to online courses, along with one-to-many subscription coaching services, both of which have longer periods over which services are rendered. As we continue to increase the amount of STV coming from our online and subscription coaching products, we continue to experience an increase in the proportion of each sale that is deferred for future recognition.

*Initial Education Sales*

Initial education sales sold at our preview events and by our telesales groups increased $2.8 million for the quarter ended September 30, 2006, when compared to the same period in 2005. Much of the increase was due to an increase in the number of preview events and better rates of customer response resulting from television advertising. This led to higher registration for our preview events, and an increase in the sale of live and online services. STV increases also resulted from increased sales of online course products to students at preview events. We also increased our internal sales force since last year, and received more sales leads. Both of these factors resulted in increased telesales of online course products during the third quarter of 2006 as compared to the same period of 2005. Slightly offsetting this increase in initial education was a decrease in the price point of the initial courses sold during the quarter.

*Continuing Education Sales*

Sales at our continuing education workshops and by our telesales groups increased $15.3 million for the quarter ended September 30, 2006, when compared to the same period in 2005, primarily due to an overall increase of 32 percent more paid graduates since the prior year. An increase in the number of students purchasing continuing education products resulted from more graduates purchasing 5-Step Investing Formula courses sold through our co-marketing partners, as compared to the number of graduates purchasing courses during the same period in the prior year. This resulted from a different pricing strategy in effect with co-marketing partners during the third quarter of 2006 as compared to the same period in 2005. Furthermore, continuing education sales increased due to an increased number of courses sold at workshops to a higher population of students already graduated from initial education courses. In addition, we have introduced an additional upsell product offering, and have converted the majority of our coaching products from one-to-one coaching products to one-to-many online subscription based

products that have been well received by our students.

*Change in Deferred Revenue*

Change in deferred revenue increased $19.5 million for the quarter ended September 30, 2006, when compared to the same period in 2005. The primary reasons for the increase in deferred revenue are the increased proportion of STV that contain subscription online and coaching products or services and the increasing length of time over which the subscription online and coaching products and services are fulfilled.

**Nine Months Ended September 30, 2006 Compared To The Nine Months Ended September 30, 2005:**

Revenue increased by $10.9 million during the nine months ended September 30, 2006, when compared to the nine months ended September 30, 2005. The reasons for the increase included all of the factors discussed above in relation to the third quarter ended September 30, 2006.

The majority of the increase resulted from an increased number of graduates, acquired due to higher marketing spending and more effective marketing focus. The increase is also attributable to improved sales percentages, co-marketing pricing and better sales performance results from workshop and telesales teams. In addition, revenue for year-to-date 2006 increased due to product sales to attendees of the INVESTools Investor Conference held in March 2006.

*Initial Education Sales*

Initial education sales sold at our preview events and by our telesales groups increased $10.9 million for the nine months ended September 30, 2006, when compared to the same period in 2005. The increase was primarily as a result of an increased number of preview events, improved rates of customer response, and improved sales efforts resulting in an increased number of graduates of our initial education courses. This resulted in 65% more INVESTools graduates in 2006, as compared to both INVESTools and co-branded graduates in 2005. We also increased our internal sales force since last year and received more sales leads, due to the increased volume of events. Both of these factors resulted in increased sales of home study and online products sold by our telesales groups.

Furthermore, in 2005, STV derived from our 5-Step Investing Formula course sold at our preview events included workshops, which included the course materials distributed at the workshop and initial web site subscription. In contrast, during 2006, sales of the 5-Step Investing Formula Online course sold at preview events included workshops, home study/online courses, and initial web site subscriptions. This change was due to the change in the delivery of course materials for the 5-Step Investing Formula from hardcopy manuals to online delivery, therefore revenue from the online courses are recategorized as home study/online course sales since the revenues for the courses are deferred and amortized over the estimated life of the subscription.

*Continuing Education Sales*

Sales at our continuing education workshops and by our telesales groups increased $51.5 million for the nine months ended September 30, 2006 when compared to the same period in 2005, primarily due to an increase in successful upsale efforts at workshops with regard to students who had already graduated from intital education courses. In addition, during the current year we have developed additional advanced education subscription products which have contributed to the increase in STV during the nine months ended September 30, 2006 compared to the same period in 2005. Continuing education revenue during the nine months ended September 30, 2006 also increased due to a difference in the sales mix of our Program of High Distinction, Masters Programs, sales of Active Investing Series, Currency Trader products, along with broker-related royalties not present during 2005 and higher revenues earned through Prophet.

*Change in Deferred Revenue*

Change in deferred revenue increased $51.5 million during the first nine months of 2006 as compared to the same period in the prior year. The primary reasons for the increase are the same as for the three months ended September 30, 2006, i.e., a higher concentration of product and service sales containing online and coaching products, or services that are ultimately fulfilled over a longer period of time than with similar sales in 2005.

**Cost of Revenue**

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| | 2006 | 2005 | % Change | 2006 | 2005 | % Change |
| | (in thousands, except percentages) | | | | | |
| Partner commissions | $ 10,542 | $ 5,205 | 103 % | $ 37,006 | $ 22,866 | 62 % |
| Payroll costs | 8,526 | 7,514 | 13 % | 29,638 | 24,113 | 23 % |
| Other | 7,223 | 5,535 | 30 % | 24,197 | 21,865 | 11 % |
| Total cost of revenue | $ 26,291 | $ 18,254 | 44 % | $ 90,841 | $ 68,844 | 32 % |

| | % of Revenue Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2006 | 2005 | 2006 | 2005 |
| Revenue | 100 % | 100 % | 100 % | 100 % |
| Partner commissions | 30 % | 14 % | 33 % | 22 % |
| Payroll costs | 24 % | 20 % | 26 % | 24 % |
| Other | 20 % | 15 % | 21 % | 21 % |
| Total cost of revenue | 74 % | 49 % | 81 % | 68 % |

We defer a significant portion of our revenues associated with advanced products to future periods as services are rendered. We recognize costs as they are incurred. These costs consist of solicitation costs, which include employee sales commissions, partner commissions, credit card fees, and materials. Since these costs are incurred at the inception of the sales transaction, and not as the revenue is recognized, the analysis in the table below presents a tool for analyzing these costs because the ratios are calculated as a percentage of STV generated in each period. Refer to the Revenue section above for a further description of STV. The calculation of cost of revenue and each of the cost components as a percent of STV in the table below is a non-GAAP financial measure, which management believes provides useful information as it compares the cost of generating sales with the sales recorded in a period, whether those sales were recognized as revenue currently or deferred until future periods. Approximately 40 percent of deferred revenue amounts relate to website subscriptions and online courses for which the remaining fulfillment cost represents an allocation of website costs, which are substantially fixed in nature at current subscriber levels. Another 34 percent of the deferred revenue amounts relate to online and telephonic coaching services, of which the remaining fulfillment cost represents labor costs of approximately 10 to 15 percent of related coaching service revenue. The balance of deferred revenue corresponds to additional workshops and workshop certificates for our advanced product sales, for which the remaining fulfillment cost represents the incremental costs of the workshop attendee.

| | % of STV Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2006 | 2005 | 2006 | 2005 |
| Sales Transaction Volume | 100 % | 100 % | 100 % | 100 % |
| Partner commissions | 19 % | 14 % | 20 % | 18 % |
| Payroll costs | 15 % | 19 % | 16 % | 19 % |
| Other | 13 % | 14 % | 13 % | 17 % |
| Total cost of revenue | 46 % | 47 % | 48 % | 55 % |

**Three Months Ended September 30, 2006 Versus Three Months Ended September 30, 2005:**

Total cost of revenue increased $8.0 million for the three month period ended September 30, 2006 when compared to the same period in 2005. While the overall cost of revenue amounts increased along with the increase in total STV, as a percentage of STV cost of revenue decreased as a result of lower proportional payroll and other costs, partially offset by an increase in partner commissions.

Partner commissions consist of amounts that are paid to co-branding and co-marketing partnerships based on sales achieved

through these channels. The primary reason for the increase in the amount of partner commissions as a percentage of STV was due to various modifications to agreements with existing partnerships, the establishment of new partnerships, and the termination of others, as well as the change in the mix of STV generated through co-marketing channels.

Payroll costs include employee commissions based on a percentage of sales achieved from our events or telesales groups, certain fixed wages, and the related employee benefit costs. The primary reason for the decrease in payroll costs as a percentage of STV was due to changes in the commission structures for sales staff, which resulted in a reduction of payroll costs proportionate to the increase in the sales transaction volume for the quarter. Additionally, our payroll costs to deliver one-to-many coaching are largely fixed, so as sales of these product and services grow we are able to leverage these payroll costs.

Other costs consist of material costs (including shipping costs), credit card fees, travel expenditures, venue costs and other costs directly related to revenues. Reasons for the decrease in other costs as a percentage of STV were due to a decrease in inventory costs resulting from the transition to online courses that do not have significant material costs.

**Nine Months Ended September 30, 2006 Versus Nine Months Ended September 30, 2005:**

Total cost of revenue increased $22.0 million during the nine months ended September 30, 2006 when compared to the same period in 2005 as a result of similar factors as those affecting the results for the third quarter of 2006.

As with the quarter ended September 30, 2006, cost of revenue as a percentage of STV decreased over the first nine months of 2006 when compared to the same period in the prior year. While the dollar amount of partner commissions and payroll increased along with the growth in the number of workshops and events conducted, as a percentage of STV payroll and other costs decreased.

Partner commissions consist of amounts that are paid to co-branding and co-marketing partnerships based on sales achieved through these channels. The primary reason for the increase in the amount of partner commissions as a percentage of STV was due to various modifications to agreements with existing partnerships, the establishment of new partnerships, as well as the change in the mix of STV generated through co-marketing channels.

Payroll costs include employee commissions based on a percentage of sales achieved from our events or telesales groups, certain fixed wages, and the associated employee benefit costs. The primary reason for the decrease in payroll costs as a percentage of STV was due to a change in the commission structure for sales staff and other sales employees, which resulted in a reduction of payroll costs proportionate to the increase in the sales transaction volume for the nine months ended September 30, 2006. Additionally, payroll costs declined as a result of the continued transition to online coaching formats that allow fewer coaches to service more students.

Other costs consist of amounts directly related to sales transaction volume including material costs, credit card fees, travel expenditures, venue costs and other costs. Reasons for the decrease in other costs as a percentage of STV were due to a decrease in inventory costs resulting from the transition to online courses that do not have significant material costs and significant decrease in travel and venue costs related to fulfillment of workshops, partially offset by the costs associated with the INVESTools Investor Conference held in March 2006.

**Selling Expense**

| | Three Months Ended September 30, | | | Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| | 2006 | 2005 | % Change | 2006 | 2005 | % Change |
| | (in thousands, except percentages) | | | | | |
| Marketing | $ 9,572 | $ 6,681 | 43 % | $ 26,584 | $ 19,211 | 38 % |
| Other | 2,582 | 2,702 | (4 )% | 9,624 | 8,118 | 19 % |
| Total selling expense | $ 12,154 | $ 9,383 | 30 % | $ 36,208 | $ 27,329 | 32 % |

| | % of Revenue Three Months Ended September 30, 2006 | | 2005 | | Nine Months Ended September 30, 2006 | | 2005 | |
|---|---|---|---|---|---|---|---|---|
| Revenue | 100 | % | 100 | % | 100 | % | 100 | % |
| Marketing | 27 | % | 18 | % | 24 | % | 19 | % |
| Other | 7 | % | 7 | % | 9 | % | 8 | % |
| Total selling expense | 34 | % | 25 | % | 32 | % | 27 | % |

**Three Months Ended September 30, 2006 Versus Three Months Ended September 30, 2005:**

Marketing costs increased $2.9 million in the three months ended September 30, 2006 when compared to the same period in 2005, primarily due to increased spending related to preview events, which are marketed via our DRTV and online advertising campaigns. These increases were partially offset by a reduction in direct mail, radio and print advertising including a decrease in marketing expenditures for BusinessWeek preview events. Other selling expense was impacted by an increase in the number of preview events resulting in increased payroll and travel costs. Sales tax expense decreased by approximately $0.8 million during the quarter due primarily to the reversal of sales tax reserves no longer required. The reversal in the sales tax reserve was the result of private letter rulings received from several states during the third quarter of 2006.

**Nine Months Ended September 30, 2006 Versus Nine Months Ended September 30, 2005:**

Marketing costs increased $7.4 million in the nine months ended September 30, 2006 when compared to the same period in 2005, primarily due to increased spending related to our preview events, which are marketed via our DRTV and online advertising campaign, and increased spending on product development costs. These increases were partially offset by a reduction in direct mail, radio and print advertising including a decrease in marketing expenditures for BusinessWeek preview events. Other selling expense was impacted by an increase in the number of preview events resulting in increased payroll and travel costs, in addition to increases in sales tax expense commensurate with the increase in revenue, offset by sales tax expense reversals stemming from private letter rulings received from several states. In addition, we also incurred marketing expenses associated with the INVESTools Investor Conference held in March 2006; there was no such event held in 2005.

**General and Administrative Expense**

| | Three Months Ended September 30, 2006 | 2005 | % Change | Nine Months Ended September 30, 2006 | 2005 | % Change |
|---|---|---|---|---|---|---|
| | (in thousands, except percentages) | | | | | |
| Payroll costs | $ 3,730 | $ 3,259 | 14 % | $ 11,158 | $ 9,556 | 17 % |
| Other | 4,623 | 2,180 | 112 % | 13,881 | 7,846 | 77 % |
| Total general and administrative expense | $ 8,353 | $ 5,439 | 54 % | $ 25,039 | $ 17,402 | 44 % |

| | % of Revenue Three Months Ended September 30, 2006 | | 2005 | | Nine Months Ended September 30, 2006 | | 2005 | |
|---|---|---|---|---|---|---|---|---|
| Revenue | 100 | % | 100 | % | 100 | % | 100 | % |
| Payroll costs | 10 | % | 9 | % | 10 | % | 9 | % |
| Other | 13 | % | 6 | % | 12 | % | 8 | % |
| Total general and administrative expense | 23 | % | 15 | % | 22 | % | 17 | % |

**Three Months Ended September 30, 2006 Versus Three Months Ended September 30, 2005:**

General and administrative expense increased $2.9 million for the three months ended September 30, 2006 when compared to the same period in 2005. The increase was primarily attributable to an increase in payroll and related costs due to increased headcount necessary to service operations, an increase in professional fees associated with various information technology projects, legal fees associated with various litigation and compliance issues, and increases in depreciation, rent and telecommunication costs resulting from the leasing of additional office space in California and New York locations.

**Nine Months Ended September 30, 2006 Versus Nine Months Ended September 30, 2005:**

General and administrative expense increased $7.6 million for the nine months ended September 30, 2006 when compared to the same period in 2005. As with the third quarter of 2006, the increase was primarily attributable to higher headcount in operating staff, increased expenses associated with information technology projects, litigation activities and regulatory compliance issues, and higher occupancy costs associated with our headquarters move to Draper, Utah.

**Special Charges**

Special charges were as follows:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | **2006** | **2005** | **2006** | **2005** |
| | **(in thousands)** | | | |
| Impairment of internal use software | $ | $ | $ 1,414 | $ |
| Severance costs and lease termination | 107 | | 683 | |
| Accrued settlement charges | 88 | | 1,088 | |
| Other | | 18 | | 58 |
| Total special charges | $ 195 | $ 18 | $ 3,185 | $ 58 |

In the third quarter 2006, we accrued $0.1 million as estimated settlement costs involved with ongoing legal matters and accrued an additional $0.1 million relating to severance costs.

**Liquidity**

**Cash Flows**

At September 30, 2006, our principal sources of liquidity consisted of $69.5 million of cash and cash equivalents and marketable securities, as compared to $33.4 million of cash and cash equivalents and marketable securities at December 31, 2005.

Net cash provided by operating activities was $45.3 million for the nine months ended September 30, 2006, compared to $13.1 million for the nine months ended September 30, 2005. Aside from the difference in net loss for the two periods, the primary reasons for the increase in operating cash flows was an increase of $51.9 million in the change in deferred revenue. Deferred revenue increased proportionately with the continued growth in sales of our continuing education and online courses discussed above. Also contributing to the increase in operating cash flow was a $9.4 million increase in cash flows related to increased levels of accounts payable and other liabilities, offset by a $3.1 million decrease in operating cash flows related to increased prepaid expenses and decreased tax liabilities.

At September 30, 2006, net working capital increased by $31.1 million to $52.2 million, compared to $21.1 million at December 31, 2005, after excluding the change in the current portion of deferred revenue which is substantially a non-cash liability. The primary reason for the increase in net working capital was a $36.1 million increase in cash and marketable securities resulting mainly from an increase in STV during 2006. Offsetting the cash and securities increases was a $9.3 million increase in accounts payable and accrued expenses, which was also associated with the growth in STV.

We regularly invest our excess cash balances in government agency securities that earned approximately a 4 percent average rate

of interest during the nine months ended September 30, 2006. At September 30, 2006, we had invested in securities with a fair value of $36.5 million, compared to $16.9 million at December 31, 2005. During the nine months ended September 30, 2006, investments matured which provided $3.9 million in proceeds, as compared to $6.1 million in proceeds provided from the maturity of investments during the comparable period of 2005. During the nine months ended September 30, 2006, we purchased an additional $23.4 million in securities compared to $2.6 million in additional securities purchased during the same period in 2005. The funds used in 2006 to acquire the additional securities came from cash provided from operations as a result of increased STV. Although the Company s marketable securities at September 30, 2006 are due to mature through the second quarter of 2009, the Company intends to liquidate most of the securities into cash in connection with the close of the merger with thinkorswim.

In June 2004, the Board of Directors authorized a stock repurchase program under which we can repurchase up to 3.5 million shares of our common stock over a two-year period. In June 2006, the Board of Directors extended the program for an additional two years. In May 2006, we repurchased 160,000 shares for $1.4 million under the terms of the program. There were no stock repurchases during the third quarter of 2006, and during the third quarter of 2005, we repurchased 343,400 shares for a cost of $1.4 million. As of September 30, 2006, a total of 1.6 million shares had been repurchased for a total cumulative cost of $5.0 million.

During the first three quarters of 2006, we added $0.2 million in equipment financed with capital leases. We expect to continue to use our liquid assets to invest in our infrastructure and fund our operations.

In connection with signing the merger agreement with thinkorswim, we obtained financing commitments from JPMorgan Chase Bank, N.A. and J.P. Morgan Securities Inc. to provide the Company with a senior secured term loan of $125 million to fund part of the cash portion of the merger consideration. Terms of the financing arrangement will require us to make quarterly principal payments of $6.3 million, plus accrued interest, through January 1, 2012. In addition, the financing commitment will provide us with a senior secured revolving credit facility of $25 million. The combined financing arrangements will also require us to meet various minimum ratios and financial covenants.

We expect that our current cash, cash equivalents and marketable securities balances, along with our cash flows from operations, will be sufficient to meet our working capital and other capital requirements for the foreseeable future. We anticipate allocating our cash resources among three primary areas which include internal growth strategies, acquisition opportunities, and the continuing buyback of our common stock.

**Contractual Obligations and Commercial Commitments**

We have various financial obligations and commitments in the ordinary course of conducting our business. We have contractual obligations requiring future cash payments under existing contractual arrangements, such as management, consulting and non-competition agreements, and lease arrangements.

The following table details our known future cash payments (on an undiscounted basis) related to various contractual obligations as of September 30, 2006 (in thousands):

| Payments due by period | Capital leases (1) | Operating leases (2) | Data & communication, and other agreements (3) | Management employment agreements (4) | Total contractual obligations |
|---|---|---|---|---|---|
| 2006 Remaining | $ 55 | $ 296 | $ 79 | $ 275 | $ 705 |
| 1 - 3 Years | 682 | 2,481 | 450 | 287 | 3,900 |
| Thereafter | 95 | 393 | | | 488 |
| Total lease payments | 832 | $ 3,170 | $ 529 | $ 562 | $ 5,093 |
| Less: Amount representing interest (average of 8%) | 113 | | | | |
| Present value of lease payments | 719 | | | | |

| | | |
|---|---|---|
| Less: Current portion | 176 | |
| Long-term portion | $ | 543 |

(1) Our capital leases include telecommunications equipment. The terms of the agreements vary from 2006 until 2010.

(2) Our operating leases include office space and operating facilities. The terms of the agreements vary from 2006 until 2010.

(3) We have supply contracts with various vendors of financial data and communications services providing for minimum monthly commitments. These contracts have terms from 2006 to 2009.

(4) We have entered into employment agreements with certain senior executives that require us to make cash payments over the contractual periods.

**Critical Accounting Policies**

Management s Discussion and Analysis of Financial Condition and Results of Operations is based upon the Condensed Consolidated Financial Statements, which have been prepared in accordance with generally accepted accounting principles in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities.

We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

An accounting policy is deemed to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact the financial statements. We believe the following critical accounting policies reflect our more significant estimates and assumptions used in the preparation of the Condensed Consolidated Financial Statements.

*Income Taxes*

The provision for income taxes is calculated using the asset and liability method. Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. We provide valuation allowances against the deferred tax assets if, based on available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Based on all available information, we do not believe it is more likely than not that our deferred tax assets will be utilized. In determining the adequacy of the valuation allowance we assess our profitability by taking into account the present and anticipated amounts of domestic and international earnings, as well as the anticipated taxable income as a result of the reversal of future taxable temporary differences. For financial reporting purposes, we generally provide taxes at the rate applicable for the appropriate tax jurisdiction.

*Valuation of Long-Lived Assets, Including Goodwill*

We review annually, or more often if events or circumstances indicate a potential impairment exists, goodwill and indefinite lived intangibles for impairment in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets.* We completed our annual impairment review during the fourth quarter of 2005. We did not identify any impairment to our goodwill or indefinite lived intangibles as a result of this review.

We review long-lived assets, including certain amortizable identifiable intangibles, for impairment whenever events or changes in circumstances indicate that we will not be able to recover the asset s carrying amount in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets.*

For long-lived assets held and used, including acquired intangibles, we initiate our review whenever events or changes in

circumstances indicate that the carrying amount of a long-lived asset may not be recoverable. Recoverability of an asset is measured by comparing its carrying amount to the expected undiscounted cash flows expected to result from the use and eventual disposition of that asset, excluding future interest costs that would be recognized as an expense when incurred. Any impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair market value. Significant management judgment is required in:

- identifying a triggering event that arises from a change in circumstances;
- forecasting future operating results; and
- estimating the proceeds from the disposition of long-lived or intangible assets.

*Revenue Recognition*

We recognize revenue in accordance with Staff Accounting Bulletin ( SAB ) No. 104, *Revenue Recognition*, and EITF No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables*. Revenue is not recognized until it is realized or realizable and earned. The criteria to meet this guideline are: (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred or services have been rendered, (iii) the price to the buyer is fixed or determinable, and (iv) collectibility is reasonably assured.

We sell our products separately and in various bundles that contain multiple deliverables that include on-demand coaching services, website subscriptions, educational workshops, online courses, along with other products and services. In accordance with EITF 00-21, sales arrangements with multiple deliverables are divided into separate units of accounting if the deliverables in the arrangement meet the following criteria: (i) the product has value to the customer on a standalone basis; (ii) there is objective and reliable evidence of the fair value of undelivered items; and (iii) delivery or performances of any undelivered item is probable and substantially in our control. The fair value of each separate element is generally determined by prices charged when sold separately. In certain arrangements, we offer these products bundled together at a discount. The discount is allocated pro rata to each element based on the relative fair value of each element when fair value support exists for each element in the arrangement. If fair value of all undelivered elements in an arrangement exists, but fair value does not exist for a delivered element, then revenue is recognized using the residual method. Under the residual method, the fair value of undelivered elements is deferred and the remaining portion of the arrangement fee (after allocation of 100 percent of any discount to the delivered item) is recognized as revenue. We provide some limited rights of return in connection with its arrangements. We estimate our returns based on historical experience and maintains an allowance for estimated returns, which has been reflected as an accrued liability. Each transaction is separated into its specific elements and revenue from each element is recognized according to the following policies:

| Product | **Recognition policy** |
|---|---|
| Workshop/workshop certificate | Deferred and recognized as the workshop is provided or certificate expires |
| Home study | Recognized upon delivery of home study materials to customer |
| Online course | Deferred and recognized over the estimated subscription period |
| Coaching services | Deferred and recognized as services are delivered, or on a straight-line basis over the subscription period |
| Website subscription and renewals | Deferred and recognized on a straight-line basis over the subscription period |
| Data licenses | Recognized monthly based on data usage |

*Deferred Revenue*

Deferred revenue arises from subscriptions to the websites, workshops, online courses and coaching services because the payments are received before the service has been rendered. Deferred revenue is recognized into revenue over the period that the services are performed or the time that the contract period expires, as shown in the above table.

*Accounting for Stock-Based Compensation*

Prior to 2003 we accounted for stock option grants in accordance with APB Opinion No. 25, *Accounting for Stock Issued to Employees* (the intrinsic value method), and accordingly recognized no compensation expense for stock option grants because the options exercise price equaled the fair market value of our stock price on the measurement date. Beginning in 2003, we adopted the fair value expense recognition method available under SFAS No. 123, *Accounting for Stock-Based Compensation* (SFAS 123), in accounting for options granted after 2002. Effective January 1, 2006, the Company adopted SFAS No. 123(R), *Share-*

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Contractual Obligations and Commercial Commitments 86

*Based Payment* utilizing the modified prospective approach.

Under the modified prospective approach, SFAS 123(R) applies to new awards and to unvested awards that were outstanding on January 1, 2006 that are subsequently exercised, modified, repurchased, or cancelled. In addition, compensation cost recognized in the first quarter of 2006 includes compensation cost for all options granted prior to, but not yet vested as of January 1, 2006, based on the grant-date fair value estimated in accordance with the original provisions of SFAS 123, and compensation cost for all options granted subsequent to January 1, 2006, based on the grant-date fair value estimated in accordance with the provisions of SFAS 123(R). In accordance with the modified prospective approach, prior periods were not restated to reflect the impact of adopting the new standard.

In calculating the fair values and compensation cost associated with share-based payments, we take into account multiple factors, which are highly subjective, and wherein changes can have a significant impact on our operations. These areas include our estimated stock price volatility, as well as the expected lives of the options.

**Recently Issued Accounting Standards**

**In July 2006, the FASB issued Financial Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ( FIN 48 ). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a company s financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes*. FIN 48 provides guidance on recognizing, measuring, presenting and disclosing in the financial statements uncertain tax positions that a company has taken or expects to take on a tax return. FIN 48 is effective for the Company as of January 1, 2007. We are currently assessing the impact, if any, of FIN 48 on our consolidated financial statements.**

In June 2006, the EITF reached a consensus on EITF Issue No. 06-03, *How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That Is, Gross versus Net Presentation)* ( EITF 06-03 ). EITF 06-03 provides that the presentation of taxes assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer on either a gross basis (included in revenues and costs) or on a net basis (excluded from revenues) is an accounting policy decision that should be disclosed. The provisions of EITF 06-03 become effective as of January 1, 2007. We are currently evaluating the impact of adopting EITF 06-03 on our consolidated financial statements.

In September 2006, the SEC released SAB No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, ( SAB 108 ), which provides the SEC staff s views regarding the process of quantifying financial statement misstatements, such as assessing both the carryover and reversing effects of prior year misstatements on the current year financial statements. SAB 108 is effective for years ending after November 15, 2006. We are currently evaluating the impact of the adoption of SAB 108 on our consolidated financial statements.

Also in September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ( SFAS 157 ). SFAS 157 defines fair value, establishes a framework for measuring fair value, and requires enhanced disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. We are currently evaluating the impact of the adoption of SFAS 157 on our consolidated financial statements.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risk, which is the potential loss arising from adverse changes in market prices and rates. We have invested excess cash in marketable securities that are subject to interest rate risk, which is not considered to be material to us. Based on our average holdings of marketable securities during the three and nine-month periods ended September 30, 2006, a 1 percent change in average interest rates would have increased or decreased our net loss for the periods by approximately $93,000 and $200,000, respectively. We do not enter, or intend to enter, into derivative financial instruments for trading or speculative purposes.

**Item 4. Controls and Procedures**

Our Chief Executive Officer and Chief Financial Officer have evaluated our disclosure controls and procedures (as such term is



In July 2006, the FASB issued Financial Interpretation No. 48, Accounting for Uncertainty in Income Taxes ( FIN 48

defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act )) as of the end of the period covered by this quarterly report. Based on this evaluation, such officers have concluded that these controls and procedures are not effective as of the end of the period covered by this quarterly report on Form 10-Q in ensuring that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely discussions regarding required disclosure. This conclusion was based on the existence of the material weakness in our internal control over financial reporting pertaining to our revenue recognition systems.

In light of the material weakness described in our Annual Report on Form 10-K for the year ended December 31, 2005, we performed additional analysis and other post-closing procedures to ensure our condensed consolidated financial statements are prepared in accordance with generally accepted accounting principles. Accordingly, management believes that the condensed consolidated financial statements included in this report fairly present in all material respects our financial position, results of operations and cash flows for the periods presented.

While we have not fully remediated the material weakness relating to revenue recognition systems, management s remediation plan consists of the following:

- We are currently in the process of configuring and implementing revenue recognition software.

- We have engaged a nationally recognized consulting firm to assist with the selection, configuration and deployment of an integrated enterprise resource planning and customer relationship management technology solution, which will include order entry, revenue recognition and all related financial modules. Implementation of this technology began during the second fiscal quarter of 2006. This technology is expected to be fully implemented during 2007.

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three-month period ended September 30, 2006 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.



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In July 2006, the FASB issued Financial Interpretation No. 48, Accounting for Uncertainty in Income Taxes ( FIN 48

In July 2006, the FASB issued Financial Interpretation No. 48, Accounting for Uncertainty in Income Taxes ( FIN 48

**PART II - OTHER INFORMATION**

**Item 1.** **Legal Proceedings**

Information regarding our legal proceedings can be found under the Litigation section of the Commitments and Contingencies footnote to the Condensed Consolidated Financial Statements.

**Item 1a.** **Risk Factors**

There have been no material changes in the Company s risk factors from those disclosed in Item 1A. Risk Factors of the 2005 Form 10-K.

## Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

## Item 3. Defaults upon Senior Securities

None.

## Item 4. Submission of Matters to a Vote of Security Holders

None

## Item 5. Other Information

None.

**Item 6.** **Exhibits**

(a) Exhibits:

| | |
|---|---|
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 32.1 | Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2 | Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

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

INVESTools Inc.

/s/ IDA K. KANE
Ida K. Kane
Chief Financial Officer
A duly authorized officer of the Registrant

Date: November 8, 2006



long as they are not identical, while, under Israeli GAAP, such separate presentation is only required if the difference between basic and diluted EPS is in excess of 5%. In addition, (i) shares to be issued upon exercise of employee stock options, the exercise of which is probable, are taken into account in the computation of basic earnings per share under Israeli GAAP, whereas under U.S. GAAP only the weighted average number of shares actually outstanding in the reported year is taken into account in computing basic earnings per share and shares to be issued upon the exercise of options are included in the computation of diluted earnings per share; (ii) the effect of including the incremental shares from assumed exercise of options is calculated under Israeli GAAP based on the full number of outstanding options and imputed interest on the assumed proceeds from the exercise of such options, rather than the treasury stock method under U.S. GAAP. The effect of including the incremental shares from assumed exercise of options was immaterial.

d. Reporting Comprehensive Income

U.S. GAAP requires reporting and display of comprehensive income and its components in a full set of general purpose financial statements. The purpose of reporting comprehensive income is to report a measure of all changes in equity of an enterprise during a period from transactions and other events from non-owner sources (i.e. all changes in equity except those resulting from investments by owners and distributions to owners). With respect to the Company, in addition to net income, other comprehensive income (loss) represents the differences from translation of foreign currency financial statements of subsidiaries, unrealized gains (loss) from available for sale securities and unrealized gains (loss) from cash flow hedge. Israeli GAAP do not contain such a requirement.

e. Income Statement Presentation

Under Israeli GAAP, the Company included capital gains on sale of fixed assets and in 2003 impairment of investments, restructuring expenses, income in respect of tax credits (grants) earned in the current year relating to previous years and expenses in respect of the retirement of officers and others under other income (expenses) net, in the consolidated income statements. Under U.S. GAAP, these expenses are classified under operating income. In addition under Israeli GAAP the Company s expense in respect of severance pay was recorded net of income from the funding arrangements, while under U.S. GAAP such income (loss) is classified under financial income (expenses), net (see g below).

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO FINANCIAL STATEMENTS (Continued)**
**Adjusted to NIS of December 2003**
**In Thousands**

Consequently, the income from operations before financing under U.S. GAAP would be as follows:

| | Consolidated | |
|---|---|---|
| | Year Ended December 31 | |
| | 2003 | 2002 |
| Income from operations before financing, as reported under Israeli GAAP | 184,971 | 80,968 |
| Effect of reclassification of (income) losses from severance pay funding arrangements | (11,183) | 2,948 |
| Effect of reclassification of other income (losses) under Israeli GAAP into operating income under U.S. GAAP | (38,720) | |
| | 135,068 | 83,916 |
| Effect of the U.S. GAAP differences listed in b 1) above | 7,547 | 7,114 |
| Income from operations before financing under U.S. GAAP | 142,615 | 91,030 |

f. Marketable Securities:

Under Israeli GAAP marketable securities designated for sale in the short-term are carried at market value. Changes in the market value are carried to the income statement. Under U.S. GAAP the Company classified its investment in marketable securities in the reported periods as investment in available for sale marketable securities. Available-for-sale securities are carried at fair value, with the unrealized gains and losses, reported as a separate component of shareholders equity, accumulated other comprehensive income (loss). Realized gains and losses on sales of investments, as determined on a specific identification basis, are included in the statements of operations. Unrealized losses that are other than temporary are recognized and are included in net income.

g. Liability for Employee Rights Upon Retirement, Net of Amount Funded

Under Israeli GAAP, amounts funded with severance pay funds and managerial insurance policies are deducted from the related severance pay liability. In addition, under Israeli GAAP, the income from such funds is offset against severance pay expenses.

Under U.S. GAAP, the amounts funded as above should be presented as a long-term investment included among the Company s assets. Also, under U.S. GAAP, income from severance pay funds and severance pay expenses are presented at their gross amounts (see also note 7c).

h. Options Granted to Employees of the Company:

Under Israeli GAAP, the Company does not recognize any compensation charge for stock options granted to employees.

Under U.S. GAAP, the Company accounts for employee stock-based compensation at fair value based method of accounting in accordance with FAS No. 123 Accounting for Stock-Based Compensation. Stock compensation is amortized over the vesting period of the underlying options.

The fair value of each option granted for CP shares was $130.00 as estimated on the date of grant using the Black & Scholes option price model.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO FINANCIAL STATEMENTS (Continued)**
**Adjusted to NIS of December 2003**
**In Thousands**

The fair value of each option granted for Agis shares was $23.00 as estimated on the date of grant using the Black & Scholes option price model.

| Option | Date of Grant | Number of Shares/Option | Vesting Period | Exercise Price | Vested |
|---|---|---|---|---|---|
| CP shares | July 31, 2000 | 3,500 | First 700 options vested immediately. The remaining balance vests in four annual installments. Such options were redeemed by the company in October 2004 and since then they have been treated as liabilities. | $350.0 | 2,800 |
| Agis shares | November 2002 | 50,000 | 25,000 options will vest on December 31, 2005. An additional 25,000 options are no longer outstanding since Net Sales goals were not met. | $ 7.5 | |

i. Accounting for Goodwill

Under Israeli GAAP, goodwill is amortized in equal annual installments over a period of no more than 20 years. Other intangible assets are amortized over a predetermined period based on their expected useful life.

For U.S. GAAP purposes, the Company has adopted FAS 141 ( Business Combinations ) and FAS 142 ( Goodwill and Other Intangible Assets ) for business combinations initiated after January 1, 2002; for business combinations initiated prior to that date, the Company has applied FAS 141 and FAS 142 to the goodwill relating thereto, as of January 1, 2002.

One of the most significant changes made by FAS 142, as applicable to the Company, is that goodwill is no longer to be amortized and is to be tested for impairment at least annually.

The Company has selected December 31 of each year as the date on which it performs its annual goodwill impairment test.

j. Derivative Instruments

Under Israeli GAAP and U.S. GAAP most of the Company s derivative instruments do not qualify for hedge accounting. For the transaction that qualified for hedge accounting, under Israeli GAAP this derivative is presented in its intrinsic value and is not marked to market. Under U.S. GAAP, such derivative is marked to market with unrealized gains or loses carried to other comprehensive income (loss).

k. Translation of Subsidiaries Financial Statements

Under Israeli GAAP, balance sheet and income statement items of investee companies, whose functional currency is other than NIS, were translated by using the exchange rate at balance sheet date (see also note 1b(3)). Under U.S. GAAP, balance sheet items are translated using the exchange rate at

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO FINANCIAL STATEMENTS (Continued)**
**Adjusted to NIS of December 2003**
**In Thousands**

balance sheet date, while income statement items are translated using the exchange rate at the dates on which these elements are recognized or the weighted average exchange rate for the period.

l. Restructuring Expenses

In June 2003, the Company s board of directors resolved to close the Petach Tikva plant of the subsidiary, Neca Chemicals (1952) Ltd. and to relocate the manufacturing of the cleaning products to alternative sites, including the Yeruham plant of the subsidiary, Careline (Pharmagis) Ltd.

A severance agreement was signed with the employees of the Neca plant by which the company undertook to pay the employees a total amount of NIS 7,000 subject to employees continuing to work until the closing the plant planned at the end of the first quarter of 2004. Under Israeli GAAP this amount is recognized currently as benefits for termination.

Under U.S. GAAP the said amount should be recognized ratably over the future service period.

m. Recently Issued Accounting Pronouncement in the United States of America:

FIN 46 R

In January 2003, the FASB issued FASB Interpretation No. 46 Consolidation of Variable Interest Entities ( FIN 46 ). Under FIN 46, entities are separated into two populations: (1) those for which voting interests are used to determine consolidation (this is the most common situation) and (2) those for which variable interests are used to determine consolidation. FIN 46 explains how to identify Variable Interest Entities ( VIEs ) and how to determine when a business enterprise should include the assets, liabilities, non-controlling interests, and results of activities of a VIE in its consolidated financial statements.

Since issuing FIN 46, the FASB has proposed various amendments to the Interpretation and has deferred its effective dates. Most recently, in December 2003, the FASB issued a revised version of FIN 46 (FIN 46-R), which also provides for a partial deferral of FIN 46. This partial deferral established the effective dates for public entities to apply FIN 46 and FIN 46-R based on the nature of the variable interest entity and the date upon which the public company became involved with the variable interest entity. In general, the deferral provides that (i) for variable interest entities created before February 1, 2003, a public entity must apply FIN 46-R at the end of the first interim or annual period ending after March 15, 2004, and may be required to apply FIN 46 at the end of the first interim or annual period ending after December 15, 2003, if the variable interest entity is a special purpose entity, and (ii) for variable interest entities created after January 31, 2003, a public company must apply FIN 46 at the end of the first interim or annual period ending after December 15, 2003, as previously required, and then apply FIN 46-R at the end of the first interim or annual reporting period ending after March 15, 2004.

The Company has currently no variable interests in any VIE. Accordingly, the Company believes that the adoption of FIN 46 and FIN 46-R will not have a material impact on its financial position, the results of its operations and and/or its cash flows.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO FINANCIAL STATEMENTS (Continued)**
**Nominal NIS In Thousands**

**Note 19 Nominal Data of the Company**

***A. Balance Sheet Data:***

| | December 31 | |
|---|---|---|
| | **2003** | **2002** |
| **Current assets** | | |
| Cash and cash equivalents | 244,906 | 65,829 |
| Short-term investments | 4,078 | 3,258 |
| Receivables and debit balances: | | |
| Trade | 97,839 | 30,750 |
| Other | 56,835 | 43,284 |
| Inventories | 66,275 | 48,653 |
| | 469,933 | 191,774 |
| **Investments and long-term receivables** | | |
| Investment in investee companies | 826,914 | 768,756 |
| Long-term deferred taxes | 11,303 | 11,065 |
| | 838,217 | 779,821 |
| **Fixed assets depreciated cost** | 56,986 | 43,242 |
| **Other assets and deferred expenses, net** | 1,433 | 656 |
| | 1,366,569 | 1,015,493 |
| **Current liabilities** | | |
| Current maturities of debentures | | 6,721 |
| Payables and credit balances: | | |
| Domestic trade | 17,444 | 9,763 |
| Foreign trade | 8,416 | 2,508 |
| Other | 52,361 | 13,165 |
| | 78,221 | 32,157 |
| **Long-term liabilities** | | |
| Loan units from institutions | 180,000 | |
| Liabilities for employee termination benefits, net | 2,061 | 2,482 |
| | 182,061 | 2,482 |
| **Shareholders equity** | | |

| | | |
|---|---|---|
| Capital and capital reserves, net of Company shares held by the Company and investee companies | 280,613 | 293,292 |
| Dividend declared after balance sheet date | 54,787 | |
| Retained earnings | 770,887 | 687,562 |
| | 1,106,287 | 980,854 |
| | 1,366,569 | 1,015,493 |

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO FINANCIAL STATEMENTS (Continued)**
**Nominal NIS In Thousands**

***B. Operating Results Data:***

| | Year Ended December 31 | | |
|---|---|---|---|
| | **2003** | **2002** | **2001** |
| Revenues, net | 286,199 | 159,443 | 159,306 |
| Cost of revenues | 141,735 | 78,308 | 78,234 |
| Gross profit | 144,464 | 81,135 | 81,072 |
| Research and development expenses, net | 89,931 | 81,603 | 75,859 |
| Selling and marketing expenses | 29,493 | 11,070 | 9,805 |
| General and administrative expenses | 15,731 | 11,159 | 11,431 |
| | 135,155 | 103,832 | 97,095 |
| Income (loss) from ordinary operations before financing | 9,309 | (22,697) | (16,023) |
| Financing income, net | 1,173 | 1,889 | 4,927 |
| Income (loss) from operations | 10,482 | (20,808) | (11,096) |
| Other income (expenses), net | (2,391) | 161 | 122 |
| Income (loss) before taxes on income | 8,091 | (20,647) | (10,974) |
| Tax saving (tax expense) | (5,990) | 3,593 | 3,665 |
| Income (loss) from operations after taxes on income | 2,101 | (17,054) | (7,309) |
| Company s share in profits of investee companies, net | 136,011 | 118,294 | 41,583 |
| Net income for the year | 138,112 | 101,240 | 34,274 |

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO FINANCIAL STATEMENTS (Continued)**
**Nominal NIS In Thousands**

***C. Changes in Shareholders Equity:***

| | Capital and Capital Reserves Net of Company Shares Held by the Company and Investee Companies | Retained Earnings | Dividend Declared After Balance Sheet Date | Total |
|---|---|---|---|---|
| **Balance as of January 1, 2001** | 287,717 | 606,835 | | 894,552 |
| **Changes during 2001:** | | | | |
| Purchase of Company shares by the Company | (24,063) | | | (24,063) |
| Differences from translation of foreign currency financial statements of investee companies | 16,010 | | | 16,010 |
| Net income | | 34,274 | | 34,274 |
| **Balance as of December 31, 2001** | 279,664 | 641,109 | | 920,773 |
| **Changes during 2002:** | | | | |
| Dividend paid | | (54,787) | | (54,787) |
| Differences from translation of foreign currency financial statements of investee companies | 13,628 | | | 13,628 |
| Net income | | 101,240 | | 101,240 |
| **Balance as of December 31, 2002** | 293,292 | 687,562 | | 980,854 |
| **Changes during 2003:** | | | | |
| Appropriation for the distribution of a dividend declared after balance sheet date | | (54,787) | 54,787 | |
| Differences from translation of foreign currency financial statements of investee companies | (12,679) | | | (12,679) |
| Net income | | 138,122 | | 138,112 |
| **Balance as of December 31, 2003** | 280,613 | 770,887 | 54,787 | 1,106,287 |

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**APPENDIX**

**DETAILS OF SUBSIDIARIES AND ASSOCIATED ENTITIES**
**As of December 31, 2003**

| Name of Company | Percentage of Holding of Shares Conferring Voting Rights and Share in Profits |
|---|---|
| **Subsidiaries:** | |
| Chemagis Ltd. | 100% |
| Agis Commercial Agencies (1989) Ltd. | 100% |
| Clay Park Labs Inc. | 100% |
| Careline (Pharmagis) Ltd. | 100% |
| Agis Investments (2000) Ltd. | 100% |
| Arginet Investments and Property (2003) Ltd. | 100% |
| | |
| **Subsidiaries of Agis Commercial Agencies (1989) Ltd.:** | |
| Westeck Ltd. | 100% |
| Pharma Clal Ltd. | 100% |
| | |
| **Subsidiaries of Arginet Investments and Property (2003) Ltd.:** | |
| Neca Chemicals (1952) Ltd. | 100% |
| | |
| **Subsidiaries of Neca Chemicals (1952) Ltd.:** | |
| Neca Marketing (1983) Ltd. | 100% |
| | |
| **Subsidiaries of Careline (Pharmagis) Ltd.:** | |
| Agis Distribution & Marketing (1989) Ltd. | 100% |
| | |
| **Subsidiaries of Chemagis Ltd.:** | |
| Dovechem Ltd. | 100% |
| ChemAgis USA Inc. | 100% |
| ChemAgis (Netherlands) B.V. | 100% |
| | |
| **Subsidiaries of ChemAgis (Netherlands) B.V.:** | |
| ChemAgis Germany GmbH | 100% |
| | |
| **Associated entities:** | |
| Danagis Ltd. | 50% |
| InfraServ GmbH&Co. Wiesbaden KG. | 7% |

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**AGIS INDUSTRIES (1983) LTD.**
**CONDENSED CONSOLIDATED BALANCE SHEET**
**NIS in Thousands (See Note 1c)**

| | September 30, | | December 31, |
|---|---|---|---|
| | 2004 | 2003 | 2003 |
| | (Unaudited) | | (Audited) |
| **Current assets** | | | |
| Cash and cash equivalents | 133,648 | 71,000 | 305,533 |
| Short-term investments | 96,802 | 13,755 | 14,436 |
| Trade receivables | 390,584 | 346,837* | 362,640* |
| Other receivables and debit balances | 162,273 | 93,873 | 103,354 |
| Inventories | 502,356 | 448,924 | 452,346 |
| Total current assets | 1,285,663 | 974,289 | 1,238,309 |
| **Investments, loans and other long-term receivables** | | | |
| Investee companies | 26,602 | 26,303 | 27,430 |
| Other investments and long-term loans, net | 44,466 | 47,529 | 49,493 |
| Deferred income taxes | 5,984 | 3,683 | 2,250 |
| Total investments | 77,052 | 77,515 | 79,173 |
| **Fixed assets depreciated balance** | 514,927 | 476,559 | 486,477 |
| **Other assets and deferred expenses, net** | 92,496 | 101,874 | 97,817 |
| | 1,970,138 | 1,630,337 | 1,901,776 |
| **Current liabilities** | | | |
| Bank credit and current maturities of other long-term liabilities | 132,585 | 61,028 | 73,031 |
| Trade payables | 229,228 | 228,104* | 240,825* |
| Other payables and credit balances | 201,836 | 134,394 | 159,445 |
| Total current liabilities | 563,649 | 423,526 | 473,301 |
| **Long-term liabilities** | | | |
| Loans and other liabilities, net | 249,114 | 94,083 | 280,115 |
| Liabilities for employee termination benefits, net | 16,574 | 15,895 | 16,164 |
| Deferred income taxes | 24,839 | 17,872 | 24,076 |
| Total long-term liabilities | 290,527 | 127,850 | 320,355 |
| **Total liabilities** | 854,176 | 551,376 | 793,656 |

| | | | |
|---|---|---|---|
| **Shareholders equity** | 1,115,962 | 1,078,961 | 1,108,120 |
| | 1,970,138 | 1,630,337 | 1,901,776 |

* Reclassified

| /s/ Moshe Arkin | /s/ Refael Lebel | /s/ Dov Feldman |
|---|---|---|
| Moshe Arkin<br>*President and Chairman of the Board of Directors* | Refael Lebel<br>*Chief Executive Officer and Director* | Dov Feldman<br>*Vice President, Finance* |

Bnei Braq,
*December 19, 2004*
*Approval date of the financial statements*

The accompanying notes are an integral part of these condensed financial statements.

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**AGIS INDUSTRIES (1983) LTD.**
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**
**NIS in Thousands (See Note 1c)**

| | For the Period of Nine Months Ended | | For the Period of Three Months Ended | | |
|---|---|---|---|---|---|
| | **September 30, 2004** | **September 30, 2003** | **September 30, 2004** | **September 30, 2003** | **Year Ended December 30, 2003** |
| | **(Unaudited)** | | **(Unaudited)** | | **(Audited)** |
| Revenues, net | 1,373,406 | 1,246,822* | 471,368 | 414,032* | 1,691,554 |
| Cost of revenues | 839,070 | 784,056* | 284,442 | 272,315* | 1,053,749 |
| **Gross profit** | 534,336 | 462,766 | 186,926 | 141,717 | 637,805 |
| Research and development expenses, net | 97,961 | 81,406* | 30,856 | 25,967* | 112,558 |
| Selling and marketing expenses | 210,745 | 170,192* | 77,667 | 62,507* | 245,659 |
| General and administrative expenses | 74,289 | 67,834* | 24,306 | 23,539* | 94,617 |
| | 382,995 | 319,432 | 132,829 | 112,013 | 452,834 |
| **Income from operations before financing** | 151,341 | 143,334 | 54,097 | 29,704 | 184,971 |
| Financing expenses (income), net | 7,231 | (4,035) | 3,116 | (4,378) | (6,047) |
| **Income from operations** | 144,110 | 147,369 | 50,981 | 34,082 | 191,018 |
| Other expenses (income), net | 76,078 | 12,386 | (443) | (5,733) | 23,890 |
| **Income before taxes on income** | 68,032 | 134,983 | 51,424 | 39,815 | 167,128 |
| Taxes on income | 11,427 | 29,263 | 10,511 | 5,545 | 31,485 |
| **Income from operations after taxes on income** | 56,605 | 105,720 | 40,913 | 34,270 | 135,643 |
| Share in profits of investee companies, net | 1,341 | 998 | 295 | 194 | 1,273 |
| **Net income for the period** | 57,946 | 106,718 | 41,208 | 34,464 | 136,916 |

| **Earning per Share NIS 1 per value** | | | | | |
|---|---|---|---|---|---|
| Earnings per share in NIS | 2.1 | 3.90 | 1.50 | 1.26 | 5.00 |
| Number of shares in nominal NIS in thousands | 27,419 | 27,394 | 27,419 | 27,394 | 27,419 |

* Reclassified

The accompanying notes are an integral part of these condensed financial statements.

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**AGIS INDUSTRIES (1983) LTD.**
**CONDENSED STATEMENTS OF CHANGES IN SHAREHOLDERS EQUITY**
**NIS in Thousands (See Note 1c)**

| | Share Capital | Capital Reserves | Differences from Translation of Foreign Currency Financial Statements of Subsidiaries | Retained Earnings | Dividend Paid | Cost of Shares in Company Held by the Company and Subsidiaries | Total |
|---|---|---|---|---|---|---|---|
| **For the Nine Months Ended September 30, 2004** | | | | | | | |
| **Unaudited** | | | | | | | |
| **Balance as of January 1, 2004** | 96,095 | 479,399 | 12 | 636,189 | 54,787 | (158,362) | 1,108,120 |
| **Changes for the Nine Months Ended September 30, 2004:** | | | | | | | |
| Dividend paid | | | | | (54,787) | | (54,787) |
| Differences from translation of foreign currency financial statements of subsidiaries | | | 4,683 | | | | 4,683 |
| Net income for the period | | | | 57,946 | | | 57,946 |
| **Balance as of September 30, 2004** | 96,095 | 479,399 | 4,695 | 694,135 | | (158,362) | 1,115,962 |
| **For the Nine Months Ended September 30, 2003** | | | | | | | |
| **Unaudited** | | | | | | | |
| **Balance as of January 1, 2003** | 96,095 | 479,399 | 9,018 | 554,060 | | (158,362) | 980,210 |
| **Changes for the Nine Months Ended September 30, 2003:** | | | | | | | |
| Differences from translation of foreign currency financial statements of | | | (7,967) | | | | (7,967) |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| subsidiaries | | | | | | | |
| Net income for the period | | | | 106,718 | | | 106,718 |
| **Balance as of September 30, 2003** | 96,095 | 479,399 | 1,051 | 660,778 | | (158,362) | 1,078,961 |
| | | | | | | | |
| **For the Year Ended December 31, 2003** | | | | | | | |
| **Audited** | | | | | | | |
| **Balance as of January 1, 2003** | 96,095 | 479,399 | 9,018 | 554,060 | | (158,362) | 980,210 |
| **Changes during 2003:** | | | | | | | |
| Differences from translation of foreign currency financial statements of subsidiaries | | | (9,006) | | | | (9,006) |
| Allocation for the distribution of a dividend declared after balance sheet date | | | | (54,787) | 54,787 | | |
| Net income | | | | 136,916 | | | 136,916 |
| | | | | | | | |
| **Balance as of December 31, 2003** | 96,095 | 479,399 | 12 | 636,189 | 54,787 | (158,362) | 1,108,120 |

The accompanying notes are an integral part of these condensed financial statements.

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**AGIS INDUSTRIES (1983) LTD.**
**CONDENSED STATEMENTS OF CHANGES IN SHAREHOLDERS EQUITY (Continued)**
**NIS in Thousands (See Note 1c)**

| | Share Capital | Capital Reserves | Differences from Translation of Foreign Currency Financial Statements of Subsidiaries | Retained Earnings | Dividend Paid | Cost of Shares in Company Held by the Company and Subsidiaries | Total |
|---|---|---|---|---|---|---|---|
| **For the Three Months Ended September 30, 2004** | | | | | | | |
| **Unaudited** | | | | | | | |
| **Balance as of July 1, 2004** | 96,095 | 479,399 | 5,237 | 652,927 | | (158,362) | 1,075,296 |
| **Changes for the Three Months Ended September 30, 2004:** | | | | | | | |
| Differences from translation of foreign currency financial statements of subsidiaries | | | (542) | | | | (542) |
| Net income for the period | | | | 41,208 | | | 41,208 |
| **Balance as of September 30, 2004** | 96,095 | 479,399 | 4,695 | 694,135 | | (158,362) | 1,115,962 |
| | | | | | | | |
| **For the Three Months Ended September 30, 2003** | | | | | | | |
| **Unaudited** | | | | | | | |
| **Balance as of July 1, 2003** | 96,095 | 479,399 | (6,376) | 626,314 | | (158,362) | 1,037,070 |
| **Changes for the Three Months Ended September 30, 2003:** | | | | | | | |
| Differences from translation of foreign currency financial statements of subsidiaries | | | 7,427 | | | | 7,427 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Net income for the period | | | | 34,464 | | 34,464 |
| **Balance as of September 30, 2003** | 96,095 | 479,399 | 1,051 | 660,778 | (158,362) | 1,078,961 |

The accompanying notes are an integral part of these condensed financial statements.

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**AGIS INDUSTRIES (1983) LTD.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**NIS in Thousands (See Note 1c)**

| | For the Period of Nine Months Ended | | For the Period of Three Months Ended | | |
|---|---|---|---|---|---|
| | September 30, 2004 | September 30, 2003 | September 30, 2004 | September 30, 2003 | Year Ended December 30, 2003 |
| | (Unaudited) | | (Unaudited) | | (Audited) |
| **Cash flows from operating activities** | | | | | |
| Net income for the period | 57,946 | 106,718 | 41,208 | 34,464 | 136,916 |
| Adjustments required to reflect the cash flows from operating activities (Appendix 1) | (37,433) | (67,513) | (28,124) | (57,029) | (41,709) |
| Net cash provided by (used in) operating activities | 20,513 | 39,205 | 13,084 | (22,565) | 95,207 |
| **Cash flows used in investment activities** | | | | | |
| Purchase of fixed assets | (79,498) | (93,829) | (22,087) | (36,450) | (121,475) |
| Investment grant relating to fixed assets | 1,467 | | 1,467 | | |
| Investee companies (grant) discharge of loans | 598 | (274) | 1,105 | (186) | (419) |
| Sale (Acquisition) of short-term marketable securities, net | (80,287) | (2,543) | 33,242 | (552) | (2,193) |
| Amounts carried to other assets and deferred expenses | (119) | (2,597) | 31 | (430) | (2,856) |
| Proceeds from sale of fixed assets | 2,227 | 2,574 | 1,080 | 1,111 | 3,301 |
| Changes in other long-term debt, net | | (11,294) | | (2,846) | |
| Credit granted to related and associated companies, net | 245 | 3,317 | (433) | 53 | 2,638 |
| Net cash provided by (used in) investment activities | (155,367) | (104,646) | 14,405 | (39,300) | (121,004) |

| | | | | | |
|---|---|---|---|---|---|
| **Cash flows from financing activities** | | | | | |
| Dividend paid | (54,787) | | | | |
| Issuance of loan units to institutions, net of issuance costs | | | | | 179,103 |
| Redemption of debentures | | (6,583) | | | (6,488) |
| Short term credit from banks, net | (30,342) | 31,992 | 396 | 1,584 | 41,733 |
| Long-term loans received and other long-term obligations undertaken | 79,774 | 2,579 | 34,715 | 100 | 9,121 |
| Discharge of long-term loans and other long-term liabilities | (32,339) | (12,729) | (1,216) | (1,361) | (13,149) |
| Net cash provided by (used in) financing activities | (37,694) | 15,259 | 33,895 | 323 | 210,320 |
| Translation differences on cash balances of consolidated subsidiaries operating independency | 663 | (931) | (118) | 714 | (1,103) |
| Increase (decrease) in cash and cash equivalents | (171,885) | (51,113) | 61,266 | (60,828) | 183,420 |
| Balance of cash and cash equivalents at beginning of period | 305,533 | 122,113 | 72,382 | 131,828 | 122,113 |
| Balance of cash and cash equivalents at end of period | 133,648 | 71,000 | 133,648 | 71,000 | 305,533 |

The accompanying notes are an integral part of these condensed financial statements.

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**AGIS INDUSTRIES (1983) LTD.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**NIS in Thousands (See Note 1c)**

| | For the Period of Nine Months Ended | | For the Period of Three Months Ended | | |
|---|---|---|---|---|---|
| | September 30, 2004 | September 30, 2003 | September 30, 2004 | September 30, 2003 | Year Ended December 30, 2003 |
| | (Unaudited) | | (Unaudited) | | (Audited) |
| **Appendix 1** | | | | | |
| **Adjustments required to reflect the cash flows from operating activities:** | | | | | |
| Revenue and expenses not involving cash flows: | | | | | |
| Share in losses (profits) of investee companies, net of dividends received there from, net | 205 | (998) | (298) | (555) | (862) |
| Depreciation and amortization | 59,167 | 53,701 | 19,968 | 18,492 | 74,947 |
| Write-off of fixed assets upon closing of a plant | | 4,980 | | 50 | 5,003 |
| Deferred taxes, net | (16,787) | (14,334) | 11,172 | (6,732) | (7,012) |
| Grant receivable from the state of New York | (59) | | | | (14,989) |
| Liabilities for employee termination, net | 415 | 6,044 | 321 | (200) | 6,175 |
| Impairment of other investment | | | | | 9,602 |
| Capital loss (gain) on: | | | | | |
| Sale of fixed assets | 259 | 270 | (264) | 330 | 190 |
| Marketable securities | (2,079) | (1,451) | (645) | (281) | (2,483) |
| Erosion of principal of long-term loans and other long-term liabilities | 2,642 | 418 | (338) | 342 | 550 |
| | 43,763 | 48,630 | 29,916 | 11,446 | 71,121 |
| Changes in assets and liabilities: | | | | | |
| Decrease (increase) in receivables and debit balances: | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Trade receivables | (22,404) | (66,806)* | 15,755 | (66,857)* | (92,362)* |
| Other receivables and debit balances | (43,908) | 133 | (9,899) | (2,169) | (8,060) |
| Increase (decrease) in payables and credit balances: | | | | | |
| Trade payables | (14,915) | (10,348)* | (29,043) | 9,541* | 6,064* |
| Other payables including long term | 47,281 | 49,752 | (28,928) | 497 | 73,871 |
| Increase in inventories | (47,250) | (88,874) | (5,925) | (9,487) | (92,343) |
| | (81,196) | (116,143) | (58,040) | (68,475) | (112,830) |
| | (37,433) | (67,513) | (28,124) | (57,029) | (41,709) |
| **Supplementary information on investing activities not involving cash flows:** | | | | | |
| Supplier s credit received for the purchase of machinery and equipment | 7,085 | 11,385 | 7,085 | 11,385 | 9,929 |

* Reclassified

The accompanying notes are an integral part of these condensed financial statements.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS**
**NIS In Thousands (See Note 1c)**

**Note 1 General**

A. The interim financial statements as of September 30, 2004 and for the nine-month and three-month periods then ended (hereinafter interim financial statements ) were prepared in a condensed format, in accordance with Accounting Standard No. 14 of the Israel Accounting Standards Board (hereinafter IASB ), and in accordance with the Securities Regulations (Periodic and Immediate Reports), 1970.

B. The accounting principles applied in the preparation of the financial statements are consistent with those principles used in the preparation of the annual financial statements, except for the change in the accounting treatment of matters discussed in Note 1c. Nonetheless, the interim financial statements do not contain all of the information and disclosures required in annual financial statements. Costs that are incurred in a non-uniform manner over the course of the year are advanced or deferred for interim reporting purposes only if it is proper to advance or defer this type of cost at the end of a report year. Taxes on income for interim periods are charged on the basis of the best estimate of the average tax rates expected for the entire year, for each of the Agis Group companies.

C. First-time application of Standards No. 12 and 13 of the IASB:

1. Transition to Nominal-Historical Financial Reporting

With effect from January 1, 2004, the Company has applied the provisions of Standard No. 12 Discontinuance of Adjusting Financial Statements for Inflation of the IASB and, pursuant thereto, the Company has discontinued, from the aforesaid date, the practice of adjusting its financial statements for the effects of inflation.

Through December 31, 2003, the Company prepared its financial statements on the basis of historical cost adjusted for the changes in the general purchasing power of Israeli currency (hereinafter NIS ), based upon changes in the consumer price index (hereinafter the CPI ), in accordance with pronouncements of the Institute of Certified Public Accountants in Israel (hereafter the Israeli Institute ). The adjusted amounts, as above, presented in the financial statements as of December 31, 2003 (hereinafter the transition date ), are used as the opening balances for the nominal-historical financial reporting in the subsequent periods. Additions made after the transition date have been included in the financial statements at their nominal values.

The comparative figures included in these financial statements are based on the adjusted financial statements for the prior reporting periods, as previously presented, after adjustment to the CPI for December 2003 (the CPI in effect at the transition date).

The amounts reported for periods after the transition date are composed as follows: all the amounts originating from the period prior to the transition date are composed of their adjusted amount at the transition date, with the addition of amounts in nominal values that were added after the transition date, and net of amounts that were deducted after the transition date (the retirement of such sums is effected at their adjusted values as of transition date, their nominal values, or a combination of the two, according to the circumstances). All the amounts originating from the period after the transition date are included in the financial statements at their nominal values.

2. Translation of Financial Statements of Overseas Investee Companies

Upon application of Standard No. 12, Interpretations Nos. 8 and 9 to Opinion 36 of the Israeli Institute were canceled and were replaced, effective January 1, 2004, by Israel Accounting Standard No. 13 Effect of Changes in Foreign Currency Exchange Rates , which was issued at the same time as Standard No. 12. Most of the provisions of Standard No. 13 correspond to the provisions that had

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED**
**FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

appeared in the above-mentioned Interpretations. Nevertheless, the following matters will affect the translation of the financial statements of overseas investee companies, operating independently:

From the transition date, operating results from overseas operations are translated into shekels at the exchange rates prevailing on the dates of the transactions (or at the average exchange rates for the period, where these approximate the actual exchange rates). Formerly, operating results from such overseas operations were translated at the period-end exchange rate.

Goodwill resulting from the acquisition of such operations is treated from the transition date as an asset of the investee company and is translated into shekels as prescribed by Standard No. 13 for such cases (formerly, goodwill was treated as an asset of the holding company).

D. Exchange Rates

Below are the changes that occurred in the report periods in the exchange rates of the dollar and the euro and in the Consumer Price Index:

| | Exchange Rate of $ | Exchange Rate of | Consumer Price Index |
|---|---|---|---|
| | % | % | % |
| For the nine months ended September 30: | | | |
| 2004 | 2.4 | (0.2) | 1.2 |
| 2003 | (6.3) | 4.3 | (1.5) |
| For the three months ended September 30: | | | |
| 2004 | (0.3) | 1.1 | (0.2) |
| 2003 | 2.9 | 5.2 | (1.0) |
| For the year ended December 31, 2003 | (7.6) | 11.3 | (1.9) |

The exchange rate of the dollar as of September 30, 2004 is: $1 = NIS 4.482.

The exchange rate of the euro as of September 30, 2004 is: 1 = NIS 5.5247.

**Note 2 Taxes on Income**

On June 29, 2004, the Israeli Parliament passed the Income Tax Ordinance Amendment (No. 140 and Temporary Provision) Law, 2004 (hereinafter the Amendment ), which provides for a gradual reduction commencing from January 1, 2004 in the rate of corporate tax from 36% to 30%, in the following manner: the rate for 2004 will be 35%, in 2005 34%, in 2006 32%, and in 2007 and thereafter 30%. The effect of the Amendment on the Company s income tax expenses (current and deferred), included in the financial statements, is immaterial.

The income tax rate in the nine month period ended September 30, 2004 is approximately 17%, which weights the average tax rates expected for the year 2004, for each of the Group companies.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

**Note 3 Geographic Segments**

| | Israel | International Activities | Total Consolidated |
|---|---|---|---|
| **For the Nine Months Ended September 30, 2004 Unaudited** | | | |
| Revenues of the segment | 446,693 | 926,713 | 1,373,406 |
| Income of the segment | 21,204 | 139,537 | 160,741 |
| Joint general expenses that were not allocated between segments | | | 9,400 |
| Income from operations before financing and other expenses | | | 151,341 |
| **For the Nine Months Ended September 30, 2003 Unaudited** | | | |
| Revenues of the segment | 459,127* | 787,695 | 1,246,822 |
| Income of the segment | 33,039 | 119,333 | 152,372 |
| Joint general expenses that were not allocated between segments | | | 9,038 |
| Income from operations before financing and other expenses | | | 143,334 |
| **For the Three Months Ended September 30, 2004 Unaudited** | | | |
| Revenues of the segment | 156,361 | 315,007 | 471,368 |
| Income of the segment | 4,177 | 53,020 | 57,197 |
| Joint general expenses that were not allocated between segments | | | 3,100 |
| Income from operations before financing and other expenses | | | 54,097 |

| | | | |
|---|---|---|---|
| **For the Three Months Ended September 30, 2003** | | | |
| **Unaudited** | | | |
| Revenues of the segment | 155,041* | 158,991 | 414,032 |
| Income of the segment | 11,287 | 21,397 | 32,684 |
| Joint general expenses that were not allocated between segments | | | 2,980 |
| Income from operations before financing and other expenses | | | 29,704 |
| | | | |
| **For the Year Ended December 31, 2003** | | | |
| **Audited** | | | |
| Revenues of the segment | 608,261 | 1,083,293 | 1,691,554 |
| Income of the segment | 44,785 | 152,749 | 197,534 |
| Joint general expenses that were not allocated between segments | | | 12,563 |
| Income from operations before financing and other income | | | 184,971 |

* Reclassified

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

**Note 4 Non-Recurring Expenses**

A. During the first quarter of 2004, the Company signed agreements with former and current officers of the Company, who, since 1994, had held options to purchase 5% of the Company s holdings in Clay Park Labs Inc. (hereinafter CP ). Under the terms of the agreements, the aforementioned waived their right to exercise the option that had been granted to them in the past. In return, the Company undertook to compensate them, based on the amount of the benefit they were to have received from the exercise of the option.

During the second quarter of the year, a final determination was made of the amount of the compensation for the majority of the options. As to the balance, compensation is a function of the Company s share price. Likewise, the purchase dates were fixed, the last of them not before April 2, 2006. Additionally, in the third quarter of 2004, an agreement was signed with a senior employee of CP regarding the compensation to be paid for his waiver of the options he held.

In the wake of these agreements, the Company recorded a non-recurring provision, charged to other expenses, in respect of the estimated value of the benefit included in the redemption of the above options. Likewise, the Company updated the provisions deriving from various obligations toward senior officers who ceased serving in these capacities. The expenses charged totaled NIS 70,000 (NIS 57,000, net of tax effect).

B. During the first half of 2004, the Company conducted negotiations on a merger proposal. The negotiations concluded without formulation of a binding agreement. The non-recurring expenses relating to the negotiations, which were charged in the reported period to other expenses totaled NIS 7,100.

**Note 5 Contingent Liabilities**

In May 2004, the Ministry of the Environment imposed additional conditions for a business license on a subsidiary that has a plant in Ramat Hovav. Professionals in the company are of the opinion that these are stringent conditions, and it is not possible, under the present circumstances, to estimate the extent of the actual fulfillment of the conditions and the costs involved. The subsidiary, together with other companies that received similar demands, filed an administrative appeal to revoke the conditions because of their unreasonableness. The legal proceedings have not yet begun.

**Note 6 Recently Published Accounting Standards**

In July 2004, the Israel Accounting Standards Board published Accounting Standard No. 19 Taxes on Income , which is based on International Accounting Standard No. 12, which prescribes the required accounting treatment (principles of recognition, measurement, presentation and disclosure) for taxes on income.

This Standard will apply to the financial statements relating to periods commencing on or after January 1, 2005, although early adoption of the Standard is recommended.

At this stage, the Company is evaluating the effect on it financial statement of the applying the provisions of this Standard.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

**Note 7 Reconciliation Between Generally Accepted Accounting Principles in Israel and in the United States**

The Company prepares its financial statements in accordance with Israeli GAAP. As applicable to these financial statements, Israeli GAAP vary in certain significant measurement respects from U.S. GAAP, as described below:

A. In accordance with Israeli GAAP, the Company comprehensively included the effect of the changes in the general purchasing power of Israeli currency in its financial statements through December 31, 2003. As more fully described in note 1b, from January 1, 2004 the Company no longer adjusts its financial statement for the effect of inflation. The amounts adjusted through December 31, 2003 serve as the basis for the nominal reporting in the following periods. The adjustments to reflect the changes in the general purchasing power of Israeli currency have not been reversed in the reconciliation of Israeli GAAP to U.S. GAAP.

B. The Company s reconciliation of net income and shareholders equity between Israeli GAAP and U.S. GAAP, are as follows:

| | Nine Months Ended September 30 | |
|---|---|---|
| | **2004** | **2003** |
| | **(unaudited)** | |
| 1. Net income: | | |
| As reported in these financial statements, under Israeli GAAP | 57,946 | 106,718 |
| Effect of treatment of the following items under U.S. GAAP: | | |
| Goodwill amortization (see i below) | 5,497 | 5,400 |
| Unrealized gains on available for sale marketable securities (see f below) | (477) | (1,647) |
| Restructuring expenses (see l below) | (2,333) | 4,667 |
| Options granted to Company s employees (see h below) | 2,970 | (752) |
| | 5,657 | 7,668 |
| Taxes on income: | | |
| Tax effect on the above U.S. GAAP adjustments | (1,551) | (4,194) |
| Changes in valuation allowance* | | (2,517) |
| Translation of subsidiaries financial statements (see k below) | | 472 |
| Net Income under U.S. GAAP | 62,052 | 108,147 |
| 2. Earnings per share under U.S. GAAP: | | |
| Basic (adjusted NIS) | 2.3 | 3.9 |
| Diluted (adjusted NIS) | 2.3 | 3.9 |
| 3. Comprehensive income (loss): | | |
| Net Income as reconciled to U.S. GAAP | 62,052 | 108,147 |
| Other comprehensive income (loss): | | |
| Differences from translation of foreign currency financial statements of consolidated companies | 4,683 | (8,439) |

| | | |
|---|---|---|
| Unrealized gains on available for sale marketable securities (see f below) | 477 | 1,647 |
| Unrealized gain (loss) from cash flow hedge (see j below) | 407 | (704) |
| Comprehensive income under U.S. GAAP | 67,619 | 100,651 |

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

| | September 30, | |
|---|---|---|
| | **2004** | **2003** |
| | **(unaudited)** | |
| 4. Shareholders equity: | | |
| As reported in these financial statements, under Israeli GAAP | 1,115,962 | 1,078,961 |
| Effect of treatment of the following items under U.S. GAAP: | | |
| Goodwill amortization (see i below) | 20,235 | 13,002 |
| Restructuring expenses (see l below) | | 4,667 |
| Derivative instruments (see j below) | 44 | (1,214) |
| Total U.S. GAAP adjustments | 20,279 | 16,455 |
| Tax effect on the above U.S. GAAP adjustments | (9,053) | (7,006) |
| Changes in valuation allowance* | | 805 |
| Shareholders equity under U.S. GAAP | 1,127,188 | 1,089,215 |

* The reversal of goodwill amortization for U.S. GAAP reconciliation purposes resulted in a reduction of a net deferred tax asset for which, for the year ended December 31, 2002, a valuation allowance had been recorded under Israeli GAAP. Following said reduction, this valuation allowance was likewise reversed. During 2003, the net deferred tax asset was reduced under Israeli GAAP and the prior year entry reversing the valuation allowance for U.S. GAAP purposes was reversed.

C. Earnings Per Share ( EPS )

Israeli GAAP relating to computation of EPS are described in note 1s.

As applicable to the Company the main differences between U.S. GAAP and Israeli GAAP are: under U.S. GAAP separate presentation of basic and diluted EPS is required as long as they are not identical, while, under Israeli GAAP, such separate presentation is only required if the difference between basic and diluted EPS is in excess of 5%. In addition, (i) shares to be issued upon exercise of employee stock options, the exercise of which is probable, are taken into account in the computation of basic earnings per share under Israeli GAAP, whereas under U.S. GAAP only the weighted average number of shares actually outstanding in the reported year is taken into account in computing basic earnings per share and shares to be issued upon the exercise of options are included in the computation of diluted earnings per share; (ii) the effect of including the incremental shares from assumed exercise of options is calculated under Israeli GAAP based on the full number of outstanding options and imputed interest on the assumed proceeds from the exercise of such options, rather than the treasury stock method under U.S. GAAP. The effect of including the incremental shares from assumed exercise of options was immaterial.

D. Reporting Comprehensive Income

U.S. GAAP requires reporting and display of comprehensive income and its components in a full set of general purpose financial statements. The purpose of reporting comprehensive income is to report a measure of all changes in equity of an enterprise during a period from transactions and other events from non-owner sources (i.e. all changes in equity except those resulting from investments by owners and distributions to owners). With respect to the Company,

in addition to net income, other comprehensive income (loss) represents the differences from translation of foreign currency financial statements of subsidiaries, unrealized gains (loss) from available for sale securities and unrealized gains (loss) from cash flow hedge. Israeli GAAP do not contain such a requirement.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

E. Income Statement Presentation

Under Israeli GAAP, the Company included capital gains on sale of fixed assets and in the nine months ended September 30, 2003 impairment of investments, restructuring expenses, income in respect of tax credits (grants) earned in the current year relating to previous years and expenses in respect of the retirement of officers and others under other income (expenses) net, in the consolidated income statements. Under U.S. GAAP, these expenses are classified under operating income. In addition under Israeli GAAP the Company s expense in respect of severance pay was recorded net of income from the funding arrangements, while under U.S. GAAP such income (loss) is classified under financial income (expenses), net (see g below).

Consequently, the income from operations before financing under U.S. GAAP would be as follows:

| | Nine Months Ended September 30 | |
|---|---|---|
| | **2004** | **2003** |
| Income from operations before financing, as reported under Israeli GAAP | 151,341 | 143,334 |
| Effect of reclassification of income from severance pay funding arrangements | (2,310) | (7,381) |
| Effect of reclassification of other income (losses) under Israeli GAAP into operating income under U.S. GAAP | (77,108) | (18,426) |
| | 71,923 | 117,527 |
| Effect of the U.S. GAAP differences listed in b 1) above | 6,974 | 8,155 |
| Income from operations before financing under U.S. GAAP | 78,897 | 125,682 |

F. Marketable Securities

Under Israeli GAAP marketable securities designated for sale in the short-term are carried at market value. Changes in the market value are carried to the income statement. Under U.S. GAAP the Company classified its investment in marketable securities in the reported periods as investment in available for sale marketable securities. Available-for-sale securities are carried at fair value, with the unrealized gains and losses, reported as a separate component of shareholders equity, accumulated other comprehensive income (loss). Realized gains and losses on sales of investments, as determined on a specific identification basis, are included in the statements of operations. Unrealized losses that are other than temporary are recognized are included in the consolidated statements of income.

G. Liability for employee rights upon retirement, net of amount funded

Under Israeli GAAP, amounts funded with severance pay funds and managerial insurance policies are deducted from the related severance pay liability. In addition, under Israeli GAAP, the income from such funds is offset against severance pay expenses.

Under U.S. GAAP, the amounts funded as above should be presented as a long-term investment included among the Company s assets. Also, under U.S. GAAP, income from severance pay funds and severance pay expenses are presented at their gross amounts.

H. Options granted to employees of the Company:

Under Israeli GAAP, the Company does not recognize any compensation charge for stock options granted to employees.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

Under U.S. GAAP, the Company accounts for employee stock-based compensation at fair value based method of accounting in accordance with FAS No. 123 Accounting for Stock-Based Compensation. Stock compensation is amortized over the vesting period of the underlying options.

The fair value of each option granted for CP shares was $130.00 as estimated on the date of grant using the Black & Scholes option price model.

The fair value of each option granted for Agis shares was $23.00 as estimated on the date of grant using the Black & Scholes option price model.

| Option | Date of Grant | No. of Shares/Option | Vesting Period | Exercise Price | Vested |
|---|---|---|---|---|---|
| CP shares | July 31, 2000 | 3,500 | First 700 options vested immediately. The remaining balance vests in four annual installments. Such options were redeemed by the company in October 2004 and since then they have been treated as liabilities. | $350.0 | 3,500 |
| Agis shares | November 2002 | 50,000 | 25,000 options will vest on December 31, 2005. An additional 25,000 options are no longer outstanding since Net Sales goals were not met. | $ 7.5 | |

I. Accounting for Goodwill

Under Israeli GAAP, goodwill is amortized in equal annual installments over a period of no more than 20 years. Other intangible assets are amortized over a predetermined period based on their expected useful life.

For U.S. GAAP purposes, the Company has adopted FAS 141 ( Business Combinations ) and FAS 142 ( Goodwill and Other Intangible Assets ) for business combinations initiated after January 1, 2002; for business combinations initiated prior to that date, the Company has applied FAS 141 and FAS 142 to the goodwill relating thereto, as of January 1, 2002.

One of the most significant changes made by FAS142, as applicable to the Company, is that goodwill is no longer to be amortized and is to be tested for impairment at least annually.

The Company has selected December 31 of each year as the date on which it performs its annual goodwill impairment test.

J. Derivative Instruments

Under Israeli GAAP and U.S. GAAP most of the Company s derivative instruments do not qualify for hedge accounting. For the transaction that qualified for hedge accounting, under Israeli GAAP this derivative is presented in its intrinsic value and is not marked to market. Under U.S. GAAP, such derivative is marked to market with unrealized gains or losses carried to other comprehensive income (loss).

K. Translation of Subsidiaries Financial Statements

Under Israeli GAAP, until December 31, 2003 (see note 1v) balance sheet and income statement items of investee companies, whose functional currency is other than NIS, were translated by using the exchange rate at balance sheet date (see also note 1b(3)). Since January 1, 2004, the Israeli GAAP

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED**
**FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

relating to translation of subsidiary financial statements was changed. Thus, the principles of translation are the same as the principles under U.S. GAAP. Under U.S. GAAP, balance sheet items are translated using the exchange rate at balance sheet date, while income statement items are translated using the exchange rate at the dates on which these elements are recognized or the weighted average exchange rate for the period.

L. Restructuring Expenses

In June 2003, the Company s board of directors resolved to close the Petach Tikva plant of the subsidiary, Neca Chemicals (1952) Ltd. and to relocate the manufacture of the cleaning products to alternative sites, including the Yeruham plant of the subsidiary, Careline (Pharmagis) Ltd..

A severance agreement was signed with the employees of the Neca plant by which the company undertook to pay the employees a total amount of NIS 7,000 subject to employees continuing to work until the closing the plant planned at the end of the first quarter of 2004.

Under Israeli GAAP this amount is recognized currently as benefits for termination. Under U.S. GAAP the said amount should be recognized ratably over the future service period.

M. Recently issued accounting pronouncement in the United States of America:

FIN 46 R

In January 2003, the FASB issued FASB Interpretation No. 46 Consolidation of Variable Interest Entities ( FIN 46 ). Under FIN 46, entities are separated into two populations: (1) those for which voting interests are used to determine consolidation (this is the most common situation) and (2) those for which variable interests are used to determine consolidation. FIN 46 explains how to identify Variable Interest Entities ( VIEs ) and how to determine when a business enterprise should include the assets, liabilities, non-controlling interests, and results of activities of a VIE in its consolidated financial statements.

Since issuing FIN 46, the FASB has proposed various amendments to the Interpretation and has deferred its effective dates. Most recently, in December 2003, the FASB issued a revised version of FIN 46 ( FIN 46-R ), which also provides for a partial deferral of FIN 46. This partial deferral established the effective dates for public entities to apply FIN 46 and FIN 46-R based on the nature of the variable interest entity and the date upon which the public company became involved with the variable interest entity. In general, the deferral provides that (i) for variable interest entities created before February 1, 2003, a public entity must apply FIN 46-R at the end of the first interim or annual period ending after March 15, 2004, and may be required to apply FIN 46 at the end of the first interim or annual period ending after December 15, 2003, if the variable interest entity is a special purpose entity, and (ii) for variable interest entities created after January 31, 2003, a public company must apply FIN 46 at the end of the first interim or annual period ending after December 15, 2003, as previously required, and then apply FIN 46-R at the end of the first interim or annual reporting period ending after March 15, 2004.

The Company has currently no variable interests in any VIE. Accordingly, the Company believes that the adoption of FIN 46 and FIN 46-R will not have a material impact on its financial position, the results of its operations and/or its cash flows.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED**
**FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

**Note 8 Subsequent Events**

On November 14, 2004, the company signed an Agreement and Plan of Merger (the Merger Agreement ) with Perrigo Company from the United States ( Perrigo ).

A. In accordance with the Merger Agreement, the merger will be carried out in a manner that subsequent to the Merger the Company will become a wholly-owned subsidiary of Perrigo and the shareholders of the Company will receive 0.8011 shares of Common Stock of Perrigo and an amount equal to $14.93 a total consideration equal as at November 14, 2004 to $29.87 (NIS 132.29) for each ordinary share of the Company. This exchange ratio reflects a Company value of 818 million US Dollars (net without taking into account Company shares held in treasury by the Company and its subsidiaries) and as noted above, half will be paid in cash and half in Perrigo stock. The total consideration for the Company shares reflects a premium of approximately 21.4% on the closing price of Company s shares on November 14, 2004 (NIS 109.00 per share) and the closing price of Perrigo stock on November 12, 2004 ($18.65).

B. Upon completion of the Merger the Company s shareholders will hold approximately 23% of Perrigo s stock.

C. Perrigo, based in Michigan USA, is a leading company in the healthcare field and is the largest U.S. manufacturer of over-the-counter pharmaceuticals and nutritional products sold by food, drug, and mass merchandise chains under their own labels (Private Label). Perrigo operates manufacturing and logistics facilities in the United States, England and Mexico and had sales of $898 million, and net income of $81 million for the 12 month period ended June 26, 2004.

D. In connection with the Merger Agreement, Mr. Moshe Arkin, the Company s controlling shareholder, signed several ancillary agreements, including:

1. A Lock-Up Agreement pursuant to which Mr. Arkin undertook not to sell Perrigo stock he will receive in exchange for his shares in the Company pursuant to the Merger Agreement for a period of two years from the date of Closing and not to sell more than half of such shares in the third year after date of Closing;

2. An Employment Agreement that will become effective upon the Closing of the Merger Agreement, pursuant to which Mr. Arkin will serve as the vice-chairman of Perrigo for a term of three years from the date of Closing;

3. A Nominating Agreement pursuant to which Mr. Arkin will be entitled to be nominated to the Board of Directors of Perrigo and to nominate an additional independent director (and in the event of a vacancy on the Perrigo Board, to nominate a third director);

4. An Undertaking Agreement, pursuant to which Mr. Arkin undertook to vote for the Merger Agreement at the shareholders meeting of the Company and to provide Perrigo with a power of attorney to vote his shares in favor of the Merger Agreement.

E. In addition, the Company s CEO Mr. Refael Lebel, signed a three year employment agreement that will become effective upon the closing of the Merger Agreement, pursuant to which Mr. Lebel will continue to serve as the Company s President and will also serve as an executive vice president of Perrigo.

F. The Merger is subject to the approval of the shareholders of the Company and of Perrigo, issuance of a prospectus in Israel and the US and receipt of all approvals required under any applicable law, including anti trust laws in the jurisdictions relevant to the operations on the companies.

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**AGIS INDUSTRIES (1983) LTD.**
**NOTES TO THE CONDENSED INTERIM CONSOLIDATED**
**FINANCIAL STATEMENTS (Continued)**
**NIS In Thousands (See Note 1c)**

G. Upon completion the Merger, Perrigo shares will be registered for trading on both the Nasdaq and the Tel-Aviv Stock Exchange in Tel-Aviv (dual listing).

H. Upon receipt of all necessary regulatory approvals, a special meeting of the shareholders of the Company will be convened. In light of Mr. Arkin s status as a controlling shareholder and the ancillary agreements described above, the approval of the Merger will be subject to the approvals required pursuant to section 275 of the Companies Law.

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**APPENDIX A**

**AGREEMENT AND PLAN OF MERGER**

**dated as of November 14, 2004**
**among**
**PERRIGO COMPANY,**
**PERRIGO ISRAEL OPPORTUNITIES LTD.**
**and**
**AGIS INDUSTRIES (1983) LTD.**

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**AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (this *Agreement*) is made and entered into as of November 14, 2004 among Perrigo Company, a Michigan corporation *(Buyer)*, Perrigo Israel Opportunities Ltd., an Israeli company and an indirect wholly owned subsidiary of Buyer *(Merger Sub)*, and Agis Industries (1983) Ltd., an Israeli public company (the *Company*).

WHEREAS, the Boards of Directors of Buyer, Merger Sub and the Company have each determined that it is in the best interests of their respective shareholders for Buyer to acquire the Company upon the terms and subject to the conditions of this Agreement;

WHEREAS, in furtherance of such acquisition, the Boards of Directors of Buyer, Merger Sub and the Company have each unanimously (without taking into consideration directors required to abstain from such vote pursuant to the Israeli Companies Law-5759-1999 (together with the rules and regulations promulgated thereunder, the *Israeli Companies Law*)) approved this Agreement and the merger (the *Merger*) of Merger Sub with and into the Company in accordance with Sections 314 through 327 of the Israeli Companies Law, and the Israeli Securities Law, 1968 (together with the regulations promulgated thereunder, the *Israeli Securities Law*), and upon the terms and subject to the conditions of this Agreement;

WHEREAS, the Board of Directors of the Company has: (i) determined that this Agreement, the Merger and the other transactions contemplated by this Agreement are fair to, and in the best interests of, the Company and its shareholders, and that, considering the financial position of the merging companies, no reasonable concern exists that the Surviving Corporation (as defined herein) will be unable to fulfill the obligations of the Company to its creditors; (ii) approved this Agreement, the Merger and the other transactions contemplated hereby; and (iii) determined to recommend that the shareholders of the Company approve this Agreement, the Merger and the other transactions contemplated hereby;

WHEREAS, the Boards of Directors of Buyer and Merger Sub have each unanimously: (i) determined that this Agreement, the Merger and the other transactions contemplated by this Agreement are fair to, and in the best interests of, their respective companies and shareholders, and that, considering the financial position of the merging companies, no reasonable concern exists that the Surviving Corporation will be unable to fulfill the obligations of Merger Sub to its creditors; (ii) approved this Agreement, the Merger and the other transactions contemplated hereby; and (iii) determined to recommend that the shareholders of their respective companies approve, in the case of Buyer, the issuance of the Buyer Common Stock (as defined herein) pursuant to this Agreement, and, in the case of Merger Sub, this Agreement, the Merger and the other transactions contemplated hereby;

WHEREAS, concurrently with the execution and delivery of this Agreement, as a condition and inducement to Buyer s willingness to enter into this Agreement, Buyer is entering into (i) an Undertaking Agreement (the *Undertaking Agreement*) with Moshe Arkin (the *Principal Shareholder*) and the Company pursuant to which, among other things, the Principal Shareholder has agreed, subject to the terms and conditions therein, to retain unencumbered all shares of capital stock of the Company owned by him, to vote or deliver written consents with respect to all such shares in favor of approval of this Agreement and the transactions contemplated hereby (including the Merger) and vote or deliver written consents with respect to all such shares against any transaction that is reasonably likely to impair the ability of Buyer, Merger Sub or the Company to consummate the transactions contemplated hereby (including the Merger); and (ii) a Lock-Up Agreement (the *Lock-Up Agreement*) with the Principal Shareholder pursuant to which the Principal Shareholder has agreed to certain restrictions with respect to the sale or other disposition of Buyer Common Stock received by the Principal Shareholder in the Merger;

WHEREAS, concurrently with the execution and delivery of this Agreement, as a condition and inducement to the Company s willingness to enter into this Agreement, the Company is entering into a Voting Agreement (the *Buyer Voting Agreement*) with a certain shareholder of Buyer (the *Buyer Shareholder*) pursuant to which, among other things, such Buyer Shareholder has agreed, subject to the terms and conditions therein, to vote or deliver written consents with respect to all shares of capital stock

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of Buyer owned by such shareholder in favor of approval of the issuance of the Buyer Common Stock pursuant to this Agreement; and

WHEREAS, Buyer intends to operate the Surviving Corporation s business in Israel in substantially the same manner as the business has been operated by the Company in the past.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

PLAN OF MERGER

1.1 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Israeli Companies Law, at the Effective Time (as defined herein), Merger Sub (as the target company (Chevrat Yaad) in the Merger) shall be merged with and into the Company (as the absorbing company (Chevra Koletet) in the Merger). As a result of the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the Surviving Corporation (the *Surviving Corporation* ) and shall (a) become a wholly owned direct or indirect subsidiary of Buyer, (b) be governed by the laws of the State of Israel, (c) maintain a registered office in the State of Israel and (d) succeed to and assume all of the rights, properties and obligations of Merger Sub and the Company in accordance with the Israeli Companies Law. Buyer, as the sole direct or indirect shareholder of Merger Sub, shall approve or cause to be approved the Merger and this Agreement at the general shareholders meeting of Merger Sub as promptly as practicable following the execution hereof.

1.2 *Effective Time; Closing Date.* The closing of the Merger and the other transactions contemplated by this Agreement (the *Closing* ) shall take place at the offices of Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, at a time and on a date to be designated by the parties (the time and date upon which the Closing actually occurs is referred to herein as the *Closing Date* ), which shall be no later than the fifth business day after the later to occur of: (a) the satisfaction or waiver of the conditions set forth in Article VI (other than those conditions which by their terms are to be satisfied or waived as of the Closing); or (b) the 71st day after the delivery of the Merger Proposal (as defined herein) to the office of the Companies Registrar of the State of Israel (the *Companies Registrar* ), or at such other time, date and location as the parties hereto shall mutually agree. On or before the Closing Date, Merger Sub and the Company shall each, in coordination with each other, deliver to the Companies Registrar a notice (the *Merger Notice* ) informing the Companies Registrar that the Merger was approved by the general shareholders meetings of Merger Sub and the Company, respectively. The Merger shall become effective upon the issuance by the Companies Registrar of a certificate evidencing the completion of the Merger in accordance with section 323(5) of the Israeli Companies Law. The time at which the Merger becomes effective is referred to herein as the *Effective Time* .

1.3 *Effects of the Merger.* At the Effective Time, without any action on the part of Buyer, Merger Sub, the Company or the holders of any of the following securities, the following shall occur:

(a) *Conversion of Company Shares.* Each Ordinary Share, NIS 1.00 par value per share, of the Company (collectively, the *Company Shares* ) issued and outstanding immediately prior to the Effective Time, other than any Company Shares held in the treasury of the Company or owned by Buyer or any direct or indirect wholly owned subsidiary of the Company or Buyer immediately prior to the Effective Time, shall automatically be converted into and represent the right to receive the following (the *Merger Consideration* ): (i) 0.8011 shares of common stock, without par value, of Buyer (the *Buyer Common Stock* ); and (ii) $14.93 in cash, in each case payable without interest to the holder of such Company Share upon surrender, in the manner provided in Section 1.4, of the certificate that formerly evidenced such Company Share. Upon the issuance of any Buyer Common Stock hereunder, and pursuant to Buyer s existing Rights Agreement dated as of April 10, 1996 (as the same may be amended from time to time, the *Rights Agreement* ) between Buyer and State Street Bank & Trust Company, as rights agent, one Preferred Share Purchase Right issuable pursuant

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to the Rights Agreement or any other right issued in substitution therefor (a *Right* ) shall be issued together with and shall attach to each share of Buyer Common Stock issued pursuant to the terms of this Agreement, unless the Rights shall have expired or been redeemed prior to the Effective Time. References in this Agreement to Buyer Common Stock shall include, unless the context requires otherwise, the Rights.

(b) *Buyer-Owned Stock and Stock Held in Treasury.* Each Company Share held in the treasury of the Company or owned by Buyer or any direct or indirect wholly owned subsidiary of the Company or of Buyer immediately prior to the Effective Time shall be cancelled and retired without any conversion or consideration paid in respect thereof, and shall cease to exist.

(c) *Stock Options.* Effective as of the Effective Time, each outstanding option or right to acquire Company Shares then outstanding (each, a *Company Stock Option* ), whether or not then exercisable, shall be assumed by Buyer and converted into an option to purchase shares of Buyer Common Stock in accordance with this Section 1.3(c). Each Company Stock Option so converted shall continue to have, and be subject to, the same material terms and conditions (including vesting schedule) as set forth in the applicable agreement pursuant to which such Company Stock Option was granted immediately prior to the Effective Time, except that, as of the Effective Time, (i) each Company Stock Option shall be exercisable for that number of whole shares of Buyer Common Stock equal to the product of the number of Company Shares that were issuable upon exercise of such Company Stock Option immediately prior to the Effective Time multiplied by 1.6022 (the *Exchange Ratio* ), rounded to the nearest whole number of shares of Buyer Common Stock, and (ii) the per share exercise price for each share of Buyer Common Stock issuable upon exercise of each Company Stock Option so converted shall be equal to the quotient determined by dividing the exercise price per Company Share at which such Company Stock Option was exercisable immediately prior to the Effective Time (expressed in U.S. Dollars based on the exchange rate in effect as of the close of business on the business day immediately preceding the date hereof) by the Exchange Ratio, rounded to the nearest whole cent. If not otherwise covered by a registration statement on Form S-8 in place as of the Effective Time, then as promptly as practicable, but in no event later than 60 days after the Closing, Buyer shall register the shares of Buyer Common Stock issuable upon exercise of Company Stock Option converted pursuant to this Section 1.3(c) by filing an effective registration statement on Form S-8 (or any successor form) or another appropriate form with the SEC (as defined herein), and Buyer shall use reasonable best efforts to maintain the effectiveness of such registration statement and maintain the current status of the prospectus with respect thereto for so long as such options remain outstanding. The Company shall use its reasonable best efforts to obtain any and all consents necessary to allow for the conversion of the Company Stock Options as provided in this Section 1.3(c).

(d) *Articles of Association.* At the Effective Time, the Articles of Association of the Company shall be the Articles of Association of the Surviving Corporation until thereafter amended in accordance with the Israeli Companies Law and such Articles of Association.

(e) *Directors and Officers.* The initial directors of the Surviving Corporation shall be the directors of Merger Sub immediately prior to the Effective Time, each to hold office in accordance with the Articles of Association of the Surviving Corporation until their respective successors are duly elected or appointed and qualified. The initial officers of the Surviving Corporation shall be the officers of Merger Sub immediately prior to the Effective Time, each to hold office in accordance with the Articles of Association of the Surviving Corporation until their respective successors are duly appointed.

(f) *Capital Stock of Merger Sub.* Each Ordinary Share, NIS 1.00 par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable Ordinary Share, NIS 1.00 par value per share, of the Surviving Corporation. Each certificate evidencing ownership of such shares of Merger Sub

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immediately prior to the Effective Time shall, as of the Effective Time, evidence ownership of such shares of the Surviving Corporation.

(g) *Adjustments to Merger Consideration.* The Merger Consideration shall be adjusted to reflect appropriately the effect of any forward or reverse stock split, stock dividend (including any dividend or distribution of securities exercisable or exchangeable for or convertible into Buyer Common Stock or Company Shares), cash dividends (other than any regular quarterly Buyer dividend of no more than $0.04 per share of Buyer Common Stock), stock issuance or sale, reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to Buyer Common Stock or Company Shares occurring on or after the date hereof and prior to the Effective Time.

(h) *Fractional Shares.* No fraction of a share of Buyer Common Stock will be issued to represent any fractional share interests in Buyer Common Stock to be delivered hereunder in exchange for Company Shares, but in lieu thereof each holder of shares of Company Shares who would otherwise be entitled to a fraction of a share of Buyer Common Stock (after aggregating all fractional shares of Buyer Common Stock that otherwise would be received by such holder) shall, upon surrender by such holder of each Certificate (as defined herein) held thereby, receive from Buyer an amount of cash (rounded to the nearest whole cent), without interest, equal to the product of (i) such fraction, *multiplied by* (ii) $18.638. The parties hereto acknowledge that payment of the cash consideration in lieu of issuing fractional shares is not separately bargained for consideration, but merely represents a mechanical rounding off for purposes of simplifying the corporate and accounting complexities that would otherwise be caused by the issuance of fractional shares.

1.4 *Surrender of Certificates.*

(a) *Exchange Agent.* Prior to the Effective Time, Buyer shall appoint a bank or trust company that maintains an office in Israel reasonably acceptable to the Company to act as exchange agent (the *Exchange Agent*) for the exchange of the Merger Consideration upon surrender of certificates that immediately prior to the Effective Time represented issued and outstanding Company Shares that were converted into the right to receive Merger Consideration pursuant to Section 1.3 (the *Certificates*).

(b) *Buyer to Provide Merger Consideration.* At or prior to the Effective Time, Buyer shall deposit with the Exchange Agent, for exchange in accordance with this Article I, the Merger Consideration and cash in an amount sufficient for payment in lieu of fractional shares of Buyer Common Stock to which holders of Company Shares may be entitled pursuant to Section 1.3(h) and any dividends or distributions to which holders of Company Shares may be entitled pursuant to Section 1.4(d) (collectively, the *Exchange Fund*). In the event the cash in the Exchange Fund shall be insufficient to fully satisfy all of the payment obligations to be made by the Exchange Agent hereunder (including pursuant to Section 1.3(h) and 1.4(d)), Buyer shall promptly make available to the Exchange Agent the amounts so required to satisfy such payment obligations in full. The Exchange Agent shall deliver the Merger Consideration, cash in lieu of any fractional shares of Buyer Common Stock and any dividends or other distributions contemplated to be paid for Company Shares pursuant to this Agreement out of the Exchange Fund. Except as contemplated by this Section 1.4, the Exchange Fund shall not be used for any other purpose.

(c) *Exchange Procedures.* As soon as reasonably practicable after the Effective Time (but no later than three business days thereafter), Buyer shall cause the Exchange Agent to mail to each holder of record as of the Effective Time of a Certificate (i) a letter of transmittal (in the English and Hebrew languages) in customary form (which shall specify that delivery shall be effected, and risk of loss and title to the Certificate shall pass, only upon delivery of the Certificate to the Exchange Agent), that shall also be in such form and have such other provisions as Buyer and the Company may reasonably specify, and (ii) instructions (in the English and Hebrew languages) for use in effecting the surrender of the Certificate in exchange for the Merger Consideration. Upon surrender of Certificates for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holders of such Certificates shall be entitled to receive in

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exchange therefor the Merger Consideration, cash in lieu of fractional shares of Buyer Common Stock to which such holder is entitled pursuant to Section 1.3(h) and any dividends or other distributions to which such holder is entitled pursuant to Section 1.4(d), and the Certificates so surrendered shall forthwith be canceled. Until so surrendered, outstanding Certificates will be deemed from and after the Effective Time to evidence only the right to receive, upon surrender and without interest, the Merger Consideration into which the Company Shares theretofore represented by such Certificates shall have been converted pursuant to Section 1.3, cash in lieu of fractional shares of Buyer Common Stock pursuant to Section 1.3(h) and any dividends or other distributions pursuant to Section 1.4(d).

(d) *Distributions with Respect to Unexchanged Shares.* No dividends or other distributions declared or made after the date hereof with respect to Buyer Common Stock with a record date at or after the Effective Time will be paid to the holders of any unsurrendered Certificate with respect to the shares of Buyer Common Stock represented thereby until the surrender of such Certificate in accordance with this Section 1.4. Subject to applicable law, following surrender of any such Certificate, the Exchange Agent shall promptly deliver to the record holder thereof, without interest, certificates representing whole shares of Buyer Common Stock issued in exchange therefor along with payment of the amount of cash, if any, into which the aggregate number of Company Shares previously represented by such certificate surrendered shall have been converted pursuant to this Agreement, cash payable in lieu of fractional shares pursuant to Section 1.3(h) and the amount of any such dividends or other distributions with a record date at or after the Effective Time theretofore paid with respect to such whole shares of Buyer Common Stock.

(e) *Transfers of Ownership.* If certificates representing shares of Buyer Common Stock are to be issued in a name other than that in which the Certificates surrendered in exchange therefor are registered, it will be a condition of the issuance thereof that the Certificates so surrendered will be properly endorsed and otherwise in proper form for transfer and that the persons requesting such exchange will have paid to Buyer or any agent designated by it any transfer or other Taxes (as defined herein) required by reason of the issuance of certificates representing shares of Buyer Common Stock in any name other than that of the registered holder of the Certificates surrendered, or established to the satisfaction of Buyer or any agent designated by it that such Tax has been paid or is not payable.

(f) *Required Withholding.* Each of the Exchange Agent and Buyer shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Company Shares such amounts as may be required to be deducted or withheld therefrom (i) if and to the extent required under the Israeli Tax Ordinance and the regulations promulgated thereunder, the Israeli Income Tax Ruling (as defined herein) or any other provision of Israeli law, statute, regulation, administrative ruling, pronouncement or other authority or judicial opinion or (ii) if required under section 3401 of the Internal Revenue Code of 1986, as amended (the *Code* ), or any similar provision of United States federal, state or local or foreign Tax Law, but only to the extent that any consideration payable or otherwise deliverable pursuant to this Agreement is treated as compensation for services. 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.

(g) *No Liability.* Notwithstanding anything to the contrary in this Section 1.4, neither the Exchange Agent, Buyer nor any party hereto shall be liable to a holder of shares of Buyer Common Stock or Company Shares for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

1.5 *Company s Transfer Books Closed; No Further Ownership Rights in Company Shares.* At the Effective Time: (a) the share transfer books of the Company shall be deemed closed, and no transfer of any certificates theretofore representing Company Shares shall thereafter be made or consummated; and (b) all holders of Certificates shall cease to have any rights as shareholders of the Company except for any right to receive the Merger Consideration, cash in lieu of fractional shares of Buyer Common Stock pursuant to Section 1.3(h) and any dividends or other distributions pursuant to Section 1.4(d). All shares of Buyer Common Stock issued in accordance with the terms hereof (including any cash paid in respect

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thereof pursuant to Section 1.3(h) or 1.4(d)) shall be deemed to have been issued in full satisfaction of all rights pertaining to such Company Shares.

1.6 *Lost, Stolen or Destroyed 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 Buyer or the Exchange Agent, the posting by such person of a bond in such reasonable amount as Buyer or the Exchange Agent may direct as indemnity against any claim that may be made against them with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration into which the Company Shares represented by such Certificate immediately prior to the Effective Time shall have been converted pursuant to Section 1.3, any cash in lieu of fractional shares of Buyer Common Stock payable to the holder thereof pursuant to Section 1.3(h) and any dividends or other distributions payable to the holder thereof pursuant to Section 1.4(d).

1.7 *Termination of Exchange Fund.* Promptly following the date that is 180 days after the Closing Date, the Surviving Corporation shall be entitled to require the Exchange Agent to deliver to Buyer any portion of the Exchange Fund which has not been disbursed to holders of Company Shares (including all interest and other income received by the Exchange Agent in respect of the Exchange Fund), and thereafter each holder of a Certificate may surrender such Certificate to Buyer or the Surviving Corporation and (subject to abandoned property, escheat and other similar laws) receive in consideration therefor the Merger Consideration into which the Company Shares represented by such Certificate immediately prior to the Effective Time shall have been converted pursuant to Section 1.3, without interest, cash in lieu of fractional shares of Buyer Common Stock pursuant to Section 1.3(h) and any dividends or other distributions pursuant to Section 1.4(d), but such holder shall have no greater rights against Buyer or the Surviving Corporation than may be accorded to general creditors of Buyer or the Surviving Corporation under applicable law.

1.8 *Taking of Necessary Action; Further Action.* If, at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement and the transactions contemplated hereby, the officers and directors of the Company, Merger Sub and Buyer will take any and all such lawful and necessary action.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer as follows:

2.1 *Organization and Qualification; Subsidiaries.*

(a) Each of the Company and the Company Subsidiaries (as defined herein) is a corporation duly organized and validly existing and, where such concept is applicable, in good standing, under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted, except where the failure to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined herein) on the Company. Each of the Company and the Company Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, consents, certificates, approvals and orders *( Approvals )* necessary to own, lease and operate the properties it purports to own, operate or lease and to carry on its business as it is now being conducted, except where the failure to have such Approvals would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each of the Company and the Company Subsidiaries is duly qualified or licensed as a foreign corporation to do business, and, where such concept is applicable, is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. For the purposes of this Agreement,

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*Material Adverse Effect* means, with respect to any party hereto, any event, change, circumstance or state of facts which individually or in the aggregate has or would reasonably be expected to have a material adverse effect on the business, assets, liabilities, properties, condition (financial or otherwise) or results of operations of such party and its subsidiaries, taken as a whole, materially impair the ability of such party to perform any of its obligations hereunder or prevent or materially delay the consummation of any of the transactions contemplated hereby; *provided, however*, that the term Material Adverse Effect shall exclude events, changes, circumstances and states of facts (i) that result or arise from events, changes, circumstances or states of facts generally affecting any industry in which such party operates or the economy in any of the countries in which such party operates, (ii) that result or arise from events, changes, circumstances or states of facts affecting general worldwide economic or capital market conditions, which in the case of each of the immediately preceding clause (i) and this clause (ii) do not materially disproportionately affect such party, (iii) specifically related to the results of pre-clinical and clinical testing (including bioequivalence testing), United States Food and Drug Administration *( FDA )* review of regulatory submissions (except to the extent that review issues relate to general FDA compliance considerations, such as compliance with good manufacturing practice requirements), including the approval by the FDA of any products of any third party that are competitive with products of the Company or any Company Subsidiary, and patent litigation for drugs that are pending or planned to be submitted for approval under abbreviated new drug applications or section 505(b)(2) applications, or (iv) that result or arise from the execution of this Agreement or the announcement of the transactions contemplated hereby.

(b) *Section 2.1(b)* of that certain Schedule dated as of the date hereof, signed by a duly authorized officer of the Company and delivered to Buyer on the date hereof (the *Company Disclosure Schedule* ), lists each of the Company s subsidiaries (each, a *Company Subsidiary* and, collectively, the *Company Subsidiaries* ), the jurisdiction of incorporation of each Company Subsidiary and the Company s equity interest therein, and, if not directly or indirectly wholly owned by the Company, to the Knowledge (as defined herein) of the Company, the identity and ownership interest of each of the other owners of such Company Subsidiary. Except as set forth in *Section 2.1(b) of the Company Disclosure Schedule*, as of the date hereof neither the Company nor any Company Subsidiary has agreed, is obligated to make or is bound (or has bound its property) by any written or oral agreement, contract, subcontract, lease, binding understanding, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan, commitment, arrangement or undertaking of any nature under applicable law (a *Contract* ) under which it is or is reasonably likely to become obligated to make any future investment in or capital contribution to any other entity in excess of $100,000 in the aggregate with other such Contracts. Other than the Company s interests in the Company Subsidiaries, and except as set forth in *Section 2.1(b) of the Company Disclosure Schedule*, neither the Company nor any Company Subsidiary directly or indirectly owns any equity or similar interest in or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any corporation, partnership, limited liability company, joint venture, trust, association, unincorporated organization or other legal entity. All of the issued and outstanding shares of capital stock of or other equity interests in each Company Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and not subject to preemptive rights, and, except as set forth in *Section 2.1(b) of the Company Disclosure Schedule*, all such shares or interests owned by the Company or any Company Subsidiary are owned free and clear of all pledges, hypothecations, claims, liens, charges, mortgages, encumbrances and security interests of any kind or nature whatsoever (collectively, *Liens* ).

(c) *Memorandum of Association; Articles of Association.* The Company has made available to Buyer (i) a complete and correct copy of its Memorandum of Association and Articles of Association as amended to the date of this Agreement (together, the *Company Charter Documents* ) and (ii) complete and correct copies of the Articles of Incorporation, bylaws, organization documents, partnership, joint venture and operating agreements and similar constitutive documents of each Company Subsidiary as amended to the date of this Agreement (collectively, the *Company Subsidiary Charter Documents* ). Such Company Charter Documents and Company Subsidiary Charter Documents are in full force and effect and no dissolution, revocation or forfeiture proceedings regarding the Company or any of the Company Subsidiaries have been commenced. Except as set forth in *Section 2.1(c) of the Company*

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*Disclosure Schedule*, the Company is not in violation of any of the provisions of the Company Charter Documents, and no Company Subsidiary is in violation of its applicable Company Subsidiary Charter Documents.

2.2 *Capitalization.*

(a) The registered (authorized) share capital of the Company consists of 40,000,000 Company Shares, NIS 1.00 par value per share. As of the date hereof: (i) 31,326,116 Company Shares are issued and outstanding; (ii) except as set forth in *Section 2.2(a) of the Company Disclosure Schedule*, no Company Shares are held in treasury by the Company or any Company Subsidiary; and (iii) 75,000 Company Shares are reserved for issuance upon the exercise of options or the grant of the rights to purchase Company Shares.

(b) All issued and outstanding Company Shares are duly authorized, validly issued, fully paid and nonassessable and are not subject to preemptive rights. There are no bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible or exercisable or exchangeable for securities having the right to vote) on any matters on which shareholders of the Company may vote.

(c) *Section 2.2(c) of the Company Disclosure Schedule* sets forth the following information with respect to each Company Stock Option outstanding as of the date of this Agreement: (i) the name of the optionee; (ii) the number of Company Shares subject to such Company Stock Option; (iii) the exercise price of such Company Stock Option; (iv) the date on which such Company Stock Option was granted; and (v) the applicable vesting schedule, including the vesting commencement date. The Company has made available to Buyer and Merger Sub accurate and complete copies of all Company option plans, if any, pursuant to which the Company has granted such Company Stock Options that are currently outstanding and the form of all stock option agreements evidencing such Company Stock Options. All Company Shares subject to issuance have been duly authorized and, upon issuance on the terms and conditions specified in the instrument pursuant to which they are issuable, will be validly issued, fully paid and nonassessable. Except as set forth in *Section 2.2(c) of the Company Disclosure Schedule*, there are no commitments, agreements or understandings of any character to which the Company is bound obligating the Company to accelerate the vesting of any Company Stock Option as a result of the Merger. All outstanding Company Shares, all outstanding Company Stock Options, and all outstanding shares of capital stock of each Company Subsidiary have been issued and granted in compliance with (i) all laws applicable to the issuance of securities or stock options, and (ii) all requirements set forth in applicable Contracts, except where the failure to comply with any such requirements would not, individually, or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(d) Except (i) as set forth in *Section 2.2(d) of the Company Disclosure Schedule*, (ii) for securities that the Company owns free and clear of all Liens, options, rights of first refusal, preemptive rights, community property interests or restrictions of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset, but specifically excluding any restrictions under applicable securities laws) directly or indirectly through one or more Company Subsidiaries, and (iii) for shares of capital stock or other similar ownership interests of Company Subsidiaries that are owned by certain nominee equity holders as required by the applicable law of the jurisdiction of organization of such Company Subsidiaries (which shares or other interests do not materially affect the Company s control of such Company Subsidiaries), as of the date hereof, there are no equity securities, partnership interests or similar ownership interests of any class of equity security of any Company Subsidiary, or any security exchangeable or convertible into or exercisable for such equity securities, partnership interests or similar ownership interests, issued, reserved for issuance or outstanding. Except as set forth in *Section 2.2(d) of the Company Disclosure Schedule* or as set forth in Section 2.2(a), as of the date hereof, there are no subscriptions, options, warrants, equity securities, partnership interests or similar ownership interests, calls, rights

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(including preemptive rights), commitments or agreements of any character to which the Company or any Company Subsidiary is a party or by which it is bound obligating the Company or any Company Subsidiary to issue, deliver or sell, or cause to be issued, delivered or sold, or repurchase, redeem or otherwise acquire, or cause the repurchase, redemption or acquisition of, any shares of capital stock, partnership interests or similar ownership interests of the Company or any Company Subsidiary or obligating the Company or any Company Subsidiary to grant, extend, accelerate the vesting of or enter into any such subscription, option, warrant, equity security, call, right, commitment or agreement. Except as contemplated by this Agreement or as set forth in *Section 2.2(d) of the Company Disclosure Schedule*, there are no registration rights and there is, except for the Voting Agreements, no voting trust, proxy, rights plan, antitakeover plan or other agreement or commitment to which the Company or any Company Subsidiary is a party or by which they are bound with respect to any equity security of any class of the Company or with respect to any equity security, partnership interest or similar ownership interest of any class of any of the Company Subsidiaries.

2.3 *Authority Relative to this Agreement.* The Company has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and, subject to obtaining the approval of the shareholders of the Company of this Agreement and receipt of required regulatory approvals and consents, to perform its obligations hereunder and to consummate the transactions contemplated hereby. Subject to the foregoing, the execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions so contemplated. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Buyer and Merger Sub, constitutes a valid, legal and binding obligation of the Company, enforceable against the Company in accordance with the terms hereof.

The required votes for the approval of the Merger (the *Company Shareholder Approval* ) are: (i) the affirmative vote of 75% of the voting power of the Company Shares present and voting at the Company Shareholders Meeting in person or by proxy; and (ii) if the Principal Shareholder has a personal interest (as such term is defined under the Israeli Companies Law) in this Agreement or the Merger, the affirmative vote of at least one-third of the aggregate voting power of the Company Shares held by shareholders that do not have a personal interest in this Agreement and the Merger and who are present and voting at the Company Shareholders Meeting (the *Non-Interested Shareholders* ); *provided, however*, such one-third vote would not be required in the event that the total votes opposing the Merger cast by the Non-Interested Shareholders do not exceed 1% of the voting rights in the Company.

2.4 *No Conflict; Required Filings and Consents.*

(a) Except as set forth in *Section 2.4 of the Company Disclosure Schedule*, the execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company shall not, (i) conflict with or violate the Company Charter Documents or the equivalent organizational documents of any Company Subsidiary, (ii) subject to obtaining the approval of the Company s shareholders of this Agreement and the transactions contemplated hereby and compliance with the requirements set forth in Section 2.4(b), conflict with or violate any law, rule, regulation, order, judgment or decree applicable to the Company or any Company Subsidiary or by which the Company s or any Company Subsidiary s property is bound, or (iii) conflict with, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, require any notice or consent pursuant to, impair the Company s or any Company Subsidiary s rights or alter the rights or obligations of any third party under, or give rise to any rights of termination, amendment, acceleration or cancellation of, or rights to payment under, or result in the creation of a Lien (other than Permitted Liens (as defined herein)) on any of the properties or assets of the Company or any Company Subsidiary pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, merger or other acquisition agreement, license, permit, franchise, concession or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary or

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the Company s or any Company Subsidiary s property is bound except to the extent such conflict, violation, breach, failure to give notice or obtain consent, default, impairment of rights, losses, Liens (other than Permitted Liens) or other effect would not, in the case of clauses (ii) or (iii), individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) Other than with respect to procedures under the Israeli Companies Law, the execution and delivery of this Agreement by the Company does not and the consummation of the transactions contemplated hereby do not, and the performance of this Agreement and the transactions contemplated hereby by the Company shall not, require any consent, approval, authorization or permit of, or filing with or notification to, any court, administrative agency, commission or governmental or regulatory authority, U.S. or foreign (a *Governmental Entity* ), except (i) for applicable requirements, if any, of the Securities Act of 1933, as amended, and the regulations promulgated thereunder (the *Securities Act* ), the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder (the *Exchange Act* ), state securities laws ( *Blue Sky Laws* ), Israeli Securities Law, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the *HSR Act* ), the requirements of any Governmental Entity under applicable competition, antitrust or foreign investment laws, the approval of the Israeli Investment Center of the Israeli Ministry of Trade & Industry (the *Investment Center* ), the approval of the office of the Chief Scientist of the Israeli Ministry of Trade & Industry ( *OCS* ), the approval of the Israeli Commissioner of Restrictive Trade Practices to the extent required pursuant to the Restrictive Trade Practices Act, 1988, the approval of the Israeli Lands Authority, the required approvals of this Agreement by the Company s shareholders pursuant to Israeli Law, the rules and regulations of the Nasdaq Stock Market ( *Nasdaq* ) and the Tel-Aviv Stock Exchange ( *TASE* ), and such other filings, notices, permits, authorizations, consents or approvals as may be required by reason of the status of Buyer, Merger Sub or their affiliates, and (ii) where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

2.5 *Compliance; Permits.*

(a) Except as set forth in *Section 2.5(a) of the Company Disclosure Schedule* and excluding labor and employee benefits matters which are exclusively covered in Section 2.10, tax matters which are exclusively covered in Section 2.12, and environmental matters which are exclusively covered in Section 2.16, neither the Company nor any Company Subsidiary is in conflict with, or in default or violation of, (i) any law, statute, code, rule, regulation (including regulations or requirements of any stock exchange), order, ordinance, judgment or decree or other pronouncement having the effect of law in the United States, Israel, or any foreign country or any state, county, city or other subdivision of any Governmental Entity including without limitation, those covering biopharmaceuticals, pharmaceuticals (including drugs), biologics, radiopharmaceuticals, controlled substances, energy, safety, health, information technology, transportation, bribery, record keeping, zoning, antidiscrimination, antitrust, wage and hour, and price and wage control matters (collectively, *Law* ) applicable to the Company or any Company Subsidiary or by which its or any of their respective properties is bound, or (ii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise, concession or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary or its or their respective properties is bound, except for any such conflicts, defaults or violations that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Company. No investigation or review by any Governmental Entity is, to the Knowledge of the Company, pending or threatened against the Company or any Company Subsidiary, nor, to the Knowledge of the Company, has during the past five years any Governmental Entity indicated an intention to conduct the same, other than, in each such case, those the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) Except as set forth in *Section 2.5(b) of the Company Disclosure Schedule* and excluding labor and employee benefits matters which are exclusively covered in Section 2.10, tax matters which are exclusively covered in Section 2.12, and environmental matters which are exclusively covered in

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Section 2.16, the Company and the Company Subsidiaries hold all permits, licenses, variances, exemptions, certificates, consents, product listings, establishment registrations, orders and approvals and other authorizations from Governmental Entities to test, manufacture, market, sell or distribute their respective products, to own, lease and operate their respective properties and assets, or carry on their respective businesses as they are now being conducted or otherwise which are material to the operation of the business of the Company and the Company Subsidiary taken as a whole (collectively, the *Company Permits*). All such Company Permits are in full force and effect, and as of the date of this Agreement, none of the Company Permits has, during the past five years, been withdrawn, revoked, suspended or cancelled nor is any such withdrawal, revocation, suspension or cancellation pending or, to the Knowledge of Company, threatened in writing, except where such failure to be in full force and effect or such withdrawal, revocation, suspension or cancellation, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. The Company and each Company Subsidiary have been, during the past five years, and are in compliance in all respects with the terms of the Company Permits and any conditions placed thereon, except for any noncompliance that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Company.

(c) Each product subject to the Federal Food, Drug and Cosmetic Act (the *FFDCA*), the FDA regulations promulgated thereunder, or similar legal provisions in any domestic or foreign jurisdiction that is developed, manufactured, tested, packaged, labeled, marketed, sold and/or distributed by the Company or any Company Subsidiary (each such product, a *Company Product*), is being developed, researched, manufactured, tested, packaged, labeled, marketed, sold and/or distributed in compliance in all material respects with all applicable requirements under the FFDCA or similar applicable laws, including those relating to investigational use, investigational new drug applications, new drug applications, abbreviated new drug applications, good clinical and manufacturing practices, record keeping, filing of reports and patient privacy, and medical record security.

(d) (i) During the past five years, neither the Company nor any Company Subsidiary has received any notice or other communication from the FDA or any other Governmental Entity in any domestic or foreign jurisdiction alleging any violation of any law by the Company or any Company Subsidiary applicable to any Company Product, except for any violation that, individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect on the Company. During the past five years, except as identified in *Section 2.5(d)(i) of the Company Disclosure Schedule*, no Governmental Entity or regulatory authority has served any notice, warning letter, regulatory letter, Section 305 notice, or any other similar communication on the Company or any of the Company Subsidiaries stating that their businesses were or are in material violation of any law, regulation, rule, ordinance, clearance, approval, permissions, authorizations, consents, exemption, guidance or guideline, or were or are the subject of any material pending, threatened or anticipated administrative agency or Governmental Entity investigation, proceeding, review or inquiry, or that there are circumstances currently existing which would reasonably be expected to lead to any loss of or refusal to renew any of the Company Permits held by the Company or any of the Company Subsidiaries. All manufacturing facilities of Company and Company Subsidiaries are operated in compliance in all material respects with the FDA s current good manufacturing practice regulations, 21 C.F.R. Parts 210 and 211.

(ii) Except as set forth in *Section 2.5(d)(ii) of the Company Disclosure Schedule*, during the three years prior to the date hereof, neither the Company nor any Company Subsidiary or any affiliate (as defined herein) thereof has received or been subject to any FDA Form 483 s relating to the Company Products.

(iii) *Section 2.5(d)(iii) of the Company Disclosure Schedule* sets forth a list as of the date hereof of all of the following with respect to the Company Products in the last three years, copies of all of which have been made available to Buyer prior to the date hereof: (A) reports of inspection observations from any Governmental Entity related to manufacturing facilities where products of the Company or any Company Subsidiary, or any affiliate thereof, are being manufactured, and (B) establishment inspection reports from any Governmental Entity.

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(e) Except as set forth in *Section 2.5(e) of the Company Disclosure Schedule*, all preclinical and clinical trials and bioequivalence studies conducted, supervised or monitored by the Company or the Company Subsidiaries have been conducted in compliance with all applicable federal, state, and local Laws, and the regulations and requirements of any Governmental Entity, including without limitation, FDA good clinical practice and good laboratory practice requirements except where the failure to be in such compliance would not reasonably be expected to have a Material Adverse Effect on the Company. During the past three years the Company and the Company Subsidiaries have consistently obtained and maintained any necessary Institutional Review Board *( IRB )* approvals of clinical trials or modifications thereto, conducted, supervised or monitored by the Company and the Company Subsidiaries. In no clinical trial conducted, supervised or monitored by the Company or the Company Subsidiaries in the past three years has IRB approval been suspended, terminated, put on clinical hold or voluntarily withdrawn because of deficiencies attributed to the Company or the Company Subsidiaries.

(f) The Company has made available to Buyer all (i) approved and pending new drug applications (including section 505(b)(2) applications) and abbreviated new drug applications as of the date hereof, specifying related reference listed drugs, Paragraph IV patent certifications, and the status and results of all associated pre-clinical and clinical testing, and (ii) pre-clinical and clinical studies and trials and bioequivalence studies referenced in the Company s Investigational New Drug applications, pending new drug applications (including section 505(b)(2) applications) and abbreviated new drug applications as of the date hereof, specifying related reference listed drugs, and Paragraph IV patent certifications, filed with the FDA, or any similar applications in any domestic or foreign jurisdiction, as amended from time to time, together with the dates and brief descriptions of such studies, previously or currently undertaken or sponsored by (A) the Company or any Company Subsidiary, (B) to the Knowledge of the Company, its licensors and their respective affiliates and (C) to the Knowledge of the Company, any third-party investigator and such third-party s licensors. The Company has made available to Buyer true, complete and accurate copies of all material data and reports with respect to such studies and trials, all other material information regarding the efficacy and safety of the Company Products. The Company has made available to Buyer all material correspondence and contact information between the Company and the FDA and other Governmental Entity regarding the Company Products, and, to the extent provided to the Company or any Company Subsidiary, between the FDA and other Governmental Entities relating thereto.

(g) Except as set forth in *Section 2.5(g) of the Company Disclosure Schedule*, the Company has no Knowledge of any safety, efficacy, regulatory, legal or other issues that could reasonably be expected to have a material adverse effect on the FDA approval of existing products.

(h) During the past five years, neither the Company nor any Company Subsidiary, nor, to the Knowledge of the Company, any officer, employee or agent acting on behalf of the Company or any Company Subsidiary, has, unless corrected in a subsequent statement, act or disclosure made prior to the date hereof, made an untrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to violate the FDA policy respecting Fraud, Untrue Statements of Material Fact, Bribery, and Illegal Gratuities , set forth in 56 Fed Reg. 46191 (September 10, 1991) or any similar policy. Neither the Company nor any Company Subsidiary nor, to the Knowledge of the Company, any officer, employee or agent acting on behalf of the Company or any Company Subsidiary, has, during the past five years, been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. Section 335a(a) or any similar Law or authorized by 21 U.S.C. Section 335a(b) or been charged with or convicted under U.S. Law for conduct relating to the development or approval, or otherwise relating to the regulation of any Company Product that is a drug under the Generic Drug Enforcement Act of 1992, or any other relevant Law. During the past three years, neither the Company nor any Company Subsidiary, nor, to the Knowledge of the Company, any officer, employee or agent acting on behalf of the Company or any Company Subsidiary, has been convicted of any crime or engaged in any conduct for which such person or entity could be excluded from participating in the federal health care programs under Section 1128 of the Social

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Security Act or any similar Law. Neither the Company nor any of the Company Subsidiaries, or, to the Knowledge of the Company, any of their agents or employees acting on their behalf, have violated or caused a violation of any federal or state health care fraud and abuse or false claims statute or regulation, including, without limitation, the Medicare/ Medicaid Anti-kickback provisions of the Social Security Act, 42 U.S.C. § 1320a-7b(b), and the relevant regulations in 42 C.F.R. Part 1001.

(i) Except as set forth in *Section 2.5(i) of the Company Disclosure Schedule*, neither the Company nor any of the Company Subsidiaries is a party to an agreement to refrain from, or to limit, for any period of time, the research, development, manufacture, marketing, distribution or sale of a drug approved under an abbreviated new drug application *( ANDA Drug Product )* that it controls and is of the same kind (*i.e.,* has the same dosage form, contains the same active pharmaceutical ingredient) as another ANDA Drug Product controlled by another party to the agreement.

2.6 *ISA/ TASE Documents; Financial Statements.* The Company has filed with the Israeli Securities Authority (the *ISA* ) and TASE and made available to Buyer all reports, schedules, forms, statements and other documents required to be filed with the ISA and TASE by the Company since January 1, 2001 (collectively, the *ISA/ TASE Documents* ). (i) All of the ISA/ TASE Documents (other than preliminary material) complied, as of their respective filing dates, in all material respects with all applicable requirements of the ISA; (ii) none of the ISA/ TASE Documents at the time of filing contained any untrue statement of a material fact or omitted 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 were made, not misleading, except to the extent such statements have been modified or superseded by later ISA/ TASE Documents filed and publicly available prior to the date hereof; and (iii) the consolidated financial statements of the Company and the Company Subsidiaries included in the ISA/ TASE Documents, including without limitation (A) the audited consolidated balance sheet of the Company and the Company Subsidiaries for the fiscal year ended December 31, 2003 and the related statements of operations, retained earnings and cash flows for the fiscal year ended on such date, together with supporting notes, schedules and the report thereon from Chaikin, Cohen, Rubin and Gilboa and Kesselman and Kesselman and (B) the unaudited consolidated balance sheet of the Company and the Company Subsidiaries for the six months ended on June 30, 2004 and the related statements of operations, retained earnings and cash flows for the period ended on such date, together with supporting notes and schedules (collectively, the *Company Financial Statements* ), complied in all material respects with applicable accounting requirements and the Israeli Securities Law and Israeli Companies Law as were in effect on the date of such statement, have been prepared from the books and records of the Company in accordance with Israeli generally accepted accounting principles *( Israeli GAAP )* and the requirements of Israeli Securities Law, in each case as were in effect on the date of such statement (subject, in the case of unaudited statements, to the absence of footnotes and normal year-end audit adjustments which, individually and in the aggregate, are not material), applied on a consistent basis during the periods involved, fairly present in all material respects, in accordance with the applicable requirements of Israeli GAAP and Israeli Securities Law, in each case as were in effect on the date of such statement, the consolidated financial position of the Company and the Company Subsidiaries as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to the absence of footnotes and normal year-end audit adjustments which, individually and in the aggregate, are not material). No Company Subsidiary is required to file any forms, reports or other documents with the ISA. Except as set forth in *Section 2.6 of the Company Disclosure Schedule*, there are no Company Subsidiaries that are not consolidated for accounting purposes.

2.7 *No Undisclosed Liabilities.* Except (a) as set forth in *Section 2.7 of the Company Disclosure Schedule* or the Company Financial Statements (b) for obligations incurred since June 30, 2004 that would not, individually or in the aggregate, have a Material Adverse Effect on the Company and (c) for obligations under this Agreement and the transactions contemplated hereby, neither the Company nor any Company Subsidiary has any liabilities (absolute, accrued, contingent or otherwise) of a nature required by Israeli GAAP to be disclosed on a consolidated balance sheet of the Company and the Company Subsidiaries or in the notes thereto.

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2.8 *Absence of Certain Changes or Events.* Except as set forth in *Section 2.8 of the Company Disclosure Schedule* and except for the transactions contemplated hereby, since June 30, 2004, the Company and the Company Subsidiaries have conducted their business in all material respects in the ordinary course consistent with past practice and there has not been: (i) any event or occurrence which has had or is reasonably likely to have a Material Adverse Effect on the Company; (ii) any authorization, declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of the Company s or any Company Subsidiary s capital stock, or any purchase, redemption or other acquisition by the Company of any of the Company s capital stock or any other securities of the Company or any Company Subsidiary or 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 or purchase agreements or cancellation of such options in accordance with Section 1.3(c); (iii) any split, combination or reclassification of any of the Company s or any Company Subsidiary s capital stock; (iv) any granting by the Company or any Company Subsidiary of any increase in compensation or fringe benefits, except for normal grants and increases of cash compensation in the ordinary course of business consistent with past practice, or any payment by the Company or any Company Subsidiary of any bonus, except for bonuses made in the ordinary course of business consistent with past practice (including annual bonuses with respect to 2004 to eligible Company Employees (as defined herein) determined in accordance with past practice of the Company by the Chief Executive Officer of the Company or his designee), or any granting by the Company or any Company Subsidiary of any increase in severance or termination pay or any entry by the Company or any Company Subsidiary into any currently effective employment, severance, termination or indemnification agreement or any agreement the benefits of which are contingent or the terms of which are materially altered upon the occurrence of a transaction involving the Company of the nature contemplated hereby; (v) any material change by the Company in its accounting methods, principles or practices, except as required by concurrent changes in Israeli GAAP, or any material election or agreement with respect to Taxes with respect to the Company and the Company Subsidiaries; or (vi) any revaluation by the Company of any of its material assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable that are material to the Company.

2.9 *Absence of Litigation.* Except as set forth in *Section 2.9 of the Company Disclosure Schedule*, there are no claims, actions, suits, proceedings or investigations pending or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary or any properties or rights of the Company or any Company Subsidiary, by or before any Governmental Entity, except for those claims, actions, suits or proceedings which would not, individually or in the aggregate, reasonably be expected to (a) result in the payment by the Company or any Company Subsidiary of any amounts in excess of $2,500,000 or (b) have a Material Adverse Effect on the Company.

2.10 *Employee Matters and Benefit Plans.*

(a) *Definitions.* For the purposes of this Agreement, the following terms have the meanings set forth below:

(i) *COBRA* shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended;

(ii) *Company Employee* shall mean any current, former or retired employee, officer or director of the Company or any Company Subsidiary;

(iii) *Company Employee Plan* shall mean any plan, program, policy, practice, contract, agreement or arrangement of any kind (excluding any Company Employment Agreement (as defined herein)) providing for compensation, severance, termination pay, bonus, incentive compensation, pension, profit sharing, retirement, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, worker s compensation and other insurance, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each employee benefit plan within the meaning of

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Section 3(3) of ERISA (as defined herein), which is adopted, maintained, contributed to, or required to be contributed to, by the Company or any Company Subsidiary under which any Company Employee, or any beneficiary thereof, is covered, is eligible for coverage or has any benefit rights;

(iv) *Company Employment Agreement* shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visas, work permit or other agreement, contract or understanding between the Company or any Company Subsidiary and any Company Employee;

(v) *Company ERISA Affiliate* shall mean any other person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder;

(vi) *DOL* shall mean the Department of Labor;

(vii) *ERISA* shall mean the Employee Retirement Income Security Act of 1974, as amended;

(viii) *FMLA* shall mean the Family Medical Leave Act of 1993, as amended;

(ix) *IRS* shall mean the Internal Revenue Service;

(x) *Multiemployer Plan* shall mean any Pension Plan (as defined herein) which is a multiemployer plan as defined in Section 3(37) of ERISA;

(xi) *Pension Plan* shall mean an employee pension benefit plan within the meaning of Section 3(2) of ERISA.

(b) *Company Employee Plans and Company Employment Agreements. Section 2.10(b) of the Company Disclosure Schedule* contains an accurate and complete list as of the date hereof of each material Company Employee Plan, and each Company Employment Agreement that provides for annual base salary in excess of $100,000. The Company does not have any commitment to establish, adopt or enter into any new material Company Employee Plans or Company Employment Agreements that provide for annual base salary in excess of $100,000, or to modify any material Company Employee Plan or Company Employment Agreement that provides for annual base salary in excess of $100,000 (except to the extent required by applicable Law).

(c) *Documents.* The Company has provided or made available to Buyer and Merger Sub correct and complete copies of: (i) each Company Employee Plan listed in *Section 2.10(b) of the Company Disclosure Schedule* and each Company Employment Agreement listed in *Section 2.10(b) of the Company Disclosure Schedule,* including without limitation all amendments thereto and all related trust documents, administrative service agreements, group annuity contracts and group insurance contracts; (ii) the most recent annual actuarial valuations, if any, prepared for each Company Employee Plan prior to the date hereof; (iii) the most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan; (iv) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets; (v) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan; and (vi) all IRS determination or opinion letters with respect to each Company Employee Plan.

(d) *Company Employee Plan Compliance.* Other than a Company Employee Plan that is a Multiemployer Plan and except as would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect: (i) each Company Employee Plan and Company Employee Agreement has been established and maintained in all respects in accordance with its terms and in compliance with all applicable Laws, including but not limited to ERISA and the Code (to the extent applicable); (ii) each Company Employee Plan intended to qualify under Section 401(a) of the Code has either received a favorable determination or opinion letter from the IRS with respect to each such Company Employee Plan as to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, or has remaining a period of time

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under applicable United States Treasury Regulations or IRS pronouncements in which to apply for such a letter and make any amendments necessary to obtain a favorable determination as to the qualified status of each such Company Employee Plan; (iii) no prohibited transaction within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt for which the Company or any Company Subsidiary would incur material liability has occurred with respect to any Company Employee Plan; (iv) there are no actions, suits or claims pending or, to the Knowledge of the Company, threatened (other than routine claims for benefits) against any Company Employee Plan or any Company Employment Agreement or against the assets of any Company Employee Plan; (v) each Company Employee Plan (other than any stock option plan) can be amended, terminated or otherwise discontinued after the Closing Date, without liability to Buyer, Merger Sub, the Company or any Company Subsidiary (other than for benefits accrued to date and ordinary administration expenses); (vi) there are no audits, inquiries or proceedings pending or, to the Knowledge of the Company or any Company ERISA Affiliate, threatened by the IRS or DOL with respect to any Company Employee Plan; (vii) neither the Company nor any ERISA Affiliate has incurred liability for any tax imposed under section 4971 through 4980E of the Code or civil liability under section 501(i) or (l) of ERISA; (viii) no tax has been imposed under section 511 of the Code with respect to any Company Employee Plan (or trust or funding vehicle pursuant thereto); and (ix) all contributions to Company Employee Plans that were required to be made under such Company Employee Plans have been made on a timely basis.

(e) *Pension Plan.* Except as set forth in *Section 2.10(e) of the Company Disclosure Schedule*, neither the Company nor any Company ERISA Affiliate has ever maintained, established, sponsored, participated in or contributed to any Pension Plan which is subject to Title IV of ERISA or Section 412 of the Code.

(f) *Multiemployer and Multiple Employer Plans.* Except as set forth in *Section 2.10(f) of the Company Disclosure Schedule*, during the past six years neither the Company nor any Company ERISA Affiliate has contributed to or been obligated to contribute to any Multiemployer Plan. Except as set forth in *Section 2.10(f) of the Company Disclosure Schedule*, neither the Company, nor any Company ERISA Affiliate has during the past six years maintained, established, sponsored, participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code. With respect to each Multiemployer Plan, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) no withdrawal liability has been incurred by the Company or any Company ERISA Affiliate, and the Company has no reason to believe that any such liability will be incurred prior to the Closing Date, (ii) no such plan is in reorganization (within the meaning of Section 4241 of ERISA), (iii) no notice has been received that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, or that the plan is or may become insolvent (within the meaning of Section 4241 of ERISA), (iv) no proceedings have been instituted by the Pension Benefit Guaranty Corporation against the plan, and (v) there is no contingent liability for withdrawal liability by reason of a sale of assets pursuant to Section 4204 of ERISA.

(g) *No Post-Employment Obligations.* Except as set forth in *Section 2.10(g) of the Company Disclosure Schedule*, no Company Employee Plan provides, or reflects or represents any liability to provide, life insurance or health benefits beyond termination of employment to any person for any reason, except (i) as may be required by COBRA or other applicable Law, (ii) benefits, the full cost of which are borne by Company Employees or their beneficiaries, or (iii) continuing coverage until the end of the month in which retirement or termination of employment occurs.

(h) *Health Care Compliance.* Except as would not be reasonably expected to result in a Material Adverse Effect, neither the Company nor any Company ERISA Affiliate has, prior to the Closing Date and in any material respect, violated any of the health care continuation requirements of COBRA, the requirements of FMLA to the extent applicable, the requirements of the Health Insurance Portability and Accountability Act of 1996, the requirements of the Women s Health and Cancer Rights Act of 1998, the requirements of the Newborns and Mothers Health Protection Act of 1996, or any amendment to each such act, or any similar provisions of state law applicable to its Company Employees.

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(i) *Effect of Transaction.* Subject to applicable Laws and except as set forth on *Section 2.10(i) of the Company Disclosure Schedule*, the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or together with a second event dependent upon the consummation of the transactions contemplated hereby (*e.g.*, termination of employment)) constitute an event under any Company Employee Plan or Company Employment Agreement that would reasonably be expected to result in any payment (whether severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Company Employee.

(j) *Employment Matters.* With respect to Company Employees (other than Israeli Company Employees, as defined herein), the Company and the Company Subsidiaries: (i) with respect to each applicant for employment and Company Employee, are in compliance in all material respects with all applicable foreign, federal, state and local laws, rules and regulations (including without limitation the National Labor Relations Act) respecting employment, employment practices, terms and conditions of employment, wages and hours and workplace safety; (ii) have withheld and reported all amounts required by Law or by agreement to be withheld and reported with respect to wages, salaries and other payments to any Company Employee; (iii) are not liable for any wages or any taxes (other than wages or taxes which are not yet due to be paid); and (iv) are not liable for any material payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority with respect to unemployment compensation benefits, social security or other benefits or obligations for Company Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no pending or, to the Company s Knowledge, threatened material labor disputes, charges, grievances, claims or actions against the Company or any Company Subsidiary regarding any employment matters.

(k) *Labor.* With respect to Company Employees (other than Israeli Company Employees): (i) except as set forth in *Section 2.10(k)(i) of the Company Disclosure Schedule*, within the past five years no work stoppage or labor strike against the Company or any Company Subsidiary has occurred, is pending or, to the Knowledge of the Company, threatened; (ii) the Company has no Knowledge of any activities or proceedings of any labor union to organize any Company Employees; and (iii) except as set forth in *Section 2.10(k)(ii) of the Company Disclosure Schedule*, neither the Company nor any Company Subsidiary is presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Company Employees and no collective bargaining agreement is being negotiated by the Company or any Company Subsidiary.

(l) *Employees Resident in Israel.* Notwithstanding anything contained in this Agreement to the contrary, and solely with respect to employees of the Company who reside in Israel *( Israeli Company Employees )* and except as set forth in *Section 2.10(l) of the Company Disclosure Schedule:* (i) neither the Company nor any Company Subsidiary is a party to any collective bargaining contract, collective labor agreement or other contract or arrangement with a labor union, trade union or other organization or body involving any of its Israeli Company Employees, or is otherwise required (under any Law, contract or otherwise) to provide benefits or working conditions beyond those required by Law or pursuant to rules and regulations thereunder (including expansion orders of the Ministry of Labor or Welfare) or of the Histadrut (General Federation of Labor) or the Coordinating Bureau of Economic Organization and the Industrialists Association, and neither the Company nor any Company Subsidiary has recognized or received a demand for recognition from any collective bargaining representative with respect to any of its Israeli Company Employees; (ii) all of the Israeli Company Employees are at will employees subject to (x) the termination notice provisions included in Company Employment Agreements, (y) collective bargaining contracts or (z) the requirements of applicable Law; (iii) except for the Company Employment Agreements described in *Section 2.10(l) of the Company Disclosure Schedule*, there is no contract between the Company or any Company Subsidiary and any Israeli Company Employees whose annual base salary is in excess of $100,000 or directors that cannot be terminated by the Company or such Company Subsidiary upon less than three months notice without giving rise to a claim for damages or compensation (except for statutory severance pay and accrued pay through the date hereof); (iv) the obligations of the Company and each Company Subsidiary to provide severance pay to their respective

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Israeli Company Employees are either fully funded or have been properly provided for in the Company s financial statements in accordance with Israeli GAAP; (v) neither the Company nor any Company Subsidiary is liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing (other than wages or taxes which are not yet due to be paid); (vi) all amounts that the Company or any Company Subsidiary is legally or contractually required either (x) to deduct from its employees salaries or to transfer to such employees pension or provident, life insurance, incapacity insurance, continuing education fund or other similar funds or (y) to withhold from its employees salaries and to pay to any Governmental Entity as required by Israeli Tax ordinances or otherwise have, in each case, been duly deducted, transferred, withheld and paid, and neither the Company nor any Company Subsidiary has any outstanding obligation to make any such deduction, transfer, withholding or payment (other than outstanding obligations in the ordinary course of business consistent with past practice); and (vii) the Company and the Company Subsidiaries are in compliance in all material respects with all applicable legal requirements and contracts relating to employment, employment practices, wages, bonuses and other compensation matters and terms and conditions of employment related to their respective Israeli Company Employees.

2.11 *Title to Property.* Except as disclosed in *Section 2.11 of the Company Disclosure Schedule*, and except for inventory and other property sold, licensed, leased used or otherwise disposed of in the ordinary course of business, the Company and each Company Subsidiary has good title to, or in the case of leased properties and assets, valid leasehold interests in, all of their material properties and material assets, free and clear of all Liens, except for: (i) Liens imposed by law, such as carriers , warehouseman s, mechanics , materialmen s, landlords , laborers , suppliers , construction and vendors liens, incurred in good faith in the ordinary course of business and securing obligations which are not yet due or which are being contested in good faith by appropriate proceedings as to which the Company has, to the extent required by Israeli GAAP, set aside on its books adequate reserves; (ii) Liens for Taxes either not yet due and payable or which are being contested in good faith by appropriate legal or administrative proceedings and as to which the Company has, to the extent required by Israeli GAAP, set aside on its books adequate reserves; (iii) with respect to leasehold interests, liens incurred, created, assumed or permitted to exist and arising by, through or under a landlord or owner of the leased property, with or without consent of the lessee, none of which materially impairs the use of any parcel of property material to the operation of the business of the Company or the value of such property for the purpose of such business; and (iv) any minor imperfections of title which do not materially interfere with the present use of the property affected thereby (collectively, *Permitted Liens* ), and all leases pursuant to which the Company or any Company Subsidiary lease from others real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing default or event of default of the Company or any Company Subsidiary or, to the Company s Knowledge, any other party (or any event which with notice or lapse of time, or both, would constitute a default and in respect of which the Company or Company Subsidiary has not taken adequate steps to prevent such default from occurring) except for such failures to be in good standing, valid and effective and for such defaults or events of default which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Except as set forth in *Section 2.11 of the Company Disclosure Schedule*, neither the Company nor any Company Subsidiary owns any real property. All the plants, structures and equipment of the Company and the Company Subsidiaries that are material to the operations of the Company s and the Company Subsidiaries business as currently conducted are in good operating condition and repair, with the exception of normal wear and tear, in all material respects.

2.12 *Taxes.*

(a) *Definition of Taxes.* For the purposes of this Agreement, (i) *Tax* or, collectively, *Taxes* means (i) any and all United States, Israeli, federal, provincial, state, local and foreign taxes, assessments and other governmental charges, duties, customs, fees, levies, impositions and liabilities, including, but not limited to, taxes based upon or measured by gross receipts, gross or net income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, social security, excise and property taxes, together with all interest, penalties, additions to tax and

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additional amounts imposed with respect to such amounts; (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being or ceasing to be a member of an affiliated, consolidated, combined or unitary group for any period (including, without limitation, any liability under United States Treasury Regulation Section 1.1502-6 or any comparable provision of Israeli, foreign, state or local law); and (iii) any liability for the payment of any amounts of the type described in clause (i) or (ii) as a result of any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) *Tax Returns and Audits.*

Except as set forth in *Section 2.12(b) of the Company Disclosure Schedule*:

(i) The Company and each Company Subsidiary have timely (A) (after taking into account all available extensions) filed all material returns, estimates, declarations, information statements and reports relating to Taxes required to be filed with any governmental taxing authority by the Company and each Company Subsidiary *( Tax Returns )* and such Tax Returns are true and correct and complete in all material respects and (B) paid all Taxes (other than such Taxes as are being contested in good faith by appropriate proceedings and for which adequate reserves have been taken) shown as due on such Tax Returns.

(ii) The Company and each Company Subsidiary have withheld from each payment made to their employees, officers, directors, independent contractors, creditors, shareholders and other third parties all material Taxes and other deductions required to be withheld and have, to the extent, within the time and in the manner required by law, paid such withheld amounts to the proper Governmental Entities.

(iii) No penalty, interest or other charge is due or has been asserted in writing as of the date hereof, with respect to the late filing of any Tax Return or late payment of any Tax. Neither the Company nor any Company Subsidiary has executed any waiver of any statute of limitations on or extensions of the period for the assessment or collection of any Tax.

(iv) No audit or other administrative or judicial proceeding of any material Tax Return of the Company or any Company Subsidiary is currently in progress, nor has the Company or any Company Subsidiary been notified in writing of any request for such an audit or other administrative or judicial proceeding. As of the date hereof, no material claim for assessment or collection of Taxes is presently being asserted in writing against the Company or any Company Subsidiary and neither the Company nor any Company Subsidiary is a party to any pending material action, proceeding or investigation by any governmental taxing authority relating to Taxes nor does the Company have Knowledge of any such threatened material action, proceeding or investigation.

(v) No material claim by a Governmental Entity in a jurisdiction in which the Company or any Company Subsidiary does not file Returns that the Company or any Company Subsidiary may be subject to income or franchise or other material taxation by such jurisdiction has been proposed in writing by any Governmental Entity to the Company or any Company Subsidiary or any representative thereof.

(vi) Neither the Company nor any Company Subsidiary has any liability for any unpaid Taxes (whether or not shown to be due on any Tax Return) which has not been accrued for or reserved on the Company s balance sheet dated June 30, 2004, in accordance with Israeli GAAP, other than any liability for unpaid Taxes that may have accrued since June 30, 2004 in connection with the operation of the business of the Company and the Company Subsidiaries in the ordinary course.

(vii) There are no Liens on the assets of the Company or any Company Subsidiary that arose in connection with the failure to pay Taxes, other than Liens for Taxes not yet due and payable and Liens for Taxes that are being contested in good faith by appropriate proceedings and as to which

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adequate reserves have been established in accordance with U.S. GAAP (as defined herein), Israeli GAAP or German generally accepted accounting principles *( German GAAP )*, as applicable.

(viii) Neither the Company nor any Company Subsidiary (i) has ever been a member of an affiliated group filing a consolidated, combined, unitary or similar Return, (ii) is a party to any Tax sharing or Tax allocation agreement, arrangement or understanding and does not owe any amount under any such agreement, or (iii) is liable for the Taxes of any other person under United States Treasury Regulation Section 1.1502-6 (or any similar provision of law), as a transferee or successor, by contract or otherwise.

(ix) No Company Subsidiary that is a United States person for purposes of the Code has constituted either a distributing corporation or a controlled corporation in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (x) within the three-year period ending as of the date of this Agreement or (y) in a distribution which could otherwise constitute part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

(x) *Section 2.12(b)(x) of the Company Disclosure Schedule* lists each material tax incentive granted to the Company and the Company Subsidiaries under the laws of the State of Israel, the period for which such tax incentive applies, and the nature of such tax incentive. The Company and each Company Subsidiary have complied with all material requirements of Israeli law to be entitled to claim all such incentives.

(xi) Neither the Company nor any Company Subsidiary has received or is subject to any written ruling from any Governmental Entity or has entered into any written and legally binding agreement related to Taxes with any Governmental Entity.

(xii) The Company qualifies as an Industrial Company according to the meaning of the term in the law for the Encouragement of Industry (Taxes), 1969, and, after any applicable Tax holiday, Section 47(A1) of the law for the Encouragement of Capital Investment, 1959 applies to the Company, considering its level of foreign investment. *Section 2.12(b)(xii) of the Company Disclosure Schedule* sets forth the Company s Approved Enterprise Tax status approval granted by the Investment Center. The Company has not received any written or, to the Knowledge of the Company, oral indication from the Investment Center or any other Governmental Entity that the Merger or any of the other transactions contemplated hereby will jeopardize, or adversely affect, any material tax incentive granted to the Company or any Company Subsidiary (including without limitation the Approved Enterprise Tax status of the Company and its status as an Industrial Company) or require any recapture of any previously claimed incentive, and no consent or approval of any Governmental Entity is required prior to the consummation of the Merger in order to preserve the entitlement of the Company or any Company Subsidiary to any such material tax incentive, subject to the receipt of the approval by the Investment Center of the Merger and the other transactions contemplated hereby and assuming no material change in the operation of the Company s or any Company Subsidiary s business by Buyer.

(xiii) No Company Subsidiary that is a United States person for purposes of the Code has participated in or cooperated with an international boycott within the meaning of Section 999 of the Code.

(xiv) To the Knowledge of the Company, neither the Company nor any Company Subsidiary that is a United States person for purposes of the Code is a controlled foreign corporation or a passive foreign investment company as such terms are defined in Sections 957 and 1297 of the Code, respectively.

(xv) To the Knowledge of the Company, neither the Company nor any Company Subsidiary that is not a United States person for purposes of the Code is, or at any time has been, engaged in the conduct of a trade or business within the United States within the meaning of Section 864(b),

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Section 882(a) or Section 887(b) of the Code, or treated as or considered to be so engaged under Section 882(d) or Section 897 of the Code or otherwise.

2.13 *Brokers.* Except for Merrill Lynch & Co. and Leumi & Co., the fees and expenses of which are described in those certain engagement letters dated as of March 29, 2004 and September 29, 2003 (as amended as of October 21, 2003, January 20, 2004 and March 29, 2004) between the Company and such parties, respectively, true and complete copies of which have been previously provided to Buyer, no agent, broker, finder, investment banker, financial advisor or other person will be entitled to any broker s, finder s or similar fee or commission from the Company or any affiliate thereof in connection with any of the transactions contemplated by this Agreement on the basis of any act or statement made or alleged to have been made by the Company or any of its affiliates or any investment banker, financial advisor, attorney, accountant or other person retained by or acting for or on behalf of the Company or any such affiliate.

2.14 *Intellectual Property.*

(a) *Definitions.* For the purposes of this Agreement:

(i) *Company Confidential Information* means any confidential or proprietary information, including without limitation manufacturing processes and product formulations, of the Company or any Company Subsidiary.

(ii) *Company Copyrights* means any copyrights and registrations and applications therefor, including all renewals and extensions thereof and rights corresponding thereto in both published and unpublished works throughout the world, owned by or licensed to the Company or any Company Subsidiary.

(iii) *Company Information Technology* means all communications systems and computer systems used or held for use by the Company or any Company Subsidiary, including all hardware, software, uniform resource locators, e-mail and other internet addresses, sites and domain names, and applications and registrations therefor, source code, object code, firmware, development tools, files, records and data, and all media on which any of the foregoing is recorded.

(iv) *Company Intellectual Property* means any Company Copyrights, Company Patents, Company Trademarks, and Company Trade Secrets owned by the Company or any Company Subsidiary.

(v) *Company Patents* means any patents, together with any extensions, reexaminations and reissues of such patents, patents of addition, patent applications, divisions, continuations, continuations-in-part and any subsequent filings in any country or jurisdiction claiming priority therefrom, owned by the Company or any Company Subsidiary.

(vi) *Company Trade Secrets* means any know-how, trade secrets, formulae, specifications, technical information, data, databases, processes, process technology, models, manuals, plans, designs, prototypes, drawings (including engineering and auto-cad drawings), proprietary information, blue prints and all documentation related to any of the foregoing, owned by the Company or any Company Subsidiary, except for any such item that is generally available to the public, and except for any such item that has no material value to the Company or any Company Subsidiary.

(vii) *Company Trademarks* means any registered trademarks, registered service marks, trademark and service mark applications and unregistered trademarks and service marks, brand names, certification marks, trade names, logos, trade dress, all goodwill associated with the foregoing throughout the world and registrations and applications for registration in any jurisdictions thereof, including any extension, modification or renewal of any such registration or application, owned by the Company or any Company Subsidiary.

(viii) *Licensed Company Patents* means any material patents, together with any extensions, reexaminations and reissues of such patents, used, held for use or licensed to the Company or any Company Subsidiary.

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(ix) *Licensed Company Trade Secrets* means any material know-how, formulae, technical information, processes, process technology, used, held for use or licensed to the Company or any Company Subsidiary, except for any such item that is generally available to the public.

(x) *Licensed Company Trademarks* means any material registered trademarks, registered service marks, and trademark and servicemark applications including any extension, modification or renewal of any such registration used, held for use or licensed to the Company or any Company Subsidiary.

(b) *General.*

(i) Except as set forth on *Section 2.14(b)(i) in the Company Disclosure Schedule*, and except under reasonable confidentiality requirements, neither the Company nor any Company Subsidiary has transferred ownership of, nor granted any exclusive license with respect to, any material Company Confidential Information or Company Intellectual Property to any other person, or permitted the rights of the Company or any Company Subsidiary in such material Company Confidential Information to lapse unintentionally or enter the public domain. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, all material Company Confidential Information will be fully transferable, alienable or useable, as currently being used by the Company or any Company Subsidiary, by the Surviving Corporation following the Effective Time without restriction and without payment of any kind to any other person.

(ii) As of the date hereof, the Company or a Company Subsidiary is free to exploit the Company Intellectual Property without obligation of payment to a present or former employee of the Company or a Company Subsidiary.

(iii) Except as set forth in *Section 2.14(b)(iii) of the Company Disclosure Schedule*, no material Company Confidential Information or material Company Intellectual Property is subject to any proceeding or outstanding order or stipulation restricting in any manner the use, transfer or licensing thereof, or which would reasonably be expected to adversely affect the validity, use or enforceability of such material Company Confidential Information or material Company Intellectual Property. All necessary documents, recordations and certificates in connection with such material Company Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the U.S. or foreign jurisdictions, as the case may be, for the purposes of perfecting and maintaining such material Company Intellectual Property.

(iv) Except as constituted by the filing of paragraph IV certification included in an abbreviated new drug application (an *ANDA Application*) and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, and except for those in connection with any abbreviated new drug application made available to Buyer prior to the date hereof pursuant to Section 2.5(f), neither the Company nor any Company Subsidiary infringes upon, misappropriates, dilutes or otherwise violates any confidential information, proprietary information or intellectual property owned or controlled by any other person. Except as set forth in *Section 2.14(b)(iv) of the Company Disclosure Schedule*, no written notice or claim (except for those in connection with any abbreviated new drug application made available to Buyer prior to the date hereof pursuant to Section 2.5(f)) has been received by the Company or any Company Subsidiary asserting that the Company or a Company Subsidiary infringes upon, misappropriates, dilutes or otherwise violates any valid and enforceable confidential information, proprietary information or intellectual property right owned or controlled by any other person, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(v) Except as set forth in Section 2.14(b)(v) of the Company Disclosure Schedule, to the Company s Knowledge, no person is infringing, misappropriating, diluting or otherwise violating, or challenging or threatening in any way, any material Company Confidential Information or material Company Intellectual Property. Neither the Company nor any Company Subsidiary has given any

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indemnification rights to any other person against infringement, misappropriation, dilution or other violation of any Company Confidential Information.

(vi) All material Company Information Technology necessary to operate the business is owned by the Company or a Company Subsidiary free and clear of all Liens (other than Permitted Liens except security interests and leases of hardware and software), or is leased or licensed by the Company or a Company Subsidiary.

(vii) Set forth in Schedule *Section 2.14(b)(vii) of the Company Disclosure Schedule* is a complete and correct list as of the date hereof of all URL s used or held for use in the operation of the business of the Company and the Company Subsidiaries.

(c) *Contracts.*

(i) To the Company s Knowledge, all current senior R&D employees of the Company or any Company Subsidiary that are involved in the development of material Company Products or material Company Intellectual Property have executed written Contracts with the Company that assign to the Company all rights to all Company Confidential Information, inventions (whether or not patentable), improvements, discoveries or information made during their employment with the Company, subject to such exceptions as would not have a Material Adverse Effect on the Company.

(ii) *Section 2.14(c)(ii) of the Company Disclosure Schedule* contains a complete and accurate list of all material Contracts as of the date hereof relating to the Company Confidential Information and Company Intellectual Property to which the Company is a party or by which the Company is bound, except for any license implied by the sale of a product and perpetual, paid-up royalty-free and transferable license rights for off-the-shelf third party application software licensed for use by the Company or any Company Subsidiary. There are no outstanding or, to the Knowledge of the Company, threatened disputes or disagreements with respect to any such material Contract.

(iii) To the Company s Knowledge, all former and current technical contractors of the Company and each Company Subsidiary that are involved in the development of material Company Products or material Company Intellectual Property have executed written Contracts with the Company or a Company Subsidiary that assign to the Company or a Company Subsidiary all rights to all Company Confidential Information, inventions (whether or not patentable), improvements, discoveries or information derived from their relationship to the Company, subject to such exceptions as would not have a Material Adverse Effect on the Company.

(iv) To the Company s Knowledge, none of the technical consultants of the Company or any Company Subsidiary that are involved in the development of material Company Products or material Company Intellectual Property is subject to any contractual or legal restrictions that might interfere with the use of his or her best efforts to promote the interests of the Company and the Company Subsidiaries, subject to such exceptions as would not have a Material Adverse Effect on the Company.

(d) *Patents.*

(i) *Section 2.14(d)(i) of the Company Disclosure Schedule* contains a complete and accurate list as of the date hereof of all Company Patents in which the Company or any Company Subsidiary has an ownership interest, including the jurisdiction in which each item is issued or registered or in which any application for issuance or registration has been filed, and the date of application and issuance or registration of such item. The Company or a Company Subsidiary owns all right, title and interest, including all causes of action (including for past infringement or other violation thereof), damages and remedies relating thereto and rights of protection of any interest therein under the laws of all applicable jurisdictions, in and to each of the Company Patents, free and clear of all Liens (other than Permitted Liens except security interests and leases of hardware and software).

(ii) *Section 2.14(d)(ii) of the Company Disclosure Schedule* contains a complete and accurate list as of the date hereof of all Licensed Company Patents, including the jurisdiction in which each item is issued

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or registered or in which any application for issuance or registration has been filed, and the date of application and issuance or registration of such item.

(iii) Except as set forth in *Section 2.14(d)(iii) of the Company Disclosure Schedule,* to the Company s Knowledge, the material Company Patents and the material Licensed Company Patents are in compliance in all material respects with formal legal requirements (including payment of filing, examination and maintenance fees and proofs of working or use), are valid, subsisting and enforceable.

(iv) Except as set forth on *Section 2.14(d)(iv) of the Company Disclosure Schedule* (A) no material Company Patent (or, to the Company s Knowledge, application for same) has been and no material Company Patent (or, to the Company s Knowledge, application for same) is now involved in any interference, reissue, reexamination or opposition proceeding to which the Company or any Company Subsidiary is a party.

(e) *Trademarks.*

(i) *Section 2.14(e)(i) of the Company Disclosure Schedule* contains a complete and accurate list as of the date hereof of all Company Trademarks in which the Company or a Company Subsidiary has an ownership interest, including the jurisdiction in which each item is issued or registered or in which any application for issuance or registration has been filed, and the date of issuance or registration of the item. The Company or a Company Subsidiary is the owner of all right, title and interest, including all causes of action (including for past infringement or other violation thereof), damages and remedies relating thereto and rights of protection of any interest therein under the laws of all applicable jurisdictions, in and to each of the material Company Trademarks, free and clear of all Liens (other than Permitted Liens except security interests and leases of hardware and software).

(ii) *Section 2.14(e)(ii) of the Company Disclosure Schedule* contains a complete and accurate list as of the date hereof of all Licensed Company Trademarks, including the jurisdiction in which each item is issued or registered or in which any application for issuance or registration has been filed, and the date and issuance or registration of the item.

(iii) Except as set forth in *Section 2.14(e)(iii) of the Company Disclosure Schedule*, to the Company s Knowledge, the material Company Trademarks and the material Licensed Company Trademarks that have been registered with the United States Patent and Trademark Office or any foreign counterpart thereof are in compliance in all material respects with all formal legal requirements (including timely post-registration applications), and are valid, subsisting and enforceable.

(iv) Except as set forth in *Section 2.14(e)(iv) of the Company Disclosure Schedule*, no material Company Trademark has been in the past three years or is now involved in any opposition, invalidation or cancellation and, to the Company s Knowledge no such action is threatened with respect to any of such listed Company Trademarks.

(v) Except as set forth in *Section 2.14(e)(v) of the Company Disclosure Schedule*, to the Company s Knowledge, there is no interfering trademark or trademark application of any third party with respect to the material Company Trademarks.

(vi) Neither the Company nor any Company Subsidiary is a licensee of any unregistered trademarks, service marks, brand names, certification marks, trade names, logos or trade dress that is material to the Company or any Company Subsidiary.

(f) *Copyrights.* Neither the Company nor any Company Subsidiary has any material registered copyrights.

(g) *Trade Secrets.*

(i) To the Company s Knowledge, with respect to each material Company Trade Secret, the documentation relating to such Company Trade Secret is accurate and sufficient in detail and content to identify and explain it and to allow an individual having the proper education and experience its full and proper use without reliance on the knowledge or memory of any individual.

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(ii) To the Company s Knowledge, the Company or a Company Subsidiary has taken all reasonable precautions to protect the secrecy and confidentiality of the material Company Trade Secrets.

(iii) To the Company s Knowledge, the Company or a Company Subsidiary is the owner of all right, title and interest in and to the material Company Trade Secrets, including all causes of action (including for past infringement or other violation thereof), damages and remedies relating thereto and rights of protection of any interest therein under the laws of all applicable jurisdictions, and has a right to use the Company Trade Secrets without payment to a third party for the use of the Company Trade Secret except for under agreements relating to Licensed Company Trade Secrets set forth in *Section 2.14(g)(i) of the Company Disclosure Schedule.* To the Company s Knowledge, the material Company Trade Secrets and the material Licensed Company Trade Secrets are not part of the public knowledge or literature. No adverse claim has during the past five years been brought or, to the Company s Knowledge, threatened against the Company s or any Company Subsidiary s right to any material Company Trade Secret.

2.15 *Agreements, Contracts and Commitments.* Except as set forth in *Section 2.15 of the Company Disclosure Schedule*, as of the date hereof, neither the Company nor any Company Subsidiary is a party to or is bound by:

(a) any agreement or plan, including, without limitation, any stock option plan, stock appreciation right plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(b) any agreement containing material indemnification or guaranty of obligations of the Company or any Company Subsidiary other than any agreement of indemnification or guarantee of obligations entered into in the ordinary course of business;

(c) any agreement, Contract or commitment containing any covenant limiting in any respect the right of the Company or any Company Subsidiary to engage in any line of business or to compete with any person;

(d) any agreement, Contract or commitment currently in force relating to the disposition or acquisition by the Company or any Company Subsidiary after the date of this Agreement of a material amount of assets not in the ordinary course of business or pursuant to which the Company or any Company Subsidiary has any material ownership interest in any corporation, partnership, joint venture or other business enterprise other than the Company Subsidiaries;

(e) any material dealer, distributor, joint marketing or development agreement currently in force under which the Company or any Company Subsidiary has continuing material obligations to jointly market any product, technology or service and which may not be canceled without penalty upon notice of 90 days or less, or any material agreement pursuant to which the Company or any Company Subsidiary has continuing material obligations to jointly develop any Company Intellectual Property that will not be owned, in whole or in part, by the Company or any of its Company Subsidiary and which may not be canceled without penalty upon notice of 90 days or less;

(f) any material agreement, Contract or commitment currently in force to license any third party to manufacture or reproduce any Company Product, service or technology or any material agreement, Contract or commitment currently in force to sell or distribute any Company Products, service or technology involving amounts in excess of $10,000,000 per annum except agreements with distributors or sales representatives in the ordinary course of business cancelable without penalty upon notice of 90 days or less;

(g) any agreement, Contract or commitment currently in force to provide source code to any third party (other than the agreements with escrow agents in the ordinary course of business) for any product or technology that is material to the Company and the Company Subsidiaries taken as a whole;

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(h) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit other than trade payables incurred and extensions of credit to customers granted in the ordinary course of business;

(i) any settlement agreement under which the Company or any Company Subsidiary has material ongoing obligations;

(j) any agreement, Contract or commitment not otherwise disclosed pursuant to one of the other clauses of this Section 2.15 involving in excess of $10,000,000 being paid by or to the Company or any Company Subsidiary in any 12-month period; or

(k) any agreement or commitment binding upon the Company or the Company Subsidiaries or to which the Company or any Company Subsidiary is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any Company Subsidiary, any acquisition of property by the Company or any Company Subsidiary or the conduct of business by the Company or any Company Subsidiary as currently conducted, except where such agreement or commitment would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

Neither the Company nor any Company Subsidiary has, during the past five years received written notice that it has breached, violated or defaulted under (which breach, violation or default has not been cured in a timely manner), any of the material terms or conditions of any of the agreements, Contracts or commitments to which the Company or any Company Subsidiary is a party or by which it is bound that are required to be disclosed in *Section 2.15 of the Company Disclosure Schedule* (any such agreement, contract or commitment, a *Company Contract* ) in such a manner as would permit any other party to cancel or terminate any such material Company Contract, or would permit any other party to seek material damages or other remedies (for any or all of such breaches, violations or defaults, in the aggregate). The Company has made available to Buyer and Merger Sub true and correct copies of any Contracts between the Company and its top ten customers.

2.16 *Environmental Matters.*

(a) *Definitions.* For purposes of this Agreement, the following terms shall have the meanings set forth below:

(i) *Environmental Law* shall mean any and all federal, state, local, provincial, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, Permits (as defined herein), judgments, decrees, injunctions or agreements with any Governmental Entity, relating to the protection of health and the environment, worker health and safety, or governing the treatment, storage, transportation, disposal or release of Hazardous Materials (as defined herein), whether in the United States, Israel or any other jurisdiction, including but not limited to: the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Hazardous Material Transportation Act 49 U.S.C. § 1801 *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. § 136 *et seq.*; the Resource Conservation and Recovery Act of 1976 *( RCRA )*, 42 U.S.C. § 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Occupational Safety & Health Act of 1970, 29 U.S.C. § 651 *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; and the state analogies thereto, all as amended or superseded from time to time prior to the Closing Date.

(ii) *Hazardous Material* shall mean petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls, and any other chemicals, materials, substances or wastes in any amount or concentration which are defined as or included in the definition of hazardous substances, hazardous materials, hazardous wastes, extremely hazardous wastes, restricted hazardous

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wastes, toxic substances, toxic pollutants, pollutants, or contaminants or words of similar import, under any Environmental Law.

(b) Except as set forth in *Section 2.16(b) of the Company Disclosure Schedule*:

(i) In each jurisdiction in which the Company or any Company Subsidiary operates, the Company and each Company Subsidiary is in compliance with all Environmental Laws applicable to the Company and any such Company Subsidiary in such jurisdiction, including, without limitation, possessing and complying with all permits, licenses, certificates, approvals, consents or other authorizations issued by any Governmental Entity *( Permits )* required for the ownership or operation of the owned or leased real property and the operations conducted thereat under applicable Environmental Laws, except for such noncompliance or failure to hold such Permits as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect on the Company.

(ii) There is no pending or, to the Knowledge of the Company, threatened claim, suit, order, notice of violation, complaint, request for information, proceedings or administrative hearing or, to the Knowledge of the Company, investigation, against the Company or any Company Subsidiary, under or pursuant to any Environmental Law, that is reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on the Company. Neither the Company nor any Company Subsidiary has received written notice from any person, including, without limitation, any Governmental Entity, alleging that the Company or any Company Subsidiary has been or is in violation or potentially in violation of any applicable Environmental Law or otherwise may be liable under any applicable Environmental Law, which violation or liability is unresolved and which may, either individually or in the aggregate, result in a Material Adverse Effect on the Company.

(iii) Neither the Company nor any Company Subsidiary nor, to the Knowledge of the Company, any other person has disposed of, released, discharged or emitted any Hazardous Materials into the soil or groundwater at any properties owned or leased at any time by the Company or any Company Subsidiary, or to the Knowledge of the Company, exposed any person (including any Company Employee) to any Hazardous Materials or any environmental condition in such a manner as would result in any liability or clean-up obligation of any kind or nature to the Company or any Company Subsidiary, except for such liability or clean-up obligation as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(iv) Neither the Company nor any Company Subsidiary, any predecessors of the Company or any Company Subsidiary, nor any entity previously owned by the Company or any Company Subsidiary, has transported or arranged for the treatment, storage, handling, disposal, or transportation of any Hazardous Material to any location which would be reasonably likely, either individually or in the aggregate, to result in a Material Adverse Effect on the Company.

(v) Neither the Company nor any Company Subsidiary has assumed or undertaken, or agreed to assume or undertake, responsibility for any liability or obligation of any other person, arising under or relating to Environmental Laws, including without limitation any obligation for investigation, corrective or remedial action, other than any such assumptions, agreements or undertakings (A) in connection with financing agreements, (B) agreements for transportation of products or Hazardous Materials outside of the United States, (C) that are no longer in effect or (D) that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company.

(vi) There have been no material environmental investigations, studies, audits, tests, reviews or other analyses which are in the possession of the Company or any Company Subsidiary (or any representatives thereof) prepared on or after January 1, 1999, with respect to any real properties currently or formerly owned, leased or operated by the Company or any Company Subsidiary which have not been delivered to Buyer prior to execution of this Agreement.

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(vii) The representations and warranties set forth in this Section 2.16 are the Company s sole and exclusive representations and warranties with respect to environmental matters.

2.17 *Opinion of Financial Advisor.* The Board of Directors of the Company has received the written opinion of Merrill Lynch & Co., dated as of the date hereof, to the effect that, as of such date, the Merger Consideration was fair, from a financial point of view, to the holders of Company Shares, and the Company will provide a copy of such written opinion to Buyer promptly and in any event within two business days following the date hereof.

2.18 *Insurance.* True and correct copies of all material insurance policies covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company and the Company Subsidiaries (collectively, the *Insurance Policies* ) were provided or made available to Buyer prior to the date hereof. Except as set forth in *Section 2.18 of the Company Disclosure Schedule*, there is no material claim by the Company or any Company Subsidiary pending under any of the Insurance Policies as to which coverage has been denied or rejected by the underwriters of such policies.

2.19 *Board Approval.*

(a) The Board of Directors of the Company, at a meeting duly called and held in compliance with the requirements of the Israeli Companies Law and Israeli Securities Law, unanimously (without taking into consideration directors required to abstain from such vote pursuant to the Israeli Companies Law) has (i) determined that this Agreement, the Merger and the other transactions contemplated hereby are fair to, and in the best interests of, the Company and the Company s shareholders and that, considering the financial position of the merging companies, no reasonable concern exists that the Surviving Corporation will be unable to fulfill the obligations of the Company to its creditors, (ii) approved this Agreement, the Merger and the other transactions contemplated hereby and (iii) resolved to recommend that the Company s shareholders vote for the approval of this Agreement, the Merger and the other transactions contemplated hereby. The Company has furnished to Buyer a copy, certified by the Secretary of the Company, of resolutions of the Board of Directors of the Company approving and adopting this Agreement, the Merger and the other transactions contemplated hereby.

(b) The audit committee of the Company, at a meeting duly called and held in compliance with the requirements of the Israeli Companies Law and Israeli Securities Law, unanimously (without taking into consideration directors required to abstain from such vote pursuant to the Israeli Companies Law) has (i) determined that this Agreement, the Merger and the other transactions contemplated hereby are fair to, and in the best interests of the Company and the Company s shareholders and that, considering the financial position of the merging companies, no reasonable concern exists that the Surviving Corporation will be unable to fulfill the obligations of the Company to its creditors, (ii) approved this Agreement, the Merger and the other transactions contemplated hereby and (iii) resolved to recommend that the Company s shareholders vote for the approval of this Agreement, the Merger and the other transactions contemplated hereby. The Company has furnished to Buyer a copy, certified by the Secretary of the Company, of the resolutions of the audit committee of the Company approving and adopting this Agreement, the Merger and the other transactions contemplated hereby.

2.20 *Inapplicability of Certain Statutes.* Other than the Israeli Companies Law and the Israeli Securities Law, the Company is not subject to any law regarding corporate procedures in business combinations that would apply to the Merger or any other transaction contemplated by this Agreement.

2.21 *Grants, Incentives and Subsidies.* Section 2.21 of the Company Disclosure Schedule provides a complete list as of June 30, 2004 of all pending and outstanding grants, incentives and subsidies (collectively, *Grants* ) from the Government of the State of Israel or any agency thereof, or from any foreign governmental or administrative agency, granted to the Company or any Company Subsidiary, including, without limitation, (i) Approved Enterprise Status from the Investment Center and (ii) grants from the OCS. The Company has made available to Buyer and Merger Sub, prior to the date hereof, correct copies of all documents evidencing Grants submitted by the Company or any Company Subsidiary and of all letters of approval, and supplements thereto, granted to the Company or any Company

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Subsidiary. *Section 2.21 of the Company Disclosure Schedule* details all material undertakings of the Company or any Company Subsidiary given in connection with the Grants. Without limiting the generality of the foregoing, *Section 2.21 of the Company Disclosure Schedule* includes the aggregate amounts of each Grant, and the aggregate outstanding obligations thereunder of the Company or any Company Subsidiary with respect to royalties, or the outstanding amounts to be paid by the OCS to the Company or any Company Subsidiary and the composition of such obligations or amount by the product or product family to which it relates, in each case as of June 30, 2004. The Company and the Company Subsidiaries are in compliance, in all material respects, with the terms and conditions of their respective Grants and, except as disclosed in *Section 2.21 of the Company Disclosure Schedule* hereto, have duly fulfilled, in all material respects, all the undertakings relating thereto required to be fulfilled prior to the date hereof. The Company is not aware of any event or other set of circumstances which would reasonably be expected to lead to the revocation or material modification of any of the Grants.

2.22 *Listing on Tel-Aviv Stock Exchange.* The Company Shares are quoted on the TASE. The Company is in material compliance with all present requirements for listing and trading of the Company shares on the TASE.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Each of Buyer and Merger Sub represents and warrants to the Company as follows:

3.1 *Organization and Qualification; Subsidiaries.*

(a) Each of Buyer, Merger Sub and their subsidiaries is a corporation duly organized, validly existing and, where applicable, in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Each of Buyer, Merger Sub and their subsidiaries is in possession of all Approvals necessary to own, lease and operate the properties it purports to own, operate or lease and to carry on its business as it is now being conducted, except where the failure to have such Approvals would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer. Each of Buyer, Merger Sub and their subsidiaries is duly qualified or licensed as a foreign corporation to do business, and, where applicable, is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer.

(b) *Section 3.1* of that certain disclosure schedule dated as of the date hereof, signed by a duly authorized officer of Buyer and delivered to the Company on the date hereof (the *Buyer Disclosure Schedule* ) lists each of Buyer s and Merger Sub s subsidiaries, the jurisdiction of incorporation of each such subsidiary, and Buyer s or Merger Sub s equity interest therein and, if not directly or indirectly wholly owned by Buyer or the Merger Sub, to the Knowledge of Buyer, the identity and ownership interest of each of the owners of such subsidiary of Buyer or the Merger Sub. Except as set forth in *Section 3.1 of Buyer Disclosure Schedule*, as of the date hereof neither Buyer, Merger Sub nor any of their subsidiaries has agreed, is obligated to make or is bound (or has bound its property) by any Contract under which it is or is reasonably likely to become obligated to make, any future investment in or capital contribution to any other entity in excess of $2,000,000 in the aggregate with other such Contracts. Other than Buyer s and Merger Sub s interest in their subsidiaries, and except as set forth in *Section 3.1 of the Buyer Disclosure Schedule*, neither Buyer, Merger Sub nor any of their subsidiaries directly or indirectly owns any equity or similar interest in or any interest convertible into, exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, limited liability company, joint venture, trust, association unincorporated organization or other legal entity. All of the issued and outstanding shares of capital stock of or other equity interests in each subsidiary of Buyer or Merger Sub have been duly authorized and

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validly issued and are fully paid and nonassessable and not subject to preemptive rights, and except as set forth in *Section 3.1(b) of the Buyer Disclosure Schedule*, all such shares or interests owned by Buyer, Merger Sub or another subsidiary of Buyer free and clear of all Liens.

(c) *Certificate of Incorporation and Bylaws.* Each of Buyer and Merger Sub has previously furnished to the Company (i) complete and correct copies of its Certificate of Incorporation and Bylaws as amended to the date of this Agreement (together, the *Buyer Charter Documents*) and (ii) complete and correct copies of the Articles of Incorporation, bylaws, organization documents, partnership, joint venture and operating agreements and similar constitutive documents of each subsidiary of Buyer and Merger Sub as amended to the date of this Agreement. Such Buyer Charter Documents and the equivalent organizational documents of each of Buyer s and Merger Sub s subsidiaries are in full force and effect and no dissolution, revocation or forfeiture proceedings regarding Buyer, Merger Sub or any of their subsidiaries have been commenced. Neither Buyer nor Merger Sub is in violation of any of the provisions of the Buyer Charter Documents, and no subsidiary of Buyer or Merger Sub is in violation of any of its equivalent organizational documents.

3.2 *Capitalization.* The authorized capital stock of Buyer consists of (i) 200,000,000 shares of Buyer Common Stock, no par value, and (ii) 10,000 shares of Buyer Preferred Stock, no par value. As of October 13, 2004, 71,217,193 shares of Buyer Common Stock were issued and outstanding. As of the date hereof, no shares of Buyer Preferred Stock were issued or outstanding. The authorized capital stock of Merger Sub consists of 1000 Ordinary Shares, NIS 1.00 par value per share. As of the date hereof, 1000 of Merger Sub s Ordinary Shares were issued and outstanding. On June 30, 2004, options to purchase 6,050,000 shares of Buyer Common Stock were outstanding pursuant to Buyer s 2003 Long-Term Incentive Plan (the *LTIP*). Except as set forth in the immediately preceding sentence, no shares of capital stock, options, warrants, convertible securities or any other equity securities of Buyer are issued or outstanding except as set forth in the SEC Documents (as defined herein) and except for the Rights. All of the outstanding shares of Buyer s and Merger Sub s respective capital stock have been duly authorized and validly issued and are fully paid and nonassessable. All shares of Buyer Common Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, shall, and the shares of Buyer Common Stock to be issued pursuant to the transactions contemplated by this Agreement (including any such shares of Buyer Common Stock which may be issued in connection with the exercise of any options or warrants issued by Buyer in connection with this Agreement) will be, duly authorized, validly issued, fully paid and nonassessable. All of the outstanding shares of capital stock of each of Buyer s and Merger Sub s subsidiaries are duly authorized, validly issued, fully paid and nonassessable and all such shares owned by Buyer, Merger Sub or another subsidiary are owned free and clear of all Liens, agreements and limitations in Buyer s or Merger Sub s voting rights. As of the date hereof, other than as set forth above, neither Buyer nor Merger Sub has any other securities authorized, reserved for issuance, issued or outstanding.

3.3 *Authority Relative to this Agreement.* Each of Buyer and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement and, subject to the Buyer Shareholder Approval (as defined herein) and receipt of required regulatory approvals and consents, to perform its obligations hereunder and to consummate the transactions contemplated hereby. Subject to the foregoing, the execution and delivery of this Agreement by Buyer and Merger Sub and the consummation by Buyer and Merger Sub of the transactions contemplated hereby has been duly and validly authorized by all necessary corporate action on the part of Buyer and Merger Sub, and, subject to the Buyer Shareholder Approval, no other corporate proceedings on the part of Buyer or Merger Sub are necessary to authorize this Agreement or to consummate the transactions so contemplated. This Agreement has been duly and validly executed and delivered by Buyer and, assuming the due authorization, execution and delivery by the Company, constitutes a valid, legal and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

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3.4 *No Conflict; Required Filings and Consents.*

(a) Except as set forth in *Section 3.4 of the Buyer Disclosure Schedule*, the execution and delivery of this Agreement by each of Buyer and Merger Sub does not, and the performance of this Agreement by each of Buyer and Merger Sub shall not, (i) conflict with or violate the Buyer Charter Documents or equivalent organizational documents of any of Buyer s or Merger Sub s subsidiaries, (ii) subject to obtaining the consents, approvals, authorizations and permits, and making the registrations, filings and notifications set forth in Section 3.4(b) (or *Section 3.4(b) of the Buyer Disclosure Schedule*), conflict with or violate any law applicable to Buyer, Merger Sub or any of their subsidiaries or by which it or their respective properties are bound, or (iii) conflict with, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, require any notice or consent pursuant to, or impair Buyer s, Merger Sub s or any of their subsidiary s rights or alter the rights or obligations of any third party under, or give rise to any rights of termination, amendment, acceleration or cancellation of, or rights to payment under, or result in the creation of a Lien or encumbrance on any of the properties or assets of Buyer or Merger Sub or any of their subsidiaries pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, merger or other acquisition agreement, license, permit, franchise, concession or other instrument or obligation to which Buyer, Merger Sub or any of their subsidiaries is a party or by which Buyer, Merger Sub or any of their subsidiaries or their or any of their respective properties are bound, except to the extent such conflict, violation, breach, failure to give notice or obtain consent, default, impairment rights, losses or Liens or other effect would not, in the case of clauses (ii) or (iii), individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer.

(b) The execution and delivery of this Agreement by each of Buyer and Merger Sub does not, and the performance of this Agreement and the transactions contemplated hereby by each of Buyer and Merger Sub shall not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity except (i) for applicable requirements, if any, of the Securities Act, the Exchange Act, Blue Sky Laws, the HSR Act and the requirements of foreign Governmental Entities, (ii) filings with the Investment Center, (iii) consent of the OCS, (iv) consent or any approval of the Israeli Commissioner of Restrictive Trade Practices and (v) where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer.

3.5 *Compliance; Permits.*

(a) Except as set forth in *Section 3.5(a) of the Buyer Disclosure Schedule*, and excluding labor and employee benefits matters which are exclusively covered in Section 3.10, tax matters which are exclusively covered in Section 3.12 and environmental matters which are exclusively covered in Section 3.15, neither Buyer, Merger Sub nor any other subsidiary of Buyer is in conflict with, or in default or violation of, (i) any Law applicable to Buyer, Merger Sub or any other subsidiary of Buyer or by which its or any of their respective properties is bound, or (ii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise, concession or other instrument or obligation to which Buyer, Merger Sub or any other subsidiary of Buyer is a party or by which Buyer, Merger Sub or any other subsidiary of Buyer or its or their respective properties is bound, except for such conflicts, defaults or violations that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Buyer. No investigation or review by any Governmental Entity is, to the Knowledge of Buyer, pending or threatened against Buyer, Merger Sub or any other subsidiary of Buyer, nor, to the Knowledge of Buyer, has during the past three years any Governmental Entity indicated an intention to conduct the same, other than, in each such case, those the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer.

(b) Except as set forth in *Section 3.5(b) of the Buyer Disclosure Schedule* and excluding labor and employee benefits matters which are exclusively covered in Section 3.10, tax matters which are exclusively covered in Section 3.12, and environmental matters which are exclusively covered in Section 3.15, Buyer and its subsidiaries hold all material permits, licenses, variances, exemptions, certificates, consents, product

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listings, establishment registrations, orders and approvals and other authorizations from Governmental Entities to test, manufacture, market, sell or distribute their respective products, to own, lease and operate their respective properties and assets, or carry on their respective businesses as they are now being conducted or otherwise which are material to the operation of the business of Buyer and its subsidiaries taken as a whole (collectively, the *Buyer Permits*). All such Buyer Permits are in full force and effect, and as of the date of this Agreement, none of the Buyer Permits has, during the past three years, been withdrawn, revoked, suspended or cancelled nor is any such withdrawal, revocation, suspension or cancellation pending or to the Knowledge of Buyer, threatened in writing, except where such failure to be in full force and effect or such withdrawal, revocation, suspension or cancellation would not reasonably be expected to have a Material Adverse Effect on Buyer. Buyer and each of its subsidiaries has been, during the past three years, and is in compliance in all material respects with the terms of the Buyer Permits and any conditions placed thereon, except for any noncompliance that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Buyer.

3.6 *SEC Filings; Financial Statements.* Buyer has filed with the United States Securities and Exchange Commission (the *SEC*) all reports, schedules, forms, statements and other documents required to be filed with the SEC by Buyer since January 1, 2001 and prior to the date of this Agreement (the *SEC Documents*). The SEC Documents (i) complied, as of their respective filing dates, with all applicable requirements of the Securities Act or the Exchange Act, (ii) did not at the time of filing 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 to the extent such statements have been modified or superseded by later SEC Documents filed and publicly available prior to the date hereof and (iii) the consolidated financial statements of Buyer and its subsidiaries included in SEC Documents including without limitation (A) the audited consolidated balance sheet of Buyer and its subsidiaries for the fiscal year ended June 26, 2004 and the related statements of operations, retained earnings and cash flows for the fiscal year ended on such date, together with supporting notes, schedules and the report thereon from BDO Seidman, and (B) the unaudited consolidated balance sheet of Buyer and its subsidiaries for the three months ended on September 26, 2004 and the related statements of operations, retained earnings and cash flows for the period ended on such date, together with supporting notes and schedules (collectively, the *Buyer Financial Statements*), complied in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as were in effect on the date of such statement, have been prepared from the books and records of Buyer in accordance with U.S. generally accepted accounting principles *(U.S. GAAP)* (except as may be indicated in the notes thereto and subject, in the case of unaudited statements, to the absence of footnotes and normal year-end audit adjustments) applied on a consistent basis during the periods involved and fairly present, in all material respects in accordance with the applicable requirements of U.S. GAAP and the applicable rules and regulations of the SEC, in each case as were in effect on the date of such statement, the consolidated financial position of Buyer and its subsidiaries as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended (except as may be indicated in the notes thereto and subject, in the case of unaudited statements, to the absence of footnotes and normal year-end audit adjustments). Buyer and its subsidiaries maintain adequate disclosure controls and procedures (as defined in Rule 13a 15(e) and 15d 15(e) of the Exchange Act) and, to the knowledge of Buyer, there are no circumstances or conditions which could reasonably be expected to prevent the timely compliance of Buyer with the requirements of Item 308 of Regulation S-K under the Exchange Act.

3.7 *No Undisclosed Liabilities.* Except (a) as set forth in *Section 3.7 of the Buyer Disclosure Schedule*, the Buyer Financial Statements or the SEC Documents, (b) for obligations incurred since June 26, 2004 that would not, individually or in the aggregate, have a Material Adverse Effect on Buyer, (c) for obligations under this Agreement and the transactions contemplated hereby and (d) for obligations under any Contract (other than due to breaches thereunder), neither Buyer, Merger Sub nor any of their subsidiaries has incurred any liabilities (absolute, accrued, contingent or otherwise) of a nature required by U.S. GAAP to be disclosed on a consolidated balance sheet or in the notes thereto.

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3.8 *Absence of Litigation.* Except as set forth in the SEC Documents as of the date hereof, there are no claims, actions, suits, proceedings or investigations pending or, to the Knowledge of Buyer or Merger Sub, threatened against Buyer or Merger Sub or any property or rights of Buyer or Merger Sub or any of their subsidiaries, by or before any Governmental Entity, except for those claims, actions, suits or proceedings which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer.

3.9 *Brokers.* Except for Goldman, Sachs & Co., the fees and expenses of which will be paid by Buyer, no agent, broker, finder, investment banker, financial advisor or other person will be entitled to any fee, commission or other compensation in connection with any of the transactions contemplated by this Agreement on the basis of any act or statement made or alleged to have been made by Buyer, Merger Sub or any of their respective affiliates, or any investment banker, financial advisor, attorney, accountant or other person retained by or acting for or on behalf of Buyer, Merger Sub or any such affiliate.

3.10 *Buyer Employee Matters and Benefit Plans.*

(a) *Definitions.* For the purposes of this Agreement, the following terms have the meanings set forth below:

(i) *Buyer Employee* shall mean any current, former or retired employee, officer or director of Buyer or any of its subsidiaries;

(ii) *Buyer Employee Plan* shall mean any plan, program, policy, practice, contract, agreement or arrangement of any kind (excluding any Buyer Employment Agreement, as defined herein) providing for compensation, severance, termination pay, bonus, incentive compensation, pension, profit sharing, retirement, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, worker s compensation and other insurance, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each employee benefit plan, within the meaning of Section 3(3) of ERISA, which is adopted, maintained, contributed to, or required to be contributed to, by Buyer or any of its subsidiaries under which any Buyer Employee, or any beneficiary thereof, is covered, is eligible for coverage or has any benefit rights; and

(iii) *Buyer Employment Agreement* shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visas, work permit or other agreement, contract or understanding between Buyer or any of its subsidiaries and any Buyer Employee as to which Buyer has incurred material liability.

(b) *Buyer Employee Plan Compliance.* Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Buyer, each Buyer Employee Plan and Buyer Employment Agreement has been established and maintained in accordance with its terms and in compliance with all applicable Laws, including without limitation ERISA or the Code.

(c) *Pension Plan.* Neither Buyer nor any Buyer ERISA Affiliate has within the past six years maintained, established, sponsored, participated in, or contributed to, any Pension Plan which is subject to Title IV of ERISA or Section 412 of the Code.

(d) *Employment Matters.* Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Buyer, with respect to Buyer s Employees, Buyer is in compliance with all applicable foreign, federal, state and local laws, rules and regulations respecting labor, employment and employment practices.

3.11 *Intellectual Property.*

(a) Buyer warrants that it is not a defendant in any ongoing, or to Buyer s Knowledge any threatened, intellectual property litigation that would reasonably be expected to result in a Material Adverse Effect to Buyer. To Buyer s Knowledge, Buyer operates its business without violation of any valid

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and enforceable third party intellectual property rights that would reasonably be expected to result in a Material Adverse Effect to Buyer.

(b) To Buyer s Knowledge, it owns or is the licensee of all material intellectual property necessary for the operation of Buyer s business, free and clear of any third party claim of ownership that would reasonably be expected to result in a Material Adverse Effect to Buyer. To Buyer s Knowledge, Buyer s material intellectual property is valid and enforceable. Buyer is not aware of any third party violation of Buyer s intellectual property that would reasonably be expected to materially reduce the value of Buyer s business.

3.12 *Taxes.* Except as set forth in *Section 3.12 of the Buyer Disclosure Schedule* and except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Buyer:

(a) Buyer and each of its subsidiaries has timely (A) (after taking into account all available extensions) filed all Tax Returns and such Tax Returns are true and correct and complete and (B) paid all Taxes (other than such Taxes as are being contested in good faith by appropriate proceedings and for which adequate reserves have been taken) shown as due on such Tax Returns.

(b) No penalty, interest or other charge is due or has been asserted in writing as of the date hereof with respect to the late filing of any Tax Return or late payment of any Tax.

(c) As of the date hereof, (i) no audit or other administrative or judicial proceeding of any material Tax Return of Buyer or any of its subsidiaries is currently in progress, and (ii) neither Buyer nor any of its subsidiaries has been notified in writing of any request for such an audit or other administrative or judicial proceeding. As of the date hereof, no claim for assessment or collection of Taxes is presently being asserted in writing against Buyer or its subsidiaries and neither Buyer nor any of its subsidiaries is a party to any pending material action, proceeding, or investigation by any governmental taxing authority relating to Taxes nor does Buyer have Knowledge of any such threatened material action, proceeding or investigation.

(d) There are no Liens on the assets of Buyer or any subsidiary thereof that arose in connection with the failure to pay Taxes, other than Liens for Taxes not yet due and payable and Liens for Taxes that are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with U.S. GAAP.

(e) Neither Buyer nor any of its subsidiaries has any material liability for any unpaid Taxes (whether or not shown to be due on any Return) which has not been accrued for or reserved on Buyer s balance sheet dated June 26, 2004, in accordance with U.S. GAAP, other than any liability for unpaid Taxes that may have accrued since June 26, 2004 in connection with the operation of the business of Buyer and its subsidiaries in the ordinary course.

3.13 *Financing.* Buyer has, or will have at the Closing, sufficient cash to pay the aggregate amount of Cash Consideration, cash in lieu of fractional shares of Buyer Common Stock and any dividends or other distribution payable to the holders of Company Shares pursuant to the terms of this Agreement.

3.14 *Absence of Certain Changes or Events.* Except as set forth in *Section 3.14 of the Buyer Disclosure Schedule*, and except for the transactions contemplated hereby, since June 26, 2004, Buyer and its subsidiaries have conducted their business in all material respects only in the ordinary course consistent with past practice and there has not been: (i) any event or occurrence which has had or is reasonably likely to have a Material Adverse Effect on Buyer, (ii) any authorization, declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of Buyer s or Merger Sub s capital stock, or any purchase, redemption or other acquisition by Buyer of any of Buyer s capital stock, Merger Sub of any of Merger Sub s capital stock or any other securities of Buyer or Merger Sub or any options, warrants, calls or rights to acquire any such shares or other securities except for repurchases from employees pursuant to the terms of their pre-existing stock option or purchase agreements, (iii) any split, combination or reclassification of any of Buyer s, Merger Sub or any of their

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subsidiaries capital stock, or (iv) any material change by either Buyer or Merger Sub in its accounting methods, principles or practices, except as required by concurrent changes in U.S. GAAP.

3.15 *Environmental Matters.* Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) Buyer and each of its subsidiaries is in compliance with all applicable Environmental Laws and (ii) there are no pending or, to the Knowledge of Buyer, threatened claims, suits, proceedings, orders, notices of violation, requests for information or administrative hearings or, to the Knowledge of Buyer, investigations against Buyer or any of its subsidiaries under Environmental Laws.

3.16 *Fairness Opinion.* The Board of Directors of Buyer has received the opinion of its financial advisor, Goldman, Sachs & Co., to the effect that, as of the date hereof, the Merger Consideration to be paid by Buyer in respect of each Company Share is fair from a financial point of view to Buyer.

3.17 *Restrictions on Business Activities.* Except as disclosed in *Section 3.17 of the Buyer s Disclosure Schedule* or in the SEC Documents, there is no agreement, commitment, judgment, injunction, order or decree binding upon Buyer, Merger Sub or their subsidiaries or to which Buyer, Merger Sub or any of their subsidiaries is a party which has prohibited or impaired any business practice of Buyer, Merger Sub or any of their subsidiaries, any acquisition of property by Buyer, Merger Sub or any of their subsidiaries or the conduct of business by Buyer, Merger Sub or any of their subsidiaries as currently conducted, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Buyer.

3.18 *Required Buyer Shareholder Vote.* The issuance of Buyer Common Stock in the merger pursuant to this Agreement and the issuance of shares of Buyer Common Stock pursuant to Section 5.13(c) requires the approval of a majority of the votes cast at a meeting at which there is a quorum by the holders of Buyer Common Stock (the *Buyer Shareholder Approval* ), and no other vote of the holders of any class or series of capital stock of Buyer is required to approve or authorize this Agreement or the consummation of the transactions contemplated hereby.

3.19 *Board Approvals.* Each of the Board of Directors of Buyer and Merger Sub has unanimously: (i) determined that this Agreement, the Merger and the other transactions contemplated by this Agreement are fair to, and in the best interests of, their respective companies and shareholders, and that, considering the financial position of the merging companies, no reasonable concern exists that the Surviving Corporation (as defined herein) will be unable to fulfill the obligations of Merger Sub to its creditors; (ii) approved this Agreement, the Merger and the other transactions contemplated hereby; and (iii) determined to recommend that the shareholders of their respective companies approve, in the case of Buyer, the issuance of the Buyer Common Stock pursuant to this Agreement, and, in the case of Merger Sub, this Agreement, the Merger and the other transactions contemplated hereby. Each of Buyer and Merger Sub has furnished to the Company a copy, certified by the Secretary of Buyer and Merger Sub, respectively, of resolutions of its Board of Directors approving and adopting this Agreement, the Merger and the other transactions contemplated hereby.

3.20 *Inapplicability of Certain Statutes and Rights Agreement.* Buyer is not subject to any Law regarding corporate procedures in business combinations that would apply to the Merger or any other transaction contemplated by this Agreement. No person shall become an *Acquiring Person* (as defined in the Rights Agreement) and no Share Acquisition Date or Distribution Date (in either case, as defined in the Rights Agreement) shall occur, or deemed to have occurred, as a result of Buyer s entering into this Agreement or the consummation of the transactions contemplated hereby.

3.21 *Listing on Nasdaq.* The common stock of Buyer is traded on the Nasdaq. Buyer is in material compliance with all present requirements for listing and trading of Buyer shares on the Nasdaq.

3.22 *Certain Customer Relationships.* Buyer has not received notice from any customer that accounts for 25% or more of Buyer s net sales that such customer intends to modify in any manner detrimental to Buyer its relationship with Buyer, except for any such modification as would not reasonably be expected to have a Material Adverse Effect on Buyer.

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3.23 *Insurance.* For the six-year period prior to the date hereof, Buyer maintained a program of liability insurance, which covered liabilities from products or product defects, consisting of claims-made policies with coverage totaling at least $100,000,000 for each year (the *Product Liability Insurance Policies* ), substantially all of which amount, as of the date hereof, is available for the satisfaction of claims. The Product Liability Insurance Policies have been maintained and not revoked and contain a retroactive date of June 1, 1986. There is no material product liability claim against Buyer or any subsidiary of Buyer pending under any Product Liability Insurance Policy as to which coverage has been denied by the underwriters of such policies.

ARTICLE IV

CONDUCT PRIOR TO THE CLOSING DATE

4.1 *Conduct of Business by the Company.* Except as set forth in *Section 4.1 of the Company Disclosure Schedule*, as contemplated by this Agreement or consented to by Buyer in writing (which consent shall not be unreasonably withheld or delayed), during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms and the Effective Time, the Company shall, and shall cause each Company Subsidiary to, carry on its business in all material respects in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in material compliance with all applicable laws and regulations, pay its debts and Taxes when due subject to good faith disputes over such debts or Taxes, pay or perform other material obligations when due, subject to good faith disputes over such obligations, and use its commercially reasonable efforts consistent with past practices and policies to (i) preserve intact its present business organization, (ii) keep available the services of its present officers and management level employees and (iii) preserve its relationships with material customers, suppliers, distributors, licensors, licensees and others with which it has material business dealings. Without limiting the generality of the foregoing, except as set forth in the corresponding subsection of *Section 4.1 of the Company Disclosure Schedule* or as contemplated by this Agreement, during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms and the Effective Time, without the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), the Company shall not and shall not permit any Company Subsidiary to (unless required by Law or the regulations or requirements of any stock exchange or regulatory organization applicable to the Company and any Company Subsidiary, in each case after consultation with counsel) do any of the following:

(a) Waive any stock repurchase rights, accelerate (except in accordance with the terms thereof), amend or change the period of exercisability of options or restricted stock, or reprice options granted under any employee, consultant, director or other stock plans or authorize cash payments in exchange for any options granted under any of such plans;

(b) Transfer or license exclusively to any person or entity or otherwise extend, amend or modify any rights to the material Company Intellectual Property, or enter into any agreements or make other commitments or arrangements to grant, transfer or license to any person future rights to any material Intellectual Property, in each case other than entering into, amending or modifying licenses in the ordinary course of business consistent with past practices;

(c) Declare, set aside or pay any dividends on (except dividends declared or paid by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company) or make any other distributions (whether in cash, stock, equity securities or property) in respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any capital stock;

(d) Purchase, redeem or otherwise acquire, directly or indirectly, any shares of capital stock of the Company or any Company Subsidiary, except repurchases of unvested shares at cost in connection with the termination of the employment relationship with any employee pursuant to stock option or purchase agreements in effect on the date hereof (or any such agreements entered into in the ordinary

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course consistent with past practice by the Company or any Company Subsidiary with Company Employees hired after the date hereof);

(e) Issue, deliver, sell (including the sale by any Company Subsidiary of Company Shares and the sale by the Company of any Company Shares held in treasury), authorize, pledge or otherwise encumber or propose any of the foregoing with respect to any shares of capital stock or any securities convertible into or exercisable or exchangeable for shares of capital stock, or subscriptions, rights, warrants or options to acquire any shares of such capital stock or any securities convertible into or exercisable or exchangeable for shares of such capital stock, or enter into other agreements or commitments of any character obligating it to issue any such shares or convertible securities, other than the issuance, delivery or sale of shares of Company Shares pursuant to the exercise of stock options and warrants outstanding as of the date of this Agreement;

(f) Cause, permit or propose any amendments to the Company Charter Documents (or similar governing instruments of any Company Subsidiary);

(g) In any single transaction or series of related transactions having a fair market value in excess of $1,000,000 in the aggregate, (i) acquire or agree to acquire by merging or consolidating with, or by purchasing any equity interest in or a portion of the assets of, or by any other manner, any business or any corporation, limited liability company, general or limited partnership, business trust, unincorporated association or other business organization, entity or division thereof, or (ii) otherwise acquire or agree to acquire all or substantially all of the assets of any of the foregoing, or enter into any joint ventures, strategic partnerships or alliances;

(h) (i) Sell, lease, license, encumber, convey, assign, sublicense or otherwise dispose of or transfer any properties or assets or any interest therein other than in the ordinary course of business consistent with past practice, except for the sale, lease, licensing, encumbrance, conveyance, assignment, sublicensing or disposition of property or assets in any single transaction or series of related transactions having a fair market value not in excess of $2,500,000 in the aggregate, (ii) materially modify, amend or terminate any existing material lease, license or Contract affecting the use, possession or operation of any such properties or assets, or (iii) grant or otherwise create or consent to the creation of any material easement, covenant, restriction, assessment or charge affecting any owned real property or leased real property or any material part thereof;

(i) Incur any indebtedness for borrowed money or guarantee any such indebtedness of another person, issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company, enter into any keep well or other agreement to maintain any financial statement condition or enter into any arrangement having the economic effect of any of the foregoing, in each case other than in connection with (A) the financing of ordinary course trade payables, (B) borrowings under the Company s existing credit facility, (C) short term borrowings (not to exceed three months in term) in the ordinary course of business not in excess of $1,000,000 or (D) the collection of accounts receivable, notes or commercial paper, in the ordinary course of business consistent with past practice;

(j) (i) except pursuant to Company Employee Plans or Company Employment Agreements in existence prior to the date hereof, adopt or amend any material Company Employee Plan or Company Employment Agreement that provides for annual base salary in excess of $100,000 or enter into any employment contract or collective bargaining agreement (other than offer letters and agreements that do not provide for an annual base salary in excess of $100,000 or that are entered into in the ordinary course of business consistent with past practice with employees who are terminable at will and who are not officers of the Company); (ii) pay any special bonus or special remuneration to any director or employee other than special bonuses to Company Employees pursuant to and in accordance with the terms of Section 5.13(d); or (iii) increase the salaries or wage rates or fringe benefits (including granting or increasing rights to severance or indemnification) (other than increases in the ordinary course of business consistent with past practice or as required by any existing employment agreement or collective bargaining agreements) of its directors, officers, employees or consultants except, in each

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case, as may be required by law or any existing Company Employee Plan or Company Employment Agreement; provided, however, that the Company may enter into retention agreements pursuant to and in accordance with the terms of Section 5.14(e).

(k) (i) Pay, discharge, settle or satisfy any litigation (whether or not commenced prior to the date of this Agreement) or any material claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) where the aggregate amount of such payments exceeds $500,000, other than the payment, discharge, settlement or satisfaction of such claims, liabilities and obligations in the ordinary course of business consistent with past practice or in accordance with their terms in existence as of the date hereof; or (ii) waive the benefits of, agree to modify in any material manner, terminate, release any person from or knowingly fail to enforce any material confidentiality or similar agreement to which the Company or any Company Subsidiary is a party or of which the Company or any Company Subsidiary is a beneficiary;

(l) Except as permitted pursuant to the other clauses of this Section 4.1, make any individual or series of related payments outside of the ordinary course of business in excess of $1,000,000 or make any payments outside of the ordinary course of business where the aggregate of such payments exceeds $5,000,000;

(m) Materially modify, amend or terminate any material contract or agreement to which the Company or any Company Subsidiary is a party or waive, delay the exercise of, release or assign any material rights or material claims thereunder, in each case, except in the ordinary course of business consistent with past practice;

(n) Except as required by U.S. GAAP, Israeli GAAP or German GAAP, revalue any of its assets or make any material change in accounting methods, principles or practices;

(o) Enter into, renew or modify any Contracts that, had they been executed on or as of the date hereof, would have been required to be listed in *Section 2.15 of the Company Disclosure Schedule*, in each case other than Contracts, agreements or arrangements entered into in the ordinary course of business consistent with past practice that can be terminated or cancelled by the Company without penalty or further payment and without more than 60 days notice;

(p) Other than (i) fees payable to Merrill Lynch & Co. and Leumi & Co. pursuant to the engagement letter referred to in Section 2.13 and (ii) fees payable to legal, accounting and other professional service advisors (which advisors are disclosed in *Section 4.1(p) of the Company Disclosure Schedule*), make any individual or series of related payments of fees or expenses outside of the ordinary course of business consistent with past practice (including payments to other legal, accounting or other professional service advisors);

(q) Except as permitted pursuant to the other clauses of this Section 4.1, incur or enter into any agreement, contract or commitment requiring the Company or any of Company Subsidiary to pay in excess of $1,000,000 over the term of such agreement, contract or commitment, other than any such agreement, contract or commitment entered into in the ordinary course of business consistent with past practice;

(r) (i) Except as required by Law or by any Governmental Entity and except for elections made in the ordinary course of business consistent with past practice that are consistent with the corresponding election previously made, make any material Tax election or Tax accounting method change, (ii) make any settlement or compromise of any current audit set forth in *Section 2.12(b)(iv) of the Company Disclosure Schedule* in an amount greater than the amount specifically reserved therefor in the Company Financial Statements or settle or compromise any audit that is not disclosed on such Schedule, or (iii) consent to any extension or waiver of any limitation period with respect to Taxes; or

(s) Agree or commit to take any of the actions described in Section 4.1(a) through (r).

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4.2 *Conduct of Business by Buyer.* Except as set forth in *Section 4.2 of the Buyer Disclosure Schedule*, as contemplated by this Agreement or consented to by the Company in writing (which consent shall not be unreasonably withheld or delayed), during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms and the Effective Time, Buyer shall, and shall cause each subsidiary of Buyer to, carry on its business in all material respects in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and in material compliance with all applicable laws and regulations, pay its debts and Taxes when due subject to good faith disputes over such debts or Taxes, pay or perform other material obligations when due, subject to good faith disputes over such obligations, and use its commercially reasonable efforts consistent with past practices and policies to preserve its relationships with material customers, suppliers, distributors, licensors and others with which it has material business dealings. Without limiting the generality of the foregoing, except as set forth in the corresponding subsection of *Section 4.1 of the Buyer Disclosure Schedule* or as contemplated by this Agreement, during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms and the Effective Time and except as provided in *Section 4.2 of the Buyer Disclosure Schedule*, without the prior written consent of the Company (which consent shall not be unreasonably withheld), Buyer shall not and shall not permit its subsidiaries to (unless required by Law or the regulations and requirements of any stock exchange or regulatory organization applicable to Buyer and any of its subsidiaries) do any of the following:

(a) Declare, set aside or pay any dividends on (other than regular quarterly dividends) or make any other distributions (whether in cash, stock, equity securities or property) in respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any capital stock, unless the Merger Consideration shall be appropriately adjusted pursuant to Section 1.3(g);

(b) Acquire or agree to acquire by merging or consolidating with, or by purchasing any equity interest in or a portion of the assets of, or by any other manner, any business or any corporation, limited liability company, general or limited partnership, business trust, unincorporated association or other business organization, entity or division thereof, or otherwise acquire or agree to acquire all or substantially all of the assets of any of the foregoing, unless the consideration paid or to be paid in any of the foregoing consists solely of securities of Buyer or cash and stock totaling less than $10,000,000;

(c) Sell, lease, license, encumber, convey, assign, sublicense or otherwise dispose of or transfer any properties or assets or any interest therein other than in the ordinary course of business consistent with past practice, except for the sale, lease, licensing, encumbrance, conveyance, assignment, sublicensing or disposition of property or assets in any single transaction or series of related transactions having a fair market value not in excess of $10,000,000 in the aggregate;

(d) Purchase, redeem or otherwise acquire, directly or indirectly, any shares of capital stock of Buyer or its subsidiaries, except repurchases of unvested shares at cost in connection with the termination of the employment relationship with any employee pursuant to stock option or purchase agreements in effect on the date hereof (or any such agreements entered into in the ordinary course consistent with past practice by Buyer with employees hired after the date hereof);

(e) Issue, deliver, sell, authorize, pledge or otherwise encumber or propose any of the foregoing with respect to any shares of capital stock or any securities convertible into or exercisable or exchangeable for shares of capital stock, or subscriptions, rights, warrants or options to acquire any shares of such capital stock or any securities convertible into or exercisable or exchangeable for shares of such capital stock, or enter into other agreements or commitments of any character obligating it to issue or purchase any such shares or convertible securities, other than (i) the grant of options to purchase shares of Buyer Common Stock to directors, officers, employees and consultants of Buyer in the ordinary course of business, consistent with past practice, (ii) the issuance, delivery or sale of shares of Buyer Common Stock pursuant to the exercise of stock options and warrants outstanding as

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of the date of this Agreement, or (iii) in connection with any acquisition where the consideration paid or to be paid consists solely of securities of Buyer or cash and stock totaling less than $10,000,000; or

(f) Agree or commit to take any of the actions described in Section 4.2(a) through (e).

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 *Prospectus; Shareholder Meetings.*

(a) As promptly as practicable after the execution and delivery of this Agreement, each of Buyer and the Company shall prepare and Buyer shall file with the SEC and the ISA a proxy statement/ prospectus and form of proxy, in connection with the vote of the shareholders of Buyer with respect to issuance of the Buyer Common Stock pursuant to this Agreement (such proxy statement/ prospectus, together with any amendments thereof or supplements thereto, is referred to herein as the *Prospectus* ). Buyer shall, as promptly as practicable after the execution and delivery of this Agreement, prepare and file with the SEC a registration statement on Form S-4 (the *Form S-4 Registration Statement* ), in which the Prospectus will be included as a prospectus, in connection with the registration under the Securities Act of the shares of Buyer Common Stock issuable upon exchange of the Company Shares. As promptly as practicable after the execution and delivery of this Agreement, the Company shall prepare the notice (the *Notice* ) of the general meeting of the Company s shareholders to be held in connection with the Merger and the transactions contemplated hereby (the *Company Shareholders Meeting* ). Each of the Company and Buyer shall promptly provide to the other all such information concerning its business and financial statements and affairs as reasonably may be required or appropriate for inclusion in the Prospectus or the Form S-4 Registration Statement, or in any amendments or supplements thereto, and each party shall cause its counsel and auditors to cooperate with counsel and auditors of the other party in the preparation of the Prospectus and the Form S-4 Registration Statement. Each of the Company and Buyer shall, following consultation with and the consent of the other party, respond to any comments of the ISA or the SEC, as applicable, and Buyer shall use its commercially reasonable efforts to have the Form S-4 Registration Statement declared or ordered effective under the Securities Act and approved under the Israeli Securities Law as promptly as practicable after such filing. At the earliest practicable date after the Form S-4 Registration Statement is declared or ordered effective by the SEC and approved by the ISA, the Company shall cause the Prospectus and the Notice to be published in the manner required by applicable law and Buyer shall cause the Prospectus to be mailed to its shareholders. As promptly as practicable after the date hereof, each of Buyer and the Company shall prepare and file any other filings required to be filed by it under the Exchange Act, the Securities Act or any other federal, foreign, Blue Sky Laws or related laws relating to the transactions contemplated by this Agreement (the *Other Filings* ). Each party hereto shall notify the other party promptly upon the receipt of any comments or written communication from the SEC or the ISA or their respective staffs or any other government officials and of any request by the SEC or the ISA or their respective staffs or any other government officials for amendments or supplements to the Form S-4 Registration Statement, the Prospectus, the Notice or any Other Filing, or for additional information and shall supply the other party with copies of all correspondence between such party or any of its representatives, on the one hand, and the SEC or the ISA or their respective staffs or any other government officials, on the other hand, with respect to the Form S-4 Registration Statement, the Prospectus, the Notice, the Merger or any Other Filing. Each party hereto shall allow the other parties and their representatives to participate in any meetings, telephone calls or similar communications between representatives of such party and the SEC or the ISA or their respective staffs or any other government officials with respect to the Form S-4 Registration Statement, the Prospectus, the Notice, the Merger or any Other Fili ng. All filings by Buyer with the SEC and the ISA and by the Company with the ISA and any other disclosure documents required under the Securities Act, the Exchange Act, the Israeli Securities Law or other applicable law in connection with the transactions contemplated hereby (with the exception of quarterly and annual reports filed by Buyer under the Exchange Act) including any amendments or supplements thereto, shall be subject to the prior review and

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approval of the Company or Buyer, respectively (which approval shall not be unreasonably withheld or delayed).

(b) Each party hereto agrees that the information provided or to be provided by it in writing for inclusion in (i) the Form S-4 Registration Statement will not, at the time the Form S-4 Registration Statement becomes effective under the Securities Act, 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, and (ii) the Prospectus will not, at the date or dates mailed to the shareholders of Buyer or published by the Company, at the time the Company Shareholders Meeting and at the time of the Buyer Shareholders Meeting, 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 thereunder.

(c) Each of Buyer and the Company shall cause all documents that it is responsible for filing with the SEC, the ISA or other regulatory authorities under this Section 5.1 (and all information that it supplies for inclusion in such filing by the other party) to comply as to form and substance in all material respects with the applicable requirements of law and the rules and regulations promulgated thereunder, including, as applicable, the Exchange Act, the Securities Act, the Israeli Securities Law and the rules and regulations of Nasdaq and the TASE. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Prospectus, the Notice, the Form S-4 Registration Statement or any Other Filing, the Company or Buyer, as the case may be, shall promptly inform the other of such occurrence and cooperate in filing with the SEC or the ISA or their respective staffs or any other government officials, or mailing to the shareholders of Buyer or the Company or both such amendment or supplement.

(d) The Company will as promptly as practicable following the date of this Agreement, file an Immediate Report, as defined under the Israel Securities Law, regarding the Company s entry into a transaction in which the Principal Shareholder has a personal interest and duly call, give notice of and, in accordance with the requirements of applicable law following the date the Form S-4 Registration Statement becomes effective and the Prospectus approved and published, convene and hold the Company Shareholders Meeting for the purpose of approving this Agreement and the transactions contemplated by this Agreement. In furtherance of the foregoing, except as set forth in Section 5.7(b), the Board of Directors of the Company shall recommend approval of this Agreement and the transactions contemplated hereby by the shareholders of the Company as set forth in Section 2.19 (the *Company Recommendation* ). Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Company to call, give notice of, convene and hold the Company Shareholder Meeting shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission to it of any Acquisition Proposal (as defined herein) or by any Company Change in Recommendation (as defined herein), unless this Agreement has been terminated in accordance with its terms. Buyer will, as promptly as practicable following the date hereof, duly call, give notice of, and, in accordance with the requirements of applicable Law following the date the Form S-4 Registration Statement becomes effective and the Prospectus approved and published, convene and hold a meeting of its shareholders (the *Buyer Shareholders Meeting* ) for the purpose of approving the issuance of shares of Buyer Common Stock in connection with the Merger. Buyer will, through its Board of Directors, recommend to Buyer s shareholders approval of the foregoing matters (the *Buyer Recommendation* ). Such recommendation, along with the opinions referred to in Sections 2.17 and 3.16 shall be included in the Prospectus. The Company and Buyer will use reasonable efforts to hold the Company Shareholders Meeting and the Buyer Shareholders Meeting on the same day and use their best efforts to hold such meetings as soon as practicable after the date hereof, subject to the requirements of applicable Law and the effectiveness of the Form S-4 Registration Statement and approval and publication of the Prospectus. Within three days after the approval of the Merger by the shareholders of the Company, the Company shall deliver to the Companies Registrar a notice in accordance with Section 317(b) of the Israeli Companies Law informing the Companies Registrar that the Merger was approved at the general shareholders meeting of the

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Company. Concurrently with the delivery by the Company of the notice referenced in the immediately preceding sentence, Merger Sub shall deliver to the Companies Registrar a notice in accordance with Section 317(b) of the Israeli Companies Law informing the Companies Registrar that the Merger was approved at the general shareholders meeting of Merger Sub.

5.2 *Merger Proposal.* As promptly as practicable following the date hereof the Company and Merger Sub shall (a) cause a merger proposal (in the Hebrew language) in the form of *Exhibit A* (the *Merger Proposal* ) to be executed in accordance with Section 316 of the Israeli Companies Law and (b) deliver the Merger Proposal to the Companies Registrar within three days from the calling of the shareholders meetings. The Company and Merger Sub shall cause a copy of the Merger Proposal to be delivered to each of their respective secured creditors, if any, no later than three days after the date on which the Merger Proposal is delivered to the Companies Registrar and shall promptly inform their respective non-secured creditors of the Merger Proposal and its contents in accordance with Section 318 of the Israeli Companies Law. Promptly after the Company and Merger Sub shall have complied with the preceding sentence and with clauses (i) and (ii) of this Section 5.2, but in any event no more than three business days following the date on which such notice was sent to the creditors, the Company and Merger Sub shall inform the Companies Registrar, in accordance with Section 317(b) of the Israeli Companies Law, that notice was given to their respective creditors under Section 318 of the Israeli Companies Law. In addition to the foregoing, each of the Company and, if applicable, Merger Sub, shall: (i) publish a notice to its creditors, stating that a Merger Proposal was submitted to the Companies Registrar and that the creditors may review the Merger Proposal at the office of the Companies Registrar, Company s registered office or Merger Sub s registered offices, as applicable, and at such other locations as the Company or Merger Sub, as applicable, may determine, in (A) two daily Hebrew newspapers, on the day that the Merger Proposal is submitted to the Companies Registrar, (B) if required, in such other manner (including in a popular newspaper in the United States) as may be required by applicable Law; (ii) within four business days from the date of submitting the Merger Proposal to the Companies Registrar, send a notice by registered mail to all of the Substantial Creditors (as such term is defined in the regulations promulgated under the Israeli Companies Law) that the Company or Merger Sub, as applicable, is aware of, in which it shall state that a Merger Proposal was submitted to the Companies Registrar and that the creditors may review the Merger Proposal at such additional locations, if such locations were determined in the notice referred to in the immediately preceding clause (i); and (iii) send to the workers committee or display in a prominent place at the Company s premises, a copy of the notice published in a daily Hebrew newspaper (as referred to in clause (i)(A) of this Section 5.2), no later than three business days following the day on which the Merger Proposal was submitted to the Companies Registrar.

5.3 *Notification.*

(a) The Company shall give prompt notice to Buyer upon becoming aware that any representation or warranty made by it contained in this Agreement has become untrue or inaccurate in any material respect, or of any failure of the Company to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; *provided, however*, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

(b) Each of Buyer and Merger Sub shall give prompt notice to the Company upon becoming aware that any representation or warranty made by it contained in this Agreement has become untrue or inaccurate in any material respect, or of any failure of Buyer or Merger Sub to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; *provided, however*, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

5.4 *Israeli Approvals.*

(a) *Government Filings.* Each party hereto shall use its commercially reasonable efforts to deliver and file, as promptly as practicable after the date hereof, each notice, report or other document required to

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be delivered by such party to or filed by such party with any Israeli Governmental Entity with respect to the Merger. Without limiting the generality of the foregoing: (i) as promptly as practicable after the date of this Agreement, the Company and Buyer shall prepare and file the notifications required under the Israeli Restrictive Trade Practices Law in connection with the Merger; (ii) the Company and Buyer shall respond as promptly as practicable to any inquiries or requests received from the Israeli Restrictive Trade Practices Commissioner for additional information or documentation; (iii) the Company shall use all reasonable efforts to obtain, as promptly as practicable after the date hereof, the following consents, and any other consents that may be required in connection with the Merger (A) approval of the OCS and (B) approval of the Investment Center; and (iv) Buyer shall provide to OCS, the Investment Center, the Israeli Restrictive Trade Practices Commissioner and the ISA any information requested by such authorities and shall execute an undertaking in customary form reasonably satisfactory to Buyer, which does not require or provide for any payment (other than filing, processing or similar administrative fees that are not material in amount) by Buyer or any affiliate thereof, to comply with the OCS laws and regulations. Buyer and the Company shall use commercially reasonable efforts to secure the consent of Israeli Lands Authority to the Merger, *provided*, that such efforts shall not require Buyer or the Company to make any payment (other than filing, processing or similar administrative fees that are not material in amount) in order to obtain such consent.

(b) *Israeli Income Tax Ruling.* As soon as reasonably practicable after the execution of this Agreement, the Company, Buyer and Merger Sub shall cause their respective Israeli counsel, advisors and accountants to prepare and file with the Israeli Income Tax Commissioner an application for a ruling concerning the Israeli Tax treatment of the Merger and that will include specific arrangements concerning withholding Taxes under which Buyer will not be obligated to withhold any Taxes with respect to the Buyer Common Stock, and that will not impose any obligations on the Company, Buyer or its shareholders without Buyer s prior written consent (the *Israeli Income Tax Ruling* ). Each of the Company and Buyer shall cause its respective Israeli counsel to coordinate all activities, and to cooperate with each other, with respect to the preparation and filing of such application and in the preparation of any written or oral submissions that may be necessary, proper or advisable to obtain the Israeli Income Tax Ruling. Subject to the terms and conditions hereof, the Company and Buyer shall use reasonable best efforts to promptly take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable law to obtain the Israeli Income Tax Rulings as promptly as practicable. Notwithstanding any provisions contained in Section 4.1 to the contrary, the Company shall be permitted to comply with any conditions contained in the ruling described in this Section 5.4(b) or reasonable requests made by the Israeli Tax Commissioner in connection with its delivery of such ruling; *provided, however*, (i) that the Company shall give Buyer at least three days written notice of any such conditions or requests prior to compliance with such conditions or requests, and (ii) that in no event, unless consented to by Buyer, shall the Company comply with any such condition or request in the event any such condition or request might reasonably be expected to (A) have a Material Adverse Effect on the Company, (B) prohibit or impair any business practice of the Company, any acquisition of property by the Company or any Company Subsidiary or the conduct of business by the Company or any Company Subsidiary, or (C) adversely impact or delay the consummation of the Merger or any of the other transactions contemplated by this Agreement.

(c) *TASE Listing.* Promptly after the date of this Agreement, Buyer shall take all actions necessary in order for the shares of Buyer Common Stock to be listed on the TASE immediately prior to the Effective Time, and shall use its reasonable best efforts to obtain, prior to the Closing Date, the agreement of the TASE to list such shares of Buyer Common Stock on the TASE, and the Company shall cooperate with Buyer with respect to such listing. Buyer shall use its reasonable best efforts to maintain the listing of shares of Buyer Common Stock on the TASE (or any successor thereof) and to comply, in all material respects, with any applicable rules and regulations of the ISA and TASE until the date which is at least three years after the Effective Time.

5.5 *Confidentiality; Access to Information.* The parties acknowledge that the Company and Buyer have previously executed a Non-Disclosure Agreement, dated as of October 30, 2003 (the *Non-*

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*Disclosure Agreement* ), which Non-Disclosure Agreement will continue in full force and effect in accordance with its terms except as otherwise provided herein, and Buyer shall cause Merger Sub to comply with the terms thereof. Each of Buyer, Merger Sub and the Company will afford the other parties and the other parties accountants, counsel and other representatives reasonable access during normal business hours, upon reasonable notice, to its properties, books, records and personnel during the period prior to the Effective Time to obtain all information concerning its business, including without limitation the status of product development efforts, properties, results of operations and personnel, as the other may reasonably request. The Company shall provide to Buyer the monthly balance sheets, statements of operations, retained earnings and cash flows and other financial statements of the Company and the Company Subsidiaries generated by the Company in the ordinary course as such became available. Each of the parties hereto will hold, and will cause its accountants, counsel and other representatives to hold, in confidence all documents and information furnished to it by or on behalf of another party to this Agreement in connection with the transactions contemplated by this Agreement pursuant to the terms of the Non-Disclosure Agreement. No information or knowledge obtained by a party in any investigation pursuant to this Section 5.5 will affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger.

5.6 *No Solicitation.*

(a) From the date of this Agreement until the Effective Time or, if earlier, the termination of this Agreement in accordance with its terms, the Company shall not, and shall cause the Company Subsidiaries and use its reasonable best efforts to cause its and their respective officers, directors, employees, auditors, financial advisors, attorneys, accountants, consultants and other agents, advisors or representatives (collectively, *Representatives* ) not to, directly or indirectly: (i) solicit, initiate, encourage or knowingly facilitate (including by way of furnishing information) any inquiries or the making or submission of any proposal that constitutes, or may reasonably be expected to lead to, an Acquisition Proposal; (ii) participate or engage in any discussions (except to notify of the existence of these provisions) or negotiations with, or disclose or provide any non-public information or data relating to the Company or the Company Subsidiaries or afford access to the properties, books or records or employees of the Company or the Company Subsidiaries to, any third party relating to an Acquisition Proposal, or knowingly facilitate any effort or attempt to make or implement an Acquisition Proposal or accept an Acquisition Proposal; or (iii) enter into any Contract (including any agreement in principle, letter of intent or understanding, but excluding a non-disclosure agreement of the type described in, and subject to compliance by the Company with, Section 5.6(b)) with respect to or contemplating any Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Company to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement. The Company shall, and shall cause the Company Subsidiaries and shall use its reasonable best efforts to cause the Company s and the Company Subsidiaries respective Representatives to, immediately cease and terminate any existing solicitation, initiation, encouragement, activity, discussion or negotiation with any third party conducted heretofore by the Company, any Company Subsidiary or their respective Representatives with respect to any Acquisition Proposal.

(b) Notwithstanding the restrictions set forth in Section 5.6(a), if, at any time prior to the Effective Time, (i) the Company receives an unsolicited bona fide written proposal from a third party relating to an Acquisition Proposal (under circumstances in which the Company has complied with its obligations under Section 5.6(a), other than any breach of such obligations that is unintentional and immaterial) and (ii) the Board of Directors of the Company concludes in good faith that (A) such Acquisition Proposal is, or is reasonably likely to result in, a Superior Proposal (as defined herein), and (B) the failure to provide nonpublic information or data concerning the Company or participate in negotiations or discussions concerning such Acquisition Proposal would result in a breach by the Board of Directors of the Company of its fiduciary duties to the Company s shareholders under applicable Law, then, with respect to each of the immediately preceding clauses (A) and (B), after consultation with a financial advisor of internationally recognized reputation and after consultation with its outside counsel and an additional law firm with expertise in corporate transactions in the State of Israel, the Company may, subject to its giving

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Buyer at least three business days prior written notice of the identity of such third party and the material terms and conditions of such Acquisition Proposal and the Company s intention to furnish nonpublic information to, or enter into discussions or negotiations with, such third party, (x) furnish information with respect to the Company and the Company Subsidiaries and afford access to the properties, books or records or employees of the Company or the Company Subsidiaries to such third party pursuant to a non-disclosure agreement containing terms no less restrictive than the terms of the Non-Disclosure Agreement and a customary standstill provision, *provided* that a copy of all such information is delivered simultaneously to Buyer if it has not previously been so furnished to Buyer, and (y) participate in discussions or negotiations regarding such proposal.

(c) The Company shall as soon as practicable (and in any event within 24 hours) notify and advise Buyer orally and in writing of any Acquisition Proposal or of any request for information or inquiry that may reasonably be expected to lead to an Acquisition Proposal, the material terms and conditions of such Acquisition Proposal (including without limitation price, structure, form of consideration and financing status), request or inquiry, and the identity of the person making such Acquisition Proposal, request or inquiry. The Company shall inform Buyer on a prompt and current basis of the status, material content and material details of any discussions regarding, or relating to, any Acquisition Proposal with a third party (including amendments and proposed amendments) and, as promptly as practicable, of any change in the price, structure or form of the consideration or material terms of and conditions regarding the Acquisition Proposal. In fulfilling its obligations under this Section 5.6(c), the Company shall provide promptly to Buyer copies of all material written correspondence or other material written material, including material in electronic form, between the Company and such third party.

(d) The Company shall promptly inform its and the Company Subsidiaries respective Representatives of the obligations undertaken in this Section 5.6.

(e) For the purposes of this Agreement:

(i) *Acquisition Proposal* shall mean any inquiry, offer, proposal, indication of interest, signed agreement or public announcement, as the case may be, by any third party that relates to (A) any merger, consolidation, recapitalization, liquidation or other direct or indirect business combination involving the Company or any transaction or series of transactions involving the issuance or acquisition of shares of capital stock or other equity securities of the Company representing 15% or more (by voting power) of the outstanding capital stock of the Company, (B) any tender or exchange offer that if consummated would result in any person, together with all affiliates thereof, beneficially owning (within the meaning of Rule 13d-3 promulgated under the Exchange Act) shares of capital stock or other equity securities of the Company representing 15% or more (by voting power) of the outstanding capital stock of the Company or (C) the acquisition, license, purchase or other disposition of 15% or more of the consolidated business or assets of the Company and the Company Subsidiaries (including the capital stock or assets of any Company Subsidiary) outside the ordinary course of business consistent with past practice; and

(ii) *Superior Proposal* shall mean any bona fide written Acquisition Proposal (*provided*, that for the purposes of this definition, (A) the applicable percentages in clauses (A) and (B) of the definition of Acquisition Proposal shall be 50% as opposed to 15% and (B) any acquisition, license, purchase or other disposition referred to in clause (C) of the definition of Acquisition Proposal shall be for all or a majority of the consolidated business and assets of the Company and the Company Subsidiaries (including the capital stock or assets of any Company Subsidiary), the consideration for which consists entirely of (i) cash, (ii) freely tradable (subject to customary prospectus delivery requirements and restrictions based solely on the identity of the recipient of the securities in such transaction) securities which have an average daily trading volume (measured during the most recently completed three-month period prior to the date on which such Acquisition Proposal is made) that is equal to or greater than that of Buyer s Common Stock (measured during the most recently completed three-month period prior to the date hereof), or (iii) some combination thereof, on its most recently amended or modified terms, if amended or modified, which the Board of Directors of

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the Company determines in its good faith judgment (after consultation with a financial advisor of internationally recognized reputation and after consultation with the Company s outside counsel), taking into account, among other things, all legal, financial, regulatory, timing and other aspects of the proposal and the third party making the proposal including but not limited to the fact that if any cash consideration is involved, the proposal is not subject to any financing contingency and that receipt of all governmental and regulatory approvals required to consummate the Acquisition Proposal is likely, (1) would, if consummated, result in a transaction that is more favorable to the Company s shareholders (in their capacities as shareholders), from a financial point of view, than the transactions contemplated by this Agreement and (2) is reasonably capable of being completed.

(f) The Company agrees not to release or permit the release of any person from, or to waive or permit the waiver of any provision of, any confidentiality (other than those entered into in the ordinary course of business), standstill or similar agreement to which any of the Company or any Company Subsidiary is a party (except that the Company shall be permitted to release or permit the release of such person from any standstill obligation if such action is required in order for the Company s Board of Directors to exercise its rights under, and consistent with, Sections 5.6(b) and 5.7(b)) and will promptly provide Buyer with a copy of such agreements. The Company will use its best efforts to enforce or cause to be enforced each such agreement at the request of Buyer.

5.7 *Board Recommendation.*

(a) Subject to Section 5.7(b), neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw, qualify, modify or amend (or publicly propose to withdraw, qualify, modify or amend) in any manner adverse to Buyer, the Company Recommendation or take any action or make any statement, filing or release, in connection with the Company Shareholders Meeting or otherwise, inconsistent with the Company Recommendation (it being understood that taking a neutral position or no position with respect to an Acquisition Proposal shall each be considered an adverse modification of the Company Recommendation) or (ii) approve or recommend (or propose publicly to approve or recommend) any Acquisition Proposal (each of the foregoing is referred to herein as a *Company Change in Recommendation* ).

(b) Notwithstanding the provisions of Section 5.7(a), if, prior to the Company Shareholders Meeting, the Board of Directors of the Company determines in good faith that the failure to make a Company Change in Recommendation would result in a breach by the Board of Directors of the Company of its fiduciary duties to the Company s shareholders under applicable Law, and (i) the Board of Directors of the Company has consulted with its outside counsel and an additional law firm with expertise in corporate transactions in the State of Israel and (ii) if such determination is based on the value of the Merger Consideration but is not being made in connection with a Superior Proposal, the Board of Directors of the Company has consulted with a financial advisor of internationally recognized reputation with regard to, among other things, the fairness, from a financial point of view, of the Merger Consideration as of the date of such determination to the holders of Company Shares, then the Board of Directors of the Company may make a Company Change in Recommendation. In addition to the foregoing requirements, in the event of a Company Change in Recommendation resulting from a Superior Proposal, the Board of Directors of the Company may make a Company Change in Recommendation only (i) after the Company provides to Buyer a written notice (a *Notice of Superior Proposal* ) (A) advising Buyer that the Board of Directors of the Company has received, and intends to accept, a Superior Proposal, (B) specifying the material terms and conditions of such Superior Proposal, including the amount that the Company s shareholders will receive per Company Share (valuing any non-cash consideration at what the Board of Directors of the Company determines in good faith, after consultation with its independent financial advisor, to be the fair value of such non-cash consideration) and including a copy thereof with all accompanying documentation, and (C) identifying the person making such Superior Proposal, (ii) after cooperating in good faith with Buyer for a period of not less than five business days to make such adjustments in the terms and conditions of this Agreement as would enable the Company to proceed with the Company Recommendation without a Company Change in Recommendation (*provided, however*, that any determination by Buyer to propose to make such adjustment to the terms and conditions

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of this Agreement shall be at the discretion of Buyer at the time), and (iii) if Buyer does not, within five business days of Buyer s receipt of the Notice of Superior Proposal, make an offer that the Board of Directors of the Company determines in good faith (after consultation with a financial advisor of nationally recognized reputation) to be as favorable to the Company s shareholders as such Superior Proposal.

(c) Neither the Board of Directors of Buyer nor any committee thereof shall withdraw, qualify, modify or amend (or publicly propose to withdraw, qualify, modify or amend) in any manner adverse to the Company, the Buyer Recommendation or make any statement, filing or release, in connection with the Buyer Shareholders Meeting or otherwise, inconsistent with the Buyer Recommendation (it being understood that taking a neutral position or no position shall each be considered an adverse modification of the Buyer Recommendation) (each of the foregoing is referred to herein as a *Buyer Change in Recommendation* ).

5.8 *Public Disclosure.* Except for the joint announcement of the execution and delivery of this Agreement, the timing and content of which have been mutually agreed by the parties hereto, no party hereto shall issue any press release or otherwise make any public announcement with respect to this Agreement, the Merger or the other transactions contemplated hereby or an Acquisition Proposal without first consulting with the other parties and providing the other parties with reasonable opportunity to review and comment upon such press release or public announcement. Notwithstanding the foregoing, if such an announcement is required by applicable law or any listing agreement with a national securities exchange or quotation system (including Nasdaq and the TASE) the party required to make such announcement shall provide notice to and a copy of such as promptly as practicable in advance of such announcement and, to the extent practicable, take the views of the other party in respect of such announcement into account prior to making such announcement. The parties hereto have agreed to the text of the joint press release announcing the execution and delivery of this Agreement.

5.9 *Commercially Reasonable Efforts.*

(a) Subject to the terms and conditions set forth in this Agreement, each of the parties hereto shall use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things under such party s control or which such party is required to do under this Agreement to consummate and make effective, as soon as reasonably practicable, the Merger and the other transactions contemplated hereby. Without limiting the generality of the foregoing, the Company and its Board of Directors shall, if any takeover statute or similar statute or regulation is or becomes applicable to the Merger, this Agreement or any of the transactions hereby, use all commercially reasonable efforts to ensure that the Merger and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise to minimize the effect of such statute or regulation on the Merger, this Agreement and the transactions contemplated hereby.

(b) Each of the parties hereto shall, (i) as promptly as practicable and before the expiration of any relevant legal deadline, but in no event later than fifteen business days following the execution and delivery of this Agreement, file with the United States Federal Trade Commission (the *FTC* ) and the United States Department of Justice (the *DOJ* ), the notification and report form required for the transactions contemplated hereby and any supplemental information requested in connection therewith pursuant to the HSR Act, which forms shall specifically request early termination of the waiting period prescribed by the HSR Act, and (ii) as promptly as practicable and before the expiration of any legal deadline, file with any other Governmental Entity, any other filings, reports, information and documentation required for the transactions contemplated hereby pursuant to any other antitrust, competition or trade regulatory law of any Governmental Entity (collectively, *Antitrust Laws* ). Each of the parties hereto shall furnish to each other s counsel such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act and any other Antitrust Laws.

(c) Each of the parties hereto shall use its commercially reasonable efforts to obtain promptly any clearance required under the HSR Act and any other Antitrust Laws for the consummation of the Merger

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and the other transactions contemplated hereby and shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ and other Governmental Entities and shall comply promptly with any such inquiry or request; *provided, however*, that neither Buyer nor any affiliate thereof shall be required to consent to any divestiture or any other structural or conduct relief. Each of the parties hereto shall promptly and timely respond to a request for additional information from the DOJ or the FTC.

(d) Each of the parties hereto commits to instruct its counsel to cooperate with each other and use commercially reasonable efforts to facilitate and expedite the identification and resolution of any such issues and, consequently, the expiration of the applicable HSR Act waiting period and the waiting periods under any other Antitrust Laws at the earliest practicable dates. Such commercially reasonable efforts and cooperation include, without limitation, counsel s undertaking (i) to keep each other appropriately informed of communications from and to personnel of the reviewing antitrust authority, and (ii) to confer with each other regarding appropriate contacts with and response to personnel of such antitrust authority.

(e) Each party hereto shall (i) give the other parties prompt notice of the commencement of any legal or other proceeding by or before any Governmental Entity (including the Israeli Restrictive Trade Practices Commissioner, the OCS, the Investment Center, the ISA, the Companies Registrar, the Israeli Lands Authority, the FTC, the DOJ and the SEC) with respect to the Merger or any of the other transactions contemplated by this Agreement, (ii) promptly inform the other parties of any communication with any Governmental Entity regarding the Merger or any of the other transactions contemplated by this Agreement and (iii) keep the other parties informed as to the status of any such proceeding or communication. The parties to this Agreement will consult and cooperate with one another in connection with any analysis, appearance, discussion, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with any proceeding or communication relating to the Merger or any of the other transactions contemplated by this Agreement. In addition, except as may be prohibited by any Governmental Entity or by any legal requirement, in connection with any such proceeding relating to any such Governmental Entity, each party hereto will permit authorized representatives of the other party to be present at each meeting or conference or telephone call relating to any such proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with any such proceeding.

5.10 *Indemnification.*

(a) From and after the Effective Time, Buyer shall cause the Surviving Corporation to indemnify and hold harmless all current and former directors and officers of the Company and the Company Subsidiaries to the fullest extent permitted by Law for acts or omissions occurring prior to the Effective Time (including without limitation acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby) in their capacities as such. Buyer shall cause the Surviving Corporation to fulfill and honor in all respects the obligations pursuant to any indemnification agreements between the Company and its directors and officers in effect immediately prior to the Effective Time, any indemnification provisions under the Company Charter Documents as in effect on the date hereof and the indemnification resolutions adopted by the shareholders of the Company on November 12, 1992, in each case to the maximum extent permitted by Law.

(b) Prior to the Effective Time, the Company will endeavor to enter into a directors and officers liability insurance policy covering those persons who, as of immediately prior to the Effective Time, are covered by the Company s directors and officers liability insurance policy (the *Insured Parties* ) on terms no less favorable to the Insured Parties than those of the Company s present directors and officers liability insurance policy (such policy, a *Company D&O Policy* ), for a period of seven years after the Effective Time, at a cost not to exceed $700,000. If the Company is unable to obtain such a Company D&O Policy prior to the Effective Time, Buyer shall cause the Surviving Corporation to maintain in effect, for a period of seven years after the Closing Date, a Company D&O Policy; *provided, however*, that in no event shall Buyer be required to expend annually more than 300% of the annual premium currently paid

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by the Company for such coverage (and if the cost for such coverage is in excess of such amount Buyer shall be required only to maintain such coverage as is available for such amount).

(c) In the event that Buyer or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all its properties and assets to any person, Buyer shall cause proper provisions to be made so that the successors and assigns of Buyer or the Surviving Corporation assume the obligations set forth in this Section 5.10. The obligations of Buyer and the Surviving Corporation under this Section 5.10 shall not be terminated or modified in such a manner as to adversely affect any indemnitee to whom this Section 5.10 applies without the express written consent of such affected indemnitee (it being expressly agreed that the indemnitees to whom this Section 5.10 applies shall be third party beneficiaries of this Section 5.10).

5.11 *Company Affiliate Agreement.* As soon as practicable after the date hereof and in any event not fewer than 30 days prior to the Effective Time, the Company shall deliver to Buyer a list setting forth the names of all persons the Company expects to be, as of the date of the Company Shareholders Meeting, its affiliates for purposes of Rule 145 under the Securities Act. The Company shall use its reasonable best efforts to cause the delivery to Buyer of letter agreements in substantially the form of *Exhibit B* hereto from each person identified in the list delivered by the Company pursuant to the immediately preceding sentence.

5.12 *Nasdaq Listing.* Buyer shall use its reasonable best efforts to cause the shares of Buyer Common Stock to be issued in the Merger to be approved for listing upon the Effective Time on Nasdaq or on such other national securities exchange as the Buyer Common Stock is listed.

5.13 *Employee Matters.*

(a) Following the Effective Time, Buyer shall cause the Surviving Corporation to honor all Company Employee Plans and Company Employment Agreements disclosed herein in accordance with their respective terms as in effect immediately prior to the Effective Time. It is the intention of Buyer to, immediately following the Effective Time, continue the employment of Company Employees who are employed by the Company and its subsidiaries immediately prior to the Effective Time (the *Post-Merger Employees* ). Buyer shall cause the Surviving Corporation to provide Post-Merger Employees whose employment is continued by the Surviving Corporation, for a period of one year following the Effective Time, with compensation and benefits that are no less favorable in the aggregate than those provided to such Company Employees immediately prior to the Effective Time.

(b) To the extent permitted by Law and the terms of any employee benefit plan or arrangements maintained by Buyer or any subsidiary of Buyer in which a Post-Merger Employee becomes eligible to participate (other than equity-based compensation plans) (the *Post-Merger Plans* ), Buyer shall, or shall cause the Surviving Corporation to, give Post-Merger Employees full credit for purposes of eligibility, vesting and amount of benefits under Post-Merger Plans in which such Post-Merger Employee becomes eligible to participate in after the Closing Date; *provided, however*, that in no event shall the Post-Merger Employee be entitled to any credit to the extent that it would result in duplication of benefits.

(c) *Buyer Restricted Stock.* As of the Effective Time, Buyer shall grant to selected Post-Merger Employees shares of Buyer Common Stock (the *Buyer Restricted Stock* ) having an aggregate value, based on the closing price of Buyer Common Stock on the business day immediately preceding the Closing Date, of $4,100,000. The Buyer Restricted Stock shall be granted pursuant to and subject to the terms of the LTIP and, subject to the continued employment of the Post-Merger Employee, shall vest in three annual installments on each of the first three anniversaries of the Closing Date (each such date, a *Vesting Date* ); *provided, however*, that if on or prior to the final Vesting Date, (i) the Post-Merger Employee s employment is terminated by the Company (other than for cause) or (ii) if the Post-Merger Employee terminates his or her employment for good reason (as defined herein), then notwithstanding anything in the LTIP to the contrary all unvested Buyer Restricted Stock awarded to such Post-Merger Employee shall vest immediately upon such termination of employment. For the purposes of this

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Agreement, *good reason* means a reduction in such Post-Merger Employee s annual base salary or the relocation of such Post-Merger Employee s principal place of employment to a location more than 50 miles from such Post-Merger Employee s principal place of employment immediately prior to the Effective Time.

(d) *Special Bonuses.* On the Closing Date, the Company may distribute bonuses to selected Post-Merger Employees in an aggregate amount not to exceed $2,750,000 (collectively, the *Special Bonuses* ); *provided, however*, that the aggregate amount of Special Bonuses shall be reduced by the aggregate amount of bonuses set forth next to the names of the individuals set forth on *Section 5.13 of the Company Disclosure Schedule*.

(e) *Retention Agreements.* Prior to the Effective Time, the Company may enter into retention agreements, in substantially the form made available to Buyer prior to the date hereof, with selected Company Employees (the *Retention Agreements* ) providing for payments to such Company Employees generally no earlier than six months, and no later than three years, following the Closing date, subject to continued employment through the payment date; provided, however, that the aggregate payments under the Retention Agreements shall in no event exceed $1,750,000.

(f) *Mutual Agreement.* Prior to the Effective Time, the chief executive officers of each of Buyer and the Company shall mutually agree upon the selection of Post-Merger Employees who are eligible for Buyer Restricted Stock, Special Bonuses and Retention Payments (which employees may include the Company s three most senior executives), the apportionment of the Buyer Restricted Stock, Special Bonuses and Retention Payments, and the timing of the Retention Payments; *provided, however*, that shares of Buyer Restricted Stock having an aggregate value as determined in accordance with Section 5.13(c) of $1,000,000 and Special Bonuses in the aggregate amount of $1,000,000 shall not be subject to such mutual agreement and shall instead be apportioned to Post-Merger Employees as determined by the Company.

(g) To the extent not paid by the Company prior to the Effective Time, Buyer shall or shall cause the Surviving Corporation to distribute annual bonuses with respect to 2004 to eligible Post-Merger Employees, at times and in such amounts to be determined in accordance with past practice of the Company as determined by the chief executive officer of the Company or his designee.

(h) Nothing in this Section 5.13, express or implied, shall confer upon any Company Employee, or any legal representative or beneficiary thereof, any rights or remedies, including any right to employment or continued employment for any specified period, or compensation or benefits of any nature or kind whatsoever under this Agreement. Nothing in this Section 5.13, express or implied, shall be construed to prevent the Buyer from terminating or modifying to any extent or in any respect any benefit plan that the Buyer may establish or maintain.

5.14 *Section 16 Matters.* Buyer and the Company agree that, in order to most effectively compensate and retain the Company Insiders (as defined herein) in connection with the Merger, both prior to and after the Effective Time, it is desirable that the conversion of Shares into shares of Buyer Common Stock in the Merger by the Company Insiders be exempted from liability under Section 16(b) of the Exchange Act to the fullest extent permitted by Law, and for that compensatory and retentive purpose agree to the provisions of this Section 5.14. Assuming that the Company delivers to Buyer the Section 16 Information in a timely fashion, the Board of Directors of Buyer, or a committee of Non-Employee Directors thereof (as such term is defined for purposes of Rule 16b-3(d) under the Exchange Act), shall adopt a resolution providing that the receipt by the Company Insiders of Buyer Common Stock in exchange for Company Shares pursuant to the transactions contemplated by this Agreement and to the extent such securities are listed in the Section 16 Information, are intended to be exempt from liability pursuant to Section 16(b) under the Exchange Act. For the purposes of this Agreement: *Section 16 Information* shall mean information accurate in all material respects regarding the Company Insiders, the number of Shares held by each such Company Insider and elected by such Company Insiders to be exchanged for Buyer Common Stock in the Merger; and *Company Insiders* shall mean those officers

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and directors of the Company who may be subject to the reporting requirements of Section 16(a) of the Exchange Act on or following the Effective Time and who are listed in the Section 16 Information.

5.15 *Resignations.* Prior to the Effective Time, the Company shall use commercially reasonable efforts to obtain resignations from the directors of the Company and the Company Subsidiaries designated by Buyer from their positions as directors of the Company and the Company Subsidiaries effective as of the Effective Time.

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 *Conditions to Obligations of Each Party to Effect the Merger.* The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction at or prior to the Closing Date of the following conditions, any of which may be waived, in writing, by mutual agreement of Buyer and the Company:

(a) *Registration Statement Effective; Proxy Statement.* The SEC shall have declared the Form S-4 Registration Statement, and any required post-effective amendment to the Form S-4 Registration Statement, effective. The Prospectus shall have been approved by the ISA. No stop order suspending the effectiveness of the Form S-4 Registration Statement or any part thereof shall have been issued and no proceeding for that purpose, and no similar proceeding in respect of the Prospectus, shall have been initiated or threatened in writing by the SEC.

(b) *No Order; Antitrust Approvals.* No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger. The waiting period under the HSR Act shall have expired or been terminated, and all foreign antitrust approvals, if any, required to be obtained prior to the Merger in connection with the transactions contemplated hereby shall have been obtained.

(c) *Israeli Governmental Entity Approvals.* All Israeli Governmental Entity approvals required pursuant to Israeli legal requirements for the consummation of the Merger shall have been obtained including, without limitation, approval of the OCS, the Investment Center and the Israeli Commissioner of Restrictive Trade Practices.

(d) *Shareholder Approvals.* The Company Shareholder Approval and the Buyer Shareholder Approval shall have been obtained.

(e) *TASE and Nasdaq Listings.* The shares of Buyer Common Stock shall be listed on the TASE and the shares of Buyer Common Stock issuable to the Company s shareholders in the Merger and such other shares of Buyer Common Stock to be reserved for issuance in connection with the Merger shall have been approved for listing on Nasdaq or on such national securities exchange as Buyer Common Stock is then listed.

6.2 *Additional Conditions to Obligations of the Company.* The obligation of the Company to consummate and effect the Merger shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) *Representations and Warranties.* The representations and warranties of Buyer and Merger Sub contained in this Agreement shall have been true and correct as of the date hereof and shall be true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date other than those representations and warranties which address matters only as of a particular date, which representations shall have been true and correct as of such particular date, except where the failure of such representations and warranties to be true and correct (without giving effect to any materiality or Material Adverse Effect limitation) has not had and would not reasonably

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be expected to have a Material Adverse Effect on Buyer. The Company shall have received a certificate with respect to the foregoing signed on behalf of each of Buyer and Merger Sub by an executive officer of Buyer or Merger Sub, respectively.

(b) *Agreements and Covenants.* Each of Buyer and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date, and the Company shall have received a certificate to such effect signed on behalf of each of Buyer and Merger Sub by an executive officer of Buyer or Merger Sub, respectively.

(c) *No Material Adverse Effect.* Since the date hereof, there shall have been no Material Adverse Effect with respect to Buyer and Merger Sub and the Company shall have received a certificate to such effect signed on behalf of each of Buyer and Merger Sub by an executive officer of Buyer and Merger Sub, respectively.

6.3 *Additional Conditions to the Obligations of Buyer and Merger Sub.* The obligations of each of Buyer and Merger Sub to consummate and effect the Merger shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by Buyer:

(a) *Representations and Warranties.* The representations and warranties of the Company contained in this Agreement shall have been true and correct as of the date hereof and shall be true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date (other than those representations and warranties which address matters only as of a particular date, which representations shall have been true and correct as of such particular date), except where the failure of such representations and warranties to be true and correct (without giving effect to any materiality or Material Adverse Effect limitation) has not had and would not reasonably be expected to have a Material Adverse Effect on the Company; *provided, however*, that the representations and warranties contained in Section 2.12(b)(xii) shall be true and correct in all respects without qualification by Material Adverse Effect or otherwise. Each of Buyer and Merger Sub shall have received a certificate with respect to the foregoing signed on behalf of the Company by an executive officer of the Company.

(b) *Agreements and Covenants.* The Company shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it at or prior to the Closing Date, and each of Buyer and Merger Sub shall have received a certificate to such effect signed on behalf of the Company by the chief executive officer and the chief financial officer of the Company.

(c) *No Material Adverse Effect.* Since the date hereof, there shall have been no Material Adverse Effect with respect to the Company and Buyer shall have received a certificate to such effect signed on behalf of the Company by an authorized officer of the Company.

(d) *Voting and Lock-Up Agreements.* Each of the Undertaking Agreement and Lock-Up Agreement shall be in full force and effect and enforceable by Buyer against the Principal Shareholder in accordance with its terms, and the Principal Shareholder shall not be in breach in any material respect of either such agreement.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

7.1 *Termination.* This Agreement may be terminated at any time prior to the Effective Time, whether before or after the requisite approval of the shareholders of the Company:

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

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(b) by either the Company or Buyer if the Merger shall not have been consummated prior to August 31, 2005 (the *Termination Date* ) for any reason; *provided, however*, that the right to terminate this Agreement under this Section 7.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date;

(c) by either the Company or Buyer if a Governmental Entity shall have issued an order, decree or ruling or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger, which order, decree, ruling or other action shall have become final and nonappealable;

(d) by either the Company or Buyer if (i) the Company Shareholder Approval shall not have been obtained at the Company Shareholders Meeting (or any adjournment thereof) or (ii) the Buyer Shareholder Approval shall not have been obtained at the Buyer Shareholders Meeting (or any adjournment thereof);

(e) by Buyer, if the Board of Directors of the Company or the Company, as the case may be, shall have (i) made a Company Change in Recommendation, whether or not permitted by the terms hereof; *provided, however*, that if following the 75th day following the date hereof (A) Buyer shall have provided the Company with a written notice of its intention to terminate the Agreement pursuant to this Section 7.1(e)(i) at least five business days prior to termination and (B) the Board of Directors of the Company shall have failed to (x) reaffirm the Company Recommendation or (y) terminate any discussions or negotiations with any third party concerning any Acquisition Proposal, in each case within five business days after Buyer s notice, (ii) failed to call the Company Shareholders Meeting in accordance with Section 5.1(d) within five business days following the later of the declaration by the SEC of the Form S-4 Registration Statement effective and the approval of the Prospectus by the ISA, (iii) failed to reaffirm the Company Recommendation within ten business days after Buyer requests such at any time following the public announcement of an Acquisition Proposal, or (iv) breached in any material respect any provision of Section 5.6(a);

(f) by either Buyer or the Company, if there shall have been a breach by the other of any of its representations, warranties, covenants or obligations contained in this Agreement, which breach would result in the failure to satisfy by the Termination Date one or more of the conditions set forth in Section 6.2(a) or (b) (in the case of a breach by Buyer) or Section 6.3(a) or (b) (in the case of a breach by the Company), and in any such case such breach shall be incapable of being cured or, if capable of being cured, shall not have been cured within 30 days after written notice thereof shall have been received by the party alleged to be in breach;

(g) By the Company, if any of the conditions set forth in Section 6.1 or 6.2 shall have become incapable of fulfillment by the Termination Date and shall not have been waived by the Company;

(h) By Buyer, if any of the conditions set forth in Section 6.1 or 6.3 shall have become incapable of fulfillment by the Termination Date and shall not have been waived by Buyer;

(i) By the Company, if the Board of Directors of Buyer shall have (i) made a Buyer Change in Recommendation, or (ii) failed to call the Buyer Shareholders Meeting in accordance with Section 5.1(d) within five business days following the later of the declaration by the SEC of the Form S-4 Registration Statement effective and the approval of the Prospectus by the ISA; or

(j) By the Company at any time on or prior to the 75th day following the date hereof, to accept a Superior Proposal; *provided*, that the Company has complied in all material respects with its obligations under Section 5.6 and with the applicable requirements of Section 7.3(b).

Notwithstanding anything else contained in this Agreement, the right to terminate this Agreement under this Section 7.1 shall not be available to any party that (i) is in material breach of its obligations hereunder or (ii) whose failure to fulfill its obligations or to comply with its covenants under this

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Agreement has been the cause of, or resulted in, the failure to satisfy any condition to the obligations of any party hereunder.

7.2 *Notice of Termination; Effect of Termination.* A party desiring to terminate this Agreement pursuant to Section 7.1(b), (c), (d), (e), (f), (g), (h), or (i) shall give written notice of such termination to the other party, specifying the provision pursuant to which such termination is effective. In the event of the termination of this Agreement as provided in Section 7.1, this Agreement shall be of no further force and effect, except (i) as set forth in this Section 7.2, Section 7.3 and Article VIII, each of which shall survive the termination of this Agreement and (ii) nothing herein shall relieve any party from liability for any willful breach of this Agreement. No termination of this Agreement shall affect the obligations of the parties contained in the Non-Disclosure Agreement, all of which obligations shall survive termination of this Agreement in accordance with their terms.

7.3 *Fees and Expenses.*

(a) Other than as specifically provided in this Section 7.3 or otherwise agreed to in writing by the parties, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses, whether or not the Merger is consummated, except that (i) filing fees in connection with the filing with the SEC of the Form S-4 Registration Statement and the Prospectus, (ii) filing fees payable under or pursuant to the HSR Act, (iii) all printing, mailing and related expenses incurred in connection with printing and mailing of the Form S-4 Registration Statement and the Prospectus, and (iv) any filing fees in connection with filings with any Israeli Governmental Entity shall be shared equally by Buyer and the Company, whether or not the Merger is consummated.

(b) If this Agreement is terminated pursuant to:

(i) Section 7.1(e) prior to the Company Shareholders Meeting or 7.1(j); or

(ii) Section 7.1(d)(i), and (A) after the date hereof and prior to the Company Shareholder Meeting at which the Company failed to obtain the requisite vote there shall be outstanding or there shall have been publicly announced a plan or proposal with respect to an Acquisition Proposal and (B)(1) within 12 months after such termination the Company shall have entered into a definitive agreement with respect to such Acquisition Proposal (substituting 20% for 15% in the definition thereof) or (2) within six months after such termination the Company shall have entered into a definitive agreement with respect to any transaction or series of transactions which, had such been proposed during the term of this Agreement, would have constituted an Acquisition Proposal (substituting 50% for 15% in the definition thereof), *provided* that the transactions contemplated by the Acquisition Proposal described in the immediately preceding clause (1) or (2), as applicable, are subsequently consummated; or

(iii) Section 7.1(b), to the extent resulting from a material breach by the Company, or Section 7.1(f), to the extent terminated by Buyer, and, in any such case, (A) after the date hereof and prior to or at the time of such termination, there shall be outstanding, there shall have been under consideration by the Company or there shall have been publicly announced a plan or proposal with respect to an Acquisition Proposal and (B)(1) within 12 months after termination of the Agreement the Company shall have entered into a definitive agreement with respect to such Acquisition Proposal (substituting 20% for 15% in the definition thereof) or (2) within six months after such termination the Company shall have entered into a definitive agreement with respect to any transaction or series of transactions which, had such been proposed during the term of this Agreement, would have constituted an Acquisition Proposal (substituting 50% for 15% in the definition thereof), *provided* that the transactions contemplated by the Acquisition Proposal described in the immediately preceding clause (1) or (2), as applicable, are subsequently consummated;

then Buyer would suffer direct and substantial damages, which damages cannot be determined with reasonable certainty and, in order to compensate Buyer for such damages the Company shall pay to Buyer the amount of $25,000,000 by wire transfer in immediately available funds to an account designated by

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Buyer as liquidated damages (the *Termination Fee* ). The Termination Fee shall be due and payable (A) in the case of any termination by Buyer, within three business days of termination of this Agreement and (B) in the case of any termination by the Company, immediately prior to (and as condition to) such termination; *provided, however*, that in the case of clauses (ii) and (iii) of this Section 7.3(b), the Termination Fee shall be due and payable immediately prior to the consummation of the transactions contemplated by the Acquisition Proposal. It is specifically agreed that the amount to be paid pursuant to this Section 7.3(b) represents liquidated damages and not a penalty.

(c) If this Agreement is terminated pursuant to Section 7.1(d)(i) in circumstances under which the provisions of Section 7.3(b)(ii) are inapplicable, then the Company shall pay to Buyer an amount equal to lesser of (i) Buyer s out-of-pocket expenses incurred in connection with this Agreement and the transactions contemplated hereby (including without limitation all attorneys , accountants and investment bankers fees and expenses) and (ii) $5,000,000, by wire transfer of immediately available funds to an account designated by Buyer within three business days of such termination.

(d) If this Agreement is terminated pursuant to Section 7.1(d)(ii), then Buyer shall pay to the Company an amount equal to lesser of (i) the Company s out-of-pocket expenses incurred in connection with this Agreement and the transactions contemplated hereby (including without limitation all attorneys , accountants and investment bankers fees and expenses) and (ii) $5,000,000, by wire transfer of immediately available funds to an account designated by the Company within three business days of such termination.

(e) The remedies provided under Sections 7.3(b), 7.3(c) and 7.3(d) shall be exclusive of all other remedies at law or in equity; *provided, however*, that in the event of a willful breach by a party of any of its representations or warranties or willful failure to comply with any of its covenants or obligations contained in this Agreement, such remedies shall be non-exclusive and the other party shall be entitled to pursue any other remedy at law or in equity in respect of such breach or failure to comply.

7.4 *Amendment.* Subject to applicable law, this Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of Buyer, Merger Sub and the Company; *provided, however*, that after the vote by the shareholders of the Company, there shall not be made any amendment that by law requires further approval by such shareholders without the further approval of such shareholders.

7.5 *Extension; Waiver.* At any time prior to the Closing Date, any party hereto may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. Delay in exercising any right under this Agreement shall not constitute a waiver of such right.

ARTICLE VIII

GENERAL PROVISIONS

8.1 *Non-Survival of Representations and Warranties.* The representations and warranties of the Company, Buyer and Merger Sub contained in this Agreement shall terminate and be of not further force and effect as of the Closing, and only the covenants that by their terms contemplate performance after the Closing shall survive the Closing.

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8.2 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or sent via telecopy (receipt confirmed) to the parties at the following addresses or telecopy numbers (or at such other address or telecopy numbers for a party as shall be specified by like notice):

(a) if to Buyer, to:
Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Chief Executive Officer
Telecopier: 269-673-7535
and

Perrigo Company

515 Eastern Avenue
Allegan, MI 49010
Attention: General Counsel
Telecopier: 269-673-1386

with a copy to:

Morgan, Lewis & Bockius LLP

502 Carnegie Center
Princeton, NJ 08540
Attention:. Randall B. Sunberg, Esq.
Telecopier: 609-919-6639

and

Morgan, Lewis & Bockius LLP

101 Park Avenue
New York, NY 10178
Attention: Robert G. Robison, Esq.
Telecopier: 212-309-6001

and to:

Fischer Behar Chen & Co.

3 Daniel Frisch
Tel-Aviv 64731
Israel
Attention: Avraham Well, Adv.
Telecopier: 972-3-6091116

if to the Company, to:

Agis Industries (1983) Ltd.

29 Lehi Street
Bnei-Brak 51200
Israel
Attention: Chief Executive Officer
Telecopier: 972-3-577-3500

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with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square
New York, NY 10036
Telecopier: 212-735-2000
Attention: David Fox, Esq.
Thomas W. Greenberg, Esq.

and to:

Rosenberg, Hacohen, Goddard & Ephrat

24 Raoul Wallenberg Street
Tel-Aviv 69719
Israel
Telecopier: 972-3-766-6567
Attention: Dan Hacohen, Adv.

8.3 *Construction.*

(a) For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (i) words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders; (ii) references herein to Articles, Sections, subsections and other subdivisions, and to Exhibits, Schedules, Annexes and other attachments, without reference to a document are to the specified Articles, Sections, subsections and other subdivisions of, and Exhibits, Schedules, Annexes and other attachments to, this Agreement and each item disclosed in the Company Disclosure Schedule or the Buyer Disclosure Schedule is identified by reference to, or has been grouped under a heading referring to, a specific individual section of this Agreement; *provided, however*, that any item disclosed in any section of the Company Disclosure Schedule or the Buyer Disclosure Schedule pursuant to any section hereof shall be deemed to be disclosed on each other section of the Company Disclosure Schedule or the Buyer Disclosure Schedule, respectively, but only to the extent the applicability of the item to such other section is reasonably apparent from the disclosure made; (iii) a reference to a subsection or other subdivision without further reference to a Section is a reference to such subsection or subdivision as contained in the same Section in which the reference appears; (iv) the words herein, hereof, hereunder, hereby and other words of similar import refer to this Agreement as a whole and not to any particular provision; (v) the words include, includes and including are deemed to be followed by the phrase without limitation ; (vi) all accounting terms used and not expressly defined herein have the respective meanings given to them under U.S. or Israeli GAAP, as applicable; and (vii) when an item is described as having been made available , it was included in a data room located at the New York offices of Skadden, Arps, Meagher, Slate & Flom LLP on October 4-8, 2004 or in a data room located at the offices of Rosenberg, Hacohen, Goddard & Ephrat on October 17-19, 2004, or otherwise provided by the Company or its Representatives to Buyer or its Representatives.

(b) For the purposes of this Agreement, the term *affiliate* shall have the meaning set forth in Rule 12b-2 of the Exchange Act.

(c) For the purposes of this Agreement, the term *Knowledge* means with respect to a party hereto, with respect to any matter in question, the actual knowledge of the executive officers or directors of such party, *provided* that such persons shall have made due and diligent inquiry of those employees of such party whom such executive officers reasonably believe would have actual knowledge of the matters represented.

(d) For the purposes of this Agreement, the term *person* means individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint

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venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, Governmental Entity or other legal entity.

(e) For purposes of this Agreement, the term *subsidiary* of any person shall mean any corporation, partnership, limited liability company, joint venture, trust, association, unincorporated organization or other legal entity of any kind of which such person (either alone or through or together with one or more of it subsidiaries) owns, directly or indirectly, 50% or more of the capital stock or other equity interests, the holders of which are (i) generally entitled to vote for the election of the board of directors or other governing body of such legal entity or (ii) generally entitled to share in the profits or capital of such legal entity.

8.4 *Counterparts.* This Agreement may be executed in one or more counterparts (including counterparts executed and delivered by facsimile, which shall be as counterparts executed and delivered manually), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

8.5 *Entire Agreement; Third Party Beneficiaries.* This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Non-Disclosure Agreement, the Company Disclosure Schedule and the Buyer Disclosure Schedule: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, it being understood that the Non-Disclosure Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement except as provided in Section 7.2 hereof; and (b) except as set forth in Section 5.10, are not intended to confer upon any other person any rights or remedies hereunder.

8.6 *Severability.* If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such provision or its severance herefrom and (d) in lieu of such provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such provision as may be possible.

8.7 *Other Remedies; Specific Performance.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction without the necessity of demonstrating damages or posting a bond, this being in addition to any other remedy to which they are entitled at law or in equity.

8.8 *Applicable Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction; *provided, however*, that any matter involving the internal corporate affairs of the Company or any party hereto shall be governed by the provisions of the jurisdictions of its incorporation. The rights of the shareholders of the Company, if any, shall be governed by the Laws of the State of Israel.

8.9 *Rules of Construction.* The parties hereto agree that they have jointly drafted and have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the

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application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

8.10 *Assignment.* No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.11 *CONSENT TO JURISDICTION AND SERVICE OF PROCESS.* EACH PARTY HERETO CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE LITIGATED ONLY IN SUCH COURTS. EACH PARTY HERETO ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS RESPECTIVE PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF SUCH COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 15 CALENDAR DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL IN ANY WAY BE DEEMED TO LIMIT THE ABILITY OF EITHER PARTY HERETO TO SERVE ANY SUCH LEGAL PROCESS, SUMMONS, NOTICES AND DOCUMENTS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

8.12 *WAIVER OF JURY TRIAL.* EACH OF BUYER, MERGER SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF BUYER, MERGER SUB OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

**[Signature page follows.]**

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized respective officers as of the date first written above.

PERRIGO COMPANY

By: /s/ DAVID T. GIBBONS

Name: David T. Gibbons
Title: *Chairman, President and Chief Executive Officer*

AGIS INDUSTRIES (1983) LTD.

By: /s/ MOSHE ARKIN

Name: Moshe Arkin
Title: *President and Chairman*

PERRIGO ISRAEL OPPORTUNITIES LTD.

By: /s/ TODD W. KINGMA

Name: Todd W. Kingma
Title: *Secretary*

**[Signature Page to Agreement and Plan of Merger]**

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**APPENDIX B**

**[Letterhead of Goldman, Sachs & Co.]**

***PERSONAL AND CONFIDENTIAL***

November 14, 2004

Board of Directors

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010

Ladies and Gentlemen:

You have requested our opinion as to the fairness from a financial point of view to Perrigo Company (the Company ) of the Consideration (as defined below) to be paid by the Company in respect of each outstanding share of common stock, par value NIS 1.00 per share (the Agis Common Stock ), of Agis Industries (1983) Ltd. ( Agis ) pursuant to the Agreement and Plan of Merger, made and entered into on November 14, 2004 (the Agreement ), among the Company, Perrigo Israel Opportunities Ltd., a wholly owned subsidiary of the Company ( Acquisition Sub ), and Agis. Pursuant to the Agreement, Acquisition Sub will be merged with and into Agis, and each outstanding share of Agis Common Stock will be converted into $14.93 in cash (the Cash Consideration ) and 0.8011 shares of common stock, par value $0.01 per share (the Company Common Stock ), of the Company (the Stock Consideration ; together with the Cash Consideration, the Consideration ).

Goldman, Sachs & Co. and its affiliates, as part of their investment banking business, are continually engaged in performing financial analyses with respect to businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and other transactions as well as for estate, corporate and other purposes. We have acted as financial advisor to the Company in connection with, and have participated in certain of the negotiations leading to, the transaction contemplated by the Agreement (the Transaction ). We expect to receive fees for our services in connection with the Transaction, the principal portion of which is contingent upon consummation of the Transaction, and the Company has agreed to reimburse our expenses and indemnify us against certain liabilities arising out of our engagement. We may provide investment banking services to the Company in the future, and we may receive compensation for such services.

Goldman, Sachs & Co. is a full service securities firm engaged, either directly or through its affiliates, in securities trading, investment management, financial planning and benefits counseling, risk management, hedging, financing and brokerage activities for both companies and individuals. In the ordinary course of these activities, Goldman, Sachs & Co. and its affiliates may provide such services to the Company, Agis and their affiliates, may actively trade the debt and equity securities (or related derivative securities) of the Company and Agis for their own account and for the accounts of their customers and may at any time hold long and short positions of such securities.

In connection with this opinion, we have reviewed, among other things, the Agreement; annual reports to stockholders and Annual Reports on Form 10-K of the Company for the five fiscal years ended June 30, 2004; annual reports to stockholders of Agis for the four fiscal years ended December 31, 2003; certain Quarterly Reports on Form 10-Q of the Company; certain interim reports to stockholders of Agis; certain other communications from the Company and Agis to their respective stockholders; certain internal financial analyses and forecasts for Agis prepared by its management; certain internal financial analyses and forecasts for the Company and certain financial analyses and forecasts for Agis prepared by the management of the Company (the Forecasts ); and certain cost savings and operating synergies projected by the management of the Company to result from the Transaction (the Synergies ). We also have held

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discussions with members of the senior management of the Company regarding its assessment of the strategic rationale for, and the potential benefits of, the Transaction and the past and current business operations, financial condition and future prospects of the Company and with members of the senior managements of the Company and Agis regarding the past and current business operations, financial condition and future prospects of Agis. In addition, we have reviewed the reported price and trading activity for the shares of the Company Common Stock and the shares of Agis Common Stock, compared certain financial and stock market information for the Company and Agis with similar financial information for certain other companies the securities of which are publicly traded, reviewed the financial terms of certain recent business combinations in the specialty pharmaceutical industry specifically and in other industries generally and performed such other studies and analyses, and considered such other factors, as we considered appropriate.

We have relied upon the accuracy and completeness of all of the financial, accounting, legal, tax and other information discussed with or reviewed by us and have assumed such accuracy and completeness for purposes of rendering this opinion. In that regard we have assumed with your consent that the Forecasts and the Synergies have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the Company. In addition, we have not made an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or off-balance-sheet assets and liabilities) of the Company or Agis or any of their respective subsidiaries, and we have not been furnished with any such evaluation or appraisal. We have assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Transaction will be obtained without any adverse effect on the Company or Agis or on the expected benefits of the Transaction in any way meaningful to our analysis.

Our opinion does not address the underlying business decision of the Company to engage in the Transaction, nor are we expressing any opinion as to the prices at which shares of Company Common Stock will trade at any time. Our advisory services and the opinion expressed herein are provided for the information and assistance of the Board of Directors of the Company in connection with its consideration of the Transaction and such opinion does not constitute a recommendation as to how any holder of Company Common Stock should vote with respect to such Transaction.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration to be paid by the Company in respect of each share of Agis Common Stock is fair from a financial point of view to the Company.

Very truly yours,

/s/ GOLDMAN, SACHS & CO.

(Goldman, Sachs & Co.)

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**APPENDIX C**

**[Letterhead of Merrill Lynch]**

November 14, 2004

Board of Directors

Agis Industries (1983) Ltd.
29 Lehi Street
51200 Bnei Brak
Israel

Members of the Board of Directors:

Agis Industries (1983) Ltd. (the Company ), Perrigo Company (the Buyer ) and Perrigo Israel Opportunities Ltd., a newly formed, wholly owned subsidiary of the Buyer ( Merger Sub ), are entering into an Agreement and Plan of Merger, dated as of November 14, 2004 (the Agreement ), pursuant to which Merger Sub will be merged with and into the Company (the Merger ). The Merger, together with the other transactions contemplated by the Agreement, are collectively referred to herein as the Transaction. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings assigned to them in the Agreement.

Pursuant to the terms of the Agreement, each ordinary share, NIS 1.00 par value per share, of the Company (each, a Company Share ) issued and outstanding immediately prior to the Effective Time (other than any Company Shares held in the treasury of the Company or owned by Buyer or any direct or indirect wholly owned subsidiary of the Company or Buyer, which will be cancelled and retired) will be converted into the right to receive, (x) 0.8011 shares of common stock, without par value, of Buyer (the Buyer Common Stock ), each share of which shall be issued together with one Preferred Share Purchase Right (the Stock Consideration ), and (y) $14.93 in cash (the Cash Consideration ; together with the Stock Consideration, the Consideration ).

We also understand that concurrently with the execution of the Agreement, the Buyer is entering into (i) an Undertaking Agreement with Moshe Arkin (the Principal Shareholder ), pursuant to which the Principal Shareholder will agree, among other things, to take specified actions to facilitate the Merger (the Undertaking Agreement ), (ii) a Lock-Up Agreement with the Principal Shareholder, pursuant to which the Principal Shareholder has agreed to certain restrictions with respect to the sale or other disposition of Buyer Common Stock received by the Principal Shareholder in the Merger (the Lock-Up Agreement ), (iii) a Nominating Agreement with the Principal Shareholder, pursuant to which the Principal Shareholder will be appointed to the board of directors of Buyer and shall have the right, until such time that the Principal Shareholder both (a) ceases to beneficially own at least 9% of the outstanding shares of Buyer Common Stock and (b) ceases to beneficially own 9,000,000 shares of Buyer Common Stock, to nominate two candidates to the Buyer s board of directors (the Nominating Agreement ), and (iv) a Registration Rights Agreement pursuant to which the Principal Shareholder will have certain rights to require registration of shares of Buyer Common Stock received in the Transaction (the Registration Rights Agreement ). We further understand that approximately 45.7% of the outstanding shares of the Company are held by the Principal Shareholder.

You have asked us whether, in our opinion, the Consideration to be received by the holders of the Company Shares pursuant to the Transaction, taken as a whole, is fair from a financial point of view to such holders.

In arriving at the opinion set forth below, we have, among other things:

(1) Reviewed certain publicly available business and financial information relating to the Company and the Buyer that we deemed to be relevant;

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(2) Reviewed certain information, including financial forecasts (the Forecasts ), relating to the business, earnings, cash flow, assets, liabilities and prospects of the Company and the Buyer, furnished to us by the Company and the Buyer, respectively;

(3) Conducted discussions with members of senior management and representatives of the Company and the Buyer concerning the matters described in clauses 1 and 2 above, as well as their respective businesses and prospects before and after giving effect to the Merger;

(4) Reviewed the market prices and valuation multiples for the Company Shares and the Buyer Common Stock and compared them with those of certain publicly traded companies that we deemed to be relevant;

(5) Reviewed the results of operations of the Company and the Buyer and compared them with those of certain publicly traded companies that we deemed to be relevant;

(6) Compared the proposed financial terms of the Merger with the financial terms of certain other transactions that we deemed to be relevant;

(7) Participated in certain discussions and negotiations among representatives of the Company and the Buyer and their financial and legal advisors;

(8) Reviewed the potential pro forma impact of the Merger;

(9) Reviewed the Agreement, the Undertaking Agreement, the Lock-Up Agreement, the Nominating Agreement and the Registration Rights Agreement, each dated as of November 14, 2004, and certain related documents; and

(10) Reviewed such other financial studies and analyses and taken into account such other matters as we deemed necessary, including our assessment of general economic, market and monetary conditions.

In preparing our opinion, we have assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to us, discussed with or reviewed by or for us, or publicly available, and we have not assumed any responsibility for independently verifying such information or undertaken an independent evaluation or appraisal of any of the assets or liabilities of the Company or the Buyer or been furnished with any such evaluation or appraisal, nor have we evaluated the solvency or fair value of the Company or the Buyer under any foreign, state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, we have not assumed any obligation to conduct any physical inspection of the properties or facilities of the Company or the Buyer. With respect to the Forecasts furnished to or discussed with us by the Company or the Buyer, we have assumed that they have been reasonably prepared and reflect the best currently available estimates and judgment of the Company s or the Buyer s management as to the expected future financial performance of the Company or the Buyer, as the case may be. We have assumed that the representations and warranties of each party contained in the Agreement are true and correct as of the date of the Agreement, that each party will perform all of its respective covenants and agreements contained in the agreement and that the Transaction will be consummated in accordance with the terms of the Agreement without waiver, modification or amendment. We have also assumed that the final forms of the Agreement and the agreements with the Principal Shareholder will be substantially similar to the last drafts reviewed by us.

Our opinion is necessarily based upon market, economic and other conditions as they exist and can be evaluated on, and on the information made available to us as of, the date hereof. We have assumed that in the course of obtaining the necessary regulatory or other consents or approvals (contractual or otherwise) for the Merger, no restrictions, including any divestiture requirements or amendments or modifications, will be imposed that will have a material adverse effect on the contemplated benefits of the Merger.

We are not rendering any accounting, legal or tax advice and understand that the Company is relying upon its own accounting, legal and tax advisors as to accounting, legal and tax matters in connection with the Transaction.

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We are acting as financial advisor to the Company in connection with the Transaction and will receive a fee from the Company for our services, which is contingent upon the consummation of the Transaction. In addition, the Company has agreed to indemnify us for certain liabilities arising out of our engagement. We have, in the past, provided financial advisory and financing services to the Company and/or its affiliates and may continue to do so and have received, and may receive, fees for the rendering of such services. In addition, in the ordinary course of our business, we may actively trade the Company Shares and other securities of the Company, as well as the Buyer Common Stock and other securities of the Buyer, for our own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

This opinion is for the use and benefit of the Board of Directors of the Company. Our opinion does not address the merits of the underlying decision by the Company or the Principal Shareholder to engage in the Merger and does not constitute a recommendation to any shareholder as to how such shareholder should vote on the proposed Merger or any matter related thereto. Our opinion does not address the relative values of the Stock Consideration and the Cash Consideration. In addition, you have not asked us to address, and this opinion does not address, the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of the Company, other than the holders of the Company Shares, nor does this opinion address in any manner the terms of the Undertaking Agreement, the Lock-Up Agreement, the Nominating Agreement, the Registration Rights Agreement or any other agreement between the Principal Shareholder and the Buyer.

We are not expressing any opinion herein as to (i) the prices at which the Company Shares or the Buyer Common Stock will trade or (ii) the trading volume of the Company Shares or the Buyer Common Stock on any stock exchange or trading market on which such securities may be listed or admitted to trading following the announcement or consummation of the Merger.

On the basis of and subject to the foregoing, we are of the opinion that, as of the date hereof, the Consideration to be received by the holders of Company Shares pursuant to the Transaction, taken as a whole, is fair from a financial point of view to such holders.

Very truly yours,

/s/ MERRILL LYNCH, PIERCE, FENNER & SMITH INC.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

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**APPENDIX D**

**UNDERTAKING AGREEMENT**

This UNDERTAKING AGREEMENT ( **Agreement** ) is made as of November 14, 2004, between Perrigo Company, a Michigan corporation ( **Buyer** ), Agis Industries (1983) Ltd., an Israeli public company (the **Company** ) and the undersigned shareholder ( **Shareholder** ) of the Company.

**RECITALS:**

WHEREAS, concurrently with the execution and delivery of this Agreement, Buyer, Perrigo Israel Opportunities Ltd., a private Israeli company and wholly owned subsidiary of Buyer ( **Merger Sub** ), and the Company are entering into an Agreement and Plan of Merger of even date herewith (the **Merger Agreement** ), pursuant to which Merger Sub will be merged with and into the Company, and the Company will become a wholly owned subsidiary of Buyer (the **Merger** );

WHEREAS, as of the date hereof, Shareholder is the Beneficial Owner (as defined below) of the Subject Shares (as defined below);

WHEREAS, the Board of Directors of the Company has: (x) determined that the Merger and the Merger Agreement are fair to, and in the best interests of, the Company and its shareholders, (y) approved the Merger and the Merger Agreement; and (z) determined to recommend to the shareholders of the Company to approve the Merger and the Merger Agreement;

WHEREAS, it is a condition to the willingness of Buyer and the Company to enter into the Merger Agreement and to consummate the Merger that the Shareholder undertake the obligations set forth in this Agreement;

WHEREAS, in order to induce Buyer and Merger Sub to enter into the Merger Agreement, Shareholder has agreed to enter into this Agreement; and

WHEREAS, it is a condition to the willingness of Shareholder to enter into this Agreement that Buyer enters into the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and agreements set forth herein and intending to be legally bound hereby, the parties agree as follows:

1. *Definitions.*

(a) Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Merger Agreement.

(b) **Beneficially Own** or **Beneficial Owner** with respect to any securities means having beneficial ownership as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the **Exchange Act** ).

(c) **Company Capital Stock** means shares of common stock, par value 1.00 New Israeli Shekel per share, of the Company.

(d) **Company Options and Other Rights** means options, warrants and other rights to acquire, directly or indirectly, shares of Company Capital Stock.

(e) **Expiration Date** means the earlier to occur of (i) the Effective Time, (ii) the date on which the Merger Agreement is terminated pursuant to its terms or (iii) the mutual agreement of Buyer and Shareholder to terminate this Agreement.

(f) **Subject Shares** means (i) all shares of Company Capital Stock Beneficially Owned by Shareholder as of the date of this Agreement; and (ii) all additional shares of Company Capital Stock of

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which Shareholder acquires Beneficial Ownership during the period from the date of this Agreement through the Expiration Date.

2. *Voting.*

(a) Shareholder hereby agrees that, prior to the Expiration Date, at any meeting of the shareholders of the Company, however called, and in any written action by consent of shareholders of the Company Shareholder shall cause to be counted as present thereat for purposes of establishing a quorum and shall vote, or cause to be voted, any and all Subject Shares Beneficially Owned by Shareholder as of the record date of such meeting or written consent:

(i) in favor of the Merger, the execution and delivery by the Company of the Merger Agreement and the adoption and approval of the Merger Agreement and the terms thereof, in favor of each of the other actions contemplated by the Merger Agreement and in favor of any action in furtherance of any of the foregoing;

(ii) against any action or agreement that would reasonably be expected to result in a breach of any representation, warranty, covenant or obligation of the Company in the Merger Agreement; and

(iii) against the following actions (other than the Merger and the transactions contemplated by the Merger Agreement): (A) any extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any subsidiary of the Company other than, in the case of the Company, with any subsidiary of the Company and in the case of any subsidiary of the Company, with the Company or any subsidiary of the Company; (B) any sale, lease, sublease, license, sublicense or transfer of a material portion of the rights or other assets of the Company or any subsidiary of the Company other than, in the case of the Company, to any subsidiary of the Company and in the case of any subsidiary of the Company, to the Company or any subsidiary of the Company; (C) any reorganization, recapitalization, dissolution or liquidation of the Company or any subsidiary of the Company; (D) any change in the individuals who serve as members of the board of directors of the Company if such action would reasonably be expected to materially impair or delay the ability of the Company to consummate the Merger; (E) any amendment to the Company s Memorandum of Association or Articles of Incorporation if such action would reasonably be expected to materially impair or delay the ability of the Company to consummate the Merger; (F) any material change in the capitalization of the Company or the Company s corporate structure; and (G) any other action which is intended, or would reasonably be expected, to impede, interfere with, delay, postpone, discourage or adversely affect the Merger or any of the other transactions contemplated by the Merger Agreement or this Agreement.

(b) Prior to the Expiration Date, Shareholder shall not enter into any agreement or understanding with any Person to vote or give instructions in any manner inconsistent with clause (i), clause (ii) or clause (iii) of Section 2(a).

(c) Shareholder hereby waives and agrees not to exercise any applicable appraisal rights or similar rights, to the extent such rights exist, under the Israel Companies Law with respect to the Subject Shares in connection with the Merger and the Merger Agreement.

3. *Grant of Proxy; Appointment of Proxy.*

(a) In furtherance of the transactions contemplated hereby and by the Merger Agreement, and in order to secure the performance by Shareholder of Shareholder s duties under this Agreement, Shareholder, concurrently with the execution of this Agreement, shall execute, in accordance with the provisions of applicable Israeli law, and deliver to Buyer an irrevocable proxy, substantially in the form of Annex A hereto unless a different form is specified in the Company s Articles of Association (in which case the proxy shall meet the requirements of the Company s Articles of Association) (the **Proxy** ).

(b) Shareholder understands and acknowledges that Buyer is entering into the Merger Agreement in reliance upon such Proxy. Shareholder hereby affirms that the Proxy set forth in this Section 3 is given to secure the performance of the duties of Shareholder under this Agreement. Shareholder hereby affirms

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that the irrevocable proxy is coupled with an interest and may under no circumstances be revoked. Shareholder hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof.

(c) Shareholder hereby revokes any and all prior proxies or powers of attorney given by Shareholder with respect to the voting of the Subject Shares in respect of any of the matters set forth in Section 2(a) and agrees not to grant any subsequent proxies or powers of attorney with respect to the voting of the Subject Shares in respect of any of the matters set forth in Section 2(a) until the Expiration Date.

(d) Shareholder shall, at Buyer s own expense, perform such further acts and execute such further proxies and other documents and instruments as may reasonably be required to vest in Buyer the power to carry out and give effect to the provisions of this Agreement.

4. *Covenants of Shareholder.* Shareholder covenants and agrees for the benefit of Buyer that, until the Expiration Date, Shareholder will not:

(a) other than pursuant to the Lock-Up Agreement, sell, transfer, pledge, hypothecate, encumber, assign, tender or otherwise dispose of, or enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, pledge, hypothecation, encumbrance, assignment, tender or other disposition of, any Subject Shares or any interest therein; *provided, however*, that Shareholder may sell, transfer, pledge, hypothecate, encumber, assign, tender or otherwise dispose of any Subject Shares to a family member or trust or other entity for estate or tax planning purposes, provided, that any such sale transfer, pledge, hypothecation, encumbrance, assignment, tender or other disposition shall be conditioned on each such transferee signing and delivering an Undertaking Agreement and Proxy in substantially the form of this Agreement and the Proxy attached hereto;

(b) other than the Proxy or pursuant to the Lock-Up Agreement, grant any powers of attorney or proxies or consents in respect of any of the Subject Shares, deposit any of such Subject Shares into a voting trust, or enter into a voting agreement with respect to any of such Subject Shares; or

(c) take any other action with respect to the Subject Shares that would in any way restrict, limit or interfere with the performance of Shareholder s obligations hereunder or the transactions contemplated hereby and by the Merger Agreement.

5. *Representations and Warranties of Shareholder.* Shareholder represents and warrants to Buyer as follows:

(a) As of the date of this Agreement

(i) Shareholder is the Beneficial Owner (free and clear of any encumbrances or restrictions) of the outstanding shares of Company Capital Stock set forth under the heading Shares of Company Capital Stock Beneficially Owned , on the signature page hereof, which shares are registered in Shareholder s name in the Company s books and records.

(ii) Shareholder does not directly or indirectly Beneficially Own any Company Options and Other Rights; and

(iii) Shareholder does not directly or indirectly Beneficially Own any shares of Company Capital Stock or other securities of the Company, other than the shares of Company Capital Stock set forth on the signature page hereof.

(b) Shareholder has the legal capacity, power and authority to enter into and perform all of Shareholder s obligations under this Agreement and the Proxy. This Agreement has been duly executed and delivered by Shareholder and, upon its execution and delivery by Buyer, will constitute a legal, valid and binding obligation of Shareholder, enforceable against Shareholder in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors rights generally, and the availability of injunctive relief and other equitable remedies.

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(c) The execution, delivery and performance by Shareholder of this Agreement will not (i) conflict with, require a consent, waiver or approval under, or result in a breach of or default under, any of the terms of any contract, commitment or other obligation to which Shareholder is a party or by which any of Shareholder s assets may be bound, or (ii) violate any order, writ injunction, decree, judgment, order, statute, rule or regulation applicable to Shareholder or any of its assets.

(d) No filing with, and no permit, authorization, consent or approval of, any state or federal public body or authority is necessary for the execution of this Agreement by Shareholder and the consummation by Shareholder of the transactions contemplated hereby.

6. *Adjustments; Additional Shares.* In the event (a) of any stock dividend, stock split, merger, recapitalization, reclassification, combination, exchange of shares or the like of the capital stock of the Company on, of or affecting the Subject Shares or (b) that Shareholder shall become the Beneficial Owner of any additional shares of Company Capital Stock or other securities entitling the holder thereof to vote or give consent with respect to the matters set forth in Section 2(a), then the terms of this Agreement shall apply to the shares of Company Capital Stock or other instruments or documents held by Shareholder immediately following the effectiveness of the events described in clause (a) or Shareholder becoming the Beneficial Owner thereof as described in clause (b), as though, in either case, they were Subject Shares hereunder.

7. *Amendments and Waivers.* Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. To the maximum extent permitted by law, (a) no waiver that may be given by a party shall be applicable except in the specific instance for which it was given and (b) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or the right of the party giving such notice or demand to take further action without notice or demand.

8. *Assignment.* This Agreement may not be assigned by either party hereto without the prior written consent of the other party. Subject to the foregoing, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and assigns.

9. *Entire Agreement.* This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto, including, without limitation, the Lock-Up Agreement and the Proxy, set forth the entire understanding of the parties with respect to the subject matter hereof. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

10. *Notices.* Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, if not, then on the next business day; or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to Buyer, to:

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Chief Executive Officer
Telecopier: 269-673-7535

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and

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Vice President and General Counsel
Telecopier: 269-673-1386

with a copy to:

Morgan, Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540
Attention:. Randall B. Sunberg, Esq.
Telecopier: 609-919-6639

and

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attention: Robert G. Robison, Esq.
Telecopier: 212-309-6001

If to Shareholder:

Moshe Arkin
29 Lehi Street
Bnei-Brak 51200
Israel
Telecopier: 972-3-577-3500

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attn: David Fox, Esq.
Thomas W. Greenberg, Esq.
Telecopier: 212-735-2000

and

Rosenberg, Hacohen, Goddard & Ephrat
24 Raoul Wallenberg Street
Tel-Aviv 69719
Israel
Attn: Dan Hacohen, Adv.
Telecopier: 972-3-766-6567

or to such other address or to the attention of such Person or Persons as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

11. *Captions.* All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

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12. *Counterparts.* This Agreement may be executed in counterparts, and either party may execute such counterpart, both of which when executed and delivered shall be deemed to be an original and which counterparts taken together shall constitute but one and the same instrument.

13. *Severability; Enforcement.* Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14. *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction without the necessity of demonstrating damages or posting a bond, this being in addition to any other remedy to which they are entitled at law or in equity.

15. *Consent to Jurisdiction.* Each party irrevocably submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of New York for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each party agrees to commence any such action, suit or proceeding in any court of competent jurisdiction in the State of New York. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party s respective address set forth above shall be effective service of process for any action, suit or proceeding in a court of competent jurisdiction in the State of New York with respect to any matters to which it has submitted to jurisdiction in this Section 15. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in a court of competent jurisdiction in the State of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

16. *Governing Law.* This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

17. *Actions in Other Capacities.* Nothing in this Agreement shall (i) limit, restrict or otherwise affect any actions taken by Shareholder in his capacity as an officer or member of the board of directors of the Company or any of its subsidiaries or (ii) modify the Company s rights under the Merger Agreement.

**[Signature Page to Follow]**

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto all as of the day and year first above written.

PERRIGO COMPANY

By: /s/ DAVID T. GIBBONS

Name: David T. Gibbons
Title: *Chairman, President and Chief Executive Officer*

*Agis Industries (1983) Ltd.*

By: /s/ MOSHE ARKIN

Name: Moshe Arkin
Title: *President and Chairman*

SHAREHOLDER

/s/ MOSHE ARKIN

(Signature)

Moshe Arkin

Print Name

Number and class of shares of Capital Stock: 12,510,414 Common Shares

A-D-7

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**ANNEX A**

**IRREVOCABLE PROXY**

Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Undertaking Agreement, dated as of November 14, 2004, between Perrigo Company, a Michigan corporation, Agis Industries (1983) Ltd., an Israeli public company (the **Company** ), and the undersigned Shareholder of the Company (the **Undertaking Agreement** ). A copy of the Undertaking Agreement is attached hereto and is incorporated by reference herein.

This Proxy is given to secure the performance of the duties of the undersigned Shareholder pursuant to the Undertaking Agreement and is granted in consideration of Buyer negotiating and entering into the Merger Agreement.

The undersigned Shareholder hereby irrevocably appoints Douglas R. Schrank and Todd W. Kingma, and each of them individually, the sole and exclusive attorneys, agents and proxies, with full power of substitution in each of them, for the undersigned Shareholder and in the name, place and stead of the undersigned Shareholder, to vote or, if applicable, to give written consent, with respect to, all Subject Shares Beneficially Owned by the undersigned Shareholder and which the undersigned Shareholder is or may be entitled to vote at any meeting of the Company held after the date hereof, whether annual or special and whether or not an adjourned meeting, or, if applicable, to give written consent with respect thereto, in accordance with the provisions of Section 2(a) of the Undertaking Agreement as follows:

(i) in favor of the Merger, the execution and delivery by the Company of the Merger Agreement and the adoption and approval of the Merger Agreement and the terms thereof, in favor of each of the other actions contemplated by the Merger Agreement and in favor of any action in furtherance of any of the foregoing;

(ii) against any action or agreement that would reasonably be expected to result in a breach of any representation, warranty, covenant or obligation of the Company in the Merger Agreement; and

(iii) against the following actions (other than the Merger and the transactions contemplated by the Merger Agreement): (A) any extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any subsidiary of the Company other than, in the case of the Company, with any subsidiary of the Company and in the case of any subsidiary of the Company, with the Company or any subsidiary of the Company; (B) any sale, lease, sublease, license, sublicense or transfer of a material portion of the rights or other assets of the Company or any subsidiary of the Company other than, in the case of the Company, to any subsidiary of the Company and in the case of any subsidiary of the Company, to the Company or any subsidiary of the Company; (C) any reorganization, recapitalization, dissolution or liquidation of the Company or any subsidiary of the Company; (D) any change in the individuals who serve as members of the board of directors of the Company if such action would reasonably be expected to materially impair or delay the ability of the Company to consummate the Merger; (E) any amendment to the Company s certificate of incorporation or bylaws if such action would reasonably be expected to materially impair or delay the ability of the Company to consummate the Merger; (F) any material change in the capitalization of the Company or the Company s corporate structure; and (G) any other action which is intended, or could reasonably be expected, to impede, interfere with, delay, postpone, discourage or adversely affect the Merger or any of the other transactions contemplated by the Merger Agreement or the Undertaking Agreement.

This Proxy is coupled with an interest, shall be irrevocable to the fullest extent permitted by law and shall be binding on any successor in interest of the undersigned Shareholder. This Proxy shall not be terminated by operation of law upon the occurrence of any event, including, without limitation, the death or incapacity of the undersigned Shareholder.

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This Proxy shall operate to revoke any prior proxy as to the Subject Shares heretofore granted by the undersigned Shareholder with respect to the subject matter of the Undertaking Agreement and the Merger Agreement.

This Proxy shall terminate on the Expiration Date.

**[Signature Page to Follow]**

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SIGNATURE TO IRREVOCABLE PROXY

SHAREHOLDER

(Signature)

Moshe Arkin

Print Name

Date: November 14, 2004

The undersigned, Douglas R. Schrank, irrevocably accepts this Proxy and agrees to act in accordance with its terms.

(Signature)

Douglas R. Schrank

Print Name

Date: November 14, 2004

The undersigned, Todd W. Kingma, irrevocably accepts this Proxy and agrees to act in accordance with its terms.

(Signature)

Todd W. Kingma

Print Name

Date: November 14, 2004

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**APPENDIX E**

**VOTING AGREEMENT**

This VOTING AGREEMENT ( **Agreement** ) is made as of November 14, 2004, between Agis Industries (1983) Ltd., an Israeli public company (the **Company** ), and the undersigned shareholder ( **Shareholder** ) of Perrigo Company, a Michigan corporation ( **Buyer** ).

RECITALS:

WHEREAS, concurrently with the execution and delivery of this Agreement, Buyer, Perrigo Israel Opportunities Ltd., a private Israeli company and indirect wholly owned subsidiary of Buyer ( **Merger Sub** ), and the Company are entering into an Agreement and Plan of Merger of even date herewith (the **Merger Agreement** ), pursuant to which Merger Sub will be merged with and into the Company, and the Company will become a wholly owned subsidiary of Buyer (the **Merger** );

WHEREAS, the Board of Directors of Buyer has: (x) determined that the Merger Agreement (and the transactions contemplated thereby) are fair to, and in the best interests of, Buyer and its shareholders, (y) approved the Merger Agreement (and the transactions contemplated thereby); and (z) determined to recommend to the shareholders of Buyer to adopt and approve the Merger Agreement and the transactions contemplated thereby;

WHEREAS, it is a condition to the willingness of the Company to enter into the Merger Agreement and to consummate the Merger that Shareholder undertake the obligations set forth in this Agreement; and

WHEREAS, in order to induce the Company to enter into the Merger Agreement, Shareholder has agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and agreements set forth herein and intending to be legally bound hereby, the parties agree as follows:

1. *Definitions.*

(a) Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Merger Agreement.

(b) **Buyer Common Stock** means shares of common stock, no par value, of Buyer.

(c) **Expiration Date** means the earlier to occur of (i) the Effective Time, (ii) the date on which the Merger Agreement is terminated pursuant to its terms or (iii) the mutual agreement of the Company and Shareholder to terminate this Agreement.

(d) **Subject Shares** means all shares of Buyer Common Stock owned by Shareholder as of the date of the Buyer Stockholders Meeting.

2. *Voting.*

(a) Shareholder hereby agrees that, prior to the Expiration Date, at any meeting of the shareholders of Buyer, however called, and in any written action by consent of shareholders of Buyer, Shareholder shall cause to be counted as present thereat for purposes of establishing a quorum and shall vote, or cause to be voted, any and all Subject Shares owned by Shareholder as of the record date of such meeting or written consent in favor of the issuance of the Buyer Common Stock as contemplated by the Merger Agreement and in favor of any action in furtherance of the foregoing.

(b) Prior to the Expiration Date, Shareholder shall not enter into any agreement or understanding with any Person to vote or give instructions in any manner inconsistent with clause (i) of this Section 2(a).

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3. *Grant of Proxy; Appointment of Proxy.*

(a) In furtherance of the transactions contemplated hereby and by the Merger Agreement, and in order to secure the performance by Shareholder of Shareholder s duties under this Agreement, Shareholder, concurrently with the execution of this Agreement, shall execute, in accordance with the provisions of applicable law, and deliver to the Company an irrevocable proxy, substantially in the form of Annex A hereto unless a different form is specified in Buyer s Articles of Incorporation or Bylaws (in which case the proxy shall meet the requirements of Buyer s Articles of Incorporation and Bylaws) (the **Proxy** ).

(b) Shareholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon such Proxy. Shareholder hereby affirms that the Proxy set forth in this Section 3 is given to secure the performance of the duties of Shareholder under this Agreement. Shareholder hereby affirms that the irrevocable proxy is coupled with an interest and may under no circumstances be revoked. Shareholder hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof.

(c) Shareholder hereby revokes any and all prior proxies or powers of attorney given by Shareholder with respect to the voting of the Subject Shares in respect of any of the matters set forth in Section 2(a) and agrees not to grant any subsequent proxies or powers of attorney with respect to the voting of the Subject Shares in respect of any of the matters set forth in Section 2(a) until the Expiration Date.

(d) Shareholder shall, at the Company s own expense, perform such further acts and execute such further proxies and other documents and instruments as may reasonably be required to vest in the Company the power to carry out and give effect to the provisions of this Agreement.

4. *Transfer of Subject Shares.* Nothing contained in this Agreement shall be interpreted as prohibiting Shareholder from transferring any Subject Shares free from the restrictions of this Agreement; *provided*, *however*, that Shareholder agrees that any transfers to family members will be made only for bona fide estate planning, gift, financial planning, tax planning or other similar purposes.

5. *Covenants of Shareholder.* Shareholder covenants and agrees for the benefit of the Company that, until the Expiration Date, Shareholder will not, other than the Proxy, grant any powers of attorney or proxies or consents in respect of any of the Subject Shares, or enter into a voting agreement with respect to any of such Subject Shares. Notwithstanding the foregoing, nothing herein shall be deemed to restrict in any way Shareholder s ability to sell or transfer Subject Shares to any person or entity.

6. *Representations and Warranties of Shareholder.* Shareholder represents and warrants to the Company as follows:

(a) As of the date of this Agreement, Shareholder is the owner (free and clear of any encumbrances or restrictions other than restrictions under any securities laws) of the outstanding shares of Buyer Common Stock set forth under the heading Shares of Buyer Common Stock owned on the signature page hereof.

(b) Shareholder has the legal capacity, power and authority to enter into and perform all of Shareholder s obligations under this Agreement and the Proxy. This Agreement has been duly executed and delivered by Shareholder and, upon its execution and delivery by the Company, will constitute a legal, valid and binding obligation of Shareholder, enforceable against Shareholder in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors rights generally, and the availability of injunctive relief and other equitable remedies.

(c) The execution, delivery and performance by Shareholder of this Agreement will not (i) conflict with, require a consent, waiver or approval under, or result in a breach of or default under, any of the terms of any contract, commitment or other obligation to which Shareholder is a party or by which any of Shareholder s assets may be bound, or (ii) violate any order, writ injunction, decree, judgment, order, statute, rule or regulation applicable to Shareholder or any of its assets.

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(d) No filing with, and no permit, authorization, consent or approval of, any state or federal public body or authority is necessary for the execution of this Agreement by Shareholder and the consummation by Shareholder of the transactions contemplated hereby.

7. *Adjustments; Additional Shares.* In the event of any stock dividend, stock split, merger, recapitalization, reclassification, combination, exchange of shares or the like of the capital stock of Buyer on, of or affecting the Subject Shares, then the terms of this Agreement shall apply to the shares of Buyer Common Stock or other instruments or documents held by Shareholder immediately following the effectiveness of the events described above as though they were Subject Shares hereunder.

8. *Amendments and Waivers.* Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. To the maximum extent permitted by law, (a) no waiver that may be given by a party shall be applicable except in the specific instance for which it was given and (b) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or the right of the party giving such notice or demand to take further action without notice or demand.

9. *Assignment.* This Agreement may not be assigned by either party hereto without the prior written consent of the other party. Subject to the foregoing, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and assigns.

10. *Entire Agreement.* This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto, including, without limitation, the Proxy, set forth the entire understanding of the parties with respect to the subject matter hereof. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

11. *Notices.* Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, if not, then on the next business day; or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

(i) If to Buyer, to:

Perrigo Company

515 Eastern Avenue
Allegan, MI 49010
Attention: Chief Executive Officer
Telecopier: 269-673-7535

and

Perrigo Company

515 Eastern Avenue
Allegan, MI 49010
Attention: Vice President and General Counsel
Telecopier: 269-673-1386

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with a copy to:

Morgan, Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540
Attention:. Randall B. Sunberg, Esq.
Telecopier: 609-919-6639

and

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attention: Robert G. Robison, Esq.
Telecopier: 212-309-6001

If to Shareholder:

Moshe Arkin
29 Lehi Street
Bnei-Brak 51200
Israel
Telecopier: 972-3-577-3500

with a copy to:

Rosenberg, Hacohen, Goddard & Ephrat
24 Raoul Wallenberg Street
Tel-Aviv 69719
Israel
Attn: Dan Hacohen, Adv.
Telecopier: 972-3-766-6567

and

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attn: David Fox, Esq.
Thomas W. Greenberg, Esq.
Telecopier: (212) 735-2000

or to such other address or to the attention of such Person or Persons as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may tereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

12. *Captions.* All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

13. *Counterparts.* This Agreement may be executed in counterparts, and either party may execute such counterpart, both of which when executed and delivered shall be deemed to be an original and which counterparts taken together shall constitute but one and the same instrument.

14. *Severability; Enforcement.* Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or

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unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15. *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction without the necessity of demonstrating damages or posting a bond, this being in addition to any other remedy to which they are entitled at law or in equity.

16. *Consent to Jurisdiction.* Each party irrevocably submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of New York for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each party agrees to commence any such action, suit or proceeding in any court of competent jurisdiction in the State of New York. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party s respective address set forth above shall be effective service of process for any action, suit or proceeding in a court of competent jurisdiction in the State of New York with respect to any matters to which it has submitted to jurisdiction in this Section 16. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in a court of competent jurisdiction in the State of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

17. *Governing Law.* This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

18. *Actions in Other Capacities.* Nothing in this Agreement shall (i) limit, restrict or otherwise affect any actions taken by Shareholder in his capacity as a member of the board of directors of Buyer or any of its subsidiaries or (ii) modify Buyer s rights under the Merger Agreement.

**[Signature Page to Follow]**

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto all as of the day and year first above written.

AGIS INDUSTRIES (1983) LTD.

By: /s/ MOSHE ARKIN

Name: Moshe Arkin
Title: *President and Chairman*

SHAREHOLDER

/s/ MICHAEL J. JANDERNOA

(Signature)

Michael J. Jandernoa

Print Name

Number and class of shares of Capital Stock: 6,541,964

Common Stock

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**ANNEX A**

**IRREVOCABLE PROXY**

Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Voting Agreement, dated as of November 14, 2004, (the **Voting Agreement** ) between Agis Industries (1983) Ltd., an Israeli public company (the **Company** ), and the undersigned shareholder ( **Shareholder** ) of Perrigo Company, a Michigan corporation ( **Buyer** ). A copy of the Voting Agreement is attached hereto and is incorporated by reference herein.

This Proxy is given to secure the performance of the duties of the undersigned Shareholder pursuant to the Voting Agreement and is granted in consideration of the Company negotiating and entering into the Merger Agreement.

(i) The undersigned Shareholder hereby irrevocably appoints Moshe Arkin and Refael Lebel, and each of them individually, the sole and exclusive attorneys, agents and proxies, with full power of substitution in each of them, for the undersigned Shareholder and in the name, place and stead of the undersigned Shareholder, to vote or, if applicable, to give written consent, with respect to, all Subject Shares owned by the undersigned Shareholder and which the undersigned Shareholder is or may be entitled to vote at any meeting of Buyer held after the date hereof, whether annual or special and whether or not an adjourned meeting, or, if applicable, to give written consent with respect thereto, in accordance with the provisions of Section 2(a) of the Voting Agreement, in favor of the issuance of the Buyer Common Stock as contemplated by the Merger Agreement and in favor of any action in furtherance of the foregoing.

This Proxy is coupled with an interest, shall be irrevocable to the fullest extent permitted by law and shall be binding on any successor in interest of the undersigned Shareholder. This Proxy shall not be terminated by operation of law upon the occurrence of any event, including, without limitation, the death or incapacity of the undersigned Shareholder.

This Proxy shall operate to revoke any prior proxy as to the Subject Shares heretofore granted by the undersigned Shareholder with respect to the subject matter of the Voting Agreement and the Merger Agreement.

This Proxy shall terminate on the Expiration Date.

**[Signature Page to Follow]**

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**SIGNATURE TO IRREVOCABLE PROXY**

SHAREHOLDER

(Signature)

Michael J. Jandernoa

Print Name

Date: November 14, 2004

The undersigned, Moshe Arkin, irrevocably accepts this Proxy and agrees to act in accordance with its terms.

(Signature)

Moshe Arkin

Print Name

Date: November 14, 2004

The undersigned, Refael Lebel, irrevocably accepts this Proxy and agrees to act in accordance with its terms.

(Signature)

Refael Lebel

Print Name

Date: November 14, 2004

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**APPENDIX F**

**NOMINATING AGREEMENT**

This NOMINATING AGREEMENT (this **Agreement** ) is made as of November 14, 2004 between Perrigo Company, a Michigan corporation ( **Buyer** ), and the undersigned shareholder ( **Shareholder** ) of Agis Industries (1983) Ltd., an Israeli public company (the **Company** ).

**RECITALS:**

WHEREAS, concurrently with the execution and delivery of this Agreement, Buyer, Perrigo Israel Opportunities, Ltd., a private Israeli company and indirect wholly owned subsidiary of Buyer ( **Merger Sub** ), and the Company are entering into an Agreement and Plan of Merger of even date herewith (the **Merger Agreement** ), pursuant to which Merger Sub will be merged with and into the Company (the **Merger** );

WHEREAS, concurrently with the execution and delivery of this Agreement, Buyer and Shareholder are entering into (i) an Undertaking Agreement (the **Undertaking Agreement** ), pursuant to which Shareholder agrees to vote in favor of the transactions contemplated by the Merger Agreement and (ii) a Lockup Agreement (the **Lockup Agreement** ), pursuant to which Shareholder agrees, for a specific period of time, not to sell shares of Buyer common stock that Shareholder acquired upon the consummation of the Merger;

WHEREAS, it is a condition to the willingness of Shareholder to enter into the Undertaking Agreement and the Lockup Agreement that Buyer provide Shareholder with the right to designate directors to the Board of Directors of Buyer in the manner set forth herein at the time of the consummation of the transactions contemplated by the Merger Agreement; and

WHEREAS, in order to induce Shareholder to enter into the Undertaking Agreement and the Lockup Agreement, Buyer has agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Definitions.*

(a) Capitalized terms used herein and not otherwise defined shall have the meaning of set forth in the Merger Agreement.

(b) **Own** with respect to any securities means actual ownership by the Shareholder (it being understood that any shares of Buyer common stock (i) beneficially owned by Shareholder but held in nominee or street name or (ii) transferred by Shareholder to a family member, trust or other entity controlled by Shareholder solely for estate or tax planning purposes shall be deemed Owned by Shareholder for purposes of this Agreement).

(c) **Board** means the Board of Directors of Buyer.

(d) **Director** means a member of the Board.

(e) **Independent** has the meaning set forth in the rules of the Nasdaq Stock Market.

2. *Director Nomination Rights.*

(a) On the Closing Date, the Board shall appoint Shareholder and one Independent candidate designated by Shareholder to the Board (*provided*, that if such Independent candidate has not been designated by Shareholder on or prior to the Closing Date, the Board shall appoint to the Board such Independent candidate when subsequently so designated by Shareholder). The parties hereto acknowledge and agree that the Shareholder shall be appointed to the Board to serve for a term expiring at Buyer s 2007 annual meeting term and such Independent candidate shall be appointed to the Board to serve for a term expiring at Buyer s 2006 annual meeting in order to comply with the requirements for staggered

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terms and apportioned classes of Directors set forth in Buyer s By-laws. Notwithstanding the foregoing, the appointment of Shareholder or any Shareholder-designated candidate pursuant to this Section 2(a), (i) shall be subject to the approval process of Buyer s Nominating & Governance Committee, consistent with Buyer s Corporate Governance Guidelines, and (ii) must have the requisite qualifications as determined in good faith by the Nominating & Governance Committee; *provided, however*, that if for any reason the conditions set forth in clauses (i) and (ii) are not satisfied, Shareholder shall have the right to designate an alternate person or persons to be so nominated. Nothing in this Section 2 shall prevent the Board from acting in good faith in accordance with its Corporate Governance Guidelines while giving due consideration to the intent of this Agreement.

(b) After the Closing Date, should there exist or occur any vacancy on the Board as a result of death, disability, retirement, resignation, removal or any other reason, including if any current Director shall not be nominated for re-election (other than any vacancy resulting from the death, disability, retirement, resignation or removal of Shareholder or any Shareholder Director), the Board shall appoint one additional Independent candidate designated by Shareholder to the Board to serve for a term of office continuing only until the next election of the class of Directors in which the vacancy occurs. The parties hereto acknowledge and agree that such Independent candidate shall be nominated to the same class as the Director that such Independent candidate is replacing. Notwithstanding the foregoing, the appointment of a Shareholder-designated candidate pursuant to this Section 2(b), (i) shall be subject to the approval process of Buyer s Nominating & Governance Committee, consistent with Buyer s Corporate Governance Guidelines, and (ii) must have the requisite qualifications as determined in good faith by the Nominating & Governance Committee; *provided, however*, that if for any reason the conditions set forth in clauses (i) and (ii) are not satisfied, Shareholder shall have the right to designate an alternate person or persons to be so nominated. Nothing in this Section 2 shall prevent the Board from acting in good faith in accordance with its Corporate Governance Guidelines while giving due consideration to the intent of this Agreement.

(c) Following the initial appointments referenced in Sections 2(a) and (b) above, Buyer shall nominate for the Board at the next applicable annual meeting of the shareholders of Buyer, any Independent candidates designated by Shareholder pursuant to the terms of this Agreement (each such designated Independent candidate a **Shareholder Director** and collectively, the **Shareholder Directors** ); *provided, however*, that Buyer shall only be obligated to nominate any Shareholder Director at the annual meeting at which the term of the class of Directors to which any Shareholder Director belongs has expired and such class of Directors is up for election. In accordance with its Corporate Governance Guidelines, the Board shall submit in writing the name of any Shareholder Director to the Buyer Nominating & Governance Committee for election to the Board. The Company shall use its reasonable best efforts (i) to cause the Buyer Nominating & Governance Committee to include the name of the Shareholder Directors so submitted among its nominees for election to the Board and (ii) to cause the Board to unanimously recommend that the shareholders of Buyer vote in favor of the Shareholder Directors; *provided, however*, that if for any reason the conditions set forth in clauses (i) and (ii) are not satisfied, Shareholder shall have the right to designate an alternate person or persons to be so nominated. Nothing in this Section 2 shall prevent the Board from acting in good faith in accordance with its Corporate Governance Guidelines while giving due consideration to the intent of this Agreement.

(d) Following the initial appointment of Shareholder referenced in Section 2(a) above, Buyer shall nominate Shareholder at each applicable annual meeting of the shareholders of Buyer to serve on the Board; *provided, however*, the Buyer shall only be obligated to nominate the Shareholder at each annual meeting at which the term of the class of Directors to which Shareholder belongs has expired and such class of Directors is up for election. In accordance with its Corporate Governance Guidelines, the Board shall submit in writing Shareholder s name to the Buyer Nominating & Governance Committee for election to the Board. The Company shall use its reasonable best efforts (i) to cause the Buyer Nominating & Governance Committee to include the Shareholder so submitted among its nominees for election to the Board and (ii) to cause the Board to unanimously recommend that the shareholders of Buyer to vote in favor of Shareholder. Nothing in this Section 2 shall prevent the Board from acting in

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good faith in accordance with its Corporate Governance Guidelines while giving due consideration to the intent of this Agreement.

(e) The Shareholder Directors (but not the Shareholder), will each be invited to serve on at least one committee of the Board while serving as Directors, in accordance with and subject to their respective qualifications. The parties hereto acknowledge and agree that so long as each applicable Shareholder Director (i) submits to the proper approval process with the Nominating & Governance Committee, consistent with Buyer s Corporate Governance Guidelines and (ii) has the requisite qualifications as determined in good faith by the Nominating & Governance Committee, one of the Shareholder Directors will be invited to serve on the Audit Committee of the Board while serving as a Director and one of the Shareholder Directors will be invited to serve on the Compensation Committee of the Board while serving as a Director.

(f) Subject to Sections 2(c), 2(g), 3, and 5, in the event any Shareholder Director dies, becomes disabled or resigns, retires or is removed from the Board, Shareholder shall have the right to designate a replacement director to fill such vacancy to serve for a term of office continuing only until the next election of the class of Directors in which the vacancy occurs and such replacement director shall be considered a Shareholder Director for purposes of this Agreement.

(g)(i) The rights of Shareholder to designate any Shareholder Director, the right of any Shareholder Director to sit on the Board, and the obligations of the Board and Buyer pursuant to this Section 2 with respect to the Shareholder Directors shall terminate in the event that Shareholder both (A) ceases to Own 9% of the outstanding shares of Buyer common stock and (B) ceases to Own 9,000,000 shares of Buyer common stock.

(ii) All rights of Shareholder, including without limitation, the right of Shareholder to sit on the Board, and the obligations of the Board and Buyer pursuant to this Section 2, shall terminate in the event Shareholder ceases to Own 5,000,000 shares of Buyer common stock.

3. *Resignation of Directors.*

(a) Each Shareholder Director shall tender his or her resignation from the Board, (i) at the time Shareholder both (A) ceases to Own 9% of the outstanding shares of Buyer common stock and (B) ceases to Own 9,000,000 shares of Buyer common stock, or (ii) if such person is no longer entitled to serve on the Board pursuant to the terms hereof. In the event Buyer shall not have accepted such resignation offer within 30 days following the date thereof, the Shareholder Director shall continue to serve on the Board until the next election of the class of Directors to which such Shareholder Director belongs. Buyer s obligations to nominate and recommend each Shareholder Director is conditioned upon each such Shareholder Director s execution and delivery to Buyer of a written agreement to be bound by the terms of this Section 3.

(b) Shareholder shall tender his resignation from the Board, (i) at the time Shareholder ceases to Own 5,000,000 shares of Buyer common stock, or (ii) if he is no longer entitled to serve on the Board pursuant to the terms hereof. In the event Buyer shall not have accepted such resignation offer within 30 days following the date thereof, Shareholder shall continue to serve on the Board until the next election of the class of Directors to which Shareholder belongs.

4. *Equal Treatment.* Buyer shall provide the same compensation and rights and benefits of indemnity to the Shareholder Directors as are provided to other non-employee directors.

5. *Limitations on Nomination Rights.* Notwithstanding anything contained in this Agreement to the contrary, Shareholder shall not be entitled to designate any Shareholder Directors if the nomination of such Shareholder Directors would violate applicable law or would result in a breach by the Board of its fiduciary duties to Buyer and its shareholders, the approval process of the Nominating & Governance Committee, or the Board s Corporate Governance Guidelines while giving due consideration to the intent of this Agreement; provided, however, that the foregoing shall not affect the Shareholder s right to designate an alternate person or persons to be so nominated.

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6. *Amendments and Waivers.*

Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

No failure or delay by any party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. To the maximum extent permitted by law, (a) no waiver that may be given by a party shall be applicable except in the specific instance for which it was given and (b) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or the right of the party giving such notice or demand to take further action without notice or demand.

7. *Assignment.* This Agreement may not be assigned by either party hereto without the prior written consent of the other party. Subject to the foregoing sentence, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and assigns.

8. *Entire Agreement.* This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto, set forth the entire understanding of the parties with respect to the subject matter hereof. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

9. *Notices.* Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given; (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, if not, then on the next business day; or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to Buyer, to:

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Chief Executive Officer
Telecopier: 269-673-7535

and

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Vice President and General Counsel
Telecopier: 269-673-1386

with a copy to:

Morgan, Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540
Attention:. Randall B. Sunberg, Esq.
Telecopier: 609-919-6639

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If to Shareholder:

Moshe Arkin
29 Lehi Street
Bnei-Brak 51200
Israel
Telecopier: 972-3-577-3500

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attn: David Fox, Esq.
Thomas W. Greenberg, Esq.
Telecopier: 212-735-2000

and

Rosenberg, Hacohen, Goddard & Ephrat
24 Raoul Wallenberg Street
Tel-Aviv 69719
Israel
Attn: Dan Hacohen, Adv.
Telecopier: 972-3-766-6567

or to such other address or to the attention of such Person or Persons as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

10. *Captions.* All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

11. *Counterparts.* This Agreement may be executed in counterparts, and either party may execute such counterpart, both of which when executed and delivered shall be deemed to be an original and which counterparts taken together shall constitute but one and the same instrument.

12. *Severability; Enforcement.* Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13. *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction without the necessity of demonstrating damages or posting a bond, this being in addition to any other remedy to which they are entitled at law or in equity.

14. *Consent to Jurisdiction.* Each party irrevocably submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of New York for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each party agrees to commence any such action, suit or proceeding in any court of competent jurisdiction in the State of New York. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party s respective address set forth above shall be effective service of process for any action, suit or

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proceeding in a court of competent jurisdiction in the State of New York with respect to any matters to which it has submitted to jurisdiction in this Section 14. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in a court of competent jurisdiction in the State of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

15. *Governing Law.* This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York; *provided, however*, that any matter involving the internal corporate affairs of Buyer shall be governed by the provisions of the jurisdiction of its incorporation.

16. *Condition to Effectiveness.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be effective until the Effective Time. In the event the Effective Time does not occur, this Agreement shall not be valid, binding and enforceable against any of the parties hereto.

**[Signature Page to Follow]**

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto all as of the day and year first above written.

PERRIGO COMPANY

By: /s/ DAVID T. GIBBONS

Name: David T. Gibbons
Title: *Chairman, President and Chief Executive Officer*

SHAREHOLDER

/s/ MOSHE ARKIN

(Signature)

Moshe Arkin

Print Name

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**APPENDIX G**

November 14, 2004

Perrigo Company

515 Eastern Avenue
Allegan, MI 49010

Re: Lock-Up of Perrigo Company Common Stock
Ladies and Gentlemen:

The undersigned is an owner of record or beneficially of certain common shares of Agis Industries (1983) Ltd. *( Company Shares )* or securities convertible into or exchangeable or exercisable for Company Shares. Pursuant to that certain Agreement and Plan of Merger dated as of the date hereof among Perrigo Company *( Buyer )*, Perrigo Israel Opportunities Ltd. and Agis Industries (1983) Ltd. (the *Merger Agreement* ; capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Merger Agreement) at the Effective Time, each Company Share owned by the undersigned as of the Effective Time shall automatically be converted into the right to receive the Merger Consideration. The undersigned recognizes that the Merger will be of benefit to the undersigned and all holders of Company Shares. The undersigned acknowledges that Buyer is relying on the representations and agreements of the undersigned contained in this agreement in entering into the Merger Agreement with Agis Industries (1983) Ltd. and Perrigo Israel Opportunities Ltd. and consummating the transactions contemplated thereby. The undersigned represents and warrants to the Buyer that (i) he has the requisite legal capacity to execute and deliver this agreement and to perform his obligations hereunder; (ii) this agreement has been duly executed and delivered by the undersigned and upon its execution and delivery by all parties hereto, will constitute the valid and legally binding obligations of the undersigned, enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors rights generally, and the availability of injunctive relief and other equitable remedies; and (iii) no other action is required on the part of the undersigned in connection with the execution, delivery or performance of this agreement.

1. *Lock-Up.* In consideration of the foregoing, the undersigned hereby agrees that, without the prior written consent of Buyer, the undersigned will not, and will cause any spouse or family member of the spouse or the undersigned living in the undersigned s household not to, (a) directly or indirectly, sell, offer, contract or grant any option to sell (including without limitation any short sale), pledge, transfer, establish an open put equivalent position within the meaning of Rule 16a-1(h) under the Exchange Act or otherwise dispose of any shares of the Buyer Common Stock, received by the undersigned in the Merger (the *Buyer Securities* ) owned either of record or beneficially (as defined in Rule 13d-3 under the Exchange Act) by the undersigned (or such spouse or family member), (b) publicly announce an intention to do any of the foregoing, or (c) enter into any swap or other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of any Buyer Securities owned either of record or beneficially (as defined in Rule 13-d under the Exchange Act) by the undersigned (or such spouse or family member), whether any such swap or transaction is to be settled by delivery of Buyer Common Stock or other securities, in cash or otherwise (each of (a), (b) and (c), individually or collectively, is referred to herein as a *Disposition* ), for a period commencing on the Closing Date and ending on the second anniversary of the Closing Date. For a period commencing on the second anniversary of the Closing Date and ending on the third anniversary of the Closing Date, the undersigned hereby agrees to make no Disposition of more than 50% of the Buyer Securities owned either of record or beneficially (as defined in Rule 13-d under the Exchange Act) by the undersigned (or such spouse or family member), and will cause any spouse or family member of the spouse or the undersigned living in the undersigned s household not to make any such Disposition.

2. *Exceptions to Restriction on Disposition.* The restrictions on Dispositions set forth in Section 1 shall not apply to Dispositions of Buyer Securities to a family member, trust or other entity made solely for estate or tax planning purposes, provided that any such Disposition shall be conditioned upon each

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such transferee executing and delivering a lock-up letter agreement with Buyer in form and substance substantially similar to this agreement.

3. *Stop Transfer.* The undersigned also agrees and consents to the entry of stop transfer instructions, substantially in the form attached as Exhibit A hereto, with Buyer s transfer agent and registrar against the transfer of Buyer Securities held by the undersigned, if such transfer would constitute a violation or breach of this agreement.

4. *Registration Rights.* The undersigned waives any registration rights relating to registration under the Exchange Act of any Buyer Securities owned either of record or beneficially by the undersigned, including any rights to receive notice of the Form S-4 Registration Statement, for a period commencing on the Closing Date and continuing through the close of trading on the date that is the second anniversary of the Closing Date, except as otherwise set forth in the Registration Rights Agreement between Buyer and the undersigned, dated as of the date hereof (the *Registration Rights Agreement* ).

5. *Termination.* If the undersigned s employment with Buyer is terminated (either by Buyer without Cause or by the undersigned for Good Reason (as each is defined in that certain Employment Agreement between the Buyer and undersigned dated as of the date hereof) or as a result of undersigned s death or disability), undersigned (or his estate or guardian, as applicable) shall have the right to terminate this agreement upon the earlier of (a) the two year anniversary of the Closing Date or (b) the six month anniversary of such termination of employment. If the undersigned elects to terminate this agreement pursuant to this Section 5, the undersigned will (x) immediately tender his resignation from the Board of Directors of Buyer and (y) have only those registration rights set forth in the Registration Rights Agreement.

6. *Condition to Effectiveness.* Notwithstanding anything in this agreement to the contrary, this agreement shall not be effective until the Effective Time. In the event the Effective Time does not occur, this agreement shall not be valid, binding and enforceable against any of the parties hereto.

**[Signature Page to Follow]**

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This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives and assigns of the undersigned.

/s/ MOSHE ARKIN

Name: Moshe Arkin

ACKNOWLEDGED AND AGREED:

PERRIGO COMPANY

/s/ DAVID T. GIBBONS

Name: David T. Gibbons
Title: *Chairman, President and Chief Executive Officer*

PERRIGO ISRAEL OPPORTUNITIES LTD.

/s/ TODD W. KINGMA

Name: Todd W. Kingma
Title: *Secretary*

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**APPENDIX H**

**REGISTRATION RIGHTS AGREEMENT**

**Dated as of November 14, 2004**
**among**
**Perrigo Company**
**and**
**The Shareholder named Herein**

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**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this *Agreement* ) dated as of November 14, 2004 by and among Perrigo Company (the *Company* ), a Michigan corporation, and Moshe Arkin, (the *Shareholder* ).

WHEREAS, pursuant to the Agreement and Plan of Merger (the *Merger Agreement* ) dated as of November 14, 2004 among the Company, Perrigo Israel Opportunities Ltd. and Agis Industries (1983) Ltd., the Shareholder is acquiring concurrently with the execution and delivery hereof 10,022,092 shares (the *Common Shares* ) of the Company s common stock (the *Common Stock* ), without par value; and

WHEREAS, as part of and as partial consideration for the acquisition of the Common Shares by the Shareholder, the Company hereby grants to the Shareholder the registration rights set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. *Definitions*. As used herein, the following terms shall have the meanings ascribed to them below:

*Agreement* has the meaning set forth in the Introductory Paragraph.

*Black-Out Period* has the meaning set forth in Section 2.1(h).

*Business Day* means any day other than a Saturday, Sunday, or other day on which banks are closed in the City of New York.

*Closing Date* has the meaning ascribed to it in the Merger Agreement.

*Commission* means the United States Securities and Exchange Commission.

*Common Shares* has the meaning set forth in the Recitals.

*Common Stock* has the meaning set forth in the Recitals.

*Company* has the meaning set forth in the Introductory Paragraph.

*Company Registration* has the meaning set forth in Section 2.2(a).

*Delay Notice* has the meaning set forth in Section 2.1(h).

*Demand Registration* has the meaning set forth in Section 2.1(a).

*Exchange Act* means the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder.

*Lock-Up Agreement* means that certain Lock-up Agreement among Shareholder, the Company and Perrigo Israel Opportunities Ltd. dated as of November 14, 2004.

*Managing Underwriters* means the investment banker or investment bankers and manager or managers that administer an underwritten offering, if any, conducted pursuant to the terms hereof.

*Merger Agreement* has the meaning set forth in the Recitals.

*Person* means any individual, corporation, association, partnership, joint venture, limited liability company, trust, estate or other entity or organization.

*Registrable Securities* means (i) the Common Shares issued to the Shareholder pursuant to the Merger Agreement and (ii) any Common Shares or other securities issued or issuable with respect to the Common Shares referred to in clause (i) by way of a stock dividend, stock split, reorganization, recapitalization or merger. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities (a) when a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in

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accordance with such registration statement, or (b) when such securities shall have been otherwise transferred and subsequent public distribution of such securities shall not require registration of them under the Securities Act.

*Registration Expenses* means all expenses incident to the registration and disposition of the Registrable Securities pursuant to Section 2 hereof, including, without limitation, all registration, filing and applicable national securities exchange fees, all fees and expenses of complying with state securities or blue sky laws (including fees and disbursements of counsel to the underwriters, if any, in connection with blue sky qualification of the Registrable Securities and determination of their eligibility for investment under the laws of the various jurisdictions), all word processing, duplicating and printing expenses, all messenger and delivery expenses, the reasonable fees and disbursements of counsel for the Shareholder, the fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of cold comfort letters or any special audits required by, or incident to, such registration, and all out-of-pocket expenses of underwriters (other than underwriting and brokerage discounts, commissions and other comparable payments or discounts); *provided, however*, that Registration Expenses shall exclude, and the Shareholder shall pay, all transfer taxes, underwriting and brokerage discounts, commissions and other comparable payments or discounts in respect of the Registrable Securities being registered.

*Securities Act* means the Securities Act of 1933, as amended and all rules and regulations promulgated thereunder.

*Shareholder* has the meaning set forth in the Introductory Paragraph.

Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Merger Agreement.

2. *Registration Under Securities Act.*

2.1 *Registration on Request*

(a) *Demand Request.* The Shareholder shall have the right, subject to the provisions of the Lock-Up Agreement, to require the Company to effect the registration under the Securities Act of all or part of the Registrable Securities held by the Shareholder, by delivering a written request thereof to the Company specifying the number of shares of Registrable Securities the Shareholder wishes to register (a *Demand Registration*); *provided, however*, that the aggregate number of the Registrable Securities to be registered pursuant to such Demand Registration constitutes at least two million shares of Common Stock. The Company shall use its reasonable best efforts, including, without limitation, assisting with sales efforts and the selection of appropriate underwriters, to cause the registration statement to become effective in respect of each Demand Registration in accordance with the intended method of distribution set forth in the written request delivered by the Shareholder as expeditiously as possible (but in any event, subject to this Section 2.1, within 120 days of receipt of such written request, and the Company shall file such registration statement within 60 days of receipt of such request).

(b) *Limitations on Registration on Request.* Subject to Section 2.1(a), the Company shall only be required to effect a maximum of three (3) Demand Registrations; *provided, however*, that the first Demand Request may not be made before the earlier of the (x) termination of the Lock-up Agreement in accordance with its terms or (y) 120 days prior to the second anniversary of the Closing Date, and *further, provided*, that the Company shall not be required to file (i) more than one such Demand Registration in any twelve-month period or (ii) any such Demand Registration within 120 days following the date of effectiveness of any registration statement relating to a Demand Registration.

(c) *Registration Statement Form.* Demand Registrations under this Section 2.1 shall be on such appropriate registration form of the Commission as selected by the Company.

(d) *Expenses.* Subject to Section 2.1(g), the Shareholder shall pay all Registration Expenses incurred in connection with any registration requested pursuant to this Section 2.1; *provided, however*, that Shareholder shall not be obligated to pay fees and expenses of counsel to the Company in excess of $50,000 per each Demand Registration.

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(e) *Effective Registration Statement.* A Demand Registration requested pursuant to this Section 2.1 shall be deemed to have been effected (including for purposes of paragraph (b) of this Section 2.1) if a registration statement with respect thereto has become effective and has been kept continuously effective for a period of 90 days (or such shorter period which shall terminate when all the Registrable Securities covered by such registration statement have been sold pursuant thereto). A Demand Registration which is not effected, subject to Section 2.1(g), shall not reduce the number of Demand Registrations permitted hereunder.

(f) *Selection of Underwriters.* The Managing Underwriters for each underwritten offering of Registrable Securities to be registered pursuant to a Demand Registration shall be a nationally or regionally recognized investment bank that is selected by the Shareholder (subject to the approval by the Company, which approval may not be unreasonably delayed or withheld).

(g) *Right to Withdraw.* If the Managing Underwriters of any underwritten offering shall advise the Company and the Shareholder that the Registrable Securities covered by the registration statement cannot be sold in such offering within a price range acceptable to the Shareholder, then the Shareholder shall have the right to notify the Company in writing that he has determined that the registration statement shall be abandoned or withdrawn, in which event the Company shall abandon or withdraw such registration statement. In the event of any such abandonment or withdrawal, such request shall be counted as a Demand Registration for purposes of the requests for registration to which the Shareholder is entitled pursuant to this Section 2.1.

(h) *Postponement.* The Company shall be entitled once in any twelve-month period to postpone for a reasonable period of time (but not exceeding an aggregate of 60 days, any such period, a *Black-Out Period* ) the filing or effectiveness of any registration statement required to be prepared and filed by it pursuant to this Section 2.1 if the Company determines, in its reasonable judgment and based on the advice of its counsel, that such registration and offering would materially interfere with any material financing or other material transaction involving the Company, or if there is an event or state of facts relating to the Company that is material to the Company (and would reasonably likely be required to be disclosed in such registration statement) the disclosure of which would, in the reasonable judgment of the Company, be materially adverse to its interests, and promptly delivers to the Shareholder in such offering a certificate signed by the Company s chief executive officer or chief financial officer (a *Delay Notice* ) stating such determination, containing a general statement of the reasons for such postponement and an estimate of the anticipated delay (but the Company shall not be required to include in such notice any reference to or description of the facts based upon which the Company is delivering such Delay Notice). If the Company shall so postpone the filing of a registration statement, (i) the Company shall use its reasonable best efforts to limit the delay to as short a period as is practicable, and (ii) the Shareholder shall have the right to withdraw the Demand Registration request by giving written notice to the Company within 10 Business Days of receipt of a Delay Notice and, in the event of such withdrawal, such Demand Registration shall not be counted for purposes of requests for Demand Registration to which the Shareholder is entitled pursuant to this Section 2.1. The Company shall be obligated to pay all Registration Expenses in such event.

2.2 *Incidental Registration*.

(a) *Right to Include Registrable Securities*. If the Company at any time proposes to register any of its common stock for its own account (a *Company Registration* ) or the account of any other stockholder under the Securities Act by registration on Form S-1, S-2, or S-3 or any successor or similar form(s) (except registrations on any such form or similar form(s) solely for registration of securities in connection with an employee benefit plan or dividend reinvestment plan or a merger or consolidation or incidental to an issuance of securities under Rule 144A under the Securities Act), it will each such time give prompt written notice to the Shareholder of its intention to do so and of the Shareholder s rights under this Section 2.2. Upon the written request of the Shareholder (which request shall specify the maximum number of Registrable Securities intended to be disposed of by the Shareholder) made as promptly as practicable and in any event within 10 days after the receipt of any such notice, the Company shall use its

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reasonable best efforts to effect the registration under the Securities Act of all Registrable Securities which the Company has been so requested to register by the Shareholder; *provided*, *however*, that in the case of a Company Registration, if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company shall give the Shareholder written notice of such determination and (i) in the case of a determination not to register, shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from any obligation of the Company to pay its portion of the Registration Expenses in connection therewith), without prejudice, however, to the rights of the Shareholder to request that such registration be effected as a registration under Section 2.1 and (ii) in the case of a determination to delay registering, shall be permitted to delay registering any Registrable Securities, for the same period as the delay in registering such other securities. No registration effected under this Section 2.2 shall relieve the Company of its obligation to effect any registration upon request under Section 2.1. The Shareholder will pay Registration Expenses in proportion to the number of Registrable Securities intended to be disposed of by the Shareholder to the total number of shares of Common Stock included in the Company Registration in connection with any registration of Registrable Securities requested pursuant to this Section 2.2.

(b) *Right to Withdraw.* The Shareholder shall have the right to withdraw its request for inclusion of its Registrable Securities in any registration statement pursuant to this Section 2.2 at any time prior to the execution of an underwriting agreement with respect thereto by giving written notice to the Company of its request to withdraw.

(c) *Priority in Incidental Registrations.* In the case of a Company Registration, if the Managing Underwriters of any underwritten offering shall inform the Company by letter of its belief that the number of Registrable Securities requested to be included in such registration, when added to the number of other securities to be offered by the Company in such registration, would materially adversely affect such offering, then the Company shall include in such registration, to the extent of the number which the Company is so advised can be sold in (or during the time of) such offering without so materially adversely affecting such offering, securities in the following priority: (A) securities proposed to be included by the Company, (B) the Registrable Securities requested by the Shareholder to be included in such registration pursuant to this Section 2.2, and (C) any securities of the Company requested to be included in such registration by any other holder having the right to include securities, on a pro rata basis, based on the number of shares of Common Stock held, or obtainable by exercise or conversion of other securities of the Company, by such holder.

(d) *Plan of Distribution.* Any participation by the Shareholder in a Company Registration shall be in accordance with the Company s plan of distribution.

(e) The right of Shareholder to request inclusion of its Registrable Securities in any registration statement pursuant to this Section 2.2 shall terminate immediately if the Lock-up Agreement is terminated in accordance with its terms.

2.3 *Registration Procedures.* If and whenever the Company is required, pursuant to the terms of this Agreement, to effect the registration of any Registrable Securities under the Securities Act in accordance with Sections 2.1 or 2.2, the following procedures shall apply:

(a) The Company shall:

(i) prepare and file with the Commission the requisite registration statement to effect such registration (and shall include all financial statements required by the Commission to be filed therewith) and thereafter use its reasonable best efforts to cause such registration statement to become and remain effective; provided that the Company may discontinue any registration of its securities which are not Registrable Securities at any time prior to the effective date of the registration statement relating thereto;

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(ii) furnish to the Shareholder such number of conformed copies of the registration statement and each amendment thereof and each amendment or supplement, if any, to the prospectus included therein (including all documents incorporated by reference therein after the initial filing) as the Shareholder shall reasonably request; and

(iii) include in the registration statement information regarding the Shareholder and the methods of distribution the Company has elected.

(b) The Company shall give notice to the Shareholder:

(i) when the registration statement and any amendment thereto has been filed with the Commission and when the registration statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for any amendment or supplement to the registration statement or the prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the registration statement or the institution of any proceeding for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the institution of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the registration statement or the prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading.

(c) The Company shall use its reasonable best efforts to obtain as soon as possible the withdrawal of any order suspending the effectiveness of the registration statement or the qualification of the securities therein for sale in any jurisdiction.

(d) The Company shall promptly deliver to the Shareholder as many copies of the prospectus (including a preliminary prospectus) included in the registration statement and any amendment or supplement thereto as the Shareholder may reasonably request. The Company consents to the use of the prospectus or any amendment or supplement thereto by the Shareholder in connection with the offering and sale of the Registrable Securities pursuant to this Agreement (except during any Black-Out Period).

(e) Prior to any offering of Registrable Securities pursuant to a registration statement, the Company shall arrange for the qualification of the Registrable Securities for sale under the laws of such jurisdictions as the Shareholder shall reasonably request and shall maintain such qualification in effect so long as required; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not then so qualified, to consent generally to the service of process in such jurisdiction, or to take any action in connection therewith that would subject it to taxation.

(f) Upon the occurrence of any event contemplated by subsections (b)(iii) or (v) above, the Company shall promptly prepare a post-effective amendment to the registration statement or an amendment or supplement to the related prospectus or file any other required document so that the registration statement and the prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading.

(g) The Company shall comply with all applicable rules and regulations of the Commission and shall make generally available to its security holders an earnings statement satisfying the provisions of

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Section 11(a) of the Securities Act as soon as practicable after the effective date of the registration statement and in any event no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company s first fiscal quarter commencing after the effective date of the registration statement.

(h) In connection with any underwritten offering effected hereunder, the Company shall:

(i) make reasonably available for inspection during normal business hours by the Shareholder s counsel, counsel to the underwriters, or any such underwriter all material financial and other records and material corporate documents of the Company and its subsidiaries;

(ii) cause the Company s officers, directors, employees, accountants and auditors to supply all material information reasonably requested by the Shareholder s counsel or counsel to the underwriters or any such other Persons as is reasonable and customary for similar due diligence examinations;

(iii) cause the Company s officers, directors, employees, accountants and auditors, as appropriate, to meet with the Shareholder, the Shareholder s counsel, the Managing Underwriters or counsel to the underwriters to discuss the contents of the registration statement and the Company shall reflect in the registration statement such comments as such Persons reasonably propose;

(iv) enter into an underwriting agreement in customary form (including indemnification of the underwriters on substantially the same terms as contained in Section 2.4 hereof);

(v) make such representations and warranties to the Shareholder and the underwriters in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings;

(vi) obtain opinions of counsel to the Company and updates thereof (which opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters, if any) addressed to the Shareholder and the underwriters, if any, covering such matters as are customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the Shareholder and underwriters;

(vii) obtain comfort letters and updates thereof from the independent accountants of the Company (and, if necessary, any other independent accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the registration statement), addressed to the Shareholder and the underwriters, if any, in customary form and covering matters of the type customarily covered in comfort letters in connection with underwritten offerings;

(viii) deliver such documents and certificates as may be reasonably requested by the Shareholder or the Managing Underwriters, if any, including those to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company;

(ix) deliver to the Managing Underwriters and their counsel all notices and other documents required to be provided to the Shareholder pursuant to this Section 2.3; and

(x) assist the Managing Underwriters in complying with the rules and regulations of the National Association of Securities Dealers.

The Shareholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in paragraph (b)(iii) or (v) of this Section 2.3, the Shareholder will, to the extent appropriate, discontinue its disposition of Registrable Securities pursuant to the registration statement relating to such Registrable Securities until, in the case of paragraph (b)(v) of this Section 2.3, its receipt of the supplemented or amended prospectus contemplated by paragraph (b)(v) of this Section 2.3 and, if so directed by the Company, will deliver to the Company (at the Company s expense)

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all copies, other than permanent file copies, then in its possession, of the prospectus relating to such Registrable Securities current at the time of receipt of such notice. If the disposition by the Shareholder of its securities is discontinued pursuant to the foregoing sentence, the Company shall extend the period of effectiveness of the registration statement by the number of days during the period from and including the date of the giving of notice to and including the date when the Shareholder shall have received copies of the supplemented or amended prospectus contemplated by paragraph (b)(v) of this Section 2.3; and, if the Company shall not so extend such period, the request pursuant to which such registration statement was filed shall not be counted for purposes of the requests for registration to which the Shareholder is entitled pursuant to Section 2.1 hereof.

It shall be a condition precedent to the obligation of the Company to take any action pursuant to this Agreement in respect of the Registrable Securities which are to be registered at the request of the Shareholder that the Shareholder shall furnish to the Company within ten days of the Company s request such information regarding the Shareholder and the Registrable Securities held by the Shareholder as the Company shall reasonably request and as shall be required in connection with the action taken by the Company.

2.4 *Indemnification and Contribution.*

(a) *Indemnification by the Company.* The Company agrees that in the event of any registration of any securities of the Company pursuant to this Agreement, the Company shall, and hereby does, indemnify and hold harmless the Shareholder, and each other Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls any such underwriter within the meaning of the Securities Act, against any losses, claims, damages, or liabilities, joint or several, to which the Shareholder or any such underwriter or controlling Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities, joint or several (or actions or proceedings in respect thereof), arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered under the Securities Act on the effective date thereof, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, in light of the circumstances in which they were made) not misleading, and the Company shall reimburse the Shareholder and each such underwriter and controlling Person for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, liability, action or proceeding or (iii) any violation by the Company of any federal, state or common law rule or regulation applicable to the Company and relating to action required of or inaction by the Company in connection with any such registration; *provided*, *however*, that the Company shall not be liable in any such case to the Shareholder to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company expressly for use in connection with such registration by or on behalf of the Shareholder; *provided*, *further*, that as to any preliminary prospectus with respect to an underwritten registration, the provisions of this Section 2.4 shall not inure to the benefit of the Shareholder on account of any loss, claim, damage, liability or action arising from the sale of Common Shares to any person by the Shareholder if the Shareholder failed to send or give a copy of the final prospectus to that person, and the untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact in such preliminary prospectus thereto was corrected in the final prospectus. Such indemnity shall remain in full force regardless of any investigation made by or on behalf of the Shareholder or any such underwriter or controlling Person and shall survive the delivery of and the payment for the Common Shares sold by the Shareholder.

(b) *Indemnification by the Shareholder.* In connection with any registration statement in which the Shareholder includes Registrable Securities the Shareholder hereby agrees to indemnify and hold harmless,

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severally and not jointly (in the same manner and to the same extent as set forth in paragraph (a) of this Section 2.4), the Company, and each director of the Company, each officer of the Company and each other Person, if any, who controls the Company within the meaning of the Securities Act, with respect to any statement or alleged statement in or omission or alleged omission from such registration statement, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, but only to the extent such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Shareholder specifically stating that it is for use in the preparation of such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling Person and shall survive the delivery of and the payment for the Common Shares sold by the Shareholder.

(c) *Notices of Claims, etc.* Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding involving a claim referred to in the preceding subsections of this Section 2.4, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action or proceeding; *provided*, *however*, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding subsections of this Section 2.4, except to the extent that the indemnifying party is not otherwise aware of the claim and is actually materially prejudiced by such failure to give notice, and shall not relieve the indemnifying party from any liability which it may have to the indemnified party otherwise than under this Section 2.4. In case any such action or proceeding is brought against an indemnified party, the indemnifying party shall (i) have the right to assume the defense of such action, including the employment of counsel to be chosen by the indemnifying party which is reasonably satisfactory to the indemnified party, and (ii) be responsible for payment of expenses in connection with such action or proceeding. The indemnified party shall have the right to employ its own counsel (including local counsel) in any such case, but the legal fees and expenses of such counsel shall be at the expense of the indemnified party unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying party in connection with the defense of such action, (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to take charge of the defense of such action within a reasonable period of time after notice of the institution of such action, (iii) the indemnified party shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified party), or (iv) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, in any of which events such fees and expenses shall be borne by the indemnifying party. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement that (i) does not include as an unconditional term thereof the giving by the plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation or (ii) provides for relief other than the payment of monetary damages (and such monetary damages shall be paid in full by the indemnifying party).

(d) *Contribution.* If the indemnification provided for in this Section 2.4 shall for any reason be held by a court to be unavailable to an indemnified party under subsection (a) or (b) hereof in respect of any loss, claim, damage or liability, or any action in respect thereof, then, in lieu of the amount paid or payable under subsection (a) or (b) hereof, the indemnified party and the indemnifying party under subsection (a) or (b) hereof shall contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating the same), (i) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand, and the indemnified party on the other, which resulted in such loss, claim, damage or liability, or action in respect thereof, with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law or if the allocation provided in

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this clause (ii) provides a greater amount to the indemnified party than clause (i) above, in such proportion as shall be appropriate to reflect not only the relative fault but also the relative benefits received by the indemnifying party and the indemnified party from the offering of the securities covered by such registration statement as well as any other relevant equitable considerations. The parties hereto agree that it would not be just and equitable if contributions pursuant to this Section 2.4(d) were to be determined by pro rata allocation or by any other method of allocation which does not take into account the equitable considerations referred to in the preceding sentence of this Section 2.4(d). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. In addition, no Person shall be obligated to contribute hereunder any amounts in payment for any settlement of any action or claim effected without such Person s consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(e) *Other Indemnification.* The indemnification agreements contained in this Section 2.4 shall be in addition to any other rights to indemnification or contribution which any indemnified party may have pursuant to law or contract and shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any indemnified party and shall survive the delivery of and the payment for the Common Shares sold by the Shareholder.

(f) *Indemnification Payments.* The indemnification and contribution required by this Section 2.4 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expenses, losses, damages or liabilities are incurred.

2.5 *Stop Transfer Orders.* In connection with the offering of any Registrable Securities registered pursuant to this Agreement, the Company shall instruct any transfer agent and registrar of such Registrable Securities to release any stop transfer orders with respect to any such Registrable Securities.

2.6 *Limitation on Sale or Distribution of Other Securities.*

(a) The Shareholder (regardless of whether the Shareholder is participating in such registration) agrees, to the extent requested in writing by a Managing Underwriter of any underwritten registration effected pursuant to and in compliance with Section 2.1 or 2.2, not to sell, transfer or otherwise dispose of, including any sale pursuant to Rule 144 under the Securities Act, any shares of Common Stock, or any other security of the Company convertible into or exchangeable or exercisable for Common Stock (other than as part of such underwritten public offering) during the time period reasonably requested by the Managing Underwriters, not to exceed 90 days and subject to any registration rights to which the Shareholder would otherwise be entitled pursuant to Section 2.2.

(b) Notwithstanding the other provisions of this Agreement, the Company shall not be obligated to register the Registrable Securities of the Shareholder (i) if the Shareholder or any underwriter of such Registrable Securities shall fail to furnish to the Company necessary information in respect of the distribution of such Registrable Securities, or (ii) in the case of a Company Registration, if such registration involves an underwritten offering, such Registrable Securities are not included in such underwritten offering on the same terms and conditions as shall be applicable to the other securities of the Company being sold through underwriters in the registration or the Shareholder fails to enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwritten offering.

2.7 *No Required Sale.* Nothing in this Agreement shall be deemed to create an independent obligation on the part of the Shareholder to sell any Registrable Securities pursuant to any effective registration statement.

2.8 *Exchange Act Compliance.* If the Company is subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file all reports required to be filed by it under the Exchange Act and it will take such further action as the Shareholder may reasonably request so as to enable the Shareholder to sell Registrable Securities without registration under the Securities Act pursuant

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to Rule 144 under the Securities Act, as such rule may be in effect from time-to-time, or any similar or successor rule or regulation hereafter promulgated by the Commission.

3. *Miscellaneous.*

3.1 *Amendments and Waivers.* (i) Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Shareholder or, in the case of a waiver, by the party or parties against whom the waiver is to be provided.

(ii) No failure or delay by any party in exercising any right, power or privilege hereunder (other than a failure or delay beyond a period of time specified herein) shall operate as a waiver thereof and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

3.2 *Notices.* Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to the other shall be in writing and delivered by hand-delivery, registered first-class mail, telex, telecopier, or air courier guaranteeing overnight delivery, as follows:

If to the Buyer:

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Chief Executive Officer
Telecopier: 269-673-7535

and

Perrigo Company
515 Eastern Avenue
Allegan, MI 49010
Attention: Vice President and General Counsel
Telecopier: 269-673-1386

with a copy to:

Morgan, Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540
Attention:. Randall B. Sunberg, Esq.
Telecopier: 609-919-6639

and

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attention: Robert G. Robison, Esq.
Telecopier: 212-309-6001

If to the Shareholder:

Moshe Arkin
29 Lehi Street
Bnei-Brak 51200
Israel
Telecopier: 972-3-577-3500

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with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attention: David Fox, Esq.
Thomas W. Greenberg, Esq.
Telecopier: 212-735-2000

and

Rosenberg, Hacohen, Goddard & Ephrat
24 Raoul Wallenberg Street
Tel-Aviv 69719
Israel
Attention: Dan Hacohen, Adv.
Telecopier: 972-3-766-6567

or to such other place and with such other copies as either party may designate as to itself by written notice to the other.

All such notices, requests, instructions or other documents shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; when receipt is acknowledged by addressee, if by telecopier transmission; and on the next business day if timely delivered to a nationally recognized courier guaranteeing overnight delivery.

3.3 *Assignment; Third Party Beneficiaries.* This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. The registration rights of the Shareholder with respect to any Registrable Securities may not be transferred; *provided, however*, that the Shareholder may assign any rights under this Agreement to a family member or trust or other entity for estate or tax planning purposes, provided, that the transferee agrees to be bound by the provisions hereof. Except as provided in Section 2.4, no Person other than the parties hereto and their successors and permitted assigns is intended to be a third party beneficiary of this Agreement.

3.4 *Specific Performance.* The parties hereto acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement, and shall be entitled to enforce specifically the provisions of this Agreement in any court of the United States or any state thereof having jurisdiction, in addition to any other remedy to which the parties may be entitled under this Agreement, any other document which is part of the transactions contemplated hereby or at law or in equity.

3.5 *No Inconsistent Agreements.* The Company will not, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Shareholder in this Agreement or otherwise conflicts with the provisions hereof. The Company further represents and warrants that the rights granted to the Shareholder hereunder do not in any way conflict with and are not inconsistent with any other agreements to which the Company is a party or by which it is bound.

3.6 *Descriptive Headings.* The headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

3.7 *Governing Law.* This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the internal laws of the State of New York. Each of the parties to this

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Agreement hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York and the United States of America located in the County of New York for any action or proceeding arising out of or relating to this Agreement (and agrees not to commence any action or proceeding relating thereto except in such courts), and further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in Section 3.2 hereof shall be effective service of process for any action or proceeding brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any action or proceeding arising out of this Agreement in the courts of the State of New York or the United States of America located in the County of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

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

3.9 *Invalidity of Provision.* In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

3.10 *Further Assurances.* Each party hereto shall do and perform or cause to be done and performed all further acts and things and shall execute and deliver all other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

3.11 *Entire Agreement; Effectiveness.* This Agreement, the Lock-Up Agreement and the Merger Agreement constitute the entire agreement, and supersede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

3.12 *Condition to Effectiveness.* Notwithstanding anything in this agreement to the contrary, this agreement shall not be effective until the Effective Time. In the event the Effective Time does not occur, this agreement shall not be valid, binding and enforceable against any of the parties hereto.

**[Signature Page to Follow]**

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized.

PERRIGO COMPANY

/s/ DAVID T. GIBBONS

Name: David T. Gibbons
Title: *Chairman, President and Chief Executive Officer*

MOSHE ARKIN

/s/ MOSHE ARKIN

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**APPENDIX I**

**EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made and entered into as of November 14, 2004, by and between Perrigo Company (the Parent ), Agis Industries (1983) Ltd. (the Company ), and Moshe Arkin (the Executive );

**WITNESSETH THAT:**

WHEREAS, the Executive is currently a senior executive officer of the Company;

WHEREAS, as of the date hereof, the Company has entered into an Agreement and Plan of Merger (the Merger Agreement ) pursuant to which the Company will become a wholly-owned subsidiary of the Parent upon the Closing, as defined in the Merger Agreement;

WHEREAS, the Parent, the Company and the Executive desire to enter into this Agreement pertaining to the employment of the Executive by the Company effective upon the date of the Closing (the Effective Date );

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parent, the Executive and the Company hereby agree as follows:

1. *Performance of Services.* The Executive s employment with the Company shall be subject to the following:

(a) Subject to the terms of this Agreement, the Company hereby agrees to employ the Executive on the Effective Date in the position of Vice Chairman of Parent, and the Executive hereby agrees to remain in the employ of the Company. The Parent agrees to appoint the Executive, and the Executive agrees to serve, as a member of the Parent s Executive Committee ( Executive Committee ).

(b) While the Executive is employed by the Company, the Executive shall devote his full time (reasonable sick leave and vacations excepted) and best efforts, energies and talents to serving the Company.

(c) The Executive shall report to the Parent s Chief Executive Officer, and shall perform such duties as may be assigned to him by the Chief Executive Officer. Such duties shall include overall responsibility for long-term strategic planning of the Parent s and Company s Rx and API businesses, monitoring achievement of operational and financial results, and developing growth and diversification strategies to achieve ongoing objectives. The President of the Company and the Executive Vice President and General Manager of Perrigo s Pharmaceuticals shall directly report to the Executive. The Board may make changes to the Executive s position, reporting line, authority, or responsibilities provided that the totality of the Executive s position, reporting line, authority, and responsibilities is comparable to those typically attributable to members of the Executive Committee.

(d) The Executive agrees that he shall perform his duties faithfully and efficiently subject to the direction of the Board of Directors of Parent (the Board ). The Executive s duties shall include providing services for both the Company and its Affiliates (as defined below), as determined by the Company (as used herein, Company shall mean and include the Company and all of its Affiliates).

(e) Notwithstanding the foregoing provisions of this paragraph 1, during the Agreement Term, the Executive may devote reasonable time to pursue activities other than those required under this Agreement, including activities conducted by the Executive prior to the Effective Date, activities involving professional, charitable, educational, religious and similar types of organizations, speaking engagements, membership on the boards of directors of other profit or not-for-profit organizations, and

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similar activities, to the extent that such other activities do not, in the judgment of the Board, inhibit or prohibit the performance of the Executive s duties under this Agreement or conflict in any material way with the Company s or Parent s business.

(f) Subject to the terms of this Agreement, the Executive shall not be required to perform services under this Agreement during any period that he is Disabled (as defined in paragraph 3(b)).

(g) The Executive s place of employment shall be in Israel, provided that the Company may require the Executive to travel, consistent with the Executive s travel requirements prior to the Effective Date, outside Israel in order to fulfill his duties with the Company.

(h) The Executive s position is a senior managerial position , as defined in the Israeli Work and Rest Hours Law, 1951, and requires a high level of trust. Accordingly, the provisions of said law shall not apply to the Executive and the Executive agrees that he may be required to work beyond the regular working hours of the Company, for no additional compensation other than as specified in this Agreement.

(i) This Agreement shall govern the terms and conditions of the Executive s employment and any termination thereof from the Effective Date until the third anniversary of the Effective Date (the Agreement Term ). Thereafter, the Agreement shall automatically be extended for additional 24-month periods, unless either party to this Agreement provides notice of non-renewal to the other party at least 120 days before the last day of the Agreement Term. The term Agreement Term shall also include any renewal period under the foregoing provisions of this paragraph 1(i). Following the expiration of the Agreement Term, neither party shall have any further obligations under this Agreement, other than obligations accruing or arising prior to such expiration. The portion of the Agreement Term during which the Executive is employed by the Company is hereinafter referred to as the Employment Period .

(j) For purposes of this Agreement, the term Affiliate shall mean any corporation, partnership, joint venture or other entity in which at least a fifty percent interest in such entity is owned, directly or indirectly, by the Company (or a successor to the Company), including Parent and its Affiliates.

2. *Compensation and Benefits.* Subject to the terms of this Agreement, during the Employment Period, the Company shall compensate the Executive for his services as follows:

(a) Base Salary. The Executive shall receive base salary at an annual rate of $400,000, payable in substantially equal monthly or more frequent installments (the Salary ). Commencing on or around October 2006, the Executive s Salary shall be reviewed for increase at least annually by the Chief Executive Officer, the Board or the Compensation Committee of the Board pursuant to its review policies, if any, for members of the Executive Committee. Any increase in Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement.

(b) Annual Bonus. During the Agreement Term, the Executive shall be entitled to participate in the Management Incentive Bonus Plan of the Parent (the MIB ) administered by the Compensation Committee of the Board, or any successor annual bonus plan or arrangement generally made available to the members of the Executive Committee. The Executive s participation in the MIB shall generally be on terms and conditions applicable to the members of the Executive Committee. The MIB shall provide the Executive with a target bonus opportunity of not less than $275,000 for each fiscal year of the Parent (prorated for the fiscal year in which the Effective Date occurs to reflect less than a full year of employment). Any bonus payable under this paragraph 2(b) shall be paid in accordance with the terms of the MIB.

(c) Stock Awards. When the Company makes its next annual grant of stock-based compensation to its senior management personnel, expected to occur in or around October, 2005, the Executive shall be granted an award (the Initial Award ) in the form of an option to purchase 50,000 shares of common stock of the Parent or other stock-based award of equivalent value (on a Black-Scholes basis) on such terms and conditions as generally applicable to awards then granted to similarly

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situated senior executives. Annually thereafter during the Employment Period the Executive shall be entitled to receive additional annual stock-based awards in amounts and on terms and conditions no less favorable than the annual awards granted in the applicable year to members of the Executive Committee, provided that each such award shall have a value no less than the value of the Initial Award. For the avoidance of doubt, the Initial Award shall be in addition to any payments or awards made in respect of Section 5.13 of the Merger Agreement.

(d) Managers Insurance. During the Employment Period, the Company shall, or shall cause one of its Affiliates to, continue the Managers Insurance *(Bituach Menahalim)* as in effect immediately prior to the Effective Date and contribute thereto, on a monthly basis, 18.33% of the Executive s monthly Salary, 8.33% of which shall be in respect of severance compensation (the Severance Component ), 5% of which shall be in respect of pension, and 5% of which shall be deducted by the Company from the monthly payment of the Executive s Salary as the Executive s contribution to said Managers Insurance. The parties acknowledge and agree that in accordance with Section 14 to the Severance Pay Law 5723-1963, the allocation to Managers Insurance under this Section 2(d) shall be in lieu of severance pay according to the Severance Pay Law that Executive may be entitled to.

(e) Disability. During the Employment Period, the Company shall, or shall cause one of its Affiliates to, continue the Disability Insurance *(Ovdan Kosher Avoda)* as in effect immediately prior to the Effective Date and contribute thereto, on a monthly basis, 2.5% of the Executive s monthly Salary.

(f) Education Fund. During the Employment Period, the Company shall, or shall cause one of its Affiliates to, continue the Education Fund *(Keren Hishtalmut)* as in effect immediately prior to the Effective Date and contribute thereto, on a monthly basis, 7.5% of the Executive s monthly Salary, subject to the Executive s contribution of an additional 2.5% of his monthly Salary. All tax obligations related to the Education Fund shall be borne by the Executive.

(g) Recreation Funds. During the Employment Period, the Company shall, or shall cause one of its Affiliates to, provide and pay the Executive Recreation Funds *(Dmei Havra ah)* at the rate required by law and regulations and consistent with terms and conditions in effect immediately prior to the Effective Date.

(h) Benefits and Perquisites. During the Employment Period, the Company shall, or shall cause one of its Affiliates to, provide the Executive with benefits and perquisites that are consistent with the benefits and perquisites provided to the Executive immediately prior to the Effective Date.

(i) Executive Retention Plan. In the event the Company elects to activate its Executive Retention Plan, the Executive shall participate in such plan on terms and conditions no less favorable than the terms and conditions applicable to the members of the Executive Committee.

(j) Vacation. During each calendar year during the Employment Period, the Executive shall be entitled to 23 working days of vacation (or a pro rata number of days for any partial year that occurs during the Employment Period) determined in accordance with applicable employment laws of Israel and Company policies.

(k) If it is determined that any payment made or benefit provided to Executive pursuant to this Agreement in connection with the performance of his duties hereunder is subject to any income tax payable under any United States federal, state, local or other law, as a result of the duties performed hereunder, then Executive shall receive a tax gross-up payment with respect to such taxes. The tax gross-up payment will be an amount such that, after payment of taxes on such payment, there remains a balance sufficient to pay the taxes being reimbursed. Any such tax gross-up payments will be made at the time Executive s US federal income tax return for the applicable calendar year is filed.

3. *Termination.* The Executive s employment with the Company during the Agreement Term may be terminated under the following circumstances.

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(a) Death. The Executive s employment hereunder shall terminate upon his death.

(b) Disability. If the Executive becomes Disabled, the Company may terminate his employment with the Company. For purposes of this Agreement, the Executive shall be deemed to be Disabled if (i) he is eligible for disability benefits under a Company long term disability plan, or (ii) he has a physical or mental disability which renders him incapable, after reasonable accommodation, of performing substantially all of his duties hereunder for a period of 180 days (which need not be consecutive) in any 12-month period. In the event of a dispute as to whether the Executive is Disabled, the Company may, at its expense, refer him to a licensed practicing physician of the Company s choice and the Executive agrees to submit to such tests and examination as such physician shall deem appropriate. The determination of such physician shall be final and binding on the Company and Executive.

(c) Cause. The Company may terminate the Executive s employment hereunder immediately and at any time for Cause by written notice to the Executive detailing the basis for the Cause termination. For purposes of this Agreement, Cause means (i) gross negligence or willful and continued failure by the Executive to substantially perform his duties as an employee of the Company (other than any such failure resulting from incapacity due to physical or mental illness), (ii) willful misconduct by the Executive which is demonstrably and materially injurious to the Company, monetarily or otherwise, (iii) the engaging by the Executive in egregious misconduct involving serious moral turpitude to the extent that his creditability and reputation no longer conforms to the standard of senior executives of the Company, (iv) the commission by the Executive of a material act of dishonesty or breach of trust resulting or intending to result in personal benefit or enrichment to the Executive at the expense of the Company or (v) a material breach of this Agreement. For purposes of this provision, no act or failure to act shall be deemed willful unless done or omitted to be done not in good faith and without reasonable belief that such action or omission was in the best interest of the Company or Parent.

(d) Termination by Executive. The Executive may terminate his employment hereunder at any time for any reason by giving the Company prior written notice not less than 30 days prior to such termination.

(e) Mutual Agreement. This Agreement may be terminated at any time by mutual written agreement of the parties.

(f) Termination by the Company without Cause. The Company may terminate the Executive s employment hereunder at any time for any reason by giving the Executive prior written notice not less than 30 days prior to such termination; provided, however, termination by the Company shall be deemed to have occurred under this paragraph 3(f) only if such termination by the Company is not pursuant to paragraph 3(c) or 3(e).

(g) Termination by the Executive for Good Reason. The Executive may terminate his employment hereunder immediately at any time for any Good Reason. Good Reason shall mean, without the Executive s consent, (i) any breach or violation of Section 1(c) or the Parent or Company requesting or requiring the Executive to relocate his principal place of employment outside the State of Israel, (ii) the failure by the Company, or if applicable the Parent, to pay the Executive any portion of his current compensation within ten (10) business days of the date such compensation is due or otherwise declared payable, (iii) the failure by the Company, or if applicable the Parent, to continue any incentive compensation plan in which the Executive participates which is material to his compensation, unless an equitable substitute plan or alternative plan is made available to the Executive; or (iv) the failure by the Company or Parent to obtain a satisfactory agreement from any successor to the business of the Company or Parent to assume and agree to perform this Agreement.

(h) Date of Termination. Date of Termination means the last day that the Executive is employed by the Company under this Agreement under circumstances in which his employment is terminated in accordance with one of the foregoing provisions of this paragraph 3.

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4. *Rights Upon Termination.*

(a) If the Executive s Date of Termination occurs during the Agreement Term for any reason, the Company shall:

(i) Pay the Executive s Salary for the period ending on the Date of Termination.

(ii) Make a payment in respect of unused vacation days, as determined in accordance with Company policy as in effect from time to time.

(iii) Make any other payments or provide benefits pursuant to any employee benefit plans or arrangements adopted by the Company, to the extent such payments and benefits are earned and vested as of the Date of Termination, or are required by law to be offered for periods following the Executive s Date of Termination.

(iv) Transfer to the Executive, within 30 days following Date of Termination, any and all allocations accrued under his Managers Insurance.

The amounts payable under clauses (i) and (ii) above shall be paid in a lump sum as soon as practicable following such Date of Termination and any amounts payable under clause (iii) and (iv) above shall be paid in accordance applicable law and with the terms of the applicable plan or arrangement (the amounts and benefits, referred to in clauses, (i), (ii), (iii) and (iv) above, being referred to as Accrued Obligations ).

(b) If, during the Agreement Term, the Executive s employment is terminated by the Company without Cause or if the Executive terminates his employment for Good Reason, then in addition to the Accrued Obligations, the Company shall:

(i) Continue to pay to the Executive, an amount equal to the product of (A) the sum of (i) the Executive s Salary and (ii) the higher of (1) the Executive s target bonus for year in which Date of Termination occurs or (2) the Executive s target bonus for the year immediately preceding the year in which Date of Termination occurs (or, if the Date of Termination occurs during Parent s fiscal year 2005, the target bonus for year immediately preceding the Effective Date) multiplied by (B) the number of full and partial years remaining in the Agreement Term after the Date of Termination (but in no event less than one year and determined without regard to the actual Date of Termination) (such period being referred to as the Severance Period ).

(ii) Continue to make contributions contemplated by Sections 2(d), (e), (f) and (g) for the duration of the Severance Period.

(iii) Notwithstanding anything in the 2003 Long Term Incentive Plan (or any successor plan) to the contrary, provide for the full vesting, as of the Date of Termination, of all then unvested restricted stock awards.

(iv) Notwithstanding anything in the 2003 Long Term Incentive Plan (or any successor plan), vest the Executive, as of Date of Termination, in that number of unvested stock options which would have vested during the 24 month period following the Date of Termination. The Executive shall be entitled to exercise his options at any time prior to the earlier of (A) the date which is 30 days after the date which is 24 months after such Date of Termination, or (ii) the expiration of the respective terms of the options.

(c) Notwithstanding the terms of the MIB plan, if the Executive s Date of Termination occurs under paragraph 3(a) (relating to death), paragraph 3(b) (relating to being Disabled), or, subject to the Executive s execution of a release of claims in a form presented by the Company, paragraph 3(f) (termination without Cause) or paragraph 3(g) (termination for Good Reason), then in addition to the amounts payable in accordance with paragraph 4(a) and 4(b), the Executive will be entitled to a pro rata bonus payment for the year in which such Date of Termination occurs, which shall be an amount equal to the product of (A) the bonus the Executive would have received for the fiscal year which includes his Date of Termination if he had remained employed by the Company until the end of such year, multiplied

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by (B) a fraction, the numerator of which is the number of days in the fiscal year preceding the Executive s Date of Termination and the denominator of which is 365. Such pro rata bonus shall be payable in a lump sum payment on the next installment date on which bonus payments are made to participants in the MIB plan following the end of the fiscal year to which such bonus relates.

(d) Notwithstanding any provision of this Section 4 to the contrary, the Company shall have no obligation to transfer or release the Severance Component of the Managers Insurance if there occurs an Israeli labor court ruling that denies the Executive s right to severance payment by pursuant to Sections 17 to the Israeli Severance Payment Law 5723 1963.

5. *Non-Renewal.* In the event this Agreement terminates due to non-renewal of the Agreement Term, then, notwithstanding anything in the 2003 Long Term Incentive Plan (or any successor plan) to the contrary, the Executive shall be entitled to vest (whether or not his employment terminates), as of the date of the notice of non-renewal, in that number of unvested stock options and restricted stock award which would have vested during the 24 month period following the end of the Agreement Term. The Executive shall be entitled to exercise his options at any time prior to the earlier of (A) the date which is 30 days after the date which is 24 months after such Date of Termination, or (ii) the expiration of the respective terms of the options.

6. *Accrued Payments.* Upon the Effective Date, the Executive shall be entitled, to the extent not yet paid, (i) all amounts due to the Executive under his agreement with Agis Industries (1983) Ltd. and its affiliates (the Prior Agreement )), including without limitation, the amounts due under the Managers Insurance, Education Funds, unused vacation, as if the Executive s employment had been terminated without cause as of the Effective Date, in each case, in accordance with applicable law and the terms and conditions of the relevant insurance policies and (ii) a pro rata bonus with respect to the portion of the performance period to the Effective Date, determined in accordance with the provisions of the Prior Agreement. As of the Effective Date, the Parent shall cause the Company to release and transfer to the Executive all amounts deposited in the Mangers Insurance Fund and the Education Fund, in each case, in accordance with applicable law and the terms and conditions of the relevant insurance policies.

7. *Confidentiality and Noncompetition.* In consideration of the payment and benefits contemplated by Section 4, the Executive acknowledges and agrees that simultaneous with the execution of this Agreement, he will be required to execute and comply with the Noncompetition and Nondisclosure Agreement in the form attached to this Agreement as Exhibit A.

8. *Nonalienation.* The interests of the Executive under this Agreement are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by the Executor s creditors or beneficiaries.

9. *Successors.* This Agreement shall be binding upon, and inure to the benefit of, the Company and its successors and assigns and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company s assets and business.

10. *Notices.* Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or sent by facsimile or prepaid overnight courier to the parties at the addresses set forth below (or such other addresses as shall be specified by the parties by like notice):

To the Parent:

Perrigo Company
515 Eastern Avenue
Allegan, Michigan 49010

Attn.: General Counsel
Director of Human Resources

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To the Executive:

Moshe Arkin, at the most recent address shown in the records of the Company.

11. *Severability.* The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, and this Agreement will be construed as if such invalid or unenforceable provision were omitted (but only to the extent that such provision cannot be appropriately reformed or modified).

12. *Waiver of Breach.* No waiver of any party hereto of a breach of any provision of this Agreement by any other party will operate or be construed as a waiver of any subsequent breach by such other party. The failure of any party hereto to take any action by reason of such breach will not deprive such party of the right to take action at any time while such breach continues.

13. *Amendment.* This Agreement may be amended or canceled only by mutual agreement of the parties in writing without the consent of any other person. So long as the Executive lives, no person, other than the parties hereto, shall have any rights under or interest in this Agreement or the subject matter hereof.

14. *Survival of Agreement.* Except as otherwise expressly provided in this Agreement, the rights and obligations of the parties to this Agreement shall survive the termination of the Executive s employment with the Company.

15. *Entire Agreement.* Except with respect to the Prior Agreement which shall terminate on the satisfaction of the Company s and Parent s obligations contemplated by Section 6, this Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, if any, between the Executive and the Company or its Affiliates relating to the subject matter hereof.

16. *Governing Law.* This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Israel without regard to principals of conflict of laws. Any proceeding related to or arising out of this Agreement shall be commenced, prosecuted or continued in Israel. Notwithstanding the foregoing, any controversy relating to provisions of Section 2(b) and 2(c) shall be governed by the laws of the jurisdiction set forth in the applicable award document.

17. *Acknowledgement by Executive.* The Executive represents to the Company that he is knowledgeable and sophisticated as to business matters, including the subject matter of this Agreement, that he has read this Agreement and that he understands its terms. The Executive acknowledges that, prior to assenting to the terms of this Agreement, he has been given a reasonable time to review it, to consult with counsel of his choice, and to negotiate at arm s-length with the Company as to the contents. The Executive and the Company agree that the language used in this Agreement is the language chosen by the parties to express their mutual intent, and that no rule of strict construction is to be applied against any party hereto. Executive further agrees that, upon the payments of any amounts under Section 4, 5, or 6, as applicable, that the Executive shall deliver such releases and acknowledgements as the Parent shall reasonably request in order to confirm that the amounts paid under such provisions are exclusive of any amounts the Executive may be entitled under Israeli Statutory Provisions governing severance, Mangers Insurance, Education Fund, and Recreation Fund.

18. *Conditions to Effectiveness.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be effective until the Closing. In the event the Closing does not occur, this Agreement shall not be valid, binding and enforceable against any of the parties hereto.

19. *Indemnification.* Parent and the Company shall provide the Executive with indemnification and directors and officers insurance to the same extent that the Parent provides such protection to its Chief Executive Officer and Chairman.

20. *No Mitigation.* The Company s, or if applicable the Parent s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by

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any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company or Parent may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and, such amounts shall not be reduced whether or not the Executive obtains other employment.

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IN WITNESS WHEREOF, the Executive has hereunto set his hand, and Parent and the Company has caused these presents to be executed in its name and on its behalf, as of the date above first written.

EXECUTIVE

/s/ MOSHE ARKIN

Moshe Arkin

PERRIGO COMPANY

/s/ BY DAVID T. GIBBONS

Its *Chairman, President and Chief Executive Officer*

Agis Industries (1983) Ltd.

By /s/ RAFAEL LEBEL

Its *Chief Executive Officer*

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**EXHIBIT A**

**NONCOMPETITION AND NONDISCLOSURE AGREEMENT**

THIS NONCOMPETITION AND NONDISCLOSURE AGREEMENT ( Agreement ) entered into on November 14, 2004 by and between PERRIGO COMPANY, a Michigan corporation, for and in behalf of itself and each of its subsidiary and affiliated companies (and upon the consummation of the transactions contemplated by the Merger Agreement (as defined in the Employment Agreement) including Agis Industries (1983) Ltd.) (collectively referred to as Perrigo or the Company ), and Moshe Arkin (referred to as Employee ).

**WITNESSETH:**

WHEREAS Perrigo s special competence in its various fields of endeavor is the secret of its growth, and provides the source of both career opportunities and security for employees throughout the company. Such growth depends to a significant degree on Perrigo s confidential, proprietary information. This is information that is not generally known to others and includes more and better information than our competitors have about research, development, production, marketing and management in the manufacture, preparation, handling, treatment, storage, sale, distribution, shipment and use of products for the Store and Value Brand Product (as herein defined) ( Company Business ). To obtain such information and use it successfully, Perrigo spends considerable sums of money in product development, the development of marketing methods, training its employees, and service to its customers; and

WHEREAS Employee has entered into an employment agreement with Perrigo dated as of the date hereof (the Employment Agreement ) pursuant to which Employee will become a key employee of Perrigo. In connection with providing such employment services, Employee has obtained or will obtain access to sensitive information regarding the Company s Business and its customers. The parties agree that improper disclosure or use of that information will cause serious and irreparable harm to the company.

NOW, THEREFORE, in consideration of Perrigo s agreement to employ Employee and provide the compensation and benefits as set forth in the Employment Agreement and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. *Restriction on Competing Activities.* Beginning with the date on which the Employee commences his employment under the Employment Agreement and ending on the later of (i) end of the Agreement Term (as defined in the Employment Agreement) and (ii) first anniversary of the Employee s Date of Termination (as defined in the Employment Agreement) (the Non-Competition Period ), Employee will not, directly or indirectly, alone or as a partner, officer, director, owner, employee, or consultant of any business or other entity, be engaged in any business or other enterprise that competes, directly or indirectly, in any way with the Company Business. In addition to its plain meaning and understanding, compete in any way with the Company Business shall also specifically include engaging in any way in the production, distribution or sale of any products to the Store and Value Brand Products that are similar to or competitive with those now or hereafter produced, distributed or sold by Perrigo. As used in this Agreement, Store and Value Brand Products means those products that are supplied by a manufacturer or marketer through channels of distribution (including but not limited to, wholesalers, distributors and retailers) that bear either (i) a label or brand name that is used exclusively by the wholesaler, distributor or retailer, or (ii) a label or brand name that is not regularly advertised by national broadcast, print, direct mail or other media for the purpose of establishing brand name recognition of the manufacturer, marketer and/or distributor with the general public. Employee also agrees that during the Non-Competition Period, he will not, directly or indirectly, either for himself or any other person, solicit or induce, or attempt to solicit or induce, any individual who is an employee, independent contractor, supplier, or customer of Perrigo to terminate his, her, or its business relationship with the company or in any way interfere with or

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disrupt the company s relationship with any of its employees, independent contractors, suppliers, or customers.

2. *Nondisclosure.* Employee will not during or at any time after the termination of employment with Perrigo use, divulge, or convey to others any secret or confidential information, knowledge or data of Perrigo or that of third parties obtained by Employee during the period of employment with Perrigo. Such secret or confidential information, knowledge or data includes, but is not limited to, secret or confidential matters:

(a) of a technical nature such as, but not limited to, methods, know-how, formulas, compositions, processes, discoveries, machines, inventions, computer programs and similar items or research projects,

(b) of a business nature such as, but not limited to, information about costs, purchasing, profits, marketing, sales or lists of customers, and

(c) pertaining to future developments such as, but not limited to, research and development or future marketing or merchandising.

3. *Inventions and Patents.* Employee acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable) which relate to Perrigo s actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by Employee while providing services to the Perrigo ( Work Product ) belong to Perrigo. Employee shall promptly disclose such Work Product to Perrigo s General Counsel and perform all actions requested by Perrigo (whether during or after Employee s period of employment) to establish and confirm such ownership (including, without limitation, executing assignments, consents, powers of attorney and other instruments).

4. *Return of Company Property.* Upon termination of employment with Perrigo, or at any other time at Perrigo s request, Employee agrees:

(a) To deliver promptly to Perrigo all manuals, letters, notes, papers, books, reports, sketches, computer data or disks, files and programs, price lists, customer files, memoranda, contracts and agreements, business and marketing plans, product formulations, manufacturing processes, procedures and methods (including equipment specifications and drawings), vendor lists, vendor files, customer lists, stored or recorded documents, and all other materials and copies thereof relating in any way to the Company s Business and in any way obtained by Employee during the period of employment with Perrigo which are in Employee s possession or under his control. Employee further agrees that he will not make or retain any copies of any of the foregoing and will so represent to Perrigo upon termination of employment.

(b) To confirm to Perrigo that all of Perrigo s computer records, files and programs have first been turned over to Perrigo and then deleted or erased from all computer equipment owned, leased or used by Employee.

(c) To return to Perrigo all personal property provided for Employee s use during his employment with Perrigo including, but not limited to, automobiles, computers and related equipment, telephones, credit cards, security cards and identifications, keys and tools.

5. *Remedies.* Employee acknowledges and agrees that monetary damages for his breach of any provision of this Agreement would be an inadequate remedy and that the company would not have an adequate remedy at law for such breach. Accordingly, Employee agrees that, in addition to all other rights and remedies available to the company to enforce its rights pursuant to this Agreement, the company shall, without the necessity of proving irreparable harm or of posting a bond, be entitled to such equitable relief from any court with proper jurisdiction, including, but not limited to, an injunction, a temporary restraining order, or an order for specific performance, as may be necessary to enforce or prevent a violation (whether anticipatory, continuing, or future) of any provision of this

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Agreement. If Employee breaches any provision of this Agreement, he shall pay all expenses, including court costs and actual attorney fees, incurred by the company in enforcing such provision.

6. *Enforceability.* The unenforceability of any provision or portion of any provision of this Agreement shall not affect the enforceability of the remaining provisions or the remainder of any provision of this Agreement. If at any time a court determines that any restrictive covenant contained in this Agreement is unreasonable, the parties agree that the maximum restriction permitted by law shall be substituted for the stated restriction and that such substitution shall govern this Agreement as if originally part of this Agreement.

7. *Binding Effect.* This Agreement and the rights and obligations of Perrigo hereunder shall inure to the benefit of and be binding upon Perrigo and its successors and assigns.

8. *Entire Agreement Modifications.* This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all other agreements, whether oral or written, between the parties regarding such subject matter. This Agreement may be modified or terminated only through a written instrument signed by each of the parties.

9. *Waiver.* The waiver by either party of the enforcement or the breach of any provision of this Agreement shall not operate or be construed as a subsequent or continuing waiver of the enforcement or the breach of any provision. The failure by either party to insist upon strict compliance of any provision of this Agreement shall not be deemed a waiver of such provision. No waiver shall be valid unless in writing and signed by the party giving the waiver.

10. *Governing Law.* This Agreement shall be governed by laws of Israel, provided, however, that with respect to acts which occur in the United States ( US Based Conduct ) which would constitute a breach of this Agreement disputes relating to such acts shall be governed by and construed and enforced in accordance with the internal laws of the State of Michigan without regard to principals of conflict of laws with respect to any acts occurring in the United States. Any proceeding related to or arising out of this Agreement relating to US Based Conduct shall be commenced, prosecuted or continued in the Circuit Court in Kent County, Michigan located in Grand Rapids, Michigan or in the United Stated District Court for the Western District of Michigan, and in any appellate court thereof. Employee accepts, with respect to US Based Conduct, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and waives any defense of *forum non conveniens*, and irrevocably agrees to be bound by any final and nonappealable judgment rendered thereby in connection with this Agreement. Employee further irrevocably consents, with respect to US Based Conduct, to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof via overnight courier, such service to become effective fourteen calendar days after such mailing.

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**PERRIGO COMPANY**

A company incorporated under the laws of the State of Michigan, USA ( Perrigo )

**PROSPECTUS**

**For Listing for Trade on the Tel Aviv Stock Exchange and an Offer to Holders**

of ordinary shares of Agis Industries (1983) Ltd. ( Agis Shares and Agis , respectively) for the conversion of Agis Shares held by them for shares of common stock of Perrigo, no par value ( Perrigo Shares ) (hereinafter, the Offer ).

The Offer is part of a merger between Agis and Perrigo Israel Opportunities Ltd., an Israeli company and an indirect wholly owned subsidiary of Perrigo, under Chapter 8 of the Companies Law 1999 (the Merger ) to be approved at the Special Meeting of Agis shareholders convened by order of Agis board of directors. In the merger, each outstanding Agis Share will be converted into the right to receive (a) 0.8011 Perrigo Shares and (b) $14.93 in cash (for more details see page 90 in this proxy statement/ prospectus).

The Special Meeting of Agis has been called by Agis for March 15, 2005, at Agis offices in 29 Lehi Street, Bnei-Brak 51200, Israel, at 5:00 pm, Israel time, for the approval of the merger (for more details on the special meeting of Agis shareholders please refer to the notice of special meeting published by Agis on the Internet website of the Israeli Securities Authority at www.magna.isa.gov.il or contact Agis).

Consummation of the merger and the conversion of Agis Shares are conditioned upon a number of conditions, some of which have not yet been fulfilled at the date of the publication of this Prospectus. Should any of the conditions not be fulfilled, the merger and conversion of Agis Shares which is the subject of this Prospectus may not be implemented (for more details see page 98 in this Prospectus).

Perrigo is incorporated under the laws of the State of Michigan, USA. Perrigo Shares are listed for trading in the United States on the NASDAQ National Market, and their NASDAQ symbol is *PRGO*. These shares will also be listed for trading on the Tel-Aviv Stock Exchange ( TASE ) no later than the date on which the merger is consummated, the symbol of Perrigo Shares on the TASE will be:

The TASE has approved the listing for trading on the TASE of 93,546,934 Perrigo Shares, comprised of (a) all of the outstanding Perrigo Shares (a total of 71,601,837 Perrigo Shares), and (b) Perrigo Shares issued to the holders of the Agis Shares as aforementioned (a total of 21,945,097 Perrigo Shares) (for more details see page 99 in this Prospectus).

At Perrigo s request, the Israeli Securities Authority has approved, in accordance with Section 35 of the Securities Law, 1968 (the Securities Law ), that instead of the information required under the Securities Regulations (Prospectus Details, Format and Form) 1969, this Prospectus will consist solely of the registration statement on Form S-4 which was declared effective by the Securities Exchange Commission of the United States on February 14, 2005, together with all the documents attached thereto and incorporated by reference therein as of the date of this Prospectus.

Perrigo Shares will be listed for trading on TASE in accordance with the provisions of Chapter E3 of the Securities Law. Therefore, the reports to be submitted by Perrigo will be in English, and their content will be in accordance with the reporting requirements applicable under the United States Securities laws and Nasdaq Marketplace rules.

Nothing in the permits of the Israeli Securities Authority or the Tel Aviv Stock Exchange to publish this Prospectus shall be construed as authenticating the matters contained herein or as an approval of their reliability or adequacy, or as an expression of opinion as to the quality of the securities offered hereby.

Date of the Prospectus: February 14, 2005.

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**LEGAL OPINION**

February 11, 2005

To:

Perrigo Company

515 Eastern Avenue
Allegan, Michigan 49010

Re: Prospectus of Perrigo Company (the Company ) for Listing for Trade on the Tel Aviv Stock Exchange and the issuance of shares of common stock of the Company (the Prospectus and the Shares )

The undersigned, a practicing attorney admitted to practice law in the state of Michigan, the United States of America, hereby approves that:

1. The rights attached to the Shares offered under the Prospectus are accurately described in the Prospectus.

2. The Company is authorized to issue the Shares in the way described in the Prospectus.

3. The names of all of the directors of the Company appear on the signature page of the Prospectus. All of the directors of the Company where duly appointed to the Company s board of directors.

I consent to the inclusion of this opinion in the Prospectus.

Sincerely yours,

/s/ Todd W. Kingma
Todd W. Kingma, Esq.

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**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 20.** ***Indemnification of Directors and Officers***

Under Sections 561 through 571 of the Michigan Business Corporation Act (the MBCA ), directors and officers of a Michigan corporation may be entitled to indemnification by the corporation against judgments, expenses, fines, and amounts paid by the director or officer in settlement of claims brought against them by third persons or by or in the right of the corporation if those directors and officers acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation or its shareholders.

Perrigo is obligated under its amended and restated articles of incorporation and bylaws to indemnify its directors and executive officers to the full extent permitted under the MBCA. Perrigo may similarly indemnify persons who are not directors or executive officers to the extent authorized by Perrigo s board of directors.

The MBCA provides for indemnification of directors and officers if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of Perrigo or its shareholders (and, if a criminal proceeding, if they had no reasonable cause to believe their conduct was unlawful) against: (a) expenses (including attorneys fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding (other than an action by or in the right of Perrigo) arising out of a position with Perrigo (or with some other entity at Perrigo s request); and (b) expenses (including attorneys fees) and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding by or in the right of Perrigo, unless the director or officer is found liable to Perrigo, provided that an appropriate court could determine that he or she is nevertheless fairly and reasonably entitled to indemnity for reasonable expenses incurred. The MBCA requires indemnification for expenses to the extent that a director or officer is successful in defending against any such action, suit, or proceeding.

The MBCA generally requires that the indemnification provided for in (a) and (b) above be made only on a determination that the director or officer met the applicable standard of conduct by a majority vote of a quorum of the board of directors who were not parties or threatened to be made parties to the action, suit or proceeding, by a majority vote of a committee of not less than two disinterested directors, by independent legal counsel, by all independent directors not parties or threatened to be made parties to the action, suit or proceeding, or by the shareholders. If the articles of incorporation include a provision eliminating or limiting the liability of a director, however, a corporation may indemnify a director for certain expenses and liabilities without a determination that the director met the applicable standards of conduct, unless the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated Section 551 of the MBCA or intentionally committed a criminal act. In connection with an action by or in the right of the corporation, such indemnification may be for expenses (including attorneys fees) actually and reasonably incurred. In connection with an action, suit, or proceeding other than an action, suit or proceeding by or in the right of the corporation, such indemnification may be for expenses (including attorneys fees) actually and reasonably incurred, and for judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred.

In certain circumstances, the MBCA further permits advances to cover such expenses before a final determination that indemnification is permissible or required, upon receipt of a written affirmation by the director or officer of his or her good faith belief that he or she has met the applicable standard of conduct and an undertaking, which need not be secured and which may be accepted without reference to the financial ability of the person to make repayment, by or on behalf of the director or officer to repay such amounts if it shall ultimately be determined that he or she has not met the applicable standard of conduct. If a provision in the articles of incorporation or bylaws, a resolution of the board or shareholders or an

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agreement makes indemnification mandatory, then the advancement of expenses is also mandatory, unless the provision, resolution or agreement specifically provides otherwise.

Indemnification under the MBCA is not exclusive of other rights to indemnification to which a person may be entitled under Perrigo s amended and restated articles of incorporation, bylaws or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources may not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for under the MBCA continues as to a person who ceases to be a director or executive officer.

The MBCA permits Perrigo to purchase insurance on behalf of its directors and officers against liabilities arising out of their positions with Perrigo, whether or not such liabilities would be within the above indemnification provisions. Pursuant to this authority, Perrigo maintains such insurance on behalf of its directors and officers.

**Item 21.** ***Exhibits and Financial Statement Schedules***

a) Exhibits

| Exhibit Number | Exhibit Description |
|---|---|
| 2.1 | Agreement and Plan of Merger dated as of November 14, 2004 among Perrigo Company, Agis Industries (1983) Ltd. and Perrigo Israel Opportunities Ltd. (included as Appendix A to the proxy statement/prospectus included in this registration statement) |
| 3.1 | Amended and Restated Articles of Incorporation of Perrigo Company (incorporated by reference from Amendment No. 2 to Registration Statement No. 33-43834 filed by the Registrant on September 23, 1993) |
| 3.2 | Restated By-laws of Perrigo Company (incorporated by reference from the Registrant s Form 10-K filed on September 6, 2000) |
| 5.1 | Opinion of Todd W. Kingma |
| 23.1 | Consent of BDO Seidman, LLP |
| 23.2 | Consent of Kesselman & Kesselman |
| 23.3 | Consent of Goldman, Sachs & Co. |
| 23.4 | Consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated |
| 23.5 | Consent of Todd W. Kingma (included in Exhibit 5.1) |
| 35.2 | Powers of Attorney* |
| 99.1 | Undertaking Agreement, dated as of November 14, 2004, among Perrigo Company, Agis Industries (1983) Ltd. and Moshe Arkin (included as Appendix D to the proxy statement/prospectus included in this registration statement) |
| 99.2 | Voting Agreement, dated as of November 14, 2004, between Agis Industries (1983) Ltd. and Michael J. Jandernoa (included as Appendix E to the proxy statement/prospectus included in this registration statement) |
| 99.3 | Nominating Agreement, dated as of November 14, 2004, between Perrigo Company and Moshe Arkin (included as Appendix F to the proxy statement/prospectus included in this registration statement) |
| 99.4 | Lock-Up Agreement, dated as of November 14, 2004, among Moshe Arkin, Perrigo Company and Perrigo Israel Opportunities Ltd. (included as Appendix G to the proxy statement/prospectus included in this registration statement) |
| 99.5 | Registration Rights Agreement, dated as of November 14, 2004, between Perrigo Company and Moshe Arkin (included as Appendix H to the proxy statement/prospectus included in this registration statement) |
| 99.6 | Employment Agreement, dated as of November 14, 2004, among Perrigo Company, Agis Industries (1983) Ltd. and Moshe Arkin (included as Appendix I to the proxy statement/prospectus |

included in this registration statement)

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| Exhibit Number | Exhibit Description |
|---|---|
| 99.7 | Consent of Moshe Arkin* |
| 99.8 | Form of Proxy Perrigo |

* Previously filed on December 22, 2004

b) Financial Statement Schedules

**None**

c) Opinion of Financial Advisors

(i) Opinion of Goldman, Sachs & Co. (included as Appendix B to the proxy statement/prospectus included in this registration statement).

(ii) Opinion of Merrill Lynch & Co. (included as Appendix C to the proxy statement/prospectus included in this registration statement).

**Item 22.** ***Undertakings***

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the following provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into this proxy statement/prospectus pursuant to Item 4, 10(b), 11 or 13 of Form S-4, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. The includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

The undersigned registrant hereby undertakes to file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

The undersigned registrant hereby undertakes that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant s annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through the use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by applicable form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

The undersigned registrant hereby undertakes that every prospectus (i) that is filed pursuant to the immediately preceding paragraph, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes to deliver or cause to be delivered with this proxy statement/ prospectus, to each person to whom the proxy statement/ prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the proxy statement/ prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the proxy statement/prospectus, to deliver, or cause to be delivered to each person to whom the proxy statement/ prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the proxy statement/ prospectus to provide such interim financial information.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act, the registrant has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the County of Allegan, State of Michigan, on the 11th day of February, 2005.

PERRIGO COMPANY

By: /s/ DAVID T. GIBBONS

Name: David T. Gibbons

Title: *President and Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement has been signed below by the following persons in the capacities and on the dates indicated:

| Signature | Title | Date |
|---|---|---|
| /s/ DAVID T. GIBBONS<br>David T. Gibbons | Chairman, President, Chief Executive Officer (Principal Executive Officer) and Director | February 11, 2005 |
| *<br>Douglas R. Schrank | Executive Vice President and Chief Financial Officer (Principal Financial and Principal Accounting Officer) | February 11, 2005 |
| *<br>Laurie Brlas | Director | February 11, 2005 |
| *<br>Judy A. Hemberger | Director | February 11, 2005 |
| *<br>Gary K. Kunkle, Jr. | Director | February 11, 2005 |
| *<br>Michael J. Jandernoa | Director | February 11, 2005 |

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| Signature | Title | Date |
|---|---|---|
| * Gary M. Cohen | Director | February 11, 2005 |
| * Peter Formanek | Director | February 11, 2005 |
| * Herman Morris, Jr. | Director | February 11, 2005 |
| * Larry D. Fredricks | Director | February 11, 2005 |

*By /s/ David T. Gibbons

David T. Gibbons,
as Attorney-in-Fact pursuant to the Power of Attorney previously provided as part of the Registration Statement.

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## INDEX TO EXHIBITS

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