TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	04/21/2004

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
SYN X PHARMA, INC.		02/09/2004	CORPORATION: CANADA

RECEIVING PARTY DATA

Name:	NANOGEN, INC.
Street Address:	10398 Pacific Center Court
City:	San Diego
State/Country:	CALIFORNIA
Postal Code:	92121
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	3033359	NEXUS DX

CH $40.00 3033359

CORRESPONDENCE DATA

Fax Number: (949)725-4100
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
Phone: (949) 725-4043
Email: amina@sycr.com
Correspondent Name: Arnold V. Mina
Address Line 1: 660 Newport Center Drive, Suite 1600
Address Line 2: Stradling Yocca Carlson & Rauth
Address Line 4: Newport Beach, CALIFORNIA 92660

ATTORNEY DOCKET NUMBER:	101511-0000/NEXUS DX
NAME OF SUBMITTER:	Arnold V. Mina
Signature:	/Arnold Mina/

Date:	11/25/2009

Total Attachments: 37
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CERTIFIED RESOLUTION OF
THE SHAREHOLDERS & DEBENTUREHOLDERS OF
SYNX PHARMA INC.

Approval of the
Arrangement Resolution

"BE IT RESOLVED THAT:

1. The arrangement (the **"Arrangement"**) under Section 182 of the *Ontario Business Corporations Act* (the "OBCA") involving SynX Pharma Inc. (**"SynX"**), as more particularly described and set forth in the Management Information Circular (the **"Circular"**) of SynX accompanying the notice of this joint special meeting (as the Arrangement may be or may have been modified or amended), is hereby authorized, approved and adopted.

2. The plan of arrangement involving SynX (the **"Plan of Arrangement"**), the full text of which is included as Appendix A to the Circular, as the same may be or may have been modified or amended, is hereby authorized, approved and adopted.

3. Notwithstanding that this resolution has been passed by the holders of common shares and debentures of SynX or that the Arrangement has been approved by the Court, the directors of SynX are hereby authorized and empowered without further notice to, or approval of the holders of common shares and debentures of SynX (i) to amend the combination agreement dated as of February 9, 2004 between SynX and Nanogen, Inc. (the **"Combination Agreement"**) or the Plan of Arrangement to the extent permitted by the Combination Agreement, and (ii) subject to the terms of the Combination Agreement, not to proceed with the Arrangement.

4. Any one officer or director of SynX is hereby authorized and directed for and on behalf of SynX to execute, under the corporate seal of SynX or otherwise, and to deliver articles of arrangement and such other documents as are necessary or desirable to the Director under the OBCA in accordance with the Combination Agreement for filing.

5. Any one officer or director of SynX is hereby authorized and directed for and on behalf of SynX to execute or cause to be executed, under the corporate seal of SynX or otherwise, and to deliver or cause to be delivered, all such documents, agreements and instruments and to perform or cause to be performed all such other acts and things as such officer or director of SynX determines to be necessary or desirable in order to give full effect to the foregoing resolution and the matters authorized hereby, such determination to be conclusively evidenced by the execution and delivery of such document, agreement or instrument or the doing of any such act or thing."

The undersigned, Chairman & Chief Executive Officer of SynX Pharma Inc., hereby certifies that the foregoing is a true and correct copy of a resolution of the shareholders and debentureholders of the Corporation passed at a joint meeting of the shareholders and debentureholders

of the Corporation duly called and regularly held on the 15th day of April, 2004, which resolution is in full force and effect as of the date hereof.

DATED this 21st day of April, 2004.

Dr. George Jackowski, Chairman & CEO

11694788.1

APPENDIX "B"

COMBINATION AGREEMENT

BY AND BETWEEN

NANOGEN, INC.

AND

SYNX PHARMA INC.

Dated as of February 9, 2004

COMBINATION AGREEMENT

COMBINATION AGREEMENT (this "*Agreement*") is dated as of February 9, 2004, by and between Nanogen, Inc., a corporation organized and existing under the laws of the State of Delaware ("*Nanogen*"), and SynX Pharma Inc., a company organized and existing under the laws of the Province of Ontario (the "*Company*").

WITNESSETH:

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the Business Corporations Act (Ontario), as now in effect and as it may be amended from time to time prior to the Effective Time (the "*OBCA*"), Nanogen and the Company will enter into a business combination transaction pursuant to which Nanogen will acquire all of the issued and outstanding Company Common Shares and Company Debentures pursuant to a plan of arrangement;

WHEREAS, the board of directors of Nanogen (i) has determined that the Arrangement is fair to, and in the best interest of, Nanogen and its stockholders; and (ii) has approved this Agreement and the transactions contemplated by this Agreement (the "*Transactions*");

WHEREAS, the board of directors of the Company (i) has determined that the Arrangement is fair to, and in the best interests of, the Company and its shareholders and (ii) has approved this Agreement, and the Transactions, including the Arrangement;

WHEREAS, concurrently with the execution of this Agreement and as an inducement to Nanogen to enter into this Agreement, certain shareholders and debentureholders of the Company have entered into voting agreements in the form attached hereto as Annex A ("*Support Agreement*");

WHEREAS, concurrently with the execution of this Agreement and as an inducement to the Company to enter into this Agreement, Nanogen and the Company have entered into a bridge credit facility (the "*Loan Agreement*"), pursuant to which Nanogen shall provide a line of credit to the Company;

WHEREAS, concurrently with the execution of this Agreement and as an inducement to Nanogen to enter into this Agreement, certain employees of the Company have executed employment agreements with Nanogen, to be effective as of the Effective Time (the "*Employment Agreements*");

WHEREAS, Nanogen and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Arrangement and also to prescribe various conditions to the consummation of the Arrangement; and

WHEREAS, Section 8.3 of this Agreement contains certain definitions, and Section 8.4 of this Agreement contains an index of defined terms in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Nanogen and the Company hereby agree as follows:

ARTICLE 1

THE ARRANGEMENT

1.1 Implementation Steps by the Company. The Company covenants in favour of Nanogen that the Company shall:

(a) as soon as reasonably practicable, apply in a manner acceptable to Nanogen, acting reasonably, under Section 182 of the OBCA for an order approving the Arrangement and for the Interim Order in a form acceptable to Nanogen, and thereafter proceed with and diligently seek the Interim Order;

(b) subject to Section 1.7, as soon as reasonably practicable, lawfully convene and hold the Company Meeting for the purpose of considering the Arrangement Resolution (and, with the prior written consent of Nanogen, for any other proper purpose as may be set forth in the notice for such meeting);

(c) not adjourn, postpone or cancel (or propose for adjournment, postponement or cancellation), or fail to c... the Company Meeting without Nanogen's prior written consent except as required for quorum purpos... by applicable Laws after consulting with Nanogen;

(d) solicit from the Company Shareholders and Company Debentureholders proxies in favour of the appro... of the Arrangement Resolution (in a commercially reasonable manner) and use all commercially reasona... efforts to take all other action that is necessary or desirable to secure the requisite approval of ... Arrangement Resolution by the Company Shareholders and Company Debentureholders unless the boa... directors of the Company determines to change the Company Board Recommendation to support a Superi... Proposal in accordance with Section 5.1(b) and subject to compliance with Section 4.3;

(e) subject to the terms of this Agreement and obtaining the approvals as are required by the Interim Orde... proceed with and diligently pursue the application to the Court for the Final Order; and

(f) subject to the terms of this Agreement, obtaining the Final Order, the satisfaction or waiver of the ... conditions herein contained in favour of each party and to the consent of Nanogen (as specified in the Pla... of Arrangement), send to the Director, for endorsement and filing by the Director, the Articles ... Arrangement and execute and deliver such other documents as may be required in connection there... under the OBCA or this Agreement to give effect to the Arrangement.

1.2. Implementation Steps by Nanogen. Nanogen covenants in favour of the Company that, on or prior to ... Effective Time and subject to the satisfaction or waiver of the other conditions herein contained in favour ... Nanogen, Nanogen shall provide to the Depositary the Nanogen Common Stock (and any cash required ... payment in lieu of fractional shares of Nanogen Common Stock) for distribution in accordance with the Plan ... Arrangement.

1.3. Interim Order. The notice of motion for the application referred to in Section 1.1(a) shall request that ... Interim Order provide, among other things:

(a) for the class of Persons to whom notice is to be provided in respect of the Arrangement and the Com... Meeting and for the manner in which such notice is to be provided;

(b) that the requisite approval for the Arrangement Resolution be (i) 66⅔% of the votes cast on ... Arrangement Resolution by the Company Shareholders present in person or represented by proxy at ... Company Meeting (such that each holder of Company Common Shares is entitled to one vote for ... Company Common Share held) and (ii) Company Debentureholders holding more than 80% of the ... principal amount of the then outstanding Company Debentures cast on the Arrangement Resolution by ... Company Debentureholders present in person or represented by proxy at the Company Meeting;

(c) that, in all other respects, the terms, restrictions and conditions of the bylaws and articles of the Comp... and the Company Trust Indenture, including quorum requirements and all other matters, shall apply ... respect of the Company Meeting;

(d) for the grant of the Dissent Rights; and

(e) or notice requirements respecting presentation of the application to the Court for a Final Order.

1.4. Plan of Arrangement. The Company and Nanogen agree that, unless otherwise mutually agreed, the Pla... Arrangement shall be substantially in the form contained in Annex E hereof. The Articles of Arrangement ... with such other matters as are necessary to effect the Arrangement, implement the Plan of Arrangement ... will provide, among other things, that upon completion of the Arrangement (i) a holder of a Company Com... Share will have received as consideration in exchange for such share that number of shares of Nanogen Com... Stock equal to the Exchange Ratio as set forth in the Plan of Arrangement and (ii) a holder of a Com... Debenture will have received as consideration in exchange for such Debenture that number of shares of Nano... Common Stock as determined in accordance with Section 2.2(c) of the Plan of Arrangement.

1.5. Exchange Ratio.

(a) As used herein, the term "*Exchange Ratio*" means, in respect of Nanogen Common Stock (and asso... Nanogen Rights), to be delivered upon the transfer of Company Common Shares to Nanogen pursu...

Section 2.1 of the Plan of Arrangement, a ratio of the number of shares of Nanogen Common Stock (and associated Nanogen Rights) per Company Common Share. The Exchange Ratio shall be determined as follows:

$$\text{Exchange Ratio} = \frac{\dfrac{\text{Total Consideration}}{\text{Currency Exchange Rate}}}{\text{(Full Share Equivalents)(Nanogen Average Stock Price)}}$$

(b) The Exchange Ratio as so determined in each case shall be rounded to three decimal places (rounding up if the fourth decimal is five or more and otherwise rounding down).

(c) The Exchange Ratio shall not be adjusted on account of any consideration (in any form whatsoever) received by the Company from the date hereof to the Effective Time pursuant to the exercise, conversion or exchange of any Company Options or Company Warrants. The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into Nanogen Common Stock or Company Common Shares), merger, reorganization, recapitalization or other like change with respect to Nanogen Common Stock or Company Common Shares occurring after the date hereof and prior to the Effective Time.

(d) For purposes of this Section 1.5, the following terms shall have the meanings set forth below:

(i) "*Full Share Equivalents*" shall mean the sum, without duplication, of (A) the aggregate number of Company Common Shares that are issued and outstanding immediately prior the Effective Time; (B) the aggregate number of Company Common Shares that are issuable upon the exercise of Company Options with a per share exercise price less than $1.45 that are issued and outstanding immediately prior to the Effective Time (whether or not then vested or exercisable) less the number of shares equal to the quotient determined by dividing (I) the sum of the products of (a) the number of shares exercisable under each Company Option with a per share exercise price less than $1.45 and (b) the corresponding exercise price applicable to each Company Option with a per share exercise price less than $1.45 by (II) $1.45; and (C) the aggregate number of Company Common Shares issuable upon the exercise of Company Warrants or other direct or indirect rights to acquire Company Common Shares that are issued and outstanding immediately prior to the Effective Time (whether or not then vested or exercisable) less the number of shares equal to the quotient determined by dividing (I) the product of (a) the number of shares exercisable under each Company Warrant with a per share exercise price less than $1.45 and (b) the corresponding exercise price applicable to each Company Warrant with a per share exercise price less than $1.45 by (II) $1.45.

(ii) "*Nanogen Average Stock Price*" shall mean the average of the Nasdaq official closing prices (US Dollars) for a share of Nanogen Common Stock as quoted on the Nasdaq Stock Market for the fifteen (15) consecutive trading days ending on the trading day that is three (3) trading days prior to the Effective Date.

(iii) "*Total Consideration*" shall mean $16,287,500.

(e) Notwithstanding Sections 1.5(a) through (d) above or Section 2 of the Plan of Arrangement, in the event that the sum of (I) the number of shares of Nanogen Common Stock to be issued pursuant to Sections 2.2(a) and 2.2(c) of the Plan of Arrangement and (II) the number of shares of Nanogen Common Stock issuable upon exercise of Replacement Options and Replacement Warrants to be issued pursuant to Sections 2.2(b) and 2.2(d) of the Plan of Arrangement (together, the "*Total Share Issuance*") exceeds 19.9% of number of shares of Nanogen Common Stock issued and outstanding as of Effective Date, then the Total Share Issuance shall be reduced such that it equals 19.9% of the number of shares issued and outstanding as of the Effective Date. In the event the Total Share Issuance is reduced pursuant to this Section 1.5(e), the number of shares of Nanogen Common Stock to be issued pursuant to Sections 2.2(a) and 2.2(c) of the Plan of Arrangement and issuable upon exercise of Replacement Options and Replacement Warrants pursuant to Sections 2.2(b) and 2.2(d) of the Plan of Arrangement, as applicable, to which each holder of Company Common Shares, Company Debentures, Company Options Company Warrants is entitled under Sections 2.2(a), (b), (c) or (d) of the Plan of Arrangement shall be reduced on a pro rata basis, which shall be determined by references to the number of shares of Nanogen Common Stock that would have been issued or issuable pursuant to Sections 2.2(a), (b), (c), and (d) of the Plan of Arrangement but for the limitations set forth in this Section 1.5(e).

1.6. Treatment of Company Stock Option Plan and Company Options. At the Effective Time, Nanogen shall assume the Company Stock Option Plan, but only as to the portion of the share reserve thereunder relating to outstanding options to purchase Company Common Shares under such plan (the "***Company Options***"). In effecting such assumption, the reserve of Company Common Shares under the Company Stock Option Plan relating to those outstanding Company Options shall be converted into shares of Nanogen Common Stock by multiplying the number of shares of Company Common Shares subject to the outstanding Company Options by the Exchange Ratio and rounding down to the nearest whole share of Nanogen Common Stock. Nanogen shall also, at the Effective Time, assume all the outstanding Company Options in accordance with the provisions of Section 2.2(b) of the Plan of Arrangement.

1.7. Preparation of the Company Circular.

(a) As soon as practicable after the execution and delivery of this Agreement, Nanogen and the Company shall jointly prepare the Company Circular and the Letter of Transmittal, together with any other documents required by the Securities Laws, other applicable Laws or the Interim Order in connection with the Arrangement, and shall file the foregoing with all requisite Securities Authorities. As promptly as practicable after the date of execution and delivery of this Agreement and after obtaining the Interim Order, the Company shall cause the Company Circular and other documentation required in connection with the Company Meeting to be sent to each Company Shareholder and Company Debentureholders (together with a Letter of Transmittal) and filed as required by the Interim Order and applicable Laws.

(b) Each of Nanogen and the Company shall provide promptly to the other such information concerning its business and financial statements and affairs as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the Company Circular, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in the preparation of the Company Circular. Anything to the contrary contained herein notwithstanding, the Company shall not include in the Company Circular any information with respect to Nanogen or another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nanogen, the form and content of which information shall not have been approved by Nanogen prior to such inclusion.

(c) The Company agrees that it will instruct its financial advisors to provide their written opinion (as referred to in Section 2.23) in the Company Circular. Subject to Section 5.1(b), the Company Circular shall include the Company Board Recommendation.

1.8. Securities Compliance.

(a) Nanogen and the Company shall use all commercially reasonable efforts to obtain all exemption orders ("***Exemption Orders***") required from the applicable Canadian Securities Regulatory Authorities to permit the issuance and first resale of (a) the shares of Nanogen Common Stock issuable pursuant to the Arrangement, and (b) the shares of Nanogen Common Stock issuable from time to time upon the exercise of the Replacement Options and Replacement Warrants, in each case, without qualification with or approval of or the filing of any prospectus or similar document, or the taking of any proceeding with, or the obtaining of any further order, ruling or consent from, any Governmental Entity under any Canadian federal, provincial or territorial Laws, including Securities Laws, or pursuant to the rules and regulations of any Governmental Entity administering such Laws (including the Canadian Securities Regulatory Authorities), or the fulfillment of any other legal requirement in any such jurisdiction (other than, with respect to such first resales, any restrictions on transfer by reason of, among other things, a holder being a "control person" for purposes of Canadian federal, provincial or territorial Securities Laws and/or conditions provided for under applicable Laws relating to ordinary course resale restrictions).

(b) As promptly as practicable after the Effective Time, Nanogen shall file with the U.S. Securities and Exchange Commission a registration statement on Form S-8 or other applicable form (the "***Form S-8***") in order to register under the 1933 Act any or all shares of Nanogen Common Stock issuable under the Replacement Options for which a Form S-8 Registration Statement is available.

(c) Nanogen and the Company shall take all such steps as may be required to cause the transactions contemplated by this Article 1 and any other dispositions of the Company equity securities or acquisitions

of Nanogen equity securities (including, in each case derivative securities) in connection with this Agreement or the transactions contemplated hereby by any individual who is a director or officer of the Company, to be exempt under Rule 16b-3 promulgated under the 1934 Act.

1.9 Preparation of Filings.

(a) Nanogen and the Company shall cooperate in:

(i) the preparation of any application for the Exemption Orders and the preparation of any required registration statements and any other documents reasonably deemed by Nanogen or the Company to be necessary to discharge their respective obligations under the Securities Laws in connection with the Arrangement;

(ii) the taking of all such action as may be required under any applicable United States or state securities Laws (including "blue sky" laws), and Canadian federal, provincial or territorial Securities Laws in connection with the issuance of the shares of Nanogen Common Stock in connection with the Arrangement or the exercise of the Replacement Options or Replacement Warrants; provided, however, that with respect to the United States "blue sky" and Canadian provincial qualifications Nanogen shall not be required to register or qualify as a foreign corporation or to take any action that would subject it to service of process in any jurisdiction where such entity is not now so subject, except as to matters and transactions arising solely from the issuance of the shares of Nanogen Common Stock in connection with the Arrangement; and

(iii) the taking of all such action as may be required under the OBCA in connection with the Arrangement.

(b) Each of Nanogen and the Company shall promptly furnish to the other all information concerning it and its securityholders as may be required to effect the actions described in Sections 1.7 and 1.8 and the foregoing provisions of this Section 1.9, and each covenants that no information furnished by it (to its knowledge in the case of information concerning its securityholders) in connection with such actions or otherwise in connection with the consummation of the Arrangement and the other Transactions will contain any untrue statement of a material fact (as defined in the Securities Act) or omit to state a material fact required to be stated in any such document or necessary in order to make any information so furnished for use in any such document (and any amendment or supplement thereto) not misleading in the light of the circumstances in which it is used.

(c) Each of Nanogen and the Company shall promptly notify the other if at any time before or after the Effective Time it becomes aware that the Company Circular or an application for an Exemption Order or a registration statement described in Section 1.8 or the foregoing provisions of this Section 1.9 contains any misrepresentation (as defined in the Securities Act) or any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Company Circular or such application or registration statement. In any such event, Nanogen and the Company shall cooperate in the preparation of a supplement or amendment to the Company Circular or such other document, as required and as the case may be, and, if required, shall cause the same to be distributed to the Company Shareholders and Company Debentureholders or filed with the relevant Canadian Securities Regulatory Authorities.

(d) The Company shall ensure that the Company Circular (and any amendment or supplement thereto) complies with all applicable Laws and, without limiting the generality of the foregoing, that the Company Circular does not contain any misrepresentation (as defined in the Securities Act) or any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made (other than with respect to any information relating to and provided by Nanogen). Without limiting the generality of the foregoing, the Company shall ensure that the Company Circular complies with OSC Rule 54-501 and provides the Company Shareholders and Company Debentureholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Company Meeting.

1.10. Closing. Upon the terms and subject to the conditions set forth in this Agreement, the completion of the Arrangement (the "*Closing*") shall take place at the offices of Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario at 10 a.m., Toronto time, on the Effective Date or such other date and time as mutually agreed to by the Parties (the "*Closing Date*").

1.11. Exemption from Registration and Resale Restrictions. Subject to the implementation of the transactions contemplated hereby in accordance with the Company covenants in Section 1.1, the shares of Nanogen Common Stock issued pursuant to the Arrangement shall be exempt from registration under the 1933 Act by reason of Section 3(a)(10) thereof and, subject to restrictions on resale by an affiliate (as defined in the 1933 Act), such shares will not be subject to any resale restrictions under applicable U.S. securities Laws.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Nanogen (and acknowledges that Nanogen is relying upon such representations and warranties in connection with the matters contemplated by this Agreement) that, except as set forth in the written disclosure schedule prepared by the Company which is dated as of the date of this Agreement and arranged in sections corresponding to the numbered and lettered sections contained in this Article 2 (*provided, however*, that disclosure in any section shall be deemed to have been set forth in all other applicable sections where it is reasonably apparent that such disclosure is applicable to such other sections notwithstanding the omission of any cross-reference to such other section) and is being concurrently delivered to Nanogen in connection herewith (the "*Company Disclosure Schedule*"), the following statements are true and correct as of the date of this Agreement, except where another date is specified:

2.1. Due Organization. Each of the Company and its Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate power, and authority to carry on its business as now being conducted. Each of the Company and its Subsidiary is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties or operations makes such qualification or licensing necessary, other than (a) in any jurisdiction that does not recognize the concept of good standing, and (b) in such jurisdictions where the failure to be so qualified or licensed or to be in good standing would not have a Material Adverse Effect on the Company. The Company has delivered or made available to Nanogen, prior to the execution of this Agreement, complete and correct copies of (i) Charter Documents, as amended through the date hereof, of the Company and its Subsidiary, (ii) all the existing written consents and minutes of the meetings of the board of directors and each committee of the board of directors of the Company and its Subsidiary held since formation of such entity and (iii) all the existing written consents and minutes of the meetings of shareholders of the Company and its Subsidiary held since formation of such entity. The Company is a reporting issuer in each of the provinces of Ontario, Alberta and British Columbia and has been reporting issuer in each of such provinces for at least twelve (12) months.

2.2. Authority.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the Transactions, subject, in the case of approving this Agreement and the consummation of the Transactions, including the Arrangement, to obtaining the Company Shareholders' Approval and Company Debentureholders' Approval. The execution and delivery of this Agreement by the Company and the consummation by the Company of the Transactions, including the Arrangement, have been duly authorized by all necessary corporate action on the part of the Company and no other corporate authorizations or approvals on the part of the Company are necessary to approve this Agreement or to consummate the Transactions, subject, in the case of the Arrangement, to obtaining the Company Shareholders' Approval and Company Debentureholders' Approval. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms subject to (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, moratorium, reorganization, receivership and

similar laws relating to or affecting the enforcement of the rights and remedies of creditors generally and (ii) principles of equity (regardless of whether considered and applied in a proceeding in equity or at law).

(b) Subject to confirmation in the Interim Order, the Arrangement Resolution requires the affirmative vote of (i) 66⅔% of the votes cast on the Arrangement Resolution by the Company Shareholders present in person or represented by proxy at the Company Meeting; (ii) Company Debentureholders holding more than 80% of the unpaid principal amount of the then outstanding Debentures cast on the Arrangement Resolution by the Company Debentureholders present in person or represented by proxy at the Company Meeting. No other vote of any holders of Company Common Shares, Company Options, Company Warrants or Company Debentures is required under Law, the Company's governing documents or otherwise in order to consummate the Transactions.

(c) The board of directors of the Company at a meeting duly called and held has determined by the unanimous approval of all directors ("*Company Board Approval*") voting (i) that the Arrangement is fair, from a financial point of view, to the Company Shareholders and is in the best interests of the Company and (ii) to unanimously recommend that the Company Shareholders and Company Debentureholders vote in favour of the Arrangement Resolution (the "*Company Board Recommendation*").

2.3 **No Conflicts.** Except as set forth on Section 2.3 of the Company Disclosure Schedule, the execution, delivery and performance of this Agreement by the Company or the consummation of the Transactions, including the Arrangement, will not contravene or violate (a) any Law, judgment, order or decree to which the Company is subject or (b) the Charter Documents of the Company or any securities issued by the Company; nor will such execution, delivery or performance result in a default under any term, condition or provision of, or require the consent of any other party to, any Contract, or any Permit to which the Company is a party, by which the Company may have rights or by which any of the assets of the Company may be bound or affected, or give any party with rights thereunder the right to terminate, modify, accelerate or otherwise change the existing rights or obligations of the Company thereunder. No consent, approval, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity, is required in connection with the execution, delivery and performance of this Agreement by the Company or the consummation of the Transactions, including the Arrangement, except for (A) pursuant to applicable requirements of the Securities Laws; (B) filings with the Director under the OBCA, (C) the rules and regulations of foreign Governmental Entities, (D) as may be required by the rules and regulations of the TSX, and (E) the Regulatory Approvals relating to Company.

2.4 **Public Filings.** The Company has furnished or made available to Nanogen true and complete copies of all forms, reports, schedules, prospectuses, circulars, statements and other documents filed by it with any of the Canadian Securities Regulatory Authorities and the TSX since December 31, 2001 and, prior to the Effective Time, the Company will have furnished or made available to Nanogen true and complete copies of any additional documents filed with any of the Canadian Securities Regulatory Authorities and the TSX by the Company after the date of this Agreement and prior to the Effective Time (such forms, reports, schedules, prospectuses, circulars, statements and other documents, including any financial statements or other documents, including any schedules included therein, are referred to as the "*Company Documents*"). The Company Documents, at the time filed (and if amended or superseded by a filing prior to the date of this Agreement then on the date of such filing), (i) did not at the time they were filed contain (A) any misrepresentation (as defined in the Securities Act) or (B) any untrue statement of a material fact or omit to state a material fact (as defined in the Securities Act) 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; and (ii) complied in all material respects with the requirements of applicable Securities Laws. The Company has not filed any confidential material change report with the Canadian Securities Regulatory Authorities or any other securities authority or regulator or any stock exchange or other self-regulatory authority which as of the date hereof remains confidential.

2.5 **Financial Statements.**

(a) The annual audited financial statements and the quarterly unaudited financial statements of the Company, including the notes thereto, included in the Company Documents (the "*Company Financial Statements*") complied as to form in all material respects with applicable accounting requirements in Canada and with the published rules and regulations of applicable Governmental Entities, the Canadian Securities Regulatory

Authorities and the TSX with respect thereto as of their respective dates, and have been prepared in accordance with Canadian generally accepted accounting principles (''*Canadian GAAP*'') applied on a basis consistent throughout the periods indicated and consistent with each other (except as may be indicated in the notes thereto). The Company Financial Statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Company at the dates and during the periods indicated therein (subject, in the case of unaudited statements, to normal, recurring year-end adjustments and the absence of notes thereto) and reflect appropriate and adequate reserves in respect of contingent liabilities (if any, of the Company). There has been no change in the Company's accounting policies, except as described in the notes to the Company Financial Statements, since September 30, 2003.

(b) The books and records of the Company and its Subsidiary, in all material respects, (i) have been maintained in accordance with good business practices on a basis consistent with prior years, (ii) state in reasonable detail the material transactions and dispositions of the assets of the Company and its Subsidiary, and (iii) accurately and fairly reflect the basis for the Company Financial Statements. The Company has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with Canadian GAAP and (B) to maintain accountability of the assets of the Company and its Subsidiary.

(c) Neither the Company nor its Subsidiary is a party to, or has any commitment to become a party to, any joint venture, partnership agreement or any similar Contract (including any Contract relating to any transaction, arrangement or relationship between or among the Company or its Subsidiary, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand) where the purpose or intended effect of such arrangement is to avoid disclosure of any transaction involving the Company or its Subsidiary in the Company Financial Statements.

(d) Except as set forth in the Company Financial Statements and except as arising hereunder, the Company and its Subsidiary have no liabilities or obligations of any nature (whether absolute, accrued, asserted or unasserted, contingent or otherwise) that would be required to be reflected on or reserved against in any Company Financial Statements that are not disclosed, reflected or reserved against in such Company Financial Statements, except for liabilities and obligations (i) incurred since September 30, 2003 in the Ordinary Course of Business, or (ii) that would not reasonably be expected to have a Material Adverse Effect on the Company.

2.6. **Subsidiaries.** The Company has no subsidiaries except for Syn X Pharma U.S.A. LLC, a Florida limited liability company. Syn X Pharma U.S.A. LLC has no liabilities, no material assets and has not carried on any business. All the outstanding shares of capital stock of, or other equity or voting interests in, such Subsidiary were duly authorized, have been validly issued and are fully paid and nonassessable and are owned, directly or indirectly, by the Company, free and clear of all mortgages, pledges, assessments, claims, liens, charges, security interests and other encumbrances of any kind or nature whatsoever (collectively, ''*Liens*''). Except for the membership interests in Syn X Pharma U.S.A. LLC, and except for companies listed in Section 2.6 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock of, or other equity or voting interests in, any Person. The Company does not otherwise control directly or indirectly, any corporation, partnership, association, joint venture or other business entity.

2.7. **Capital Structure.**

(a) The authorized capital of the Company consists of unlimited common shares and unlimited non-voting preference shares issuable in series (''*Company Preferred Shares*''). As of the date hereof, the issued and outstanding share capital of the Company consists of 10,267,389 Company Common Shares and no Company Preferred Shares and other than 1,958,168 Company Options, 1,725,000 Company Warrants and Company Debentures in an aggregate principal amount of $3,450,000, no other securities of the Company are issued and outstanding. The Company has delivered to Nanogen a true, complete and correct schedule setting forth the number of Company Common Shares held by each registered holder thereof as at December 31, 2003, and since such date the Company has not issued any securities (including any securities convertible or exchangeable for Company Common Shares) except for (i) any Company Common Shares issued upon exercise of Company Options outstanding under the Company Stock Option Plan prior to

date and (ii) any Company Common Shares issued upon exercise of Company Warrants outstanding prior to such date.

(b) As of the date of this Agreement and regarding Company Options under the Company Stock Option Plan and the Company Warrants:

(i) The Company has reserved 2,500,000 Company Common Shares for issuance to employees, consultants and directors pursuant to the Company Stock Option Plan, of which (i) 236,067 vested shares have been issued pursuant to option exercises, (ii) 1,958,168 shares are subject to outstanding, unexercised options, and (iii) 305,765 shares remain available for issuance thereunder;

(ii) The Company has reserved 1,725,000 Company Common Shares for issuance to holders of Company Warrants.

(iii) Section 2.7(b)(iii) of the Company Disclosure Schedule sets forth a true and complete list as of the date hereof of each outstanding Company Option under the Company Stock Option Plan, including the Company Option holder, the number of Company Common Shares subject to such Company Option, the number of those shares which are vested or unvested and the exercise price payable per share. On the Effective Date, the Company shall deliver to Nanogen an update to Section 2.7(b)(iii) of the Company Disclosure Schedule current as of the Effective Date. Section 2.7 (b)(iii) of the Company Disclosure Schedule sets forth a true and complete list as of the date hereof of each outstanding Company Warrant, the holder of Company Warrant and the number of shares subject to such Company Warrant.

(c) All issued and outstanding Company Common Shares have been duly authorized, validly issued, and are fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, pre-emptive right, subscription right or any similar right under any provision of the OBCA, the Company's Charter Documents or any Contract to which the Company is a party or otherwise bound. None of the outstanding shares of the Company's capital stock has been issued in violation of the Securities Laws and other applicable Laws. There are no accrued and unpaid dividends with respect to any outstanding shares of capital stock of the Company. The terms of the Company Stock Option Plan and each stock option agreement, if any, evidencing an outstanding Company Option thereunder permit the assumption of the Company Options thereunder as provided in this Agreement without the consent or approval of the holders of those Company Options, the Company Shareholders or otherwise. Neither the Company Stock Option Plan nor any contract, commitment, agreement or instrument of any character to which the Company is a party to or by which the Company is bound relating to any Company Options requires or otherwise provides for any accelerated vesting or exercise of any Company Options in connection with the Arrangement or any other Transaction or upon any subsequent termination of employment or service with the Company or with Nanogen or any Subsidiary of Nanogen. True, correct and complete copies of all agreements and instruments relating to or issued under the Company Stock Option Plan (including executed copies of all agreements and instruments relating to each Company Option) have been provided to Nanogen, and such agreements and instruments have not been amended, modified or supplemented since being provided to Nanogen, and there are no agreements, understandings or commitments to amend, modify or supplement such agreements or instruments in any case from those provided to Nanogen.

(d) The Company is not a party to or bound by any agreement with respect to the voting (including voting trusts or proxies), registration under Securities Laws, or sale or transfer (including agreements relating to pre-emptive rights, rights of first refusal, co-sale rights or "drag-along" rights) of any securities of the Company. To the Knowledge of the Company, there are no agreements among other parties, to which the Company is not a party and by which it is not bound, with respect to the voting (including voting trusts or proxies) or sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any securities of the Company.

(e) Except as described in this Section 2.7, no capital stock of the Company or any security convertible or exchangeable into or exercisable for such capital stock, is issued, reserved for issuance or outstanding as of the date of this Agreement. Except as described in this Section 2.7, there are no options, preemptive rights, warrants, calls, rights, commitments or agreements of any kind to which the Company is a party, or by which the Company is bound, obligating the Company to issue, deliver or sell, or cause to be issued,

(c) The Company has duly and timely withheld all material amounts of Taxes required by Law to be withheld by it (including Taxes required to be withheld by it in respect of any amount paid or credited or deemed to be paid or credited by it to or for the account or benefit of any person, including any employees, officers or directors and any non-resident Person), and has duly and timely remitted to the appropriate Governmental Entity in all material respects such material amounts of Taxes required by Law to be remitted by it.

(d) The Company has duly and timely collected all material amounts of Taxes on account of any sales or transfer taxes, including goods and services, harmonized sales and provincial sales taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Entity in all material respects any such amounts required by Law to be remitted by it.

(e) None of sections 17, 78, 80, 80.01, 80.02, 80.03 and 80.04 and subsection 15(2) of the ITA, or any equivalent provision of the Tax laws of any province or any other jurisdiction, have applied or will apply to the Company with respect to a transaction or event occurring at any time on or before the Effective Time.

(f) The Company has not acquired any material property from, or entered into any material transactions with, a non-arm's length Person, within the meaning of the ITA, for consideration, the value of which is less than fair market value or in circumstances which could subject it to a material liability under section 160 of the ITA or any equivalent provision of the Tax Laws of any provincial or any other jurisdiction.

(g) For all material transactions between the Company and any non-resident Person with whom it was not dealing at arm's length during a taxation year commencing after 1998 and ending on or before the Effective Time, the Company has, to the extent required by Law, made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the ITA.

(h) There are no material liens for Taxes upon the assets of The Company or its Subsidiaries except for liens for current Taxes not yet due.

(i) Neither the Company nor any of its Subsidiaries is party to or has any obligation under (i) any tax sharing, tax indemnity or tax allocation agreement or arrangement, or (ii) pursuant to Section 1.1502-6 of the United States Treasury Regulations or any similar Laws, that could result in any material Tax liability for the Company or any of its Subsidiaries.

2.15. Title to Properties. The Company has good and marketable title to all of its assets and properties (real and personal) and interests in assets and properties (real and personal), reflected in the Company Financial Statements or acquired after the September 30, 2003 (except assets, properties, interests in properties and assets sold or otherwise disposed of since September 30, 2003 in the Ordinary Course of Business), or with respect to leased properties and assets, valid leasehold interests in, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (i) the lien of current taxes not yet due and payable, (ii) such imperfections of title, liens and easements as do not and will not materially detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties and (iii) liens securing debt which is reflected on the Company Financial Statements. The plants, property and equipment of Company that are used in the operations of its business are in good operating condition and repair. All properties used in the operations of Company are reflected in the Company Financial Statements to the extent Canadian GAAP requires the same to be reflected. Section 2.15 of the Company Disclosure Schedule identifies each parcel of real property owned or leased by the Company.

2.16. Intellectual Property.

(a) Section 2.16(a) of the Company Disclosure Schedule sets forth, as of the date hereof, a complete and accurate list of all the Intellectual Property Rights that are necessary to the operation of the Company as has been and is now being conducted.

(b) As of the Closing Date, Company owns or controls all of the Company Intellectual Property free and clear of all mortgages, hypotechs, liens, security interests, leases, pledges, encumbrances, equities, claims, charges, options, written restrictions, rights of first refusal, title retention agreements or other exceptions to title which affect the Company Intellectual Property or restrict the use by the Company of the Company Intellectual Property in any way. No Person, including any current or former employee or consultant of the Company, has any proprietary, commercial or other interest in any of the Company Intellectual Property.

There are no existing agreements, options, commitments, or rights with, of or to any Person to acquire or obtain any rights to, any of the Intellectual Property Rights.

(c) To the Company's Knowledge, the operation of the Company, as has been and is now being conducted, does not presently infringe or misappropriate the Intellectual Property Rights of any Person and the Company has not received any written notice from any Person nor has Knowledge of, any actual or threatened claim or assertion to the contrary or of any facts or alleged facts which are likely to serve as a basis for any such claim or assertion.

(d) Any necessary registration, maintenance and renewal fees due in connection with the Company Intellectual Property have been paid in a timely manner and all necessary documents and certificates in connection with the Intellectual Property Rights, for the purposes of maintaining such Company Intellectual Property, have been filed in a timely manner with the relevant Governmental Entity. The patent applications listed in Section 2.16(a) of the Company Disclosure Schedule that are owned by the Company (and, to the Company's Knowledge, such material patent applications that are otherwise controlled by the Company) are pending and have not been abandoned or declared in default, and have been and continue to be prosecuted.

(e) Company has the unrestricted right to assign, transfer or grant to Nanogen all rights in the Company Intellectual Property that are being assigned, transferred or granted to Nanogen under this Agreement, in each case free of any rights or claims of any Person and without payment of any royalties, license fees or other amounts to any Person.

(f) The Company has not entered into any Contract (i) granting any Person the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any of the Intellectual Property Rights or (ii) expressly agreeing to indemnify any Person against any charge of infringement of any of the Intellectual Property Rights.

(g) None of the Patents are invalid and all are subsisting and enforceable. None of the Patents are currently involved in any interference, reissue, reexamination, opposition or other inter parties proceedings which could result in a loss or limitation of a patent right or claim involving any of such Patents, and the Company has not received any written notice from any Person, or has Knowledge, of any actual or threatened claim or assertion to the contrary, or of any facts or alleged facts which are likely to serve as a basis for any such claim or assertion.

(h) To the Knowledge of the Company, there are no dominating, interfering, or potentially dominating or interfering Patents owned or under the control of any Person that are not being licensed or assigned to Nanogen hereunder.

(i) There are no actions or proceedings (including any inventorship challenges) pending with respect to any of the Patents nor have any such actions or proceedings been brought during the past five (5) years.

(j) The Company has not entered into any Contract granting any Person the right to control the prosecution of any of the Patents.

(k) Each of the Patents listed in Section 2.16(a) of the Company Disclosure Schedule that were filed by the Company properly identifies each and every inventor of the claims thereof as determined in accordance with the Laws of the jurisdiction in which such Patent is issued or such patent application is pending. Each inventor named on the Patents and patent applications listed in Section 2.16(a) of the Company Disclosure Schedule (except as otherwise indicated on such schedule) that were filed by the Company, alone or together with any joint owners, has executed an agreement agreeing to assign or actually assigning his or her entire right, title and interest in and to such patent or patent application, and the inventions embodied and claimed therein, to the Company, alone or together with any joint owners as appropriate, except as indicated in Section 2.16(a) of the Company Disclosure Schedule.

(l) To the Knowledge of the Company, there are no Patents, articles or other prior art references, or any other prior art or material information, that could render invalid in whole or in part any Patent listed in Section 2.16(a) of the Company Disclosure Schedule or any claim therein. The Company has met its duty of candor as required under applicable Laws.

(m) None of the trademarks is or has been the subject of any opposition, cancellation, abandonment or similar proceeding, the Company has not received any written notice from any Person, or has Knowledge, of

actual or threatened claim or assertion to the contrary, or of any facts or alleged facts which are likely to serve as a basis for any such claim or assertion.

(n) To the Company's Knowledge, there are no Intellectual Property Rights of any Person that are interfering or potentially interfering with the Trademarks.

(o) The Company has used commercially reasonable efforts to maintain its confidential information and trade secrets in confidence, including entering into licenses and contracts that generally require licensees, contractors and other third persons with access to such trade secrets to keep such trade secrets confidential. The Company has taken reasonable and customary measures to maintain and protect, as applicable, the confidentiality of the Patents and the Company's know-how and with respect to marking the Company Intellectual Property.

(p) All current and former employees and consultants of the Company who are or have been substantively involved in the creation, authorship, design, review, evaluation or development of the subject matter embodied in the Company Intellectual Property have executed written Contracts or are otherwise obligated to protect the confidential status and value thereof and to vest in the Company exclusive ownership of such Intellectual Property Rights. The Company has provided Nanogen with true, correct and complete copies of all such Contracts and, to the Knowledge of the Company, no such employee or consultant is in default under the terms of any such Contract.

(q) To the Knowledge of the Company, no Person described in paragraph (p) has any contractual or other obligation that would preclude any such assignment or otherwise conflict with the obligations of such Person to the Company or appropriate owners under such agreement with the Company or such appropriate owners, as the case may be.

(r) Section 2.16(r) of the Company Disclosure Schedule sets forth a true, complete and accurate list of all material agreements or instruments with respect to any options, rights, licenses or interests of any kind relating to the Intellectual Property Rights that has been granted (i) to the Company (other than agreements commonly generated in the Ordinary Course of Business (including software licenses for generally available software, employee assignment agreements, nondisclosure agreements, consulting agreements, material transfer agreements, clinical trial agreements and evaluation agreements) that individually and in the aggregate have not had and would not reasonably be expected to have a Company Material Adverse Effect) or (ii) by the Company to any other person (other than agreements commonly generated in the Ordinary Course of Business (including software licenses for generally available software, employee assignment agreements, nondisclosure agreements, consulting agreements, material transfer agreements, clinical trial agreements and evaluation agreements) that individually and in the aggregate have not had and would not reasonably be expected to have a Company Material Adverse Effect). To the Knowledge of the Company, there are no such options, rights, licenses or interests of any kind relating to Intellectual Property Rights other than as set forth in the agreements listed in Section 2.16(r) of the Company Disclosure Schedule. Section 2.16(r) of the Company Disclosure Schedule sets forth, as of the date hereof, all agreements under which the Company is obligated to make payments (in any form, including royalties, milestones and other contingent payments) to third parties for use of any intellectual property rights with respect to the commercialization of any of the Products. The Company is in compliance with the terms of all such agreements and, with respect to sublicenses, to the Knowledge of the Company, the Company's licensor is in compliance with all agreements granting such Intellectual Property Rights to licensor, except where individually or in the aggregate it would not have had or would not reasonably be expected to have a Material Adverse Effect.

2.17 Environmental Matters.

(a) Except as would not have a Material Adverse Effect on the Company:

(i) the Company possesses all Environmental Permits necessary to conduct its businesses and operations as now being conducted, and each such Environmental Permit is in full force and effect; the Company has not received written notification from any Governmental Entity that any such Environmental Permits will be modified, suspended, revoked or not renewed;

(ii) the Company and each of the facilities of the Company are, and have been, in compliance with all applicable Environmental Law or Environmental Permits. In respect of the facilities no person is

used in Rule 145 under the 1933 Act). Except as disclosed in Section 2.20(b) of the Company Disclosure Schedule, the Company is not indebted to, nor does it owe any contractual commitment or arrangement to, with or for the benefit of, any director, officer, employee, affiliate or agent of the Company (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses).

2.21 Certain Agreements Affected by the Arrangement. Except as disclosed in Section 2.21 of the Company Disclosure Schedule, neither the execution and delivery of this Agreement or the consummation of the Transactions, including the Arrangement, will, either alone or upon the occurrence of further events, (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director, employee or consultant of the Company, (ii) increase any benefits otherwise payable by the Company or (iii) result in the acceleration of the time of payment or vesting of any such benefits (except as otherwise expressly provided herein).

2.22 No Restrictions on Business. Except for this Agreement, there is no Contract, judgment, injunction, order or decree binding upon the Company which would have the effect of prohibiting or materially impairing any business practice of the Company, acquisition of property by the Company or the conduct of business by the Company as currently conducted or as currently proposed to be conducted by the Company.

2.23 Opinion of Financial Advisor. The financial advisor of the Company, First Associates Investments Inc. has delivered to the Company an opinion, on or prior to the date of this Agreement, to the effect that as of the date of this Agreement, and subject to the assumptions, qualifications and limitations set forth therein, the aggregate consideration payable by Nanogen pursuant to the Arrangement is fair, from a financial point of view, to the holders of Company Common Shares. The Company has provided or shall, when it is reduced to writing deliver, a true, complete and correct copy of such opinion to Nanogen.

2.24 Broker Fees. Except as disclosed in Section 2.24 of the Company Disclosure Schedule, no broker, investment banker, finder or financial advisor or other Person has been retained by, or is authorized to act on behalf of, the Company and is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Transactions. The Company has heretofore delivered or made available to Nanogen a complete and correct copies of all agreements between the Company and those firms listed on Section 2.24 of the Company Disclosure Schedule pursuant to which such firms could be entitled to any payment relating to the transaction contemplated by this Agreement.

2.25 Representations Complete. None of the representations or warranties made by the Company herein or in any Schedule hereto, including the Company Disclosure Schedule, or in any certificate furnished by the Company pursuant to this Agreement, or the Company Documents, when all such documents are read together in their entirety, contains or will contain at the Closing any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF NANOGEN

Nanogen represents and warrants to the Company that, except as set forth in the Nanogen Documents or in the written disclosure schedule prepared by Nanogen which is dated as of the date of this Agreement and arranged in sections corresponding to the numbered and lettered sections contained in this Article 4 (*provided, however*, that disclosure in any section shall be deemed to have been set forth in all other applicable sections where it is reasonably apparent that such disclosure is applicable to such other sections notwithstanding the omission of any cross-reference to such other section) and is being concurrently delivered to Nanogen in connection herewith (the "*Nanogen Disclosure Schedule*"), the following statements are true and correct as of the date of this Agreement, except where another date is specified:

3.1 Due Organization. Nanogen is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the requisite corporate or other power,

as the case may be, and authority to carry on its business as now being conducted. Nanogen is duly qualified licensed to do business and is in good standing in each jurisdiction in which the nature of its business ownership or leasing of its properties or operations makes such qualification or licensing necessary, other (a) in any jurisdiction that does not recognize the concept of good standing, and (b) in such jurisdictions the failure to be so qualified or licensed or to be in good standing would not have a Material Adverse Effect Nanogen.

3.2. **Authority.** Nanogen has the requisite corporate power and authority to execute and deliver this Agreement to consummate the Transactions, including the Arrangement. The execution and delivery of this Agreement Nanogen and the consummation by Nanogen of the Transactions, including the Arrangement, have been authorized by all necessary corporate action on the part of Nanogen and no other corporate authorization approvals on the part of Nanogen are necessary to approve this Agreement or to consummate the Transactions including the Arrangement. This Agreement has been duly executed and delivered by Nanogen and constitutes legal, valid and binding obligation of Nanogen, enforceable against Nanogen in accordance with its terms subject to (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, moratorium, reorganization receivership and similar laws relating to or affecting the enforcement of the rights and remedies of creditors generally and (ii) principles of equity (regardless of whether considered and applied in a proceeding in equity at law).

3.3. **No Conflicts.** The execution, delivery and performance of this Agreement by Nanogen and consummation the Transactions, including the Arrangement, will not contravene or violate (a) any Law, judgment, order decree to which Nanogen is subject or (b) the Charter Documents of Nanogen or any securities issued by Nanogen; nor will such execution, delivery or performance result in a default under any term, condition provision of, or require the consent of any other party to, any Contract, or any Permit to which Nanogen party, by which Nanogen may have rights or by which any of the assets of Nanogen may be bound or affected or give any party with rights thereunder the right to terminate, modify, accelerate or otherwise change existing rights or obligations of Nanogen thereunder. No consent, approval, order or authorization of registration, declaration or filing with, or notice to, any Governmental Entity, is required in connection with execution, delivery and performance of this Agreement by Nanogen or the consummation of the Transactions including the Arrangement, except for (A) pursuant to applicable requirements of the Securities Laws; (B) filing with the Director under the OBCA, (C) the rules and regulations of foreign Governmental Entities, (D) as may be required by the rules and regulations of the TSX, (E) the Regulatory Approvals relating to Company, (F) any approvals or filings required in connection with the creation and issuance of Nanogen Common Stock

3.4. **Public Filings.** Nanogen has filed with the SEC all reports required to be filed pursuant to Sections 13(a) 14 and 15(d) of the 1934 Act, to be filed by Nanogen since December 31, 2001 (collectively, and in each case including all amendments thereto, the "*Public Documents*"). As of their respective dates, except to the extent revised or superseded by a subsequent filing with the SEC, the Public Documents complied in all material respects with the requirements of the 1934 Act, and none of the Public Documents (including any financial statements included therein) as of such dates and as of the date hereof contained or contains any untrue statement of a material fact or omitted to state a 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.

3.5. **Financial Statements.** Except as set forth in any Nanogen SEC Document, the financial statements of Nanogen, including the notes thereto, included in the most recent annual report on Form 10-K and each subsequent quarterly report on Form 10-Q, in each case as amended, if applicable, included in the Public Documents (the "*Nanogen Financial Statements*") (i) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto as of their respective dates, (ii) have been prepared in accordance with U.S. generally accepted accounting principles ("*GAAP*") applied on a consistent basis throughout the periods indicated and consistent with each other (except as may otherwise be indicated in the notes thereto or, in the case of unaudited statements included in Quarterly Reports on Form 10-Q, as permitted by Form 10-Q under the 1934 Act), and (iii) present fairly in all material respects the financial condition and results of operations and cash flows of Nanogen as of the dates and for the periods, indicated therein (subject, in the case of interim period financial statements, to normal recurring year-end audit adjustments). Except as set forth in the Nanogen Financial Statements and except

arising hereunder, the Company has no material liabilities or obligations of any nature (whether absolute, accrued, asserted or unasserted, contingent or otherwise) that would be required to be reflected on or reserved against in any Nanogen Financial Statements that are not disclosed, reflected or reserved against in such Nanogen Financial Statements, except for liabilities and obligations (i) incurred since September 30, 2003 in the Ordinary Course of Business, or (ii) that would not reasonably be expected to have a Material Adverse Effect on Nanogen.

3.6 **Capital Stock.** The authorized capital stock of Nanogen consists of 50,000,000 shares of Nanogen Common Stock, par value $0.001 per share, and 5,000,000 shares of Nanogen Preferred Stock, $0.001 par value. As of December 31, 2003, there were issued and outstanding 24,867,325 shares of Nanogen Common Stock and no shares of Nanogen Preferred Stock. As of December 31, 2003, there were 4,861,366 issued and outstanding options to purchase Nanogen Common Stock. As of December 31, 2003, there were 2,747,293 issued and outstanding warrants to purchase Nanogen Common Stock. Upon issuance in accordance with this Agreement, the shares of Nanogen Common Stock delivered to the holders will be duly authorized, validly issued, fully paid and non-assessable.

3.7 **Absence of Litigation.** There are no claims, actions, suits, proceedings pending, and Nanogen has not received any written notice of any governmental investigations, inquiries or subpoenas pending against Nanogen, and to the Knowledge of Nanogen, none of the foregoing have been threatened in writing against Nanogen that would prevent, enjoin, alter or materially delay any of the Transactions, or that would materially interfere with the ability of Nanogen to consummate the Transactions. Nanogen is not subject to any outstanding order, judgment, writ, injunction or decree that could prevent, enjoin, alter or materially delay any of the Transactions, or that would materially interfere with the ability of Nanogen to consummate the Transactions.

3.8 **Absence of Certain Changes.** Between September 30, 2003 and the date hereof, there has not been any change in the financial condition, properties, assets, liabilities, business or results of operations of Nanogen, which change by itself or in conjunction with all other such changes, whether or not arising in the ordinary course of business, consistent with past practice, has had or can reasonably be expected to have a Material Adverse Effect on Nanogen.

3.9 **No Brokers or Finders.** Nanogen will have no liability to any Person for any commission or finder's or similar fee in connection with the Transactions other than Seven Hills Partners LLC.

3.10 **Representations Complete.** None of the representations or warranties made by Nanogen herein or in any Schedule hereto, including the Nanogen Disclosure Schedule (if any), or in any certificate furnished by Nanogen pursuant to this Agreement, or the Public Documents, when all such documents are read together in their entirety, contains or will contain at the Closing any untrue statement of a material fact, or omits or will omit at the Closing to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading.

ARTICLE 4

COVENANTS RELATING TO CONDUCT OF BUSINESS

4.1 **Conduct of Business by the Company.** Except as otherwise provided in, contemplated by or permitted by this Agreement, or as set forth in Section 4.1 of the Company Disclosure Schedule, between the date hereof and the Effective Time, the Company shall, and shall cause its Subsidiary, (i) to operate their respective businesses in the Ordinary Course of Business, and (ii) to use all commercially reasonable efforts to preserve intact their business relationships with third parties, and keep available the service of their current officers and employees. Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, or set forth in Section 4.1 of the Company Disclosure Schedule or consented to in writing by Nanogen (which consent shall not be unreasonably withheld or delayed), prior to the Effective Time the Company shall not, and shall not permit its Subsidiary to:

(a) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property) in respect of, any of its capital stock;

(b) purchase, redeem or otherwise acquire any shares of capital stock or any other securities of the Company or its Subsidiary or any options, warrants, calls or rights to acquire any such shares or other securities, or any action to amend the terms of or accelerate any vesting provisions of any such shares or securities;

(c) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of, or in substitution for shares of its capital stock or any of its other securities;

(d) issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other equity or voting interests or any securities convertible into, or exchangeable for, or any options, warrants, calls or rights to acquire, any such shares, voting securities or convertible or exchangeable securities or any stock appreciation rights or other rights that are linked in any way to the price of Company Common Shares, other than the issuance of Company Common Shares upon the exercise of Company Options outstanding on the date of this Agreement, to the extent such exercise is effected in accordance with the current existing terms of each such option and;

(e) amend or propose to amend its Charter Documents;

(f) adopt a plan of complete or partial liquidation, dissolution, consolidation, restructuring or recapitalization of the Company or any of its Subsidiaries or otherwise permit the corporate existence of the Company or any of its Subsidiaries to be suspended, lapsed or revoked;

(g) directly or indirectly, sell, lease, sell and leaseback, mortgage or otherwise encumber or subject to any Lien or otherwise dispose of any of its properties or assets or any interest therein, other than (i) the sale or distribution of personal property held for such sale or distribution to customers in the Ordinary Course of Business, (ii) pursuant to existing Contracts or commitments, (iii) any Liens for taxes not yet due and payable or being contested in good faith and (iv) such mechanics' and similar Liens, if any, as do not materially detract from the value of any such properties or assets;

(h) (I) repurchase, prepay or incur any indebtedness or assume, guarantee or endorse any indebtedness of another Person or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company or any of its Subsidiaries, except for transactions between the Company and Nanogen or (II) make any loans, advances or capital contributions to, or investments in, any other Person other than to the Company or any direct or indirect wholly-owned Subsidiary of the Company in the Ordinary Course of Business;

(i) enter into, modify, amend or terminate any Contract, except (i) for any modifications, amendments, terminations in the Ordinary Course of Business which would not (A) have an adverse effect on the Company, (B) impair in any respect the ability of the Company to perform its obligations under this Agreement or (C) prevent or delay the consummation of the Transactions, or (ii) with Nanogen's prior written consent;

(j) hire any employees or engage any consultants;

(k) (i) except as otherwise contemplated by this Agreement or as required to comply with applicable law, rule or regulation, waive any rights of the Company under or grant or pay any benefit not provided for as of the date of this Agreement under any Contract or Company Benefit Plan or (ii) enter into, modify, amend or terminate any Company Benefit Plan, (iii) accelerate the vesting schedule or the distribution or payment date for any payments or benefits provided under any Company Benefit Plan except as otherwise required by the terms of that Company Benefit Plan or any Listed Contract as in effect on the date of this Agreement or (iv) adopt or enter into any collective bargaining agreement or other labor union contract applicable to the employees of the Company or any Subsidiary thereof;

(l) maintain insurance at less than current levels or otherwise in a manner inconsistent with past practice;

(m) except as required by Canadian GAAP, revalue any of its assets or make any changes in accounting methods, principles or practices;

(n) effectuate a "mass termination," as that term is defined in the Employment Standards Act (Ontario) or any applicable legislation, as amended, affecting in whole or in part any site of employment, facility, operating unit or employee of Company or any of its Subsidiaries;

(o) take any action that would make any representations and warranty of the Company hereunder inaccurate in any respect at, or as of any time prior to, the Effective Time or omit to take any action necessary to prevent any such representations or warranty from being inaccurate in any respect at any such time; and

(p) authorize any of, or commit, resolve or agree to take any of, the foregoing actions.

4.2 Conduct of Business by Nanogen. Except as otherwise expressly provided in this Agreement, as set forth in Section 4.2 of the Nanogen Disclosure Schedule or consented to in writing by the Company (which consent shall not be unreasonably withheld or delayed), prior to the Effective Time Nanogen shall not (i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property) in respect of, any of its capital stock; or (ii) purchase, redeem or otherwise acquire any shares of capital stock or any other securities of Nanogen, other than pursuant to the exercise of Nanogen's repurchase rights with respect to unvested shares of Nanogen Common Stock held by individuals terminating employment or service with Nanogen.

4.3 No Solicitation by the Company.

(a) The Company shall not, nor shall it permit any of its Subsidiaries to, or authorize or permit any director, officer or employee of the Company or any of its Subsidiaries or any financial advisor, attorney, accountant or other advisor or representative of the Company or any of its Subsidiaries to take any action to, directly or indirectly:

(i) solicit, initiate or facilitate any Takeover Proposal or the making of any proposal that constitutes a Takeover Proposal; or

(ii) enter into, continue or otherwise participate in any negotiations regarding, or furnish to any Person any nonpublic information relating to the Company or any of its Subsidiaries relating to, or afford access to the properties, books or records of the Company or any of its Subsidiaries to any Person (other than Nanogen and its respective officers, directors, employees, agents and advisors) regarding a Takeover Proposal;

provided, however, that at any time prior to obtaining the Company Shareholders' Approval and the Company Debentureholders' Approval, subject to compliance with this Section 4.3, nothing in this Agreement shall prevent, and the Company may, in response to a Takeover Proposal;

(A) request clarifications from any third party which makes a Takeover Proposal (and its representatives) if such action is taken for the purpose and solely to the extent reasonably necessary to obtain information reasonably necessary for the Company to ascertain whether such Takeover Proposal is a Superior Proposal, *provided, however*, that the board of directors of the Company shall not rely on this Section 4.3(a)(ii)(A) to engage in any discussions or negotiations with, or disclose any nonpublic information to, or afford access to, any such third party;

(B) furnish information with respect to the Company and its Subsidiaries to the Person making such Takeover Proposal (and its representatives) pursuant to a confidentiality agreement which is no less favorable to the Company than the Confidentiality Agreement or participate in discussions or negotiations with the Person making such Takeover Proposal (and its representatives) regarding such Takeover Proposal; and

(C) enter into a binding written agreement providing for the implementation of a Superior Proposal if the Company, following the approval of the board of directors of the Company, elects to terminate this Agreement pursuant to Section 7.1(f),

if in the case of (B) and (C) above, the board of directors of the Company determines in good faith after receiving advice of outside legal counsel that (1) such Takeover Proposal constitutes, or is reasonably likely to lead to, a Superior Proposal or (2) it must take such action to comply with the fiduciary duties of the board of directors of the Company under applicable law. The term "***Takeover Proposal***" means any proposal or offer from any Person relating to any direct or indirect acquisition, in one transaction or a series of transactions, including any merger, consolidation, tender offer, exchange offer, stock acquisition, asset acquisition, binding share exchange, business combination, recapitalization, liquidation, dissolution, joint venture or similar transaction, of (i) all or substantially all of the assets, properties and business of the Company and its Subsidiaries or (ii) 50% or more of the outstanding Company Common Shares or capital

stock of, or other equity or voting interests in, the Company. The term "*Superior Proposal*" means a Takeover Proposal not solicited by the Company that the Company's board of directors determines in good faith, after consultation with the Company's independent financial advisors of nationally recognized reputation and considering any modification to this Agreement proposed by Nanogen, is more favorable to the Company Shareholders from a financial point of view than the Arrangement, taking into account all of the terms and conditions of such proposal, the likelihood of completion of such transaction, and the financial, regulatory, legal and other aspects of such proposal.

(b) The Company shall not take any of the actions referred to in clauses (A) through (C) above unless the Company shall have delivered to Nanogen a prior written notice advising Nanogen that it intends to take such action. In addition, the Company shall notify Nanogen promptly (but in no event later than twenty-four (24) hours) after receipt by the Company (or any of its advisors) of any Takeover Proposal, any indication that any third party is considering making a Takeover Proposal or of any request for information relating to the Company or any of its Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its Subsidiaries by any third party that may be considering making, or has made, a Takeover Proposal. The Company shall provide such notice orally and in writing and shall identify the third party making, and the terms and conditions of, any such Takeover Proposal, indication or request. The Company shall keep Nanogen fully informed, on a current basis, of the status and details of any such Takeover Proposal, indication or request.

(c) The terms of this Section 4.3 shall not prohibit the Company from taking any action necessary in order to comply with Section 99 under the Securities Act, *provided that* neither the Company nor its board of directors shall, except as permitted by this Agreement, propose to withdraw, amend, change or modify the recommendation of this Agreement and the Arrangement, or to approve or recommend, or propose to publicly approve or recommend, a Takeover Proposal.

(d) The Company shall, and shall cause its Subsidiaries, its representatives and the representatives of its Subsidiaries, to immediately cease existing discussions or negotiations with any Persons conducted heretofore with respect to a Takeover Proposal.

ARTICLE 5

ADDITIONAL AGREEMENTS

5.1. Covenants with Respect to the Arrangement.

(a) The Company shall use all commercially reasonable efforts to, and shall use all commercially reasonable efforts to cause its Subsidiaries to, perform all obligations required to be performed by the Company or any of its Subsidiaries under this Agreement, cooperate with Nanogen in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as practicable, the Transactions and, without limiting the generality of the foregoing, the Company shall:

(i) consult with Nanogen prior to making publicly available its financial results for any period after the date of this Agreement and prior to filing any Company Documents; and

(ii) use all commercially reasonable efforts to obtain all waivers, consents and approvals from other parties to loan agreements, leases or other contracts required to be obtained by the Company or a Subsidiary of the Company to consummate the Transactions which the failure to obtain would materially and adversely affect the ability of the Company or its Subsidiaries to consummate the Transactions.

(b) Nothing in this Agreement shall prevent the board of directors of the Company, either before or after the Company has filed or mailed the Company Circular, from withdrawing, amending, changing or modifying its recommendation in favor of the Arrangement at any time prior to the approval and adoption of this Agreement and approval of the Arrangement by the Company Shareholders and the Company Debentureholders where the board of directors of the Company determines in good faith, after consultation with its outside legal advisors, that it must do so in order to comply with its fiduciary duties under Law.

5.2. Access to Information; Confidentiality.

(a) The Company shall, and shall cause each of its Subsidiaries to, afford to Nanogen, and to the other employees, attorneys, accountants and other representatives of Nanogen, reasonable access during

business hours during the period prior to the Effective Time or termination of this Agreement, and without undue disruption of their respective businesses, to their respective properties, books, contracts, commitments, personnel and records and, during such period, the Company shall, and shall cause each of its Subsidiaries to, promptly deliver or make available to Nanogen (i) a copy of each report, schedule, form, statement and other document filed by it or received by it during such period pursuant to the requirements of Securities Laws and (ii) all other information concerning its business, properties and personnel as Nanogen may reasonably request; *provided, however*, that to the extent that such information is competitively sensitive, as determined in good faith by the board of directors of the Company, including but not limited to, the Company's customer specific information or future marketing or strategic plans, such information will be reviewed by outside antitrust counsel before being shared with Nanogen or the officers, employees, attorneys, accountants and other representatives of Nanogen. Nanogen will hold, and will cause its respective officers, employees, attorneys, accountants and other representatives to hold, any nonpublic information in accordance with the terms of the Mutual Non-Disclosure Agreement, dated as of October 14, 2003 between the Company and Nanogen (the "*Confidentiality Agreement*").

(b) Notwithstanding anything herein or in the Confidentiality Agreement to the contrary, any Party to this Agreement (and each employee, representative, or other agent of any Party to this Agreement) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Transactions, and all materials of any kind (including opinions or other tax analyses) related to such tax treatment and tax structure; *provided*, that this Section 5.2(b) shall not permit any Person to disclose the name of, or other information that would identify, any party to such transactions, or to disclose confidential commercial information regarding such transactions; *provided, further*, that this Section 5.2(b) shall not be effective with respect to any Person until the earliest of the date of a public announcement (if any) of discussions relating to any such transaction involving such Person, the date of a public announcement (if any) of any such transaction involving such Person or the date of the execution of a definitive agreement to enter into any such transaction involving such Person, it being understood that there are no limits at any time on the ability of any party to consult its own independent tax advisor regarding the tax treatment or tax structure of the transaction.

5.3 Further Actions. Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties agrees to 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 that are necessary or advisable to consummate and make effective the Arrangement and the other Transactions, including (a) the taking of all commercially reasonable acts necessary to cause the conditions in Article 6 to be satisfied, (b) the obtaining of all necessary consents, approvals or waivers from third parties (including without limitation, the Regulatory Approvals) and (c) the execution and delivery of any additional instruments necessary to consummate the Transactions and to fully carry out the purposes of this Agreement. Nothing set forth in this Section 5.3 will limit or affect actions permitted to be taken pursuant to Section 4.2, and notwithstanding this Section 5.3, the provisions of Section 5.4 shall govern with respect to filings with, and consents, approvals, permits or authorizations from, Governmental Entities.

5.4 Filings; Other Actions.

(a) Upon the terms and subject to the conditions herein provided each Party hereto shall (i) use all commercially reasonable efforts to cooperate with one another in determining which filings and registrations are required to be made prior to the Effective Time, and which consents, approvals, waivers, clearances, permits or authorizations or confirmations are required to be obtained prior to the Effective Time, from Governmental Entities in connection with the execution and delivery of this Agreement and the consummation of the Transactions, (ii) use all commercially reasonable efforts to timely make all such filings and registrations and timely obtain all such consents, approvals, waivers, clearances, permits, registrations, authorizations or confirmations (including any required filings under any foreign antitrust, competition or trade law), (iii) use all commercially reasonable efforts to avoid or eliminate as soon as practicable each and every impediment under any antitrust law that may be asserted by any United States or foreign governmental antitrust authority so as to enable the Parties to expeditiously close the Transactions, and (iv) use all commercially reasonable efforts to take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary, proper or appropriate to consummate and make effective the Transactions as promptly as practicable.

before issuing, and give each other a reasonable opportunity to review and comment upon, any press release or other public statements with respect to this Agreement and the Transactions. The Parties agree that the initial press release to be issued with respect to the entering into of this Agreement shall be in a form mutually agreeable to the Parties.

5.7. Director's and Officer's Insurance and Indemnification.

(a) For six years after the Effective Time, Nanogen shall indemnify, defend and hold harmless to the fullest extent permitted by Law the present and former officers and directors of the Company and its Subsidiaries against all losses, claims, damages and liabilities in respect of acts or omissions occurring at or prior to the Effective Time. For six years after the Effective Time, Nanogen shall maintain provisions in its Charter Documents concerning the indemnification and exoneration of the Company's former and present officers, directors, employees and agents that are no less favorable to those persons than the provisions of the Company's Charter Documents.

(b) For six years after the Effective Time, Nanogen will, without any lapse in coverage, provide officers' and directors' liability insurance in respect of acts or omissions occurring prior to the Effective Time covering each such Person currently covered by the Company's officers' and directors' liability insurance policy on substantially similar terms with respect to coverage and amount as those in effect on the date of this Agreement; provided, that Nanogen shall only be obligated to maintain such insurance to the extent the aggregate premiums during such period do not exceed 150% of aggregate annual premium currently paid by the Company for such insurance on the date of this Agreement.

(c) The provisions of this Section 5.7 are intended to be for the benefit of, and will be enforceable by, each indemnified party, his or her heirs and his or her representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise.

5.8. NNM Listing of Additional Shares Application. Nanogen shall use its commercially reasonable efforts to cause to be authorized for listing on the NNM Nanogen Common Stock issued or issuable in connection with the Arrangement.

5.9. Preparation of Audited Financial Statements. The Company shall use commercially reasonable efforts to prepare in accordance with Canadian GAAP audited financial statements of the Company, including notes thereto, for the fiscal year ended December 31, 2003 that comply as to form in all material respects with the applicable accounting requirements in Canada and with the published rules and regulations of the applicable Canadian Securities Regulatory Authorities (the "*Year-End Financials*"). The Company shall use commercially reasonable efforts to complete the Year-End Financials before April 15, 2004.

5.10. Nanogen Public Filings. With a view to making available to the holders the benefits conferred under SEC Staff Bulletin No. 3R with regard to resale status of securities that are received in transactions exempt from registration pursuant to Section 3(a)(10), Nanogen agrees to file with the SEC in a timely manner all reports required under Section 13 of the 1934 Act between the date hereof through the Effective Time.

ARTICLE 6

CONDITIONS TO THE ARRANGEMENT

6.1. Conditions to Each Party's Obligation to Effect the Arrangement. The respective obligation of each Party to effect the Arrangement is subject to the satisfaction or waiver, on or prior to the Closing Date, of the following conditions:

(a) *Approval of the Arrangement.*

(i) The Company Meeting shall have been duly convened;

(ii) The Arrangement Resolution shall have received Company Shareholders' Approval and Company Debentureholders' Approval or, in each case, approval of the Arrangement Resolution by such other percentage as set forth in the Interim Order; and

(iii) Any conditions in addition to those set out in this Section 6.1(a)(i) which may be imposed by the Interim Order shall have been satisfied.

(b) *Governmental and Regulatory Approvals; Other Approvals.* Approvals from any Governmental Entity (if any) deemed appropriate or necessary by any party to this Agreement, including the Interim Order, the Final Order, shall have been timely obtained and shall not have been set aside or modified in a manner unacceptable to the Company or Nanogen, acting reasonably, on appeal or otherwise. Any requirements of other jurisdictions or Governmental Entities applicable to the consummation of the Arrangement shall have been satisfied, unless the failure of such requirements to be satisfied would not have a Material Adverse Effect on the Company or Nanogen.

(c) *No Legal Restraints.* No provision of any applicable Laws and no temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction, Governmental Entity, or other legal restraint or prohibition (collectively, "*Legal Restraints*") that has the effect of preventing the consummation of the Arrangement or the Transactions shall be in effect.

(d) *No Termination.* This Agreement shall not have been terminated pursuant to Article 7.

6.2. Conditions to Obligation of Nanogen. The obligations of Nanogen to effect the Arrangement are further subject to the satisfaction or waiver, on or prior to the Effective Date, of the following conditions:

(a) *Representations and Warranties.* The representations and warranties of the Company contained herein shall be true and correct (without regard to the terms "material", "materially" or "Material Adverse Effect") as though made as of the Closing Date in all material respects except (i) that the accuracy of representations and warranties that by their terms speak as of a specified date will be determined as of such date, (ii) for changes contemplated by this Agreement and (iii) the representations and warranties made in Section 2.11(d) shall be made as written in such section. Nanogen shall have received a certificate signed on behalf of the Company by the chief executive officer or chief operation officer of the Company to such effect.

(b) *Performance of Obligations of the Company.* The Company shall have performed any covenants or obligations required to be performed by it under this Agreement at or prior to the Effective Date in all material respects, and Nanogen shall have received a certificate signed on behalf of the Company by the chief executive officer or the chief operation officer of the Company to such effect.

(c) *Corporate Action.* The board of directors of the Company shall have adopted all necessary resolutions and all other necessary corporate action shall have been taken by the Company and its Subsidiary to permit the consummation of the Arrangement.

(d) *No Material Adverse Effect.* Since the date of this Agreement, there shall have occurred no change or effect on the business of the Company that, individually or in the aggregate would be reasonably likely to have a Material Adverse Effect on the Company.

(e) *Consents.* All consents, authorizations, waivers, orders, licenses and approvals from or notifications to Persons required under the terms of any of the Contracts of SynX or its Subsidiary with respect to the acquisition of control by Nanogen or otherwise required in connection with the consummation of the Transactions, including the consents listed in Schedule 6.2(d), shall have been duly obtained or given, as the case may be, at or before the Effective Time on terms satisfactory to Nanogen acting reasonably, except for any which the failure to obtain or provide does not constitute, individually or in the aggregate, a Material Adverse Effect.

(f) *Dissent Rights.* The holders of no more than 5% of the outstanding Company Common Shares shall have exercised Dissent Rights.

(g) *Internal Controls and Disclosure Controls Certification.* The chief executive officer and the chief operation officer of the Company shall have executed and delivered a certificate in the form attached hereto as Annex D.

(h) *Directors' Resignations.* Each of the directors of the Company and its Subsidiary, if requested by Nanogen, shall have delivered his or her resignation as a director of the Company or its Subsidiary, as the case may be, effective the Effective Date, and appropriate resolutions will have been signed and delivered to Nanogen that have the result of replacing those members of the board of directors of the Company and its Subsidiary that are asked to resign with qualified nominees appointed by Nanogen.

6.3 Conditions to Obligation of the Company. The obligation of the Company to effect the Arrangement is further subject to the satisfaction or waiver, on or prior to the Closing Date, of the following conditions:

(a) *Representations and Warranties.* The representations and warranties of Nanogen contained herein shall be true and correct (without regard to the terms "material", "materially" or "Material Adverse Effect") as though made as of the Effective Date in all material respects, except (i) that the accuracy of representations and warranties that by their terms speak as of a specified date will be determined as of such date, and (ii) for changes contemplated by this Agreement. The Company shall have received a certificate signed on behalf of Nanogen by the chief executive officer or chief financial officer of Nanogen to such effect.

(b) *Performance of Obligations of Nanogen.* Nanogen shall have performed any covenants or obligations required to be performed by them under this Agreement at or prior to the Effective Date in all material respects, and the Company shall have received a certificate signed on behalf of Nanogen the chief executive officer or chief financial officer of Nanogen to such effect.

(c) *Corporate Action.* The board of directors of Nanogen shall have adopted all necessary resolutions, and all other necessary corporate action shall have been taken by Nanogen to permit the consummation of the Arrangement.

ARTICLE 7
TERMINATION, AMENDMENT AND WAIVER

7.1 Termination. This Agreement may be terminated, and the Arrangement contemplated hereby may be abandoned, at any time prior to the Effective Time, whether before or after the Company Shareholders' Approval and the Company Debentureholders' Approval have been obtained:

(a) by mutual written consent of Nanogen and the Company;

(b) by either Nanogen or the Company if:

(i) the Arrangement shall not have been consummated by May 15, 2004 (the "*End Date*", as extended below); *provided*, that if (A) the Effective Time has not occurred by the End Date by reason of nonsatisfaction of the conditions set forth in Sections 6.1(a)(i) or 6.1(b) and (B) all other conditions set forth in Article 6 have been satisfied or waived or are then capable of being satisfied, then the End Date shall automatically be extended to June 15, 2004 (which shall then be the "*End Date*"); *provided, further*, that no Party may terminate this Agreement pursuant to this Section 7.1(b)(i) if such Party's failure to fulfill any of its obligations under this Agreement shall have been a principal reason that the Effective Time shall not have occurred on or before the End Date,

(ii) any Legal Restraint set forth in Section 6.1(c) shall be in effect and shall have become final and nonappealable;

(iii) the Company Shareholders' Approval or the Company Debentureholders' Approval shall not have been obtained at the Company Meeting duly convened therefor; or

(iv) the closing conditions in Section 6 have been waived or satisfied and the Total Share Issuance as of the Effective Date would be subject to the limitation of Section 1.5(e);

(c) by Nanogen if the Company shall have breached or failed to perform in any respect any of its representations, warranties, covenants or other agreements set forth in this Agreement, or if any representations or warranties of the Company shall have become untrue which breach or failure to perform or untrue representation or warranty (A) would give rise to the failure of a condition set forth in Sections 6.2(a) or 6.2(b) and (B) cannot be or has not been cured within thirty (30) days after Nanogen's

giving written notice to the Company of such breach (a "*Company Material Breach*") (*provided*, in each case, that Nanogen is not then in Nanogen Material Breach of any representation, warranty, covenant or other agreement set forth in this Agreement);

(d) by Nanogen if there shall have occurred a Company Triggering Event, provided, that Nanogen is not then in Nanogen Material Breach of any representation, warranty, covenant or other agreement set forth in this Agreement (for purposes of this Agreement, "*Company Triggering Event*" shall mean: (i) the failure of the board of directors of the Company to recommend that the Company Shareholders and the Company Debentureholders vote to in favour of the Arrangement, or the withdrawal or modification of the Company Board Approval in a manner adverse to Nanogen; (ii) the Company shall have failed to include in the Company Circular the Company Board Approval or a statement to the effect that the board of directors of the Company has determined and believes that the Arrangement is in the best interests of the Company and the Company Shareholders; (iii) the board of directors of the Company shall have approved, endorsed or recommended any Takeover Proposal; (iv) a tender or exchange offer relating to securities of the Company shall have been commenced and the Company shall not have sent to its securityholders, within ten (10) Business Days after the commencement of such tender or exchange offer, a statement disclosing that the board of directors recommends rejection of such tender or exchange offer; (v) a material breach by the Company of Section 4.3, or (vi) the Company resolves, agrees or proposes publicly to take any of the foregoing actions in response to such Takeover Proposal);

(e) by the Company, if Nanogen shall have breached or failed to perform in any respect any of its representations, warranties, covenants or other agreements set forth in this Agreement or if any representations or warranties of Nanogen shall have become untrue, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Sections 6.3(a) or 6.3(b) and (B) cannot be or has not been cured within thirty (30) days after the Company's giving written notice to Nanogen of such breach (a "*Nanogen Material Breach*") (provided that the Company is not then in Company Material Breach of any representation, warranty, covenant or other agreement set forth in this Agreement); or

(f) by the Company if the Company is not in breach of its obligations under Section 4.3 hereof and the board of directors of the Company has authorized the Company to enter into a binding written agreement concerning a transaction that constitutes a Superior Proposal.

7.2. Effect of Termination. In the event of termination of this Agreement by either the Company or Nanogen as provided in Section 7.1, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Nanogen or the Company, other than Section 5.5, Section 5.6, this Section 7.2 and Article 8; *provided, however*, that no such termination shall relieve any Party from any liability or damages resulting from an intentional or willful breach or intentional or willful failure to perform by a Party of any of its representations, warranties, covenants or other agreements set forth in this Agreement.

7.3. Amendment. This Agreement may be amended by the Parties at any time before or after the Company Shareholders' Approval and Company Debentureholders' Approval; *provided, however*, that after any such approval, there shall not be made any amendment that by law, rule or regulation requires further approval by the Company Shareholders and the Company Debentureholders without the further approval of such Company Shareholders and such Company Debentureholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

7.4. Extension; Waiver. At any time prior to the Effective Time, a Party may (i) extend the time for the performance of any of the obligations or other acts of the other Parties, (ii) waive any inaccuracies in the representations and warranties of the other Parties contained in this Agreement or in any document delivered pursuant to this Agreement or (iii) subject to the proviso of Section 7.3, waive compliance by the other Party with any of the agreements or conditions set forth in this Agreement. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. Any waiver or failure to insist upon strict compliance with any obligation, covenant, agreement, provision or term or condition of this Agreement shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply. The failure or delay of any Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE 8

GENERAL PROVISIONS

8.1 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any certificate or instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 8.1 shall not limit any covenant or agreement of the Parties which by its express terms contemplates performance, in whole or in part, after the Effective Time.

8.2 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

(a) if to Nanogen, to:

Nanogen, Inc.
10398 Paeific Center Court
San Diego, CA 92121
Facsimile: (858) 410-4949
Attention: (858) 410-4600

with a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius LLP
1801 Market Street
Philadelphia, PA 19103
Facsimile: (215) 963-5001
Attention: Richard Silfen, Esq.

(b) if to the Company, to:

SynX Pharma Inc.
1 Marmac Drive
Toronto, Ontario, M9W 1G7
Facsimile: (416) 798-3445
Attention: (416) 798-3447

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
Commerce Court West
199 Bay Street, Box 25
Toronto, ON M5L 1A0
Facsimile: (416) 863-2653
Attention: Robert Bondy, Esq.

8.3 Certain Definitions. For purposes of this Agreement the following definitions shall apply:

(a) "*1934 Act*" means the United States Securities Exchange Act of 1934, as amended.

(b) "*1933 Act*" means the Securities Act of 1933, as amended.

(c) An "*Affiliate*" means an "affiliated entity" within the meaning of OSC Rule 45-501 under the Securities Act.

(d) "*Arrangement*" means an arrangement under Section 182 of the OBCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations thereto made in accordance with Section 7.3 hereof or Article 5.1 of the Plan of Arrangement or made at the direction of the Court in the Final Order;

(e) "*Arrangement Resolution*" means the resolution of the Company Shareholders and the Company Debentureholders, to be substantially in the form and content of Annex C attached hereto.

Term:	Section:
Subsidiary(ies)	8.3(lll)
Superior Proposal	4.3(a)
Support Agreement	Recitals
Surviving Corporation	1.1
Takeover Proposal	4.3(a)
Tax or Taxes	8.3(mmm)
Tax Returns	8.3(nnn)
Termination Fee	5.5(b)
Total Share Issuance	1.5(e)
TSX	8.3(ooo)

8.5. **Interpretation.** When a reference is made in this Agreement to an Article or Section or the Company Disclosure Schedule, such reference shall be to an Article or Section of, or the Company Disclosure Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "*include*", "*includes*" or "*including*" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The term "*or*" has, except where otherwise indicated, the inclusive meaning represented by the phrase "*and/or*". The words "*hereof*", "*herein*" and "*hereunder*" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by successor or comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

8.6. **Counterparts.** This Agreement may be executed by facsimile signature and in one or more counterparts, 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 Parties.

8.7. **Entire Agreement; No Third-Party Beneficiaries.** This Agreement (including the documents and instruments referred to herein) and the Confidentiality Agreement between the Company and Nanogen (i) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter of this Agreement and (ii) except for the provision of Section 5.7, are not intended to confer upon any Person other than the Parties any rights or remedies.

8.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof, except to the extent mandatorily governed by the law of another jurisdiction. Each of the Parties hereto (i) irrevocably consents to the exclusive jurisdiction and venue of the Superior Court of Justice (Ontario) in connection with any matter based upon or arising out of this Agreement or the matters contemplated hereby except as has otherwise been agreed to with respect to the consideration and approval of the Arrangement by the Court pursuant to Article 2 hereof, (ii) agrees that process may be served upon them in any manner authorized by the laws of the Province of Ontario for such persons and (iii) waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

8.9. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by any Party without the prior written consent of the other Parties. Any assignment in violation of the preceding sentence shall be void. Subject to the preceding

sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Consent to Jurisdiction. Each of Nanogen and the Company each hereby irrevocably submit to the jurisdiction of any of the courts of Ontario in any action arising out of or relating to this Agreement, and each of Nanogen, and the Company hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such courts. Nanogen, and the Company each hereby waives the defense of inconvenient forum to the maintenance of such action or proceeding. Nanogen, and the Company each hereby irrevocably consent to the service of copies of any process which may be served in any such action or proceeding by certified mail, return receipt requested, or by delivery of a copy of such process to the Company or Nanogen, as the case may be, at its address specified in Section 8.2 or by any other method permitted by Law. Nanogen, and the company each agree that a final judgement in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on judgement or by any other manner provided by Law.

Enforcement. The Parties agree that in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, monetary damages, even if available, would be an inadequate remedy. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy in any court to which they are entitled at law or in equity.

Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transactions hereby be consummated as originally contemplated to the greatest extent possible.

Currency. Unless otherwise specifically indicated, all sums of money referred to in this Agreement are expressed in Canadian Dollars.

Date for Any Action. In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding Business Day.

(Remainder of Page Intentionally Left Blank)

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

NANOGEN, INC.

By: (Signed) DAVID LUDVIGSEN
Name: David Ludvigsen
Its: Executive Vice President
Chief Financial Officer and Treasurer

SYNX PHARMA, INC.

By: (Signed) GEORGE JACKOWSKI
Name: George Jackowski
Its: Chairman & CEO

By: (Signed) W.T. BODENHAMER
Name: W.T. Bodenhamer
Its: Director

APPENDIX "C"

PLAN OF ARRANGEMENT
UNDER SECTION 182
OF THE BUSINESS CORPORATIONS ACT (ONTARIO)

ARTICLE 1

INTERPRETATION

Section 1.1 Definitions

In this Plan of Arrangement unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Arrangement**" means the arrangement under section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments thereto made in accordance with Section 7.3 of the Combination Agreement, Section 5.1 hereof or at the direction of the Court in the Final Order;

"**Arrangement Resolution**" means the resolution of the Company Shareholders and Company Debentureholders, to be substantially in the form and content of Annex "C" of the Combination Agreement;

"**Articles of Arrangement**" means the articles of arrangement of the Company in respect of the Arrangement that are required by the OBCA to be filed with the Director after the Final Order is made;

"**Business Day**" means any day on which commercial banks are open for business in San Diego, California and Toronto, Ontario, other than a Saturday, a Sunday or a day that is observed as a holiday in San Diego under the laws of the State of California or the federal laws of the United States of America or in Toronto under the laws of the Province of Ontario or the federal laws of Canada;

"**Certificate**" means the certificate of arrangement giving effect to the Arrangement, issued by the Director pursuant to subsection 183(2) of the OBCA after the Articles of Arrangement have been filed with the Director;

"**Code**" means the United States Internal Revenue Code of 1986, as amended;

"**Combination Agreement**" means the agreement dated as of February 9, 2004, between Nanogen and the Company, as amended, supplemented and/or restated in accordance therewith prior to the Effective Time providing for, among other things, this Plan of Arrangement and the Arrangement;

"**Company**" means SynX Pharma Inc., a corporation organized and existing under the OBCA;

"**Company Circular**" means the notice of the Company Meeting and accompanying management information circular, including any amendments, supplements or appendices thereto, to be sent to the Company Shareholders and Company Debentureholders in connection with the Company Meeting;

"**Company Common Shares**" means the common shares in the capital of the Company immediately prior to the Effective Time;

"**Company Debentureholder**" means a holder of a Company Debenture;

"**Company Debentures**" means $3,450,000 principal amount of secured subordinated debentures due July 9, 2005 issued on July 9, 2003 and August 22, 2003 pursuant to the Company Trust Indenture;

"**Company Meeting**" means the joint meeting of the Company Shareholders and Company Debentureholders, including any adjournments or postponements thereof, to be called and held in accordance with the Interim Order to consider the Arrangement;

"**Company Optionholder**" means a holder of a Company Option;

"**Nanogen Rights**" means the rights issued or to be issued pursuant to a stockholder rights plan dated as of November 17, 1998 between Nanogen and BankBoston, N. A. as rights agent, as amended;

"**Nanogen Stock Price**" means the average of the best bid and best ask prices at 10:00 a.m. EST as reported by the Nasdaq Stock Market on the Effective Date or, if not reported thereby, any other authoritative source mutually agreed to by Nanogen and the Company;

"**OBCA**" means the Business Corporations Act (Ontario), as amended, consolidated or re-enacted from time to time;

"**Person**" includes any individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, Governmental Entity, syndicate or other entity, whether or not having legal status;

"**Replacement Option**" has the meaning specified in Section 2.2(b);

"**Replacement Warrant**" has the meaning specified in Section 2.2(c); and

"**Subsidiary**" of any Person means any Person, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such first Person or by one or more of its respective Subsidiaries or by such party and any one or more of its respective Subsidiaries.

Section 1.2 Sections and Headings

The division of this Plan of Arrangement into sections and the insertion of headings are for reference purposes only and shall not affect the interpretation of this Plan of Arrangement. Unless otherwise indicated, any reference in this Plan of Arrangement to a section refers to the specified section of this Plan of Arrangement.

Section 1.3 Number and Gender

In this Plan of Arrangement, unless the context otherwise requires, words importing the singular number include the plural and vice versa, words importing any gender include all genders.

Section 1.4 Date for any Action

In the event that any date on or by which any action is required or permitted to be taken hereunder is not a Business Day, such action shall be required or permitted to be taken on or by the next succeeding day that is a Business Day.

Section 1.5 Currency

Unless otherwise expressly stated herein, all references to currency and payments in cash or moneys in this Plan of Arrangement are to Canadian dollars.

Section 1.6 Statutory References

Any reference in this Plan of Arrangement to a statute includes such statute as amended, consolidated or re-enacted from time to time, all regulations made thereunder, all amendments to such regulations from time to time, and any statute or regulation which supersedes such statute or regulations.

ARTICLE 2

ARRANGEMENT

Section 2.1 Binding Effect

This Plan of Arrangement will become effective at, and be binding at and after, the Effective Time on (i) the Company, (ii) Nanogen, (iii) all holders and all beneficial owners of Company Common Shares, (iv) all holders and all beneficial owners of Company Options, (v) all holders and all beneficial owners of Company Debentures, (vi) all holders and all beneficial owners of and Company Warrants, and (vii) all holders and all beneficial owners of Nanogen Common Stock received in exchange for, or on exercise of, Company Common Shares, Company Options, Company Debentures, Replacement Warrants and Replacement Options.

Section 2.2 Arrangement

At the Effective Time, the following transactions shall occur and shall be deemed to occur in the following order without any further act or formality:

(a) The Company Common Shares issued and outstanding immediately prior to the Effective Time held by each Company Shareholder (other than Company Common Shares held by a Dissenting Company Shareholder who is ultimately determined to be entitled to be paid the fair value of the Company Common Shares held by such Dissenting Company Shareholder and Company Common Shares held by Nanogen and any Subsidiary of Nanogen, which shall not be exchanged under the Arrangement and shall be cancelled at the Effective Time and shall cease to exist) shall, without any further action on behalf of such Company Shareholder, be transferred by the holder thereof, and acquired by, Nanogen, free and clear of all liens, claims and encumbrances in exchange for that number of duly authorized, fully paid and non-assessable shares of Nanogen Common Stock (and associated Nanogen Rights) equal to the product of the total number of such Company Common Shares held by such Company Shareholder multiplied by the Exchange Ratio, and the name of each such Company Shareholder will be removed from the register of holders of Company Common Shares and added to the register of holders of Nanogen Common Stock.

(b) In accordance with the terms of the Company Stock Option Plan, each Company Option outstanding that has not been duly exercised prior to the Effective Time shall, without any further action on behalf of any Company Optionholder, be converted into an option (a "**Replacement Option**") to purchase that number of shares of Nanogen Common Stock equal to the number of Company Common Shares subject to such Company Option immediately prior to the Effective Time multiplied by the Exchange Ratio. The exercise price of each such Replacement Option shall be in United States dollars and equal to (i) the exercise price in effect for such Company Option immediately prior to the Effective Time divided by the Exchange Ratio, divided by (ii) the Currency Exchange Rate on the Business Day immediately prior to the Effective Date. If the foregoing calculations result in a Replacement Option (i) being exercisable for a fraction of a share of Nanogen Common Stock, then the number of shares of Nanogen Common Stock subject to such Replacement Option shall be rounded down to the next whole number of shares of Nanogen Common Stock or (ii) having an exercise price per share of Nanogen Common Stock that is a fraction of a cent, then the exercise price per share of Nanogen Common Stock under such Replacement Option shall be rounded up to the next whole cent. The term to expiry, conditions to and manner of exercising, vesting schedule and all other terms and conditions of such Replacement Option will be substantially the same as the terms and conditions in effect for such Company Option immediately prior to the Effective Time. Notwithstanding this subsection 2.2(b) and after any adjustment to the number of shares of Nanogen Common Stock issuable upon exercise of the Replacement Option pursuant to subsection 2.2(e), the provisions provided in this subsection 2.2(b) shall, if applicable, be modified by increasing the exercise price of the Replacement Option such that the excess, if any, of the aggregate fair market value of all shares of Nanogen Common Stock subject to that Replacement Option immediately after the conversion over the aggregate exercise price under the Replacement Option for such Nanogen Common Stock does not exceed the excess, if any, of the aggregate fair market value of all Company Common Shares subject to the Company Option immediately before the conversion of that option over the aggregate exercise price under the Company Option for such Company Common Shares, where all amounts are computed in Canadian dollars using the Currency Exchange Rate on the Effective Date. Any document or agreement previously evidencing such Company Option shall thereafter evidence and be deemed to evidence such Replacement Option.

(c) The Company Debentures outstanding immediately prior to the Effective Time shall, without any [illegible] action by or on behalf of the Company Debentureholders, be transferred by the holder thereof to Nanogen and acquired by Nanogen through the issuance to each Company Debentureholder of that number of shares of Nanogen Common Stock (rounded down to the nearest whole number of shares of Nanogen Common Stock) equal to the quotient determined by dividing (i) the quotient determined by dividing (A) the sum of (a) the principal amount of the holder's Company Debentures to be purchased by Nanogen, plus (b) accrued and unpaid interest on the principal amount of the holder's Company Debentures to be purchased by Nanogen up to, but not including, the Effective Date, by (B) the Currency Exchange Rate on the Effective Date by (ii) the Nanogen Stock Price.

(d) In accordance with their terms, each Company Warrant outstanding that has not been duly exercised prior to the Effective Time shall, without any further action by or on behalf of the Company Warrantholders, be converted into a warrant (a "**Replacement Warrant**") to purchase that number of shares of Nanogen Common Stock equal to the number of Company Common Shares subject to such Company Warrant multiplied by the Exchange Ratio. The exercise price of each such Replacement Warrant shall be in United States dollars and equal to (i) the exercise price of such Company Warrant divided by the Exchange Ratio divided by (ii) the Currency Exchange Rate on the Business Day immediately prior to the Effective Date. If the foregoing calculations result in a Replacement Warrant (i) being exercisable for a fraction of a share of Nanogen Common Stock, then the number of shares of Nanogen Common Stock subject to such Replacement Warrant shall be rounded down to the next whole number of shares of Nanogen Common Stock or (ii) having an exercise price per share of Nanogen Common Stock that is a fraction of a cent, then the exercise price per share of Nanogen Common Stock under such Replacement Warrant shall be rounded up to the next whole cent. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Replacement Warrant will be substantially the same as the terms and conditions of such Company Warrant. Any document or agreement previously evidencing such Company Warrant shall thereafter evidence and be deemed to evidence such Replacement Warrant.

(e) Notwithstanding the foregoing, in the event that the sum of (i) the number of shares of Nanogen Common Stock to be issued pursuant to Sections 2.2(a) and 2.2(c) and (ii) the number of shares of Nanogen Common Stock issuable upon exercise of Replacement Options or Replacement Warrants to be issued pursuant to Sections 2.2(b) and 2.2(d) exceeds 19.9% of number of shares of Nanogen Common Stock issued and outstanding as of Effective Date, then the Total Share Issuance (as defined in the Combination Agreement) shall be adjusted downwards pursuant to Section 1.5(e) of the Combination Agreement.

ARTICLE 3

RIGHTS OF DISSENT

Section 3.1 Rights of Dissent

Company Shareholders may exercise rights of dissent with respect to their Company Common Shares pursuant to and in the manner set forth in section 185 of the OBCA in connection with the Arrangement, provided that, notwithstanding subsection 185(6) of the OBCA, the written objection to the Arrangement Resolution referred to in subsection 185(6) of the OBCA must be received by the Company not later than 5:00 p.m. (Toronto time) on the Business Day preceding the Company Meeting (the "**Dissent Rights**") in connection with the Arrangement, and any Company Shareholders who duly exercise such rights of dissent and who:

(a) are ultimately determined to be entitled to be paid fair value for Company Common Shares shall be deemed to have transferred such Company Common Shares to the Company at the Effective Time without any further act or formality and free and clear of all liens, claims and encumbrances in consideration for the payment of such fair value amount by the Company, and their Company Common Shares will be cancelled as of the Effective Time; or

(b) are ultimately determined not to be entitled, for any reason, to be paid the fair value for Company Common Shares shall be deemed to have participated in the Arrangement on the same basis as any non-dissenting Company Shareholder and shall receive Nanogen Common Stock on the basis determined in accordance with subsection 2.2(a),

but in no case shall Nanogen or the Company be required to recognize any Dissenting Company Shareholder as a Company Shareholder on and after the Effective Time, and the names of each Dissenting Company Shareholder shall be deleted from the register of Company Shareholder at the Effective Time.

ARTICLE 4

CERTIFICATE AND FRACTIONAL SHARES

Section 4.1 Issuance of Certificates Representing Nanogen Common Stock

At or as promptly as practicable after the Effective Time, Nanogen shall deposit with the Depositary, for the benefit of the holders of Company Common Shares and Company Debentures who will receive Nanogen Common Stock in connection with the Arrangement, certificates representing the Nanogen Common Stock (and associated Nanogen Rights) issuable under the Arrangement. Upon surrender to the Depositary for transfer to Nanogen of a certificate which immediately prior to or upon the Effective Time represented Company Common Shares or Company Debentures, as the case may be, in respect of which the holder is entitled to receive Nanogen Common Stock (and associated Nanogen Rights) under the Arrangement, together with a duly completed Letter of Transmittal and such other documents and instruments as would have been required to effect the transfer of the Company Common Shares or Company Debentures, as the case may be, formerly represented by such certificate under the OBCA, the by-laws of the Company and the Company Trust Indenture, as applicable, in each case with such additional documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and after the Effective Time the Depositary shall deliver to such holder, a certificate representing that number (rounded down to the nearest whole number) of shares of Nanogen Common Stock (and associated Nanogen Rights) which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to Section 4.2 and any cash in lieu of fractional shares of Nanogen Common Stock pursuant to Section 4.3) and any certificate so surrendered shall forthwith be transferred to Nanogen. No interest shall be paid or accrued on the cash in lieu of fractional shares, if any, payable to holders of certificates that formerly represented Company Common Shares or Company Debentures. In the event of a transfer of ownership of Company Common Shares or Company Debentures that was not registered in the securities register of the Company, a certificate representing the proper number of shares of Nanogen Common Stock may be issued to the transferee if the certificate representing such Company Common Shares or Company Debentures is presented to the Depositary as provided above, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this Section 4.1, each certificate which immediately prior to or upon the Effective Time represented one or more Company Common Shares or Company Debentures, under the Arrangement, that were acquired or were deemed to be acquired by Nanogen in exchange for shares of Nanogen Common Stock (and associated Nanogen Rights) pursuant to Section 2.2(a) shall be deemed at all times at and after the Effective Time, but subject to Section 4.5, to represent only the right to receive upon such surrender (i) a certificate representing that number of shares of Nanogen Common Stock (and associated Nanogen Rights) which such holder has the right to receive as contemplated by this Section 4.1, (ii) a cash payment in lieu of any fractional shares of Nanogen Common Stock as contemplated by Section 4.3, and (iii) any dividends or distributions with a record date after the Effective Time theretofor paid or payable with respect to the shares of Nanogen Common Stock as contemplated by Section 4.2.

Section 4.2 Distributions with Respect to Unsurrendered Certificates

No dividends or other distributions paid, declared or made with respect to the Nanogen Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate which immediately prior to the Effective Time represented outstanding Company Common Shares that were transferred pursuant to Section 2.2(a) unless and until the holder of such certificate shall comply with the provisions of Section 4.1. No cash payment in lieu of fractional shares shall be paid to any such Company Shareholder pursuant to Section 4.3 (and no interest will be earned and payable thereon), unless and until the certificate representing such Company Common Shares shall be surrendered in accordance with Section 4.1. Subject to applicable law and to Section 4.4, at the time such shareholder shall have complied with the provisions of Section 4.1 (or, in the case of clause (c) below, at the appropriate payment date), there shall be paid to the holder of the certificates representing Nanogen Common Stock issued in interest (a) the amount of any cash payable in lieu of a fractional Nanogen Common Stock to which such holder is entitled pursuant to Section 4.3, (b) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such Nanogen Common Stock, and (c) on the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to compliance by such holder of the provision of Section 4.1 and a payment date subsequent to such compliance and payable with respect to such Nanogen Common Stock.

Section 4.3 No Fractional Shares

No certificates representing fractional shares of Nanogen Common Stock shall be issued upon compliance with the provisions of Section 4.1 and no dividend, stock split or other change in the capital structure of Nanogen shall relate to such fractional security and such fractional interests shall not entitle the owner thereof to exercise any rights as a security holder of Nanogen. In lieu of any such fractional interests, each person entitled thereto will be entitled to receive an amount of cash (rounded to the nearest whole cent), without interest, equal to the product of such fractional interest multiplied by the Nanogen Stock Price, such amount to be provided to the Depositary by Nanogen upon request. Such payment with respect to fractional shares is merely intended to provide a mechanical rounding mechanism and is not separately bargained for, consideration. Any amount calculated under this section will be calculated based on each beneficial holder.

Section 4.4 Lost Certificates

If any certificate which immediately prior to the Effective Time represented outstanding Company Common Shares that were exchanged pursuant to Section 2.2(a) has 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, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, one or more certificates representing Nanogen Common Stock (and associated Nanogen Rights) (together with any dividends or distribution with respect thereto pursuant to Section 4.2 and any cash in lieu of fractional Nanogen Common Stock pursuant to Section 4.3) delivered in respect thereof as determined in accordance with Section 2.2(a). When seeking such certificates and payment in exchange for any lost, stolen or destroyed certificate, the Person from whom certificates representing shares of Nanogen Common Stock are to be issued shall, as a condition precedent to the issuance thereof, give a bond satisfactory to the Company, Nanogen or the Depositary, as the case may be, in such sum as Nanogen or the Depositary may direct or otherwise indemnify the Company and Nanogen in a manner satisfactory to such parties against any claim that may be made against such party with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4.5 Extinguishment of Rights

Any certificate which immediately prior to the Effective Time represented (i) outstanding Company Common Shares that are not held by a Dissenting Company Shareholder who is ultimately entitled to be paid fair value for Company Common Shares held by such Dissenting Company Shareholder or (ii) outstanding Company Debentures but was exchanged or deemed to have been exchanged pursuant to Section 2.2(a) or Section 2.2(c), respectively, and has not been deposited with all other instruments required by Section 4.1, on or prior to the fifth anniversary of the Effective Date, shall cease to represent a claim or interest of any kind or nature to Nanogen Common Stock (and associated Nanogen Rights). On such date, shares of Nanogen Common Stock (and associated Nanogen Rights) (and any dividends or distributions with respect thereto) to which the former registered holder of the certificate referred to in the preceding sentence was ultimately entitled shall be deemed to have been surrendered for no consideration to Nanogen, together with all entitlements to dividends, distributions, cash and interest in respect thereof held for such former registered holder. None of Nanogen, the Company or the Depositary shall be liable to any Person in respect of any Nanogen Common Stock (and associated Nanogen Rights) (or dividends, distributions and/or cash in lieu of fractional shares) delivered to a public official pursuant to and in compliance with any applicable abandoned property, escheat or similar law.

Section 4.6 Withholding Rights

Nanogen, the Company and the Depositary shall be entitled to deduct and withhold from any dividend, consideration otherwise payable pursuant to this Plan of Arrangement to any Company Shareholder or Company Debentureholder such amounts as Nanogen, the Company or the Depositary is required to deduct and withhold with respect to such payment under the Code, the ITA or any provision of state, local, provincial or foreign tax law, to the extent that amounts are so withheld, such amounts shall be treated for all purposes hereof as having been paid to the holder of shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, Nanogen, the Company and the Depositary are hereby authorized to sell or otherwise dispose of such portion of such consideration as is necessary to provide sufficient funds to Nanogen, the Company or the Depositary, as the case may be, in order to enable it to comply with such deduction or withholding requirement and Nanogen, the Company or the Depositary shall give an accounting to the holder with respect thereto and remit the balance of such proceeds of sale.

ARTICLE 5

AMENDMENT

Section 5.1 Amendment to Plan of Arrangement

(a) The Company and Nanogen reserve the right to amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that any such amendment, modification and/or supplement must be (i) set out in writing, (ii) approved by the Company and Nanogen, (iii) filed with the Court and, if made following the Company Meeting, approved by the Court and (iv) communicated to Company Shareholders and Company Debentureholders if and as required by the Court.

(b) Any amendment, modification or supplement to this Plan of Arrangement consented to by the Company and Nanogen at any time prior to or at the Company Meeting, with or without any other prior notice or communication, and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

(c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (i) it is consented to by the Company and Nanogen, and (ii) if required by the Court, it is consented to by the Company Shareholders and Company Debentureholders voting in the manner directed by the Court.

(d) Subject to applicable law, any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Nanogen, provided that it concerns a matter which, in the reasonable opinion of Nanogen, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any holder of Company Common Shares, Company Options, Company Debentures or Company Warrants.

ARTICLE 6

FURTHER ASSURANCES

Section 6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Combination Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, things, transfers, assurances, instruments or documents as may reasonably be required by any of them in order fully to document or evidence any of the transactions or events set out herein.