

04-19-2006

Form PTO-1594 (Rev. 07/05)  
OMB Collection 0651-0027 (exp. 6/30/2008)

DEPARTMENT OF COMMERCE  
Patent and Trademark Office



RECORD  
TRAC

103222403

4-13-06

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies):**

DNA Sciences, Inc.

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

Citizenship (see guidelines) USA

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance )/Execution Date(s) :**

Execution Date(s) May 15, 2003

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

**2. Name and address of receiving party(ies)**

Additional names, addresses, or citizenship attached?

- Yes
- No

Name: Genaissance Pharmaceuticals, Inc.

Internal

Address: \_\_\_\_\_

Street Address: Five Science Park

City: New Haven

State: CT

Country: USA Zip: 06511

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other \_\_\_\_\_

Citizenship \_\_\_\_\_

Citizenship \_\_\_\_\_

Citizenship \_\_\_\_\_

Citizenship Delaware, USA

Citizenship \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2591885

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):  
PGX (Typed Drawing)

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

Name: Matthew Catlett

Internal Address: Genaissance Pharmaceuticals, Inc.

Street Address: Five Science Park

City: New Haven

State: CT Zip: 06516

Phone Number: 203.786.3528

Fax Number: 203.562.9377

Email Address: m.catlett@genaissance.com

**6. Total number of applications and registrations involved:**

1

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$** \_\_\_\_\_

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

**8. Payment Information:**

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number 501293

Authorized User Name Matthew Catlett

**9. Signature:**

Signature

4/13/06

Date

Matthew Catlett

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: \_\_\_\_\_

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK  
REEL: 003328 FRAME: 0158

**ASSIGNMENT**

Genaissance Pharmaceuticals, Inc. ("GPI"), a Delaware corporation having its principal office at 5 Science Park, New Haven, Connecticut 06511, acquired the typed drawing mark PGX ("Mark") and the registration therefor, U.S. Registration No. 2591885 ("Registration"), and the business related thereto, through its purchase on May 15, 2003 of certain asserts of DNA Sciences, Inc. pursuant to the attached (1) "Asset Purchase Agreement by and between Genaissance Pharmaceuticals, Inc. and DNA Sciences, Inc., dated as of March 28, 2003" and the amendments thereto, (2) "Order Under 11 U.S.C. §§ 363 and 365 Approving Asset Purchase Agreement and Sale of Assets of DNA Sciences, Inc. Free and Clear of Liens, Claims, Encumbrances and Interests and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases entered on May 12, 2003 by the United States Bankruptcy Court for the Northern District of California," (3) "Bill of Sale, Assignment and Assumption Agreement," and (4) "Assignment of Trademarks."

GPI has sold and assigned its entire right, title and interest in the Mark and Registration, and the business related thereto, to Clinical Data, Inc., a Delaware corporation having its principal office at One Gateway Center, Suite 551, Newton, Massachusetts 02458.

GPI

By: Carol R. Reed  
Name: Carol R. Reed  
Title: Sr VP and CMO  
Date: 4/13/06

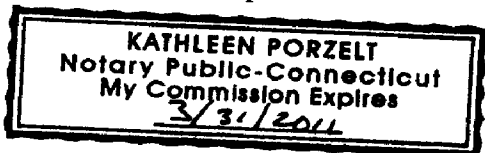
State of:

County of:

The preceding Assignment was acknowledged before me this 13<sup>th</sup> day of April by Carol Reed.

Kathleen Porzelt  
Notary Public

My Commission Expires:



8-K 1 form8-k\_13887.htm CLINICAL DATA, INC. FORM 8-K

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 4, 2005

CLINICAL DATA, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State of Incorporation)

000-12716  
(Commission File Number)

04-2573920  
(IRS Employer  
Identification No.)

One Gateway Center, Suite 411, Newton, Massachusetts  
(Address of Principal Executive Offices)

02458  
(Zip Code)

Registrant's telephone number, including area code: (617) 527-9933

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
- 
-

**Item 1.01. Entry into a Material Definitive Agreement.**

At a special meeting of the stockholders in lieu of annual meeting of the stockholders of Clinical Data, Inc. (the "*Company*"), which was convened on October 6, 2005 (the "*Special Meeting*"), the Company's stockholders approved the adoption of the Clinical Data, Inc. 2005 Equity Incentive Plan (the "*2005 Plan*"). The Company's existing 2002 Incentive and Stock Plan will remain in effect, and the remaining shares will continue to be available for future awards under that plan. Under the 2005 Plan, 1,000,000 shares of the Company's common stock, par value \$.01 per share, are reserved for long-term incentive awards that may consist of stock options, stock appreciation rights, restricted stock, restricted stock units, and other types of equity-based compensation. Employees, consultants and directors are eligible to receive awards under the plan, but only employees will be eligible to receive awards consisting of incentive stock options. No recipient may receive awards representing more than 150,000 shares of common stock in any taxable year.

The 2005 Plan will be administered by the Compensation Committee of the Company's board of directors, which committee will determine the amount, terms and timing of any awards granted under such plan. The 2005 Plan sets forth certain vesting and performance criteria that may be used by the committee in setting the terms of any award granted. No awards may be granted under the 2005 Plan after July 27, 2015.

The foregoing description of the 2005 Plan is not complete and is qualified in its entirety by reference to the 2005 Plan, which is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

On October 6, 2005, in connection with the Merger (defined below), the Company entered into a letter agreement (the "*Letter Agreement*") with Xmark Opportunity Fund, Ltd., Xmark Opportunity Fund, L.P. and Xmark JV Investment Partners, LLC, (collectively, "*Xmark*"), the holder of senior secured notes in the aggregate principle amount of approximately \$4.5 million issued by Genaissance and its wholly-owned subsidiary Lark Technologies, Inc. ("*Lark*"), as more fully described in Item 2.03 below, which description is incorporated by reference into this item in its entirety.

The foregoing description of the Letter Agreement is not complete and is qualified in its entirety by reference to the Letter Agreement, which will be filed with the Company's next periodic report on Form 10-Q filed with the SEC.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

On October 6, 2005, after receipt of shareholder approval at the Special Meeting, Safari Acquisition Corp. ("*Safari*"), a wholly owned subsidiary of the Company, was merged with and into Genaissance Pharmaceuticals, Inc. ("*Genaissance*"), with Genaissance surviving as a wholly-owned subsidiary of the Company (the "*Merger*"). The Merger was consummated pursuant to the Agreement and Plan of Merger dated as of June 20, 2005, by and among the Company, Safari and Genaissance, as amended by the First Amendment to Agreement and Plan of Merger, dated as of July 28, 2005 (collectively, the "*Merger Agreement*").

In the Merger, each share of Genaissance common stock outstanding at the effective time of the Merger was converted into the right to receive 0.065 (the "*Exchange Ratio*") shares of the Company's common stock. As a result, the Company issued approximately 2,297,652 shares of its common stock in exchange for all of the outstanding Genaissance common stock in the Merger, not including shares of the Company's common stock to be issued upon exercise of assumed options and warrants. The Merger Agreement also provided that the holder of all of Genaissance preferred stock receive 1.052326 shares of newly issued, unregistered shares of series A preferred stock of the Company in exchange for each share of its Genaissance preferred stock. The Company issued 484,070 shares of its series A preferred stock in the Merger to the preferred holder. In addition, the Company assumed all outstanding Genaissance stock options and warrants to acquire Genaissance common stock at the effective time of the Merger, and each such stock option and warrant is now exercisable for a number of shares of the Company's common stock, and at an exercise price, adjusted to reflect the Exchange Ratio. The Company will issue up to approximately 767,261 shares of its common stock if all of the assumed stock options and warrants are exercised in the future.

The foregoing description of the Merger and the Merger Agreement is not complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibits 2.1 and 2.2 hereto and is incorporated herein by reference. The Merger Agreement has been included to provide information regarding its terms. It is not intended to provide any other factual information about the Company. Such information can be found elsewhere in this Form 8-K and in the other public filings the Company makes with the SEC, which are available without charge at [www.sec.gov](http://www.sec.gov). A copy of the press release dated October 6, 2005, announcing the completion of the Merger is attached as Exhibit 99.2 hereto and incorporated by reference herein.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

As a result of the effectiveness of the Merger, the Company, through its wholly-owned subsidiaries Genaissance and Lark (collectively, the "*Co-Borrowers*"), assumed senior secured notes in the aggregate principal amount of approximately \$4.5 million (collectively, the "*Notes*") in favor of Xmark.

Pursuant to the terms of a Purchase Agreement dated April 21, 2005 (the "*Purchase Agreement*"), among the Co-Borrowers and Xmark, the Co-Borrowers sold the Notes to Xmark, together with warrants (the "*Warrants*") to purchase a total of 2,000,000 shares of Genaissance's common stock, at an exercise price of \$2.25 per share (the "*Warrant Shares*"), on an unexchanged basis. As a result of the Merger, the Warrants will be exchanged by the Company and such exchanged Warrants shall represent the right to receive 130,000 shares of the Company's common stock at an exercise price of \$28.00 per share, which exercise price was adjusted as more fully described herein.

The entire unpaid principal amount of the Notes and any accrued and unpaid interest thereon will be due and payable in full in cash on December 31, 2005 (as more fully described herein), will accrue interest on the outstanding principal balance at the rate of 5% per annum, payable quarterly in arrears, in cash, and are subject to the terms and conditions of the Purchase Agreement. The Notes are senior to any of the Co-Borrowers' current or future indebtedness, except for certain indebtedness as specified in the Purchase Agreement, and are secured in accordance with certain

security documents executed by the parties at the time of the issuance of the Notes. In addition, upon the occurrence and during the continuance of a default or event of default (each as defined in the Purchase Agreement), the outstanding principal amount on each Note will bear interest at a maximum rate of 15% per annum.

The Purchase Agreement provides for mandatory prepayment by the Co-Borrowers of the Notes upon the occurrence of any of the following events:

- the sale or other disposition by Genaissance of its Morrisville, North Carolina or New Haven, Connecticut operating facilities;
- the sale or other disposition by Genaissance of Lark; or
- upon Genaissance or any of its subsidiaries entering into one or more exclusive license arrangements, other than field-limited exclusive license arrangements, with respect to Genaissance's or its subsidiaries' intellectual property, which provides for aggregate royalty or other payments of \$8.0 million or more.

In addition, in the event that the Co-Borrowers' aggregate cash balances exceed \$10.0 million at the end of any calendar month, the Co-Borrowers will repay to Xmark a sum equal to the lesser of (x) \$2.25 million and (y) the aggregate amount of principal and interest then due under the Notes. The Co-Borrowers may prepay the Notes, at their option, at any time upon 30 days prior written notice to Xmark.

As described in Item 1.01 above, in connection with the Merger, the Company and Xmark executed the Letter Agreement waiving any default that may be triggered as a result of the consummation of the Merger. In consideration for such waiver by Xmark, the Company agreed to amend and restate the Notes to make them due and payable on December 31, 2005, instead of the original maturity date of April 21, 2007. In addition, the Company agreed to exchange Xmark's Warrants pursuant to the Exchange Ratio, but adjusted the exercise price of such Warrants to \$28.00 per share.

The foregoing summary of the terms of each of the Purchase Agreement, the Notes, the Letter Agreement and the form of warrant is not complete and is subject to, and qualified in its entirety by, the Purchase Agreement, the form of Note, the Letter Agreement and the form of warrant that will be filed with the Company's next periodic report on Form 10-Q filed with the SEC.

### **Item 3.02. Unregistered Sales of Equity Securities.**

On October 6, 2005, in connection with the Merger, the Company issued 484,070 shares of its series A preferred stock to the holder of all of the Genaissance preferred stock. Pursuant to the amended and restated terms of the Company's series A preferred stock (attached as Exhibit C to the Merger Agreement, as amended, attached hereto as Exhibits 2.1 and 2.2), the series A preferred stock is convertible into common stock of the Company (a) at the election of the holder at any time and (b) at the election of the Company at such time as the market price of the Company's common stock exceeds \$27.80 per share (as adjusted for any stock split, stock dividend, recapitalization or otherwise on the Common) for 10 consecutive trading days.

The Company believes that the foregoing transaction was exempt from the registration requirements under Section 4 (2) of the Securities Act of 1933, as amended (the "*Securities Act*"), based on the fact that there was no general solicitation, there was only one investor, who was an "accredited investor" (within the meaning of Regulation D under the Securities Act) and was sophisticated about business and financial matters, and who had access to information about the Company, and all shares issued were subject to restriction on transfer.

The foregoing description of the Company's series A preferred stock terms is not complete and is qualified in its entirety by reference to such terms, which are filed as Exhibit C to the Merger Agreement, as amended, filed as Exhibits 2.1 and 2.2 hereto and is incorporated herein by reference. The series A preferred stock terms have been included to provide information regarding their provisions. They are not intended to provide any other factual information about the Company. Such information can be found elsewhere in this Form 8-K and in the other public filings the Company makes with the SEC, which are available without charge at [www.sec.gov](http://www.sec.gov).

On October 6, 2005, the Company issued to Xmark warrants to purchase 130,000 shares of the Company's common stock at an exercise price of \$28.00 per share. Such warrants are exercisable at any time by Xmark. The Company did not receive any cash for the issuance of the warrants. Such warrants were issued in consideration for certain agreements of Xmark, as more fully described in Item 2.03 above.

The Company believes that the foregoing transaction was exempt from the registration requirements under Section 4 (2) of the Securities Act, based on the fact that there was no general solicitation, there was only one investor, who was an "accredited investor" (within the meaning of Regulation D under the Securities Act) and was sophisticated about business and financial matters, and who had access to information about the Company, and all securities issued were subject to restriction on transfer.

**Item 3.03. Material Modifications to Rights of Security Holders.**

As more fully described in Item 5.03 below, on October 4, 2005, in connection with and in preparation for the consummation of the Merger, the Company amended its certificate of incorporation by filing a certificate of designations, designating a new class of preferred stock known as the series A preferred stock, the rights preferences and privileges of which are more fully described in Exhibit C to the Merger Agreement filed as Exhibits 2.1 and 2.2 hereto.

Upon a Significant Event (as defined in the amended and restated terms of the series A preferred stock), the holder of the series A preferred stock is entitled to receive for each share held by it, prior and in preference to any distribution or payment made upon or with respect to any other security of the Company, including the common stock, an amount equal to either (a) \$22.80 plus all accrued but unpaid dividends, or (b) the amount per share that would have been received had the holder of the series A preferred stock elected to convert such shares into shares of common stock immediately prior to such Significant Event, at the election of 66-2/3% of the shares of the series A preferred stock.



**Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

In connection with the Merger and pursuant to the terms of the Merger Agreement, on October 7, 2005, the Company's board of directors, acting by unanimous written consent, elected Kevin Rakin and Joseph "Skip" Klein as directors of the Company. Messrs. Rakin and Klein served as directors of Genaissance prior to the Merger. Neither have been appointed to any committees of the Company's board of directors.

Prior to the Merger, Mr. Rakin entered into an employment agreement with Genaissance, effective as of January 1, 2004. Pursuant to such employment agreement, in the event of his termination from Genaissance, Mr. Rakin would be entitled to severance payments that would exceed \$60,000.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On June 24, 2005, the Company's board of directors approved an amendment to the Company's certificate of incorporation, as amended, by way of a certificate of the designations, preferences, relative rights and limitations of the series A preferred stock. The Company subsequently filed the certificate of designations with the Secretary of State of the State of Delaware on October 4, 2005, which is the effective date of the amendment. The certificate of designations establishes and designates the terms of 484,070 shares of series A preferred stock that were issued to the preferred stockholder of Genaissance in the Merger. As a result of the filing of the certificate of designations, the Company currently has 1,015,930 shares of undesignated preferred stock, the rights, preferences and privileges of which may again be designated by the Company's board of directors. A copy of the certificate of designations is included as Exhibit 3.2 and incorporated by reference herein.

On October 6, 2005, at the Special Meeting, the stockholders of the Company approved an amendment to the Company's certificate of incorporation which increased the number of authorized shares of common stock from 12,000,000 to 14,000,000 shares. The amendment was filed with the Secretary of State of the State of Delaware on October 6, 2005, which was also the effective date of the amendment. A copy of the certificate of amendment is included as Exhibit 3.1 and incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.****(a) Financial Statements of Business Acquired.**

Any information required by Item 9.01(a) will be filed by an amendment to this current report, as may be required by applicable SEC rules and regulations.

**(b) Pro Forma Financial Information.**

Any information required by Item 9.01(b) will be filed by an amendment to this current report, as may be required by applicable SEC rules and regulations.

**(c) Exhibits.**

- 2.1. Agreement and Plan of Merger, dated June 20, 2005, among the Company, Safari Acquisition Corp. and Genaissance Pharmaceuticals, Inc. Filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on June 24, 2005 and incorporated herein by reference.
  - 2.2. First Amendment to Agreement and Plan of Merger, dated as of July 28, 2005, among the Company, Safari Acquisition Corp. and Genaissance Pharmaceuticals, Inc. Filed as Exhibit 2.1 to the Company's Current Report on Form 8-K on August 2, 2005 and incorporated herein by reference.
  - 3.1. Certificate of Amendment to Certificate of Incorporation of the Company, dated October 6, 2005.
  - 3.2. Certificate of the Designations, Preferences, Relative Rights and Limitations of the Series A Preferred Stock of the Company, dated October 4, 2005.
  - 99.1. Clinical Data, Inc. 2005 Equity Incentive Plan.
  - 99.2. Press Release of the Company, dated October 6, 2005.
-

**SIGNATURES**

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

Clinical Data, Inc.

By: /s/ Caesar J. Belbel

Caesar J. Belbel

Senior Vice President, Secretary and General Counsel

DATE: October 11, 2005

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## EXHIBIT INDEX

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated June 20, 2005, among the Company, Safari Acquisition Corp. and Genaissance Pharmaceuticals, Inc. Filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed on June 24, 2005 and incorporated herein by reference.
2.2	First Amendment to Agreement and Plan of Merger, dated as of July 28, 2005, among the Company, Safari Acquisition Corp. and Genaissance Pharmaceuticals, Inc. Filed as Exhibit 2.1 to the Company's Current Report on Form 8-K on August 2, 2005 and incorporated herein by reference.
3.1	Certificate of Amendment to Certificate of Incorporation of the Company, dated October 6, 2005.
3.2	Certificate of the Designations, Preferences, Relative Rights and Limitations of the Series A Preferred Stock of the Company, dated October 4, 2005.
99.1	Clinical Data, Inc. 2005 Equity Incentive Plan.
99.2	Press Release of the Company, dated October 6, 2005.

**EXECUTION COPY**

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**ASSET PURCHASE AGREEMENT**

by and between

**GENAISSANCE PHARMACEUTICALS, INC.**

and

**DNA SCIENCES, INC.**

Dated as of March 28, 2003

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NEWYORK 64635v8

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**TRADEMARK**  
**REEL: 003328 FRAME: 0170**

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of March 28, 2003, by and between Genaissance Pharmaceuticals, Inc., a Delaware corporation (including its assignees, the "Purchaser"), and DNA Sciences, Inc., a Delaware corporation (the "Seller", and together with the Purchaser, each, a "Party" and, collectively, the "Parties").

### WITNESSETH:

WHEREAS, on or before April 4, 2003, the Seller shall file the Chapter 11 Case with the Bankruptcy Court under Chapter 11 of the Bankruptcy Code, and will continue in possession of its assets and in the management of its businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, the Purchaser desires to purchase certain assets of the Seller and to assume certain contracts and leases of the Seller, and the Seller desires to sell such assets to the Purchaser and to assign such contracts and leases to the Purchaser, on the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and in consideration of the representations, warranties, and covenants herein contained, and for other good and valuable consideration described herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Acquired Assets" shall have the meaning set forth in Section 2.1(a).

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Allocation" shall have the meaning set forth in Section 3.2.

"Alternative Transaction" shall mean a single transaction or a series of transactions involving (a) a sale of all or substantially all of the assets of the Seller's business by the Seller to a Person other than (i) the Purchaser or (ii) an Affiliate of the Purchaser or (b) confirmation by the Bankruptcy Court of a plan of reorganization under which the Seller retains all or substantially all of the Acquired Assets.

"Agreement" shall have the meaning set forth in the Preamble.

**"Ancillary Agreements"** means the Bill of Sale Agreement, the Assignment and Assumption Agreement, the Patent Assignment Agreement and the Trademark Assignment Agreement.

**"Approval Order"** shall have the meaning set forth in Section 5.1(b).

**"Assigned Contracts and Leases"** shall have the meaning set forth in Section 2.1(a)(iv).

**"Assigned Intellectual Property"** shall have the meaning set forth in Section 2.1(a)(vi).

**"Assigned Permits"** shall have the meaning set forth in Section 2.1(a)(v).

**"Assumed Liabilities"** shall have the meaning set forth in Section 2.2.

**"Bankruptcy Code"** means the Bankruptcy Reform Act of 1978, as heretofore and hereinafter amended, and codified as 11 U.S.C. Section 101, *et seq.*

**"Bankruptcy Court"** means the United States Bankruptcy Court for the Northern District of California or any other court, having jurisdiction over the Chapter 11 Case from time to time.

**"Bill of Sale, Assignment and Assumption Agreement"** shall have the meaning set forth in Section 4.2(i).

**"Break-Up Fee"** means \$100,000 or such other amount as the Bankruptcy Court may allow.

**"Business"** means any and all business activities of any kind that are conducted by the Seller.

**"Business Day"** means any day except a Saturday, a Sunday or other day on which commercial banks are required or authorized to close in California.

**"Certificate"** shall have the meaning set forth in Section 3.1(a).

**"Chapter 11 Case"** means the Chapter 11 case of Seller to be filed in the Bankruptcy Court.

**"Charges"** shall have the meaning set forth in Section 12.2.

**"Closing"** shall have the meaning set forth in Section 4.1.

**"Closing Date"** shall have the meaning set forth in Section 4.1.

**"Code"** means the Internal Revenue Code of 1986, as amended, together with the Treasury regulations promulgated thereunder.

**"Confidentiality Agreement"** means the Confidentiality Agreement, dated March 4, 2002 by and between the Purchaser and the Seller.

**"Copyrights"** shall have the meaning set forth in Section 6.8(e).

**"Consent"** means any consent, approval or waiver required pursuant to Section 365(c)(1) of the Bankruptcy Code.

**"Consideration"** shall have the meaning set forth in Section 3.1.

**"Cure Costs"** shall have the meaning set forth in Section 5.1(f).

**"Dollars"** or **"\$"** means the currency of the United States of America, unless otherwise specified.

**"Encumbrances"** means and includes interests, contractual rights, security interests, mortgages, liens, licenses, pledges, guarantees, charges, easements, reservations, restrictions, clouds, equities, rights of way, options, rights of first refusal and all other encumbrances, whether or not relating to the extension of credit or the borrowing of money.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, together with the rules and regulations promulgated thereunder.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Excluded Assets"** shall have the meaning set forth in Section 2.1(b).

**"Filing Date"** means the date on which Seller commences the Chapter 11 Case with the Bankruptcy Court.

**"Final Approval Order"** means the Approval Order, the operation or effect of which has not been stayed, reversed or amended (including any revisions, modifications or amendment thereof), and the time to appeal or seek review or rehearing has expired and no appeal or petition for review or rehearing was filed or, if filed, remains pending.

**"Governmental Authority"** means any foreign, United States federal, state or local government, political subdivision or governmental, regulatory or administrative authority, body, agency, board, bureau, commission, department, instrumentality or court, quasi-governmental authority, self-regulatory organization or stock exchange.

**"Intellectual Property"** shall have the meaning set forth in Section 6.8(e).

**"Law"** or **"Laws"** means any and all statutes, laws, ordinances, proclamations, regulations, orders, decrees, consent decrees and rules of any Governmental Authority, in each case, as amended and in effect from time to time.

**"Leases"** shall have the meaning set forth in Section 6.7.

**"Liability"** means any liability or obligation of any nature, whether matured or unmatured, fixed or contingent, secured or unsecured, accrued, absolute or otherwise.



**"Liens"** means all liens, claims, judgments, licenses, subleases, encumbrances, mortgages, pledges, security interests, conditional sales agreements, charges, options, rights of first refusal, reservations, restrictions or other encumbrances or defects in title of any kind.

**"Material Adverse Effect"** means any material adverse change, event, circumstance or development with respect to, or material adverse effect on, (i) the Acquired Assets, Assumed Liabilities, prospects, condition (financial or other), or results of operations of the Business, or (ii) the prospective ability of the Purchaser to operate the Business immediately after the Closing. For the avoidance of doubt, the Parties agree that the terms "material", "materially" or "materiality" as used in this Agreement with an initial lower case "m" shall have their respective customary and ordinary meanings, without regard to the meaning ascribed to Material Adverse Effect.

**"Material In-Licensed IP"** shall have the meaning set forth in Section 6.9(a).

**"Ordinary Course of Business"** means the operation of the Business in the ordinary course of business consistent with Seller's usual and customary practices in managing and operating the Business as they existed on the date hereof without regard to the transactions contemplated hereby, but giving effect to Section 12.19 herein.

**"Outbound License Agreements"** shall have the meaning set forth in Section 6.8(d).

**"Party"** or **"Parties"** shall have the meaning set forth in the Preamble.

**"Patent Assignment Agreement"** shall have the meaning set forth in Section 4.2(i).

**"Patents"** shall have the meaning set forth in Section 6.8(e).

**"Permitted Encumbrances"** means: (a) statutory liens for Taxes that are not yet due and payable or are being contested in good faith by appropriate proceedings or that are otherwise not material; (b) statutory or common law liens to secure obligations to landlords, lessors or renters under leases or rental agreements; (c) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law; (d) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens; (e) Encumbrances that relate to, or are created, arise or exist in connection with, any legal proceeding that is being contested in good faith; and (f) Encumbrances that do not materially impair the ownership or use of the assets to which they relate.

**"Person"** means and includes any individual, any legal entity, including, without limitation, any partnership, joint venture, corporation, limited liability company, trust, or unincorporated organization, and any Governmental Authority.

**"Plan"** shall have the meaning set forth in Section 6.11(b).

**"Proposed Sale"** shall have the meaning set forth in Section 5.1(a).

**"Purchase Price"** shall have the meaning set forth in Section 3.1(a).

**"Purchaser"** shall have the meaning set forth in the Preamble.

**"Purchaser Closing Certificate"** shall have the meaning set forth in Section 10.1(a).

**"Sale Approval Date"** shall have the meaning set forth in Section 5.1(a).

**"Sale Hearing"** shall have the meaning set forth in Section 5.1(a).

**"Sale Procedures"** shall have the meaning set forth in Section 5.1(a).

**"Sale Procedure Order"** shall have the meaning set forth in Section 5.1(a).

**"SEC"** means the United States Securities and Exchange Commission.

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

**"Seller"** shall have the meaning set forth in the Preamble.

**"Seller Closing Certificate"** shall have the meaning set forth in Section 9.2(a).

**"Seller Disclosure Schedule"** means the disclosure schedule delivered by Seller to Purchaser contemporaneously with the execution and delivery of the Agreement.

**"Shares"** means 250,000 shares of the common stock, par value \$0.001 per share, of Genaissance Pharmaceuticals, Inc., a Delaware corporation.

**"Tax"** or **"Taxes"** means any foreign, United States federal, state or local income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including all estimated taxes, deficiency assessments and any interest, penalty or addition thereto.

**"Trademark Assignment Agreement"** shall have the meaning set forth in Section 4.2(i).

**"Trademarks"** shall have the meaning set forth in Section 6.8(e).

**"Trade Secrets"** shall have the meaning set forth in Section 6.8(e).

**"Transferred Employees"** shall have the meaning set forth in Section 8.8(a).

**"Unassigned Contracts and Leases"** shall have the meaning set forth in Section 2.1(b)(ii).

## ARTICLE II

### **PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF LIABILITIES**

#### Section 2.1 Purchase and Sale of Acquired Assets.

(a) Subject to and upon the terms and conditions of this Agreement, Purchaser shall purchase from the Seller, and the Seller shall grant, transfer, sell, convey, assign and deliver to the Purchaser, as a good faith purchaser for value within the meaning of Section 363(m) of the Bankruptcy Code, free and clear of all Liens, interests and Encumbrances to the fullest extent of the Bankruptcy Court's authority to so order, all rights, title and interest of Seller in and to all of the assets, properties and business, other than the Excluded Assets, of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned or held by Seller in the Business as the same existed immediately prior to the Closing and including without limitation all rights, title and interest of Seller as of the Closing Date, in, to and under such of the foregoing as more specifically described below (collectively, the "Acquired Assets"):

- (i) all raw materials, work in process, finished goods, supplies and inventory of the Seller, and all computer records and other records relating to the foregoing;
- (ii) all of the Seller's accounts receivable, notes receivable or other obligations receivable, other than those notes receivable and other receivables outside the Ordinary Course of Business as set forth on Exhibit 2.1(b) (the "Excluded Receivables");
- (iii) all personal property and interests therein, including, without limitation, vehicles, machinery, equipment, furniture, office equipment, tools and other tangible property;
- (iv) all rights of the Seller under all executory contracts and unexpired leases (including, without limitation, license agreements pursuant to which Intellectual Property and Material In-Licensed IP is licensed to Seller), except as set forth in Section 2.1(b) or Exhibit 2.1(b) (collectively, the "Assigned Contracts and Leases");
- (v) all transferable foreign, federal, state or local or other governmental permits (including occupancy permits), certificates, licenses, consents, authorizations, approvals, registrations or franchises held by the Seller to the fullest extent such right, title and interest may be transferred (collectively, the "Assigned Permits");
- (vi) all Intellectual Property owned by the Seller (collectively, the "Assigned Intellectual Property");
- (vii) copies of all books, records, files and papers, whether in hard copy or computer format, including, without limitation, all books, records,

materials, manuals, sales and promotional materials and records, advertising materials, customer lists, supplier lists, mailing lists, distribution lists, business plans, litigation files, credit information, cost and pricing information, and all documents embodying the Assigned Intellectual Property, in each case relating to the Acquired Assets, excluding records which are attorney-client privileged or considered attorney work product;

- (viii) any telephone and facsimile numbers, websites, e-mail addresses and Internet domain names; and
- (ix) all rights of the Seller as of the Closing Date under the non-competition agreements in favor of the Seller set forth in Exhibit 2.1(a)(ix).

(b) Notwithstanding Section 2.1(a), the Seller will not be required to sell or transfer to the Purchaser, and the Acquired Assets shall not include, the following assets or any right or interest in or to any of the following assets (collectively, the "Excluded Assets"):

- (i) all rights of Seller under this Agreement, the Ancillary Agreements and the agreements and instruments executed and delivered to the Seller by Purchaser pursuant to this Agreement;
- (ii) any executory contracts and unexpired leases to which the Seller is a party or otherwise is bound if, after taking into account Section 365 of the Bankruptcy Code, (i) a Consent is required to be obtained from any Person in order to permit the sale or transfer to Purchaser of Seller's rights under such contract or lease and (ii) such Consent shall not have been obtained prior to the Closing (the "Unassigned Contracts and Leases");
- (iii) all cash, cash equivalents (including deposits) and securities in entities other than Seller owned by Seller;
- (iv) all of Seller's books, records, ledgers, files and documents (except that Purchaser may obtain copies of certain records described in Section 2.1(a)(vii));
- (v) Seller's formal corporate records, including its certificate of incorporation, bylaws, minute books, corporate books, stock transfer records and other records having to do with the corporate organization of Seller;
- (vi) any Intellectual Property to the extent that the Seller's rights thereto are subject to the Unassigned Contracts and Leases;
- (vii) all insurance benefits, including rights and proceeds, arising from or relating to the Acquired Assets prior to the date of this Agreement;
- (viii) the Collaboration Agreement dated March 16, 2000 between the Seller and Healthon/WebMD Corporation, the First Amendment thereto dated

January 5, 2001 and the Second Amendment thereto dated February 1, 2002;

- (ix) the Lease Agreement dated June 5, 2000 between the John Arrillaga, Trustee, or his Successor Trustee, UTA dated 7/20/77 as amended, and Richard T. Peery, Trustee, or his Successor Trustee, UTA dated 7/20/77 as amended, and the Seller, including all amendments thereto;
- (x) the Lease Agreement dated October 26, 2000 between Newcourt Communications Finance Corporation and the Seller, and all items leased thereunder;
- (xi) the Master Lease Agreement dated as of August 26, 2001, between De Lage Landen Financial Services, Inc. and the Seller, and all items leased thereunder;
- (xii) the Subscription Agreement dated as of May 14, 2001, by and between PE Corporation, doing business through its wholly owned affiliate the Celera Genomics Group, and the Seller and the Amendment No. 1. thereto dated November 18, 2002 by and between Applera Corporation, through Celera Genomics Group, and the Seller;
- (xiii) Service Agreement and License No. 1, effective as of November 9, 2001, by and between the Seller and the University of Utah;
- (xiv) the Excluded Receivables;
- (xv) any Tax attributes of Seller, including, without limitation, any net operating loss carryovers and any right or claim for a Tax refund attributable to the operations or assets of Seller, whether arising before, on or after the Closing;
- (xvi) all personnel records and other records that Seller is required by any Law to retain in its possession; and
- (xvii) those assets specifically identified as "Excluded Assets" on Exhibit 2.1(b).

Section 2.2 No Assumption of Liabilities. Subject to and upon the terms and conditions of this Agreement, the Purchaser shall not assume any Liabilities of the Seller, except for the following obligations and other liabilities (whether known, unknown, accrued, absolute, matured, unmatured, contingent or otherwise, and whether arising before (only in the case of clauses (ii), (iii) and (iv) below) or after (in the case of clauses (i) through (v) below) the Closing) as they may exist at and/or after the Closing: (i) all obligations and other liabilities of Seller under or relating to the Assigned Contracts and Leases, the Assigned Permits and the Assigned Intellectual Property; (ii) all costs and expenses related to Purchaser's taking possession and control of the Acquired Assets; (iii) all obligations and other liabilities of Seller relating to any of the Charges that the Purchaser is required to bear and pay pursuant to Section 12.2 (it being understood that the Purchaser shall not assume any other Tax Liability of the Seller

whatsoever); (iv) to the extent that the Purchaser elects to make payments for Cure Costs in excess of an aggregate of \$75,000 pursuant to Section 5.1(f), any such Cure Costs greater than such \$75,000 amount; and (v) each other obligation or other liability of Seller relating to any of the Acquired Assets (the "Assumed Liabilities"). All other liabilities of the Seller shall remain the sole responsibility of Seller and shall be retained, paid, performed and discharged solely by Seller.

### ARTICLE III

#### **PURCHASE PRICE; PAYMENT OF PURCHASE PRICE; ALLOCATION OF PURCHASE PRICE**

Section 3.1 Purchase Price; Payment of Purchase Price. As consideration for the sale of the Acquired Assets to Purchaser:

(a) Purchase Price. At the Closing, as consideration for the sale, conveyance, transfer and assignment of the Acquired Assets, the Purchaser will (i) deliver, or cause to be delivered, by wire transfer of immediately available funds to an account specified by Seller, an amount in cash equal to \$1,000,000 and (ii) subject to Section 4.3, issue and sell to Seller the Shares by delivering, or causing to be delivered, to Seller a stock certificate, registered in the name of the Seller, evidencing the Shares (the "Certificate," and, collectively, the "Purchase Price").

(b) Assumption of Liabilities. At the Closing, the Purchaser shall assume the Assumed Liabilities by delivering to Seller the Bill of Sale, Assignment and Assumption Agreement.

The consideration described in subparagraphs (a) and (b) of this Section 3.1 shall be collectively referred to as the "Consideration."

Section 3.2 Allocation of Purchase Price. The Consideration shall be allocated among the Acquired Assets and, to the extent appropriate, the Ancillary Agreements as of the Closing Date in accordance with an allocation to be mutually agreed upon in good faith by the Parties prior to the Closing (the "Allocation"). The Allocation will be determined in a manner consistent with Section 1060 of the Code and the Treasury Regulations thereunder. For all Tax purposes, Purchaser and Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the terms of this Agreement, including the Allocation, except as provided below, and that neither Party will take, or permit any of its Affiliates or representatives to take, any position inconsistent therewith in any Tax return, in any refund claim, in any litigation, or otherwise except as required by a final determination within the meaning of Section 1313(a) of the Code or any equivalent provision of any applicable state or local Law. Each Party will promptly provide the other Party with any additional information required to complete Form 8594 if the filing of such form is required. Each Party will timely notify the other Party, and will timely provide the other Party with assistance, in the event of an examination, audit or other proceeding regarding the Allocation.

## ARTICLE IV

### CLOSING

Section 4.1 Closing. Subject to the terms and conditions of this Agreement, the closing of the purchase and sale of the Acquired Assets (the "Closing") will be at 10:00 A.M. Pacific Standard Time at the offices of Cooley Godward LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, California 94306, or at such other location agreed to by the Purchaser and the Seller, on the first Business Day following the date of the issuance of the Final Approval Order, or such other earlier or later date as may be agreed upon in writing by the Parties after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Articles IX and X (other than those conditions that by their nature are to be satisfied at the Closing) (the date of the Closing being herein referred to as the "Closing Date").

Section 4.2 Deliveries by the Seller at the Closing. At the Closing, the Seller will:

- (i) deliver, or cause to be delivered, to the Purchaser, a receipt for the Purchase Price paid by the Purchaser in accordance with Section 3.1(a) and a bill of sale, assignment and assumption agreement (the "Bill of Sale, Assignment and Assumption Agreement"), a patent assignment agreement (the "Patent Assignment Agreement"), and a confirmatory trademark assignment agreement (the "Trademark Assignment Agreement") substantially in the forms of Exhibit A, Exhibit B and Exhibit C hereto, respectively;
- (ii) deliver, or cause to be delivered, to the Purchaser all consents, orders and approvals of the Bankruptcy Court (including, without limitation, a certified copy of the Approval Order);
- (iii) deliver, or cause to be delivered, to the Purchaser the Seller Closing Certificate referred to in Sections 9.2(a) and (b) hereof;
- (iv) deliver, or cause to be delivered, to the Purchaser certified copies of the resolutions of the Board of Directors of the Seller authorizing the sale of the Acquired Assets, the execution and delivery of this Agreement, the Ancillary Agreements and all other documents and agreements delivered in connection herewith by officers of the Seller and consummation of the transactions contemplated hereby and thereby; and
- (v) deliver, or cause to be delivered, to the Purchaser such good standing certificates and other similar documents as Purchaser may reasonably request to ensure that the actions required to be taken by Seller at the Closing have been properly authorized.

Section 4.3 Deliveries by the Purchaser at the Closing. At the Closing, the Purchaser will:

- (i) deliver, or cause to be delivered, to the Seller the Bill of Sale, Assignment and Assumption Agreement and the Trademark Assignment Agreement duly executed by the Purchaser;
- (ii) pay to the Seller the Purchase Price in accordance with Section 3.1(a); *provided, however*, that upon the written request of the Seller to be provided to the Purchaser not less than one (1) day prior to the Closing Date, the Purchaser will deliver the Certificate to a third party escrow agent of the Seller's choosing pursuant to instructions approved in the sole discretion of Seller that provide for the release of such Certificate from escrow upon either (i) the entry of an order by the Bankruptcy Court confirming a plan of reorganization of Seller under the Bankruptcy Code providing for the transfer or distribution of the Shares in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 1145 of the Bankruptcy Code; or (ii) the mutual consent of the Purchaser and the Seller, it being understood that all fees and expenses of any such escrow agent shall be borne exclusively by the Seller;
- (iii) deliver, or cause to be delivered to the Seller the Purchaser Closing Certificate referred to in Sections 10.1(a) and (b) hereof; and
- (iv) deliver, or cause to be delivered, to the Seller such good standing certificates and other similar documents as Seller may reasonably request to ensure that the actions required to be taken by Purchaser at the Closing have been properly authorized.

Section 4.4 Further Assurances.

(i) Each Party will from time to time, at the reasonable request of any other Party, execute and deliver such other instruments of conveyance and transfer and such other instruments, documents and agreements and take such other actions as such other Party may reasonably request or as may be reasonably requested by any applicable Governmental Authorities or third parties, in each case in order to consummate and make effective any of the transactions contemplated hereby and to vest in the Purchaser the right, title and interest in, to and under the Acquired Assets, to assist the Purchaser in the transfer, assignment, collection and reduction to possession of the Acquired Assets (and the exercise of rights with respect thereto); provided that the requesting Party will prepare any additional documents and instruments and will handle any submittal, applications, processing, recording and registrations and bear all expenses related thereto. Without limiting the provisions of Section 12.4, the Parties hereby irrevocably consent to the personal and subject-matter jurisdiction of the Bankruptcy Court for all purposes necessary to effectuate this Section 4.4.

(ii) Purchaser will return any records Seller inadvertently delivers to Purchaser that are or are reasonably likely to be attorney-client privileged or considered attorney work product or which Purchaser realizes are or are likely to be attorney-client privileged or considered attorney work product.



(iii) Purchaser agrees that should Purchaser receive a subpoena to provide to a third party copies of records relating to the Acquired Assets at any time after the Closing Date, Purchaser shall within three (3) Business Days of the receipt of the subpoena, provide written notice to Seller of the receipt of such subpoena so that Seller may seek a protective order or an appropriate remedy. Purchaser will cooperate with Seller to obtain such protective order or other remedy. If Seller elects not to seek, or is unsuccessful in obtaining, any such protective order or other remedy in connection with any requirement that Purchaser provide certain records, then Purchaser may provide to the third party the records requested in the subpoena.

Section 4.5 Grant-back License of "DNA Sciences" Name. Effective immediately after the Closing, Purchaser hereby grants to Seller a non-exclusive license to use the name "DNA Sciences" and logo solely for the purpose of completing the bankruptcy process.

## ARTICLE V

### BANKRUPTCY COURT MATTERS

#### Section 5.1 Bankruptcy Court Orders.

(a) No later than five (5) Business Days after execution of this Agreement, or, if earlier, three (3) Business Days after the filing of the Chapter 11 Case, Seller shall file a motion that seeks, on an expedited basis, the entry of an order (the "Sale Procedure Order") approving, among other things, the procedures in connection with (i) the Seller's request to sell and assign, as applicable, the Acquired Assets to the Purchaser pursuant to this Agreement and Sections 363, 365 and 1146 of the Bankruptcy Code, free and clear of all Liens, interests or Encumbrances in or on the Acquired Assets to the fullest extent of the Bankruptcy Court's authority to so order (the "Proposed Sale" and the hearing to consider approval of the Proposed Sale, the "Sale Hearing"), (ii) establishing notice and service requirements to all creditors and parties in interest of the Proposed Sale and the Sale Hearing (including the Internal Revenue Service and all other Tax authorities with jurisdiction over the Seller or the Acquired Assets), (iii) approving the payment of the Break-Up Fee in the event that it becomes payable as specified in Section 11.2 as the sole and exclusive remedy against Seller in the event the transaction contemplated herein is not consummated, (iv) establishing a deadline of the submission of competing bids for the Acquired Assets and (v) establishing thresholds for initial overbids consistent with those set forth in Section 5.1(g), the bidding procedures and setting a date for the Sale Hearing (collectively, the "Sale Procedures"), which shall be substantially in the form of Exhibit D.

(b) The order approving the Proposed Sale (the "Approval Order") will be substantially in the form annexed hereto as Exhibit E (provided, that, in each case, any material changes to such form of order must be approved by the Purchaser and Seller), and the motions relating to the Approval Order will be in form and substance reasonably satisfactory to the Purchaser; *provided, however*, that in no event shall Purchaser have the right to disapprove the Approval Order or terminate this transaction by reason of (A) subject to Section 9.2(i), the failure to assign all of the Assigned Contracts and Leases or (B) Seller's inability to assign any or all of the Assigned Contracts and Leases by reason of the Bankruptcy Court's determination that Purchaser has failed to provide adequate assurance of future performance to the counter party. If (xx) the Bankruptcy Court refuses to issue the Approval Order (except as otherwise

provided in the preceding sentence) or (yy) an Alternative Transaction is approved by the Bankruptcy Court at the Sale Hearing, then in any such event, this transaction shall automatically terminate and Seller and Purchaser shall be relieved of any further liability or obligation hereunder; *provided, however*, in the event an Alternative Transaction is approved by the Bankruptcy Court at the Sale Hearing, and Purchaser is otherwise entitled to the Break-Up Fee then such obligation on the part of Seller to pay the Break-Up Fee shall survive. Upon timely entry of the Approval Order (such entry date being referred to herein as the "Sale Approval Date"), the conditions set forth in this Section 5.1(b) shall conclusively be deemed satisfied.

(c) Subject to the Seller's obligations to comply with any order of the Bankruptcy Court (including, without limitation, the Sale Procedures), the Seller and the Purchaser will promptly make any filings, take all actions and use commercially reasonable efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the transactions contemplated hereby.

(d) The Seller shall file a motion requesting the Bankruptcy Court to hold a hearing on the sale of the Acquired Assets. Seller shall use its best efforts to expedite the timing of the hearing so that it shall be held on or before the date 45 days after the Filing Date but in no event shall the hearing be held later than the date 60 days after the Filing Date.

(e) The Seller shall promptly provide the Purchaser with drafts of all documents, motions, orders, filings or pleadings that the Seller proposes to file with the Bankruptcy Court which relate to the consummation or approval of this Agreement and will provide the Purchaser with reasonable opportunity to review such filings. The Seller will also promptly provide the Purchaser with written notice and copies of any other or further notice of appeal, motion or application filed in connection with any appeal from or application for reconsideration of, any of such orders and any related briefs.

(f) The Seller shall be responsible for the payment or satisfaction of any amounts (the "Cure Costs") necessary to cure any defaults and arrearages that exist on the Closing Date under the Assigned Contracts and Leases, up to an aggregate of \$75,000, and the Purchaser shall be responsible for any Cure Costs in excess of such amount.

(g) Buyer acknowledges and understands that the Bankruptcy Court customarily requires that any offer to purchase a debtor's assets be subject to counteroffers by third parties and that the Bankruptcy Court may conduct a bidding process at or prior to the hearing on approval of the sale of the Acquired Assets contemplated by this Agreement; *provided, however*, that the Seller shall oppose, and shall not submit any motions, plans of reorganization or disclosure statements proposing, any counteroffer by a third party (i) pursuant to which the payment of any non-cash consideration is contingent upon the maker thereof meeting or exceeding any performance criteria or is payable solely out of any profits or a percentage of revenue of the maker, or (ii) if such counteroffer contains any non-cash consideration, the maker's capital structure is not at least as financially sound as that of Buyer and (iii) provides for a total purchase price payable pursuant to such counteroffer which does not exceed the Purchase Price payable by Buyer hereunder by an amount in excess of \$50,000.

## ARTICLE VI

### REPRESENTATIONS OF THE SELLER

The Seller represents and warrants to the Purchaser as follows:

Section 6.1 Corporate Power and Authority. Subject to compliance with applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court, the Seller has the corporate power and authority to own, lease and operate its properties and to conduct its business as is presently conducted.

Section 6.2 Existence and Good Standing. The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Seller is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, except where the failure to be so qualified or to be in good standing has not had, or would not reasonably be expected to have, a Material Adverse Effect.

Section 6.3 Authority; No Consents. Except as set forth in Section 6.3(i) of the Seller Disclosure Schedule, subject to compliance with the applicable provisions of the Bankruptcy Code and the entry by the Bankruptcy Court of the Final Approval Order prior to the Closing, the execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Seller and this Agreement has been, and the Ancillary Agreements to which it is a party when executed and delivered by the Seller will be, duly and validly executed and delivered and the valid and binding obligations of the Seller, enforceable against it in accordance with their respective terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. Except as set forth in Section 6.3(ii) of the Seller Disclosure Schedule, subject to compliance with the applicable provisions of the Bankruptcy Code and the entry by the Bankruptcy Court of the Final Approval Order and the payment by the Purchaser or the Seller of all applicable Cure Costs prior to the Closing, neither the execution, delivery and performance by the Seller of this Agreement or the Ancillary Agreements to which the Seller is a party, the consummation by the Seller of the transactions contemplated hereby or thereby, nor compliance by the Seller with any provision hereof or thereof will (I) (A) conflict with, (B) result in any violation of, (C) cause a default under (with or without due notice, lapse of time or both), (D) give rise to any right of termination, amendment, cancellation or acceleration of any obligation contained in or the loss of any benefit under or (E) result in the creation of any Encumbrance on or against any assets, rights or property of the Seller under any term, condition or provision of (x) any of the Assigned Contracts and Leases or (y) any law, statute, rule, regulation, order, writ, injunction, decree, permit, concession, license or franchise of any Governmental Authority applicable to the Seller or any of its properties, assets or rights, other than any such conflict, violation, default, right, loss or Encumbrance that would not have a Material Adverse Effect, or (II) conflict with or result in any violation of the Seller's Certificate of Incorporation or Bylaws.

Section 6.4 Title to Assets, Properties and Rights and Related Matters. As of the Closing and assuming the entry of the Final Approval Order by the Bankruptcy Court and the payment by Seller of the Cure Costs, the Seller will have good and valid title to all of the Acquired Assets free and clear of all Encumbrances to the fullest extent of the Bankruptcy Court's authority to so order.

Section 6.5 Contracts. Section 6.5 of the Seller Disclosure Schedule lists all written or oral contracts (other than contracts which are Excluded Assets) to which Seller is a party that provide for the payment to or by the Seller of more than \$25,000. The Seller has delivered to the Purchaser a correct and complete copy of each contract (and all amendments, modifications and supplements thereto) listed in Section 6.5 of the Seller Disclosure Schedule. Subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies, each of the Assigned Contracts and Leases is valid and in full force and effect in accordance with its terms, except where the failure of any of the Assigned Contracts and Leases to be valid or in full force and effect would not have a Material Adverse Effect.

Section 6.6 Litigation. Except for the Chapter 11 Case and proceedings therein, and except as set forth in Section 6.6 of the Seller Disclosure Schedule, there is no action, suit, proceeding in equity or at law, arbitration or administrative or other proceeding by or before any Person (including, without limitation, any Governmental Authority), pending or, to the best of the Seller's knowledge, threatened in writing against the Seller which, if adversely determined, would result in a Material Adverse Effect after the Closing Date. Except as set forth in Section 6.6 of the Seller Disclosure Schedule, the Acquired Assets are not subject to any judgment, order or decree entered in any material lawsuit or proceeding.

Section 6.7 Real Property - Owned or Leased. The Seller does not currently own any real property. Seller has provided to Purchaser copies of all leases for real property that are Assigned Contracts and Leases ("Leases"). The Seller owns and holds all the leasehold estates purported to be granted by each Lease, and all Leases are in full force and effect and constitute valid and binding obligations of the Seller.

Section 6.8 Intellectual Property.

(a) To the Seller's knowledge, the Seller has good and valid title to, and owns free and clear of all Encumbrances, other than Permitted Encumbrances and non-exclusive licenses, and has the right to bring actions for the infringement of, all Assigned Intellectual Property. Section 6.8(a) of the Seller Disclosure Schedule includes a complete and accurate list of all of the Seller's United States and foreign (a) Patents; (b) registered Trademarks (including Internet domain name registrations); and (c) registered Copyrights, indicating for each the applicable jurisdiction, registration number (or application number), and date issued (or date filed).

(b) To the knowledge of the Seller, there are no royalties, honoraria, fees or other payments payable by the Seller to any person by reason of the Seller's ownership, use, license, transmission, broadcast, delivery (electronically or otherwise), sale, or disposition of Assigned Intellectual Property.

(c) Except as set forth in Section 6.8(c) of the Seller Disclosure Schedule, to the knowledge of the Seller, no third party is infringing upon, or violating any license or agreement with the Seller relating to, any Assigned Intellectual Property; and there is no pending or, to the Seller's knowledge, threatened claim or litigation contesting the validity of, Seller's ownership of, or Seller's right to use, sell, license or dispose of, any Assigned Intellectual Property, nor, to the Seller's knowledge, is there any legitimate basis for any such claim. To the knowledge of the Seller, the Seller has not received any written notice asserting that any Assigned Intellectual Property or the proposed sale thereof to Purchaser pursuant to the terms of this Agreement conflicts or will conflict with the rights of any other party, nor to the knowledge of the Seller is there any legitimate basis for any such assertion.

(d) Section 6.8(d) of the Seller Disclosure Schedule sets forth a complete and accurate list of all license agreements currently in effect in which the Seller has expressly granted any right to a third party to use or practice any rights under any Assigned Intellectual Property (except for licenses identified in Section 6.9(a) of the Seller Disclosure Schedule) and any assignments, consents, term, forbearances to sue, judgments, orders, settlements or similar obligations relating to any Assigned Intellectual Property to which the Seller is a party or otherwise bound (collectively, the "**Outbound License Agreements**"). The Outbound License Agreements are valid and binding obligations of the Seller, enforceable in accordance with their terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies, except where the failure of any of the Outbound License Agreements to be valid or binding obligations or enforceable in accordance with their terms would not have a Material Adverse Effect.

(e) As used in this Agreement, the term "**Intellectual Property**" shall mean all intellectual property rights worldwide, including, without limitation, trademarks, service marks, trade names, service names, URLs and Internet domain names and applications therefore (and all interest therein), and general intangibles of like nature, together with all goodwill related to the foregoing (including any registrations and applications for any of the foregoing) (collectively, "**Trademarks**"); patents (including any registrations, continuations, continuations in part, renewals and applications for any of the foregoing) (collectively, "**Patents**"); copyrights (including any registrations, applications and renewals for any of the foregoing) (collectively, "**Copyrights**"); confidential or proprietary information that derives economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure, but excluding any Copyrights or Patents that cover or protect any of the foregoing (collectively, "**Trade Secrets**"); and all other proprietary rights recognized under the laws of any jurisdiction in the world in concepts, ideas, designs, plans, schematics, drawings, specifications, research and development information, technology and product roadmaps, technology, confidential information, know-how, proprietary technology, processes, formulae, algorithms, models, customer lists, inventions, discoveries, improvements, methodologies, architecture, structure, layouts, and inventions.

#### Section 6.9 Material In-Licensed IP.

(a) Section 6.9(a) of the Seller Disclosure Schedule sets forth a true and complete list of all license agreements currently in effect in which the Seller has been granted a license to

Intellectual Property that is material to the operation of the Business (other than such licenses or agreements arising from the purchase or license of "off the shelf" or standard software products for which the purchase price or license fee is less than \$5,000) (the "Material In-Licensed IP").

(b) The Material In-Licensed IP is validly held and used by the Seller and may be used by the Seller pursuant to the applicable license agreements with respect thereto without the consent of or notice to any third party. Except as set forth in Section 6.9(b) of the Seller Disclosure Schedule, the license agreements relating to the Material In-Licensed IP are valid and binding obligations of the Seller, enforceable in accordance with their terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies, except where the failure of any of such license agreements to be valid or binding obligations or enforceable in accordance with their terms would not have a Material Adverse Effect.

Section 6.10 Compliance with Laws; Assigned Permits. Except as disclosed in Section 6.10 of the Seller Disclosure Schedule, the Business is being conducted in substantial compliance with all applicable Laws relating to the Acquired Assets. Set forth in Section 6.10 of the Seller Disclosure Schedule is a true and complete list of all Assigned Permits.

Section 6.11 Employees; Employee Benefit Plans.

(a) The Seller is not a party to or bound by any collective bargaining agreement with any labor organization, group or association covering any of its employees, and the Seller has no knowledge of any attempt to organize any of its employees by any person, unit or group seeking to act as their bargaining agent. The Seller has no knowledge of any pending or threatened charges (by employees, their representatives or governmental authorities) of unfair labor practices or of employment discrimination or of any other wrongful action with respect to any aspect of employment of any person employed or formerly employed by the Seller. No union representation elections relating to employees of the Seller have been scheduled by any Governmental Authority, and, to the Seller's knowledge, no organizational effort is being made with respect to any of such employees, and there is no investigation of the Seller's employment policies or practices by any governmental agency or authority pending or, to the Seller's knowledge, threatened. The Seller is not currently, and has not within the last three years been, involved in labor negotiations with any unit or group seeking to become the bargaining unit for any employees of the Seller's employees. The Seller has not experienced any work stoppages during the last three years, and to the best of the Seller's knowledge, no work stoppage is planned.

(b) The Seller has never maintained or contributed to an employee benefit plan within the meaning of Section 3(3) of ERISA (a "Plan") covered by Title IV of ERISA or subject to Section 412 of the Code or Section 302 of ERISA or a multiemployer plan as defined in Section 4001(a)(3) of ERISA. No Plan provides for post-employment or retiree welfare benefits, except to the extent required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code.

Section 6.12 Broker's or Finder's Fees. No agent, broker, Person or firm is, or will be, entitled to any commission or broker's or finder's fees from any Party, or from any Affiliate of

any Party, in connection with any of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

Section 6.13 Insurance Coverage. The Seller has furnished or made available to the Purchaser, a list of, and true and complete copies of, all insurance policies covering the Acquired Assets, all of which are set forth in Section 6.13 of the Seller Disclosure Schedule. There is no material claim by Seller pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds.

Section 6.14 Accounts and Notes Receivable. Subject to laws of general application relating to bankruptcy, insolvency and relief of debtors, all of the accounts receivable and notes receivable owing to the Seller being transferred and assigned to Purchaser pursuant to this Agreement constitute valid and enforceable claims, and, as of the date of this Agreement, there are no known or asserted claims, refusals to pay or other rights of set-off against any thereof. As of the date of this Agreement, there is (i) no account debtor or note debtor that has refused (or, to the knowledge of the Seller, threatened to refuse) to pay any material obligation to the Seller that constitutes an Acquired Asset for any reason, (ii) to the knowledge of the Seller, no account debtor or note debtor that is bankrupt and owes a material obligation to the Seller that constitutes an Acquired Asset and (iii) no account receivable or note receivable that constitutes an Acquired Asset which is pledged to any third party by the Seller.

Section 6.15 Governmental Authorizations and Consents.

(a) The Seller has all Federal, state, local and foreign governmental licenses, consents, approvals, authorizations, permits, orders, decrees and other compliance agreements necessary in the conduct of the Business as presently conducted, the lack of which would have a Material Adverse Effect; such licenses, consents, approvals, authorizations, permits, orders, decrees and other compliance agreements are in full force and effect, no material violations are or have been recorded in respect of any thereof and no proceeding is pending or, to the knowledge of the Seller, threatened to revoke or limit any thereof.

(b) Section 6.15(b) of the Seller Disclosure Schedule contains a true and complete list of all such governmental licenses, consents, approvals, authorizations, permits, orders, decrees and other compliance agreements and the Seller has furnished to Purchaser true and complete copies thereof.

Section 6.16 Customers. Section 6.16 of the Seller Disclosure Schedule sets forth a list of each customer that accounted for more than \$25,000 of the Seller's revenues for its most recently completed fiscal year or for the 12-month period ended February 28, 2003.

Section 6.17 Shares. The Seller is acquiring the Shares for its own account for investment only, and not with a view to, or for sale in connection with, any distribution of the Shares in violation of the Securities Act or any rule or regulation under the Securities Act. The Seller understands that the Shares are being issued to the Seller in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof. Accordingly, the Seller understands that the Shares have not been registered under the Securities Act and are "restricted securities" within the meaning of Rule 144 under the Securities Act; and the Shares

cannot be sold, transferred or otherwise disposed of unless they are subsequently registered under the Securities Act or an exemption from registration is then available. The Seller acknowledges that a legend substantially in the following form will be placed on the certificate(s) representing the Shares:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED.

## ARTICLE VII

### REPRESENTATIONS OF THE PURCHASER

The Purchaser represents and warrants to the Seller as follows:

#### Section 7.1 Existence and Good Standing; Authorization and Validity of Agreement.

(a) The Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Purchaser is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, except where the failure to be so qualified or to be in good standing would not prevent, interfere or delay the Purchaser from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement. The Purchaser has the corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Purchaser and this Agreement has been, and the Ancillary Agreements to which it is a party when executed and delivered by the Purchaser will be, duly and validly executed and delivered and the valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. Neither the execution, delivery and performance by the Purchaser of this Agreement or the Ancillary Agreements to which the Purchaser is a party, the consummation by the Purchaser of the transactions contemplated hereby or thereby, nor compliance by the Purchaser with any provision hereof or thereof will (I) (A) conflict with, (B) result in any violation of, (C) cause a default under (with or without due notice, lapse of time or both), (D) give rise to any right of termination, amendment, cancellation or acceleration of any obligation contained in or the loss of any benefit under or (E) result in the creation of any Encumbrance on or against any assets,



rights or property of the Purchaser under any term, condition or provision of (x) any instrument or agreement to which the Purchaser is a party, or by which the Purchaser or any of its properties, assets or rights may be bound or (y) any law, statute, rule, regulation, order, writ, injunction, decree, permit, concession, license or franchise of any Governmental Authority applicable to the Purchaser or any of its properties, assets or rights, other than any such conflict, violation, default, right, loss or Encumbrance that would not prevent, interfere or delay the Purchaser from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement, or (II) conflict with or result in any violation of the Purchaser's Certificate of Incorporation or Bylaws. No permit, authorization, consent or approval of or by, or any notification of or filing with, any Governmental Authority is required to be made or obtained by Purchaser in connection with the execution, delivery and performance by the Purchaser of this Agreement or the Ancillary Agreements or the consummation by the Purchaser of the transactions contemplated hereby or thereby. Purchaser is not and will not be required to obtain any consent from any Person, in connection with the execution, delivery or performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

Section 7.2 SEC Filings: Financial Statements.

(a) All reports, statements and other documents required to have been filed by the Purchaser with the SEC pursuant to the Securities Act or the Exchange Act since January 1, 2002 (the "Purchaser SEC Documents") have been so filed on a timely basis. As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing): (i) each of the Purchaser SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be); and (ii) none of the Purchaser SEC Documents contained 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 the light of the circumstances under which they were made, not misleading.

(b) The financial statements contained in the Purchaser SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements and, in the case of unaudited statements, as permitted by Form 10-Q of the SEC, and except that unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end audit adjustments which will not, individually or in the aggregate, be material in amount); and (iii) fairly present the financial position of Purchaser as of the respective dates thereof and the results of operations and cash flows of the Purchaser for the periods covered thereby.

Section 7.3 Shares. The Shares have been duly authorized by all necessary corporate action on the part of the Purchaser, and when issued in accordance with this Agreement, will be validly issued, fully paid and nonassessable and not subject to preemptive rights.

Section 7.4 Broker's or Finder's Fees. No agent, broker, Person or firm is, or will be, entitled to any commission or broker's or finder's fees from any Party, or from any Affiliate of

any Party, in connection with any of the transactions contemplated upon arrangements made by or on behalf of Purchaser. Purchaser agrees that any claims, losses or expenses incurred by Seller as a result of Section 7.2 being untrue.

personnel

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## ARTICLE VIII

### ADDITIONAL AGREEMENTS

#### Section 8.1 Operation of Business.

(a) Except as contemplated by this Agreement, the Seller Disclosure Schedule or any of the Ancillary Documents, as may be necessary to carry out any of the transactions contemplated by this Agreement or the Ancillary Agreements, as may be necessary to facilitate compliance with the requirements of any of the Assigned Contracts and Leases, or as consented to by the Purchaser, which consent shall not be unreasonably withheld, and to the extent not inconsistent with the Bankruptcy Code, or any orders entered by the Bankruptcy Court in the Chapter 11 Case or otherwise required by applicable Law, prior to the Closing, the Seller shall not, subject to Bankruptcy Court jurisdiction:

- (i) sell, lease, license, sublicense, encumber or dispose of any Acquired Assets, except in the ordinary course of business consistent with past practices;
- (ii) enter into any agreement or commitment or engage in any transaction which is not in the ordinary course of business, other than agreements or commitments entered into in connection with the wind-down of the business and operations of the Seller in a manner that does not materially and adversely alter the value of the Acquired Assets;
- (iii) take any action to waive or compromise any material claims (whether or not asserted in any pending litigation) which are included in the Acquired Assets; or
- (iv) agree in writing or otherwise to take any of the foregoing actions.

(b) Except as contemplated by this Agreement, the Seller Disclosure Schedule or any of the Ancillary Documents, as may be necessary to carry out any of the transactions contemplated by this Agreement or the Ancillary Agreements, as may be necessary to facilitate compliance with the requirements of any of the Assigned Contracts and Leases, or as consented to by the Purchaser, which consent shall not be unreasonably withheld, and to the extent not inconsistent with the Bankruptcy Code, or any orders entered by the Bankruptcy Court in the Chapter 11 Case or otherwise required by applicable Law, prior to the Closing, the Seller shall, subject to Bankruptcy Court jurisdiction, conduct its operations in the Ordinary Course of Business, and shall:

- (i) report periodically to Purchaser concerning the status of its business, operations and finances;

- (ii) engage in no material involuntary terminations of management personnel without prior consultation with Purchaser;
- (iii) use reasonable commercial efforts to maintain the Acquired Assets in a state of repair and condition that is consistent with the requirements and normal conduct of the Business;
- (iv) use reasonable commercial efforts to keep in full force and effect, without amendment, all material rights relating to the Acquired Assets;
- (v) comply materially with all Laws applicable to the operations of the Business;
- (vi) cooperate with Purchaser and assist Purchaser in identifying the permits and governmental authorization required by Purchaser to operate the Business from and after the Closing Date and either transferring existing permits and governmental authorities of Seller to Purchaser, where permissible, or obtaining new permits and governmental authorizations for Purchaser; and
- (vii) maintain all books and records of Seller relating to the Business in the Ordinary Course of Business.

Section 8.2 Review of the Seller. Subject to the provisions of the Confidentiality Agreement and applicable laws and regulations, prior to the Closing Date, Seller will, after receiving reasonable advance notice from Purchaser, give Purchaser reasonable access to the premises, the books and records (excluding records which are attorney-client privileged or considered attorney work product) of the Seller that relate to the Acquired Assets during normal working hours, for the sole purposes of enabling Purchaser (i) to further investigate, at Purchaser's sole expense, the Acquired Assets and any other appropriate matters germane to the subject matter of this Agreement and the Ancillary Agreements and (ii) to verify the accuracy of the representations and warranties of the Seller set forth in Section 6 or elsewhere in this Agreement.

Section 8.3 Reasonable Efforts; Cooperation; Consents and Approvals. Subject to the Seller's obligations to comply with any order of the Bankruptcy Court, each of the Parties agrees to use its commercially reasonable efforts to take, or cause to be taken, all action to do or cause to be done, and to assist and cooperate with each other Party in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement (in each case, to the extent that the same is within the control of such Party), including, without limitation, (i) compliance with any Bankruptcy Court approvals, consents and orders, (ii) the obtaining of all necessary waivers, consents and approvals from Governmental Authorities and the making of all necessary registrations and filings and the taking of all reasonable steps as may be necessary to obtain any approval or waiver from, or to avoid any action or proceeding by, any Governmental Authority, (iii) the defending of any lawsuits or any other legal proceedings whether judicial or administrative, challenging this Agreement, the Ancillary Agreements or the consummation of

the transactions contemplated hereby and thereby and (iv) causing the conditions set forth in Articles IX and X to be satisfied. Except as otherwise expressly set forth in the Sale Procedures, the Seller will use its commercially reasonable efforts to obtain from the Bankruptcy Court all orders, consents and approvals necessary to consummate the transactions contemplated by this Agreement, including without limitation, the Approval Order.

Section 8.4 Sale Procedures. The Seller (a) will conduct the auction process in accordance with the Sale Procedures and (b) will not amend, waive, modify or supplement in any material respect the Sale Procedures except as set forth herein or therein or as required or ordered by the Bankruptcy Court.

Section 8.5 Public Disclosure. Except as otherwise required by law or regulation, as contemplated by the Sale Procedures or as may be necessary or appropriate in connection with the pending Chapter 11 Case in respect of the Seller, each Party shall consult with the other Party and obtain such other Party's consent, which consent shall not be unreasonably withheld, before issuing any press release or otherwise making any public statements with respect to this Agreement or the matters contained herein and will not issue any such press release or make any such statement prior to such consultation and agreement. This Section 8.5 shall survive any termination of this Agreement.

Section 8.6 Apportionment. All real property and personal property Taxes, assessments and similar governmental charges levied with respect to the Acquired Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the pre-Closing Tax period and the post-Closing Tax period as of the Closing Date on a per diem basis. Thereafter, the Seller shall notify the Purchaser upon receipt of any bill for real or personal property Taxes or similar charges relating to the Acquired Assets, part or all of which are attributable to any post-Closing Tax period, and shall promptly deliver such Tax bill to the Purchaser who shall pay the same to the appropriate governmental authority; provided, that if such bill covers the pre-Closing period, the Seller shall also remit to the Purchaser, prior to the due date of such Tax bill, payment for the proportionate amount of such bill that is attributable to the pre-Closing period. If either the Seller or the Purchaser shall make a payment for which such Party is entitled to have such payment made by the other Party under this Section, the other Party shall make reimbursement promptly but in no event later than 15 Business Days after the presentation of a statement setting forth the amount of reimbursement to which the presenting Party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Any payment between the Parties required under this Section shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day from the date the relevant Tax is due to be paid to the Tax authority until paid.

Section 8.7 Access to Records and Certain Personnel. Following the Closing, (a) upon prior written notice, the Purchaser shall permit the Seller and any successors or assigns, its counsel, tax advisors and other Affiliates reasonable access during ordinary business hours to (i) the financial and other books and records relating to the Business (whether in documentary or data form), (ii) the Seller's employees and (iii) the Seller's leased real property for any purpose relating to the sale, operation, winding down, liquidation and final administration of the Business or the bankruptcy estate, which access shall include (i) the right of such professionals to copy

and use such documents and records as they may request, and (ii) Purchaser's copying and delivering to the Seller or its professionals such documents or records as they may request (provided, that the Seller reimburses Purchaser for the reasonable out-of-pocket expenses thereof).

Section 8.8 Employees; Employee Benefits.

(a) Agreements Regarding Employees. Purchaser shall offer employment to the Seller's employees identified in a memorandum to be delivered by the Purchaser to the Seller within 45 days after the Filing Date, such employment to commence as of the Closing Date. (Notwithstanding any provision to the contrary contained in this Agreement, the Purchaser may, in its sole discretion, supplement or amend such memorandum (including to remove individuals therefrom) on or before the Closing Date.) Such employees who accept employment with Purchaser shall be referred to hereinafter as "Transferred Employees," all of whom shall be employed as an "at will" employee of the Purchaser. In accordance with Section 4980B and the Treasury Regulations promulgated thereunder, Purchaser shall make COBRA coverage available to Seller's M&A Qualified Beneficiaries (within the meaning of Section 4980B and the Treasury Regulations promulgated thereunder).

(b) Other Obligations. Seller and Purchaser agree to cooperate reasonably concerning all matters relating to the Transferred Employees.

Section 8.9 Cooperation.

(a) The Seller covenants and agrees that, during the period between the date hereof and the Closing, the Seller shall promptly inform Purchaser in writing of any material breaches of the representations and warranties contained in Article VI or any material breach of any covenant of the Seller.

(b) The Purchaser covenants and agrees that, during the period between the date hereof and the Closing, the Purchaser shall promptly inform Seller in writing of any material breaches of the representations and warranties contained in Article VII or any material breach of any covenant of the Purchaser.

Section 8.10 Consents; Releases. Purchaser will cooperate with Seller, and will provide Seller with such assistance as Seller may reasonably request, for the purpose of arranging for Seller to be released and discharged from its obligations and other liabilities under the Assigned Contracts and Leases.

Section 8.11 Bankruptcy Case. Purchaser will cooperate fully with the Bankruptcy Court and with Seller to expedite the Bankruptcy Case and to obtain orders as described in Article V.

Section 8.12 Possession of the Assets. Purchaser will make all necessary arrangements for Purchaser to take possession of the Acquired Assets (other than intangible assets), and, at Purchaser's expense, to transfer the same to a location operated by Purchaser, promptly, but in no event later than 30 days following the Closing.

Section 8.13 Collection of Receivables. The Seller agrees that it shall forward promptly to the Purchaser any monies, checks or instruments received by the Seller after the Closing Date with respect to the accounts receivable, notes receivable or other obligations receivable purchased by the Purchaser from the Seller pursuant to this Agreement. The Seller shall provide to the Purchaser such reasonable assistance as the Purchaser may request with respect to the collection of any such receivables, provided the Purchaser pays the reasonable out-of-pocket expenses of the Seller and its officers, directors and employees incurred in providing such assistance. The Seller hereby grants to the Purchaser a power of attorney to endorse and cash any checks or instruments payable or endorsed to the Seller or its order which are received by the Purchaser and which relate to accounts receivable, notes receivable or other obligations receivable purchased by the Purchaser from the Seller.

Section 8.14 Non-Solicitation. The Seller will not solicit or initiate the submission of any proposal or offer from any Person relating to the acquisition of any portion of the Acquired Assets or as to all or substantially all of the capital stock or assets of the Seller (including, without limitation, any acquisition structured as a merger, consolidation, or share exchange), provided, however, that the Seller and its directors and officers will remain free to participate in any unsolicited discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person to do or seek any of the foregoing to the extent their fiduciary duties or the Sale Procedure Order may require.

## ARTICLE IX

### CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER

Section 9.1 Conditions to the Purchaser's Obligations. The obligations of the Purchaser to purchase the Acquired Assets and to take the other actions required to be taken by Purchaser at the Closing hereunder are conditioned upon the satisfaction or waiver in writing (subject to applicable Law), on or prior to the Closing Date, of the following conditions:

- (a) Motion to Approve Sale Procedures Order. The Seller shall have filed a motion to approve the Sale Procedures Order no later than five (5) Business Days from the date of this Agreement.
- (b) Hearing on Sale Procedures Order. The Bankruptcy Court shall have conducted a hearing to establish the sale procedures for the Sale Hearing and entered an Order on the Sale Procedures.
- (c) Hearing on the Sale of Acquired Assets. The Bankruptcy Court shall have conducted a hearing on the sale of the Acquired Assets.
- (d) Approval Order. The issuance of the Final Approval Order in form and substance that is in accordance with the provisions of this Agreement on or prior to the date which is 75 days after the Filing Date.

Section 9.2 Closing Conditions to the Purchaser's Obligations. The obligations of the Purchaser to consummate the Closing are conditioned upon the satisfaction or waiver in writing (subject to applicable Law), on or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties. The representations and warranties of Seller contained in Article VI (and any representations and warranties of Seller set forth in the Ancillary Agreements) qualified by materiality shall be true and correct in all respects, except for such exceptions as are permitted by this Agreement, without further qualification as of the date hereof and the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all respects as of such date), and all representations and warranties of the Seller contained in Article VI (and any representations and warranties of the Seller set forth in the Ancillary Agreements) that are not so qualified shall be true and correct in all material respects as of the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all material respects as of such date); provided, however, that, for purposes of this Section 9.2(a), any inaccuracies in the representations and warranties of the Seller will be disregarded unless all such inaccuracies, considered collectively, would have a Material Adverse Effect. Seller shall have delivered to the Purchaser a certificate, dated as of the Closing Date and signed by Seller's President and Chief Financial Officer (the "Seller Closing Certificate"), confirming that the conditions set forth in this Section 9.2(a) have been satisfied.

(b) Performance of Agreements. Each and all of the agreements of the Seller to be performed on or prior to the Closing pursuant to the terms hereof shall have been duly performed in all material respects, and the Seller Closing Certificate shall confirm that the conditions set forth in this Section 9.2(b) have been satisfied.

(c) Consents and Approvals. Purchaser shall have received the documents required to be delivered by Seller to Purchaser pursuant to Section 4.2.

(d) No Injunction. No court or other Governmental Authority of competent jurisdiction shall have issued an order or stay pending appeal which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby.

(e) Statutes. No Law of any kind shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, or has the effect of making illegal, the consummation of the transactions contemplated hereby and shall remain in effect.

(f) Governmental Approvals. All material governmental and other material consents and approvals necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

(g) Bankruptcy Matters. (a) a Final Approval Order shall have been entered by the Bankruptcy Court and (b) the Seller shall have paid the portion of the Cure Costs related to the Assigned Contracts and Leases required to be paid by it pursuant to Section 5.1(f).

(h) Cure Costs. The Cure Costs, including those payable by the Seller pursuant to Section 5.1(f), shall not exceed an aggregate of \$150,000.

(i) Assignment and Assumption. The Final Approval Order shall have approved the assignment and assumption of the contracts listed on Exhibit 9.2(i) and, to the extent any Consent is needed for such assignment and assumption, the Seller shall have obtained all such Consents.

(j) Customers. None of the customers of the Seller specified in Exhibit 9.2(j) shall have terminated its relationship with the Seller prior to the Closing or have indicated in writing its intention to terminate such relationship or significantly reduce its business activity with the Business subsequent to the Closing.

## ARTICLE X

### CONDITIONS TO THE OBLIGATIONS OF THE SELLER

Section 10.1 Conditions to the Seller's Obligations. The obligations of the Seller to consummate the Closing are conditioned upon the satisfaction or waiver in writing (subject to applicable Law), on or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties. The representations and warranties of Purchaser contained in Article VII (and any representations and warranties of Purchaser set forth in the Ancillary Agreements) qualified by materiality shall be true and correct in all respects, except for such exceptions as are permitted by this Agreement, without further qualification as of the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all respects as of such date), and all representations and warranties of the Purchaser contained in Article VII (and any representations and warranties of Purchaser set forth in the Ancillary Agreements) that are not so qualified shall be true and correct in all material respects as of the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all material respects as of such date) with only such exceptions as are permitted by this Agreement or which, individually or in the aggregate, would not (i) have a material adverse effect on the business, capitalization, assets (tangible or intangible), liabilities or operations of the Purchaser or (ii) prevent, interfere or delay the Purchaser from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement. Purchaser shall have delivered to Seller a certificate, dated as of the Closing Date and signed by the Purchaser's President (the "Purchaser Closing Certificate"), confirming that the conditions set forth in this Section 10.1(a) have been satisfied.

(b) Performance of Agreements. Each and all of the agreements of the Purchaser to be performed on or prior to the Closing pursuant to the terms hereof and the Ancillary Agreements shall have been duly performed in all material respects, and the Purchaser Closing Certificate shall confirm that the conditions set forth in this Section 10.1(b) have been satisfied.

(c) Consents and Approvals. Seller shall have received the documents required to be delivered by Purchaser to Seller pursuant to Section 4.3.

(d) Payment of Purchase Price. Purchaser shall have paid to the Seller (subject to Section 4.3(iii)) the Purchase Price in accordance with Section 3.1(a).



(e) No Injunction. No court or other Governmental Authority of competent jurisdiction shall have issued an order or stay pending appeal which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby.

(f) Statutes. No Law of any kind shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, or has the effect of making illegal, the consummation of the transactions contemplated hereby and shall remain in effect.

(g) Governmental Approvals. All material governmental and other material consents and approvals necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

(h) Bankruptcy Matters. (a) a Final Approval Order shall have been entered by the Bankruptcy Court; and (b) the Seller shall have received from the Bankruptcy Court all applicable orders, approvals and consents required to transfer the Acquired Assets, and to consummate the transactions contemplated by this Agreement.

## ARTICLE XI

### TERMINATION

Section 11.1 Events of Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of the Parties;

(b) by any Party, if the Closing Date shall not have occurred by the date 90 days after the Filing Date; provided, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall be the cause of the failure of the Closing Date to occur on or before such date;

(c) by the Seller if (i) there shall have been a material breach on the part of Purchaser of any of its representations, warranties or covenants such that the conditions set forth in Section 10.1(a) or Section 10.1(b) would not be satisfied as of the time of such breach, (ii) Seller shall have given written notice of such breach to Purchaser, (iii) at least twenty days shall have elapsed since the delivery of such written notice to Purchaser and (iv) such breach shall not have been cured in all material respects; provided that Seller may not terminate this Agreement pursuant to this Section 11.1(c) if it shall have willfully and materially breached this Agreement;

(d) by the Purchaser if (i) there shall have been a material breach on the part of Seller of any of its representations, warranties or covenants such that the conditions set forth in Section 9.2(a) or Section 9.2(b) would not be satisfied as of the time of such breach, (ii) Purchaser shall have given written notice of such breach to Seller, (iii) at least twenty days shall have elapsed since the delivery of such written notice to Seller and (iv) such breach shall not have been cured in all material respects; provided that the Purchaser may not terminate this Agreement pursuant to this Section 11.1(d) if it shall have willfully and materially breached this Agreement;

(e) by the Purchaser, if the Approval Order in form and substance that is in accordance with the provisions of this Agreement has not been entered on or prior to the date 65 days after the Filing Date or the Final Approval Order has not been entered on or prior to the date 75 days after the Filing Date;

(f) by the Purchaser, if the Chapter 11 Case is converted to a case under Chapter 7 of the Bankruptcy Code;

(g) by any Party, if there shall be any Law of any Governmental Authority that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if any judgment, injunction, order or decree of any competent authority prohibiting such transactions is entered and such judgment, injunction, order or decree shall have become final and non-appealable;

(h) by either Party if the Sale Procedure Order is not issued by the Bankruptcy Court on substantially similar terms as contained in Section 5.1(a) (*provided, however, that no change to the Sale Order Procedure with respect to the Break-Up Fee shall be deemed to give rise to such right of termination*) or in the event that a stay pending appeal or a writ of mandate of the Approval Order is granted on behalf of any party; or

(i) by any Party, if an Alternative Transaction is approved by the Bankruptcy Court.

If either Party wishes to terminate this Agreement pursuant to this Section 11.1, such Party will deliver to the other Party a written termination notification stating that such Party is terminating this Agreement and setting forth a brief statement of the basis on which such Party is terminating this Agreement.

#### Section 11.2 Effect of Termination.

(a) Except as otherwise provided in this Section 11.2, in the event that this Agreement shall be terminated pursuant to Section 11.1, all further obligations of the Parties under this Agreement shall terminate without further liability or obligation of any Party to any other Party hereunder except for those provisions that expressly survive the termination of this Agreement; provided, that (i) the Parties will remain bound by the provisions of the Confidentiality Agreement and (ii) no Party shall be released from liability hereunder if this Agreement is terminated and the transactions abandoned by reason of (A) failure of such Party to have performed its obligations hereunder in any respect or (B) any knowing misrepresentation made by such Party of any matter set forth herein.

(b) In the event that this Agreement is terminated pursuant to Section 11.1(b), (d), (e), (f), (g), (h) or (i), the Seller shall, except to the extent that the Seller is not permitted to do so by the Bankruptcy Court, pay to the Purchaser, by wire transfer of immediately available funds to a bank account specified in writing by the Purchaser, the Break-Up Fee not later than two (2) Business Days after the date of such termination.

This Section 11.2 shall survive any termination of this Agreement.

## ARTICLE XII

### MISCELLANEOUS

Section 12.1 Expenses; Fees. Except as otherwise set forth in the Agreement, the Parties shall pay all of their own expenses relating to the transactions contemplated by this Agreement.

Section 12.2 Transfer Taxes. The Parties recognize and acknowledge that the sale, transfer, assignment and delivery of the Acquired Assets may be exempt under Section 1146(c) of the Bankruptcy Code and the Approval Order from all state and local transfer, recording, stamp or other similar transfer Taxes that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets. Notwithstanding the foregoing, the Seller will bear and pay, up to a maximum of \$25,000, any sales Taxes, use Taxes, transfer Taxes, documentary charges, recording fees, filing fees or similar Taxes, charges, fees or expenses that may become payable by Purchaser or Seller in connection with the sale of the Acquired Assets to Purchaser, the assumption by Purchaser of the Assumed Liabilities or any of the other transactions contemplated by this Agreement or the Ancillary Agreements (the "Charges"). The Purchaser will solely bear and pay any Charges in excess of \$25,000. In the event that the Seller bears and pays any such Charges in excess of \$25,000, the Purchaser will reimburse the Seller for such excess amount. In the event that Purchaser bears and pays any Charges that the Seller has agreed to pay pursuant to this Section 12.2, then Seller will reimburse Purchaser for such amount. Seller and Purchaser agree to use their commercially reasonable efforts to minimize, and to cooperate with and assist the other in, minimizing the Charges.

Section 12.3 APPLICABLE LAW. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH U.S. FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN, WITHOUT REFERENCE TO CHOICE OF LAW PRINCIPLES, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

Section 12.4 JURISDICTION; WAIVER OF JURY TRIAL. THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF CALIFORNIA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF CALIFORNIA WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY CONSENTS AND SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.5 Captions; Headings. The Article and Section captions and the headings set forth herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

Section 12.6 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed, certified or registered mail with postage prepaid, or sent by telex, telegram or telecopy and a confirmation of transmission is obtained, as follows:

(a) if to the Seller, to:

DNA Sciences, Inc.  
6540 Kaiser Dr.  
Fremont, CA 94555  
Facsimile: (510) 494-4014  
Attention: Steve Lehrer, President

with a copy to:

Cooley Godward LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306  
Facsimile: (650) 849-7400  
Attention: Laura A. Berezin

(b) if to the Purchaser, to:

Genaissance Pharmaceuticals, Inc.  
Five Science Park  
New Haven, CT 06511  
Facsimile: (203) 786-3656  
Attention: Kevin L. Rakin, President and Chief Executive Officer

with a copy to:

Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
Facsimile: (617) 526-5000  
Attention: Steven D. Singer

or to such other Person or address as any Party shall specify by notice in writing to each of the other Parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of delivery unless if mailed, in which case on the third

Business Day after the mailing thereof except for a notice of a change of address, which shall be effective only upon receipt thereof.

Section 12.7 Assignment; Parties in Interest. This Agreement may not be transferred, assigned, pledged or hypothecated by either Party (whether voluntarily, involuntarily, by way of merger or otherwise) to any other Person without the prior written consent of the other Party except that Seller may assign without the prior written consent of Purchaser its rights to receive the Purchase Price. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 12.8 Counterparts. This Agreement may be executed in two (2) or more counterparts, in original form or by facsimile, each of which shall be deemed an original, but all of which together will constitute one and the same document.

Section 12.9 Entire Agreement. This Agreement, including the exhibits, schedules and other documents referred to herein which form a part hereof, and the Confidentiality Agreement, contains the entire understanding of the Parties with respect to the subject matter contained herein and therein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such subject matter.

Section 12.10 Severability; Enforcement. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each Party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by Law, and each Party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

Section 12.11 Amendments; Waiver. This Agreement may not be changed orally, but only by an agreement in writing signed by all Parties. Any provision of this Agreement can be waived, amended, supplemented or modified by written agreement of the Parties. The failure of any Party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance.

Section 12.12 No Strict Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

Section 12.13 Pronouns. As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof whenever the context and facts require such construction.

Section 12.14 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any Person other than

the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

Section 12.15 No Joint Venture. No party hereto shall make any warranties or representations, or assume or create any obligations, on the other party's behalf except as may be expressly permitted hereunder or in writing by such other party. Each Party shall be solely responsible for the actions of all its respective employees, agents and representatives.

Section 12.16 Specific Performance. The transactions contemplated by this Agreement are unique transactions and any failure on the part of either Party to complete the transactions contemplated by this Agreement or any of the Ancillary Agreements on the terms of this Agreement or any of the Ancillary Agreements will not be fully compensable in damages and the breach or threatened breach of the provisions of this Agreement or any of the Ancillary Agreements would cause the non-breaching Party irreparable harm. Accordingly, in addition to and not in limitation of any other remedies available to the non-breaching Party for a breach or threatened breach of this Agreement or any of the Ancillary Agreements, such Party will be entitled to specific performance of this Agreement or any of the Ancillary Agreements upon any breach by the other Party, and to an injunction restraining any such party from such breach or threatened breach.

Section 12.17 Survival of Representations and Warranties. None of Seller's representations, warranties and pre-closing covenants contained in this Agreement, the Ancillary Agreements, the Seller Closing Certificate or in any other agreement, document or certificate delivered pursuant to this Agreement shall survive the Closing. None of Purchaser's representations, warranties and pre-closing covenants contained in this Agreement, the Ancillary Agreements, the Purchaser Closing Certificate or in any other agreement, document or certificate delivered pursuant to this Agreement shall survive the Closing.

Section 12.18 Deduction or Setoff. Purchaser shall fulfill all of its obligations under this Agreement and the Ancillary Agreements without any deductions or setoffs of any nature.

Section 12.19 Ordinary Course of Business. The Parties acknowledge that the phrases "ordinary course" or the "ordinary course of business" when used to describe the conduct of Seller shall contemplate and include the filing of the Chapter 11 Case and the effect such filing has on the Acquired Assets.

[Signature Page Follows.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its officers thereunto duly authorized, all as of the day and year first above written.

GENAISSANCE PHARMACEUTICALS, INC.

By: 

Name: *Kevin Rakin*  
Title: *President & CEO*

DNA SCIENCES, INC.

By: \_\_\_\_\_

Name:  
Title:

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its officers thereunto duly authorized, all as of the day and year first above written.

GENAISSANCE PHARMACEUTICALS, INC.

By: \_\_\_\_\_  
Name:  
Title:

DNA SCIENCES, INC.

By: *Steven B. Lehrer*  
Name: *Steven B Lehrer*  
Title: *President/COO*



**DNA DISCLOSURE SCHEDULE**

## SELLER DISCLOSURE SCHEDULE

This disclosure schedule ("Seller Disclosure Schedule") is being furnished by DNA Sciences, Inc. ("Seller") to Genaissance Pharmaceuticals, Inc. ("Purchaser") in connection with the execution and delivery of that certain Asset Purchase Agreement dated as of March 28, 2003 between Seller and Purchaser (the "Agreement"). Unless the context otherwise requires, all capitalized terms used in this Seller Disclosure Schedule shall have the respective meanings assigned to them in the Agreement.

No reference to or disclosure of any item or other matter in this Seller Disclosure Schedule shall be construed as an admission or indication that such item or other matter is material.

This Seller Disclosure Schedule and the information and disclosures contained in this Seller Disclosure Schedule are intended only to qualify and limit the representations and warranties of Seller contained in the Agreement and shall not be deemed to expand in any way the scope or effect of any of such representations and warranties, except to the extent that information is disclosed in this Seller Disclosure Schedule in connection with a provision of the Agreement specifically calling for the disclosure of such information.

Notwithstanding anything to the contrary contained in this Seller Disclosure Schedule or in the Agreement, the information and disclosures contained in each section and subsection of this Seller Disclosure Schedule shall be deemed to be disclosed and incorporated by reference in each of the other sections and subsections of this Seller Disclosure Schedule as though fully set forth in such other sections and subsections (whether or not specific cross-references are made) only to the extent that it is clear from a reading of such disclosure that it also qualifies or applies to such other paragraphs, and (subject to the exception contained in the immediately preceding paragraph) shall be deemed to qualify and limit the applicable representations and warranties of Seller contained in the Agreement.

The headings contained in this Seller Disclosure Schedule are included for convenience only, and are not intended to limit the effect of the disclosures contained in this Seller Disclosure Schedule or to expand the scope of the information required to be disclosed in this Seller Disclosure Schedule.

### SCHEDULE 6.3 (i)

1. The Seller has not obtained the approval of its stockholders of any of the transactions contemplated by the Agreement.

### SCHEDULE 6.3 (ii)

1. The Seller makes no representation regarding compliance with any bulk sales laws.
2. The Seller has not obtained the approval of its stockholders of any of the transactions contemplated by the Agreement.
3. The following agreements providing for the license of Material In-Licensed IP either may or do require consent to assignment in connection with the Contemplated Transaction. Seller makes no representations as to whether the purported assignment and assumption of the following agreements without consent (by the order of bankruptcy court or otherwise), would constitute a default or violation of the terms thereof:

- a. License Agreement by and between the University of Utah Research Foundation, Yale University and DNA Sciences, Inc. dated as of August 8, 2000.
- b. License and Option Agreement by and between St. Jude Children's Research Hospital and PPGx, Inc. dated as of February 29, 2000.
- c. TRUSTe License Agreement by and between Trusted Universal Standards in Electronic Transactions and DNA.com, Inc. dated as of June 29, 2000.
- d. Software License Agreement by and between PPD Development, LLC and DNA Sciences, Inc. dated as of December 28, 2001.
- e. Research Agreement by and between DNA Sciences, Inc. and Bristol-Meyers Squibb Company dated August 7, 2001.
- f. Research Agreement by and between DNA Sciences, Inc. and SmithKline Beecham Corporation, doing business as GlaxoSmithKline dated as of December 17, 2001.
- g. Collaboration Research and Technology Development Agreement by and between MedStar Research Institute and DNA Sciences, Inc., dated as of November 27, 2002.
- h. Master Services Agreement between Merck KgaA and PPD Pharmaco, Inc. dated as of November 16, 1998, including all amendments thereto, as assigned to DNA Sciences Laboratories, Inc. by PPD Development LLC (predecessor to PPD Development L.P. and PPD Pharmaco, Inc.) and Merck KgaA on April 25, 2002.
- i. Independent Contractor Services Agreement between DNA Sciences, Inc. and Waban Software, Inc. dated as of January 2, 2002. Including all amendments thereto.
- j. Project Assignment # 4 dated as of June 13, 2002, to Independent Contractor Services Agreement between DNA Sciences, Inc. and Waban Software, Inc. dated as of January 2, 2002, including all amendments thereto.
- k. Unfunded Collaboration Agreement between DNA Sciences, Inc. and The Regents of the University of California, on behalf of the University of California San Francisco, dated as of April 25, 2001.

#### SCHEDULE 6.5

#### CONTRACTS (OTHER THAN EXCLUDED ASSETS) WHICH PROVIDE FOR THE PAYMENT BY THE SELLER OF MORE THAN \$25,000

- 1. License and Option Agreement by and between St. Jude Children's Research Hospital and PPGx, Inc. dated February 29, 2000.
- 2. License Agreement by and between the University of Utah Research Foundation, Yale University and DNA Sciences, Inc. dated August 8, 2000.
- 3. Instrument of Assignment and Assumption by and between DNA Sciences, Inc. and Waban Software, Inc. dated January 2, 2002.

4. University of Kentucky Research Foundation Clinical Study Agreement by and between DNA Sciences, Inc. and University of Kentucky Research Foundation dated as of January 2002.
5. Collaboration Research and Technology Development Agreement by and between MedStar Research Institute and DNA Sciences, Inc. dated as of November 27, 2002.
6. Commercial Material Transfer Agreement for Biospecimens between Mayo Foundation for Medical Education and Research and DNA Sciences, Inc. dated as of February 7, 2003.
7. Letter Agreement between DNA Sciences, Inc. and Glen Ferguson dated as of January 6, 1999, including all amendments thereto.
8. Sublease Agreement between PPD Development, LLC and PPGx, Inc. for the property located at 3500 Paramount Parkway, Morrisville, North Carolina dated as of December 1, 1999, including all amendments thereto.

**CONTRACTS (OTHER THAN EXCLUDED ASSETS) WHICH PROVIDE FOR THE PAYMENT TO THE SELLER OF MORE THAN \$25,000**

1. Sublicense Agreement between Prometheus Laboratories, Inc. and DNA Sciences, Inc. dated as of August 16, 2001.
2. Sublicense Agreement between Specialty Laboratories, Inc. and DNA Sciences, Inc. dated as of September 6, 2001.
3. Blanket Laboratory Services Agreement between DNA Sciences, Inc. and Eli Lilly and Company dated as of March 1, 2002.
4. Clinical Services Agreement between Pfizer, Inc. and DNA Sciences, Inc., in connection with Protocol Number A1371049, CYP450 2D6 dated as of April 10, 2002.
5. Clinical Services Agreement between Pfizer, Inc. and DNA Sciences, Inc., in connection with Protocol Number A1651021 dated as of April 10, 2002.
6. Clinical Services Agreement between Pfizer, Inc. and DNA Sciences, Inc., in connection with Protocol Number A314-1009 dated as of August 1, 2002.
7. Clinical Services Agreement between Pfizer, Inc. and DNA Sciences, Inc., in connection with Protocol Number A3951001 dated as of August 19, 2002.
8. Letter Agreement between Alza Corporation and DNA Sciences, Inc. for Protocol No. C-2002-012 dated as of August 26, 2002.
9. Letter Agreement between Alza Corporation and DNA Sciences, Inc. for Protocol No. C-2002-013 dated as of August 26, 2002.
10. Letter Agreement between Alza Corporation and DNA Sciences, Inc. for Protocol No. C-2002-020 dated as of August 26, 2002.

11. Master Services Agreement by and Between Schering-Plough Research institute and DNA, Sciences, Inc. dated as of July 22, 2002.
12. Statement of Work between DNA Sciences and INC Research, Inc. dated as of September 24, 2002.

#### **SCHEDULE 6.6**

##### **LITIGATION**

None

#### **SCHEDULE 6.8(a)**

##### **A. PATENTS—US: ISSUED AND PENDING.**

1. No. 60/129,129; filed April 13, 1999. Nucleotide Polymorphism Identification Through Fluorescence Resonance Energy Transfer Label Generation.
2. US Patent No. 6,458,544, issued October 1, 2002. Methods For Determining Single Nucleotide Variations And Genotyping.
3. No. 09/803,724; filed March 9, 2001. Cross Channel Device For Serial Sample Injection.
4. No. 09/805,619; filed March 13, 2001. A Method And System For Aggregating Persons With A Select Profile For Further Medical Characterization.
5. No. 09/558,245; filed April 25, 2000. Detection Of Nucleotide Sequence Variations Via The Proofreading Activities Of Polymerases.
6. No. 09/861,078; filed May 26, 2000. System For Genetically Characterizing An Individual For Evaluation Using Genetic And Phenotypic Variations Over A Wide Area Network
7. No. 09/861,081; filed May 18, 2001. Computer Program Product For Genetically Characterizing An Individual For Evaluation Using Genetic And Phenotypic Variations Over A Wide Area Network.
8. No. 09/960,867; filed September 21, 2001. Sample Injection System And Method.
9. No. 10/005,848; filed October 25, 2001. Variable Geometry Fluid Sample Loader.
10. No. 09/938,271; filed August 23, 2001. Microchannel Turn Design.
11. No. 10/214,914; filed August 7, 2002. Polymorphisms Associated With Multiple Sclerosis.
12. No. 10/224,683; filed August 20, 2002. Polymorphisms Associated With Ion-channel Genetic Pathways.
13. No. 60/369,961; filed April 3, 2002. Methods of Diagnosing Schizophrenia.

14. No. 60/378,451; filed May 3, 2002. Polymorphisms Associated With Inflammatory Bowel Disease.
15. No. 10/163,598; filed June 5, 2002. Method Of Identifying A Polymorphism In CYP2D6.
16. US Patent No. 5,714,329; issued February 3, 1998; assigned to DNA Sciences, Inc. January 14, 2002. Diagnosis Of A Genetic Predisposition To Cancer Associated With Variant CDK4 Allele.
17. US Patent No. 6,432,639; issued August 13, 2002. Genotyping Of Human CYP3A4.
18. No. 10/085,612; filed February 26, 2002. Methods For Evaluating The Ability To Metabolize Pharmaceuticals And Compositions Therefor.
19. US Patent No. 6,448,003; issued September 10, 2002. Genotyping The Human Phenol Sulfotransferase 2 Gene.
20. US Patent No. 6,479,236; issued November 12, 2002. Genotyping The Human UDP-Glucuronosyltransferase 1 (UGT1) Gene.
21. No. 09/356,806; filed July 20, 1999. Genotyping Human UDP-Glucuronosyl Transferase 2B4 (UGT2B4) 2B7 (UGT2B7) And 2B15 (UGT2B15) Genes.
22. No. 09/586,376; filed June 2, 2000. Genetic Typing Of The Human Cytochrome P450 2A6 Gene And Related Materials And Methods.
23. No. 09/724,389; filed November 28, 2000. Genetic Typing Of Human Genes And Related Materials And Methods.
24. No. 06/170,432; filed December 13, 1999. Tracking Of Clinical Study Samples, Information And Results.

#### **B. TRADEMARK APPLICATIONS AND REGISTRATIONS**

##### **U.S.**

1. DNA and design; Application No. 76/088,938, filed July 13, 2000.
2. DNA.COM and design; Application No. 76/089,692, filed July 13, 2000.
3. DNA SCIENCES; Application No. 76/090,965, filed July 17, 2000.
4. DNA SCIENCES and design; Application No. 76/089,917, filed July 13, 2000.
5. THE DNA SCIENCES GENE TRUST PROJECT; Application No. 76/089,905, filed July 13, 2000.
6. G THE GENE TRUST and design; Application No. 76/089,903, filed July 13, 2000.

7. WEB GENOME PROJECT; Application No. 76/087,520, filed July 11, 2000.
8. KIVA GENETICS; Application No. 76/155,273, filed October 27, 2000. (abandoned)
9. KIVA GENETICS; Application No. 76/154,919, filed October 27, 2000. (abandoned)
10. PGx; Registration No. 2,591,885, registered July 9, 2000.

#### **Canada**

11. DNA SCIENCES and design; Application No. 1,088,519, filed January 10, 2001.
12. THE GENE TRUST and design; Application No. 1,088,520, filed January 10, 2001.
13. PGx; Registration No. TMA549,932, registered August 20, 2001.

#### **European Union**

14. DNA SCIENCES and design; Registration No. 1899897, registered January 9, 2002.
15. G THE GENE TRUST and design; Registration No. 1899905, registered January 8, 2002.
16. THE DNA SCIENCES GENE TRUST; Registration No. 1899889, registered January 9, 2002.
17. PGx; Registration No. 97366, registered February 24, 2000.

#### **Japan**

18. DNA SCIENCES and design; Registration No. 4567207, registered May 10, 2002.
19. G THE GENE TRUST and design; Registration No. 4567208, registered May 10, 2002.
20. PGx; Registration No. 4345574, registered December 17, 1999.

#### **Mexico**

21. DNA SCIENCES and design; Registration No. 746,432, registered January 12, 2001.
22. THE GENE TRUST and design; Registration No. 708,632, registered July 30, 2001.

#### **United Kingdom**

23. DNA SCIENCES and design; Registration No. 2246413, registered March 8, 2002.
24. THE GENE TRUST and design; Registration No. 2246408, registered August 3, 2001.
25. KIVA GENETICS; Registration No. 2249587, registered April 6, 2001.

26. THE DNA SCIENCES GENE TRUST PROJECT; Registration No. 2246411, registered October 19, 2001.

**Switzerland**

27. PGx; Registration No. 463013, registered October 30, 1998.

**SCHEDULE 6.8(c)**

**INFRINGING OR VIOLATING ANY LICENSE OR AGREEMENT**

1. Boston University infringing on the LQT patents.
2. Molecular Diagnostics Laboratories infringing on TPMT patents.

**SCHEDULE 6.8(d)**

1. Sublicense Agreement between Prometheus Laboratories, Inc. and DNA Sciences, Inc. dated as of August 16, 2001.
2. Sublicense Agreement between Specialty Laboratories, Inc. and DNA Sciences, Inc. dated as of September 6, 2001.
3. License Agreement by and between PPD Development, LLC and DNA Sciences, Inc. and DNA Sciences Laboratories Inc. dated as of December 28, 2001.
4. Services Agreement between Sugen, Inc. and DNA Sciences, Inc. dated as of January 24, 2002.

**SCHEDULE 6.9(a)**

1. License Agreement by and between the University of Utah Research Foundation, Yale University and DNA Sciences, Inc. dated as of August 8, 2000.
2. License and Option Agreement by and between St. Jude Children's Research Hospital and PPGx, Inc. dated as of February 29, 2000.
3. TRUSTe License Agreement by and between Trusted Universal Standards in Electronic Transactions and DNA.com, Inc. dated as of June 29, 2000.
4. Software License Agreement by and between PPD Development, LLC and DNA Sciences, Inc. dated as of December 28, 2001.
5. Research Agreement by and between DNA Sciences, Inc. and Bristol-Meyers Squibb Company dated August 7, 2001.
6. Research Agreement by and between DNA Sciences, Inc. and SmithKline Beecham Corporation, doing business as GlaxoSmithKline dated as of December 17, 2001.
7. Collaboration Research and Technology Development Agreement by and between MedStar Research Institute and DNA Sciences, Inc. dated as of November 27, 2002.



8. Master Services Agreement between Merck KgaA and PPD Pharmaco, Inc. dated as of November 16, 1998, including all amendments thereto, as assigned to DNA Sciences Laboratories, Inc. by PPD Development LLC (predecessor to PPD Development L.P. and PPD Pharmaco, Inc.) and Merck KgaA on April 25, 2002.
9. Independent Contractor Services Agreement between DNA Sciences, Inc. and Waban Software, Inc. dated as of January 2, 2002. Including all amendments thereto.
10. Project Assignment # 4 dated as of June 13, 2002, to Independent Contractor Services Agreement between DNA Sciences, Inc. and Waban Software, Inc. dated as of January 2, 2002, including all amendments thereto.
11. Unfunded Collaboration Agreement between DNA Sciences, Inc. and The Regents of the University of California, on behalf of the University of California San Francisco, dated as of April 25, 2001.

#### **SCHEDULE 6.9(b)**

The following agreements providing for the license of Material In-Licensed IP either may or do require consent to assignment in connection with the transaction contemplated by the Agreement. Seller makes no representations as to whether the purported assignment and assumption of the following agreements without consent (by the order of bankruptcy court or otherwise), would constitute a default or violation of the terms thereof:

1. License Agreement by and between the University of Utah Research Foundation, Yale University and DNA Sciences, Inc. dated as of August 8, 2000.
2. License and Option Agreement by and between St. Jude Children's Research Hospital and PPGx, Inc. dated as of February 29, 2000.
3. TRUSTe License Agreement by and between Trusted Universal Standards in Electronic Transactions and DNA.com, Inc. dated as of June 29, 2000.
4. Software License Agreement by and between PPD Development, LLC and DNA Sciences, Inc. dated as of December 28, 2001.
5. Research Agreement by and between DNA Sciences, Inc. and Bristol-Meyers Squibb Company dated August 7, 2001.
6. Research Agreement by and between DNA Sciences, Inc. and SmithKline Beecham Corporation, doing business as GlaxoSmithKline dated as of December 17, 2001.
7. Collaboration Research and Technology Development Agreement by and between MedStar Research Institute and DNA Sciences, Inc., dated as of November 27, 2002.
8. Master Services Agreement between Merck KgaA and PPD Pharmaco, Inc. dated as of November 16, 1998, including all amendments thereto, as assigned to DNA Sciences Laboratories, Inc. by PPD Development LLC (predecessor to PPD Development L.P. and PPD Pharmaco, Inc.) and Merck KgaA on April 25, 2002.

9. Independent Contractor Services Agreement between DNA Sciences, Inc. and Waban Software, Inc. dated as of January 2, 2002. Including all amendments thereto.
10. Project Assignment # 4 dated as of June 13, 2002, to Independent Contractor Services Agreement between DNA Sciences, Inc. and Waban Software, Inc. dated as of January 2, 2002, including all amendments thereto.
11. Unfunded Collaboration Agreement between DNA Sciences, Inc. and The Regents of the University of California, on behalf of the University of California San Francisco, dated as of April 25, 2001.

#### **SCHEDULE 6.10**

##### **ASSIGNED PERMITS**

1. Hazardous Waste & Hazardous Materials Management Regulatory Program (for Hazardous Materials Management Plan, and Hazardous Waste Generator) No. 30-0924.
2. Alameda County Environmental Health Medical Waste Small Quantity Generator (w/o on-site treatment) No. PT0303392.
3. Bay Area Air Quality Management District permit for our generator.
4. Fremont Police Department, Alarm Permit No. 7148.
5. RTP: CLIA Lab Certificate of Compliance No. 34D0963437, current certification expires April 23, 2004.

#### **SCHEDULE 6.13**

##### **INSURANCE POLICIES**

1. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Package Policy, No. 3577-49-49. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
2. Federal Insurance Company (Chubb Group of Insurance Companies): Contract Research Organization Liability Policy, No. 3577-49-50. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
3. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Automobile Policy, No. 7351-26-60. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
4. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Umbrella Policy, No. 9363-09-31. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated

5. AON Financial Services Group, Inc.: Insured Persons' and Private Company Directors and Officers Liability Insurance, Policy No. DA0201917-02. Policy period: September 18, 2002 to September 18, 2003.
6. Kemper Insurance Company: Worker's Compensation Insurance, No. 236182. Policy period: January 2003 to March 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated :

#### **SCHEDULE 6.15(b)**

#### **GOVERNMENT LICENSES, CONSENT, APPROVALS, AUTHORIZATIONS, PERMITS, ORDERS, DECREES AND OTHER COMPLIANCE AGREEMENTS.**

1. Hazardous Waste & Hazardous Materials Management Regulatory Program (for Hazardous Materials Management Plan, and Hazardous Waste Generator) No. 30-0924.
2. Alameda County Environmental Health Medical Waste Small Quantity Generator (w/o on-site treatment) No. PT0303392.
3. Bay Area Air Quality Management District permit for our generator.
4. Fremont Police Department, Alarm Permit No. 7148.
5. RTP: CLIA Lab Certificate of Compliance No. 34D0963437, current certification expires April 23, 2004.

#### **SCHEDULE 6.16**

##### **CUSTOMERS**

1. Abgenix, Inc.
2. Alza Corporation
3. Amersham Pharmacia Biotech, Inc.
4. AstraZeneca Pharmaceuticals L.P.
5. Bristol-Myers Squibb Company
6. Eli Lilly & Company
7. Eisai, Inc.
8. INC Research
9. Lilly-Nus Centre
10. Merck KgaA

11. Novo Nordisk A/S
12. Otsuka Maryland Research Institute
13. Peninsula Pharmaceuticals, Inc.
14. Pfizer, Inc.
15. Pharmacia & Upjohn Company
16. PPD Development LLC
17. Prometheus Laboratories, Inc.
18. Roche, Inc.
19. Rush-Presbyterian-St. Luke's Medical Center
20. R.W. Johnson Pharmaceutical Research Institute
21. Sankyo Pharma Development
22. Schering-Plough Research Institute
23. SmithKline Beecham Corporation, doing business as GlaxoSmithKline
24. Specialty Laboratories
25. Sugan, Inc.

**EXHIBIT A**

**BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT**

**See Tab 5**

**TRADEMARK**

**REEL: 003328 FRAME: 0218**

**EXHIBIT B**

**ASSIGNMENT OF PATENT RIGHTS (as amended by the Letter Agreement)**

**See Tab 6**

**TRADEMARK**

**REEL: 003328 FRAME: 0219**

**EXHIBIT C**

**ASSIGNMENT OF TRADEMARKS**

**See Tab 7**

**TRADEMARK**

**REEL: 003328 FRAME: 0220**

**EXHIBIT D**

**ORDER APPROVING SALE PROCEDURES**

**TRADEMARK**

**REEL: 003328 FRAME: 0221**



1 COOLEY GODWARD LLP  
J. MICHAEL KELLY (133657)  
2 GREGG S. KLEINER (141311)  
AMY HALLMAN RICE (136189)  
3 DAVID A. LEVINE (219006)  
One Maritime Plaza, 20th Floor  
4 San Francisco, CA 94111-3580  
Telephone: (415) 693-2000  
5 Facsimile: (415) 951-3699

6 [Proposed] Attorneys for Debtor  
DNA Sciences, Inc.

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

12 In re  
13 DNA SCIENCES, INC.,  
14  
15 Debtor.  
16  
17 Tax Identification No. 77-0490090  
18  
19  
20  
21

Case No. 03-\_\_\_\_\_  
Chapter 11

**[PROPOSED] ORDER APPROVING  
(1) PROCEDURES FOR SALE OF  
ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, ENCUMBRANCES AND  
INTERESTS; (2) CERTAIN OVERBID  
PROTECTIONS; (3) BREAKUP FEE;  
AND (4) FORM AND SCOPE OF  
NOTICE FOR THE SALE; AND (5)  
FORM AND SCOPE OF NOTICE RE  
ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

Hearing Date  
Date: \_\_\_\_\_, 2003  
Time: \_\_\_\_\_  
Place: 1300 Clay Street  
Oakland, CA 94612  
Judge: \_\_\_\_\_

25 The Court conducted a hearing at the above-noted time and place regarding the Motion  
26 For Order Approving (1) Procedures For Sale Of Assets Free And Clear Of Liens, Claims,  
27 Encumbrances And Interests; (2) Certain Overbid Protections; (3) Breakup Fee; (4) Form And  
28 Scope Of Notice For The Sale; And (5) Form And Scope Of Notice Re Assumption And

COOLEY GODWARD LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

367713 v6/SD  
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1. ORDER APPROVING SALE PROCEDURES,  
OVERBID PROTECTIONS, ETC.

1 Assignment Of Executory Contracts And Unexpired Leases (the "Sale Procedures Motion") filed  
2 by DNA Sciences, Inc., a Delaware corporation, debtor and debtor in possession in the above-  
3 captioned bankruptcy case (the "Debtor"). By the Motion, the Debtor sought an order pursuant to  
4 sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the  
5 "Bankruptcy Code") approving (i) the procedures (collectively, the "Sale Procedures") for the  
6 sale (the "Proposed Sale") of substantially all of the Debtor's assets (collectively, the "Assets")  
7 free and clear of liens, claims, encumbrances and interests, all as more particularly described in  
8 that certain Asset Purchase Agreement, dated as of March 28, 2003 (the "Purchase Agreement"),  
9 by and between the Debtor and Genaissance Pharmaceuticals, Inc. ("Purchaser"); (ii) certain  
10 overbid protections as outlined in the Sale Procedures Motion and the Purchase Agreement; (iii) a  
11 Breakup Fee<sup>1</sup> in favor of Purchaser on the conditions set forth in the Purchase Agreement and the  
12 Sale Procedures Motion; (iv) the form and scope of the notice (the "Sale Notice") of the hearing  
13 on the Proposed Sale (the "Sale Hearing"); and (v) the form and scope of notice regarding the  
14 proposed assumption and assignment of certain executory contracts and unexpired leases (the  
15 "Assigned Contracts and Leases") in connection with the Proposed Sale ("Assumption and  
16 Assignment Notice"). J. Michael Kelly, Esq., of Cooley Godward LLP, appeared on behalf of the  
17 Debtor; other appearances were as noted in the record.

18 Having considered the Sale Procedures Motion, the Memorandum of Points and  
19 Authorities annexed thereto, the Declaration of Steven B. Lehrer In Support Of Chapter 11  
20 Petition And First Day Motions, the pleadings and records filed with respect to the Debtor's  
21 chapter 11 case, the arguments of counsel and all other documents filed regarding the Sale  
22 Procedures Motion; and having determined that:

- 23 A. Notice of the Sale Procedures Motion was adequate and appropriate;
- 24 B. The Sale Procedures are reasonable, represent a sound exercise of the Debtor's  
25 business judgment and are the best interest of the Debtor's estate;
- 26 C. Good cause exists for approving the Sale Procedures;
- 27

28 <sup>1</sup> This and other capitalized terms not otherwise defined herein shall have the same meanings as set forth in the  
Purchase Agreement.

1 D. The Break-up Fee is reasonable and appropriate under the circumstances and good  
2 cause exists for its approval; and

3 E. The Debtor's proposals set forth in the Sale Procedures Motion regarding the form  
4 and scope of notices relating to the Sale Motion are reasonable and appropriate under the  
5 circumstances and would provide adequate notice to interested parties; and specifically the Sale  
6 Notice attached as Exhibit A to the Sale Motion would provide adequate notice of the Proposed  
7 Sale, and the Assumption and Assignment Notice would provide adequate notice to non-Debtor  
8 parties to the Assigned Contracts and Leases of the Debtor's proposed assumption and  
9 assignment of the Assigned Contracts and Leases to the Purchaser (or to an alternative successful  
10 Qualified Bidder);

11 **IT IS HEREBY ORDERED** that:

12 1. The Sale Procedures Motion is granted.

13 2. The Proposed Sale to Purchaser is approved subject to higher and better bids by  
14 way of an auction which will be conducted at the Sale Hearing ("Auction"), and the Sale  
15 Procedures for the Proposed Sale, as set forth below and in the Sale Procedures Motion, are  
16 approved.

17 3. Minimum Initial Overbid Amount. At the Auction, the initial minimum overbid  
18 must be at least \$150,000.00 over the Purchase Price (including all cash, non-cash consideration  
19 and assumed liabilities), which sum includes a Breakup Fee in the amount of \$100,000.00 that the  
20 Debtor is required to pay to the Purchaser under the circumstances set forth below; provided,  
21 however, that the Debtor may, in its sole discretion, determine that a higher *cash* bid that  
22 represents less total consideration than any bid or overbid, is a higher and better offer and may  
23 seek approval thereof.

24 4. Subsequent Overbid Amount. The minimum increment for subsequent overbids  
25 shall be not less than \$50,000.00 provided, however, that the Purchaser shall receive a credit for  
26 the Break-Up Fee amount in connection with any subsequent bids.

27 5. Breakup Fee. The Purchaser shall receive a Breakup Fee equal to \$100,000.00 if  
28 the Purchase Agreement is terminated, in a manner allowed therein, at any time prior to

1 **Closing:**

2 (a) by any Party, if the Closing Date shall not have occurred by the date 90 days  
3 after the Filing Date; provided, that the Breakup Fee shall not be payable to Purchaser if  
4 Purchaser's failure to fulfill any obligation under the Purchase Agreement shall be the  
5 cause of the failure of the Closing Date to occur on or before such date;

6 (b) by the Purchaser if (i) there shall have been a material breach on the part of  
7 Debtor of any of its representations, warranties or covenants such that the conditions set  
8 forth in Section 9.2(a) or Section 9.2(b) of the Purchase Agreement would not be satisfied  
9 as of the time of such breach, (ii) Purchaser shall have given written notice of such breach  
10 to Debtor, (iii) at least twenty days shall have elapsed since the delivery of such written  
11 notice to Debtor and (iv) such breach shall not have been cured in all material respects;  
12 provided that the Breakup Fee shall not be payable to Purchaser if it shall have willfully  
13 and materially breached the Purchase Agreement;

14 (c) by the Purchaser, if the Approval Order in form and substance that is in  
15 accordance with the provisions of the Purchase Agreement has not been entered on or  
16 prior to the date 65 days after the Filing Date or the Final Approval Order has not been  
17 entered on or prior to the date 75 days after the Filing Date;

18 (d) by the Purchaser, if the Chapter 11 Case is converted to a case under Chapter 7  
19 of the Bankruptcy Code;

20 (e) by any Party, if there shall be any Law of any Governmental Authority that  
21 makes consummation of the transactions contemplated by the Purchase Agreement illegal  
22 or otherwise prohibited or if any judgment, injunction, order or decree of any competent  
23 authority prohibiting such transactions is entered and such judgment, injunction, order or  
24 decree shall have become final and non-appealable;

25 (f) by either Party if this Order is not issued on substantially similar terms as  
26 contained in Section 5.1(a) of the Purchase Agreement (*provided, however*, that no change  
27 to this Order with respect to the Breakup Fee shall be deemed to give rise to any right of  
28 the Purchaser to collect the Breakup Fee) or in the event that a stay pending appeal or a  
writ of mandate of the Approval Order is granted on behalf of any party; or

(g) by any Party, if an Alternative Transaction is approved by the Bankruptcy  
Court.

In the event that the Purchase Agreement is so terminated, the Debtor shall pay to the Purchaser,  
by wire transfer of immediately available funds to a bank account specified in writing by the  
Purchaser, the Break-Up Fee not later than two (2) Business Days after the date of such  
termination.

6. Bidder Prerequisites

(a) Initial Requirements. Unless otherwise ordered by the Court for  
cause shown, to participate in the bidding process each Person<sup>2</sup> (a "Potential Bidder") must  
deliver to the recipients set forth in subsection (d) below, no later than three (3) business days

<sup>2</sup> "Person" means person as defined by Section 101(41) of the Bankruptcy Code.

1 prior to the Sale Hearing (unless previously delivered): (1) current financial statements of the  
2 Potential Bidder or other compelling evidence of its ability to consummate the purchase of the  
3 Assets at an amount equal to or better or greater than the Purchase Price ("Financial  
4 Documentation"); and (2) either (i) a commitment letter signed by an authorized representative of  
5 the Potential Bidder indicating its acceptance of all or substantially all of the terms of the  
6 Purchase Agreement (except with such changes as are necessary given the amount and/or nature  
7 of the consideration) but at an alternative higher or better purchase price equal to the winning bid  
8 if such Potential Bidder is the successful bidder ("Commitment Letter"); or (ii) an alternative  
9 Qualified Bid (defined in subsection (e) below) for a competing transaction in connection with  
10 any sale or other disposition of Assets ("Competing Transaction"). A "Qualified Bidder" is a  
11 Potential Bidder that delivers the documents described above and whose financial information  
12 demonstrates, in the judgment of the Debtor, the financial capability of the Potential Bidder to  
13 consummate the purchase of the Assets. Any disputes as to whether a person is a Qualified  
14 Bidder shall be resolved by the Court at the Sale Hearing prior to the commencement of the  
15 Auction.

16 (b) Notification of Qualified Bidders. The Debtor shall promptly notify a  
17 Potential Bidder whether the Potential Bidder is a Qualified Bidder. The Purchaser is deemed to  
18 be a Qualified Bidder.

19 (c) Information and Due Diligence. The Debtor shall provide reasonable  
20 access to information and due diligence to all Potential Bidders, subject to the Potential Bidder's  
21 execution of a non-disclosure agreement in a form that is satisfactory to the Debtor.

22 (d) Bid Deadline and Bid Requirements. All Financial Documentation,  
23 Commitment Letters, and Competing Transactions must be submitted to: (i) counsel for the  
24 Debtor, Cooley Godward LLP, Attn: J. Michael Kelly, Esq., One Maritime Plaza, 20<sup>th</sup> Floor, San  
25 Francisco, California 94111; (ii) counsel for the Purchaser, Hale and Dorr LLP, Attn: C. Hall  
26 Swaim, Esq., 60 State Street, Boston, Massachusetts 02109; and (iii) counsel for the official  
27 committee of unsecured creditors ("Committee"), if any is appointed in this case and such counsel  
28 is employed, or the members of the Committee if appointed but no counsel is employed, no later

1 than three (3) business days prior to the Sale Hearing ("Bid Deadline"). Qualified Bid(s)  
2 submitted by the Bid Deadline shall remain open and irrevocable through eleven (11) days after  
3 the entry of the order approving the sale of the Assets ("Sale Order").

4 (e) Qualified Bids. A "Qualified Bid" is a legally binding offer from a  
5 Qualified Bidder not subject to financing contingencies or other material conditions other than  
6 those set forth in the Purchase Agreement. For purposes hereof, the Purchase Agreement shall  
7 constitute a Qualified Bid, as shall a Commitment Letter by a Qualified Bidder other than the  
8 Purchaser indicating acceptance of all or substantially all of the terms of the Purchase Agreement  
9 pursuant to subsection (a) above. A Competing Transaction may also constitute a Qualified Bid.  
10 Except as otherwise agreed to by the Debtor, a Competing Transaction (defined in subsection (a)  
11 above) must be in writing and submitted using a form that is substantially similar to the Purchase  
12 Agreement. Such proposal shall be made on terms and conditions substantially similar to those  
13 contained in Purchase Agreement (except as may constitute an improvement on the terms set  
14 forth therein), and must be accompanied by a "clean" version of the revised Purchase Agreement  
15 together with a blacklined version to reflect any proposed changes to the terms and conditions of  
16 the revised Purchase Agreement.

17 (f) Deposit. A Qualified Bidder (other than the Purchaser) must tender to  
18 Debtor's counsel, Cooley Godward LLP, Attn: J. Michael Kelly, Esq., One Maritime Plaza, 20<sup>th</sup>  
19 Floor, San Francisco, California 94111, on or before the Bid Deadline, a bank check, teller's  
20 check or wire transfer payable to "DNA Sciences, Inc." in a sum not less than \$100,000.00 (the  
21 "Deposit") to be held by such Debtor's counsel until Closing of the sale (at which time such  
22 payment shall be credited against the purchase price if such offer is accepted), or until eleven (11)  
23 days after the entry of the order approving the sale of the Assets to another Person, at which time  
24 the Deposit shall be returned to the Qualified Bidder. The Deposit shall be held by Debtor's  
25 counsel in a non-interest bearing account. In the event that the successful bidder fails to close the  
26 Asset sale for any reason other than the failure of the Debtor to obtain an order from the Court  
27 approving the offer, the Debtor shall be entitled to all remedies available at law.

28 7. Auction/Sale Hearing. In the event that a Qualified Bid is made by a Qualified

1 Bidder other than Purchaser, the Debtor shall conduct the Auction at the Sale Hearing unless  
2 otherwise ordered by this Court. The Auction shall not conclude until each participating bidder  
3 has had the opportunity to submit any additional overbids with full knowledge of the existing  
4 highest or best bid. In order for any Qualified Bid(s) to be considered as a higher or better  
5 offer(s), (i) such Qualified Bid(s) must provide for the purchase of all or a substantial portion of  
6 the Assets and must be upon and subject to substantially the same or better terms and conditions  
7 contained in the Purchase Agreement and must also provide for an aggregate alternative purchase  
8 price in cash or cash equivalents, or cash or cash equivalents plus securities, for the Assets of not  
9 less than the value of the cash and cash equivalents plus securities provided as consideration  
10 pursuant to the Purchase Agreement plus the initial minimum overbid amount, (ii) such Qualified  
11 Bid(s) must not be subject to financing, and (iii) such Qualified Bidder(s) must provide evidence,  
12 satisfactory to the Debtor and approved by this Court, of their financial ability to perform in the  
13 event that their Qualified Bid(s) are accepted as higher or better than the bid of the Purchaser and  
14 must demonstrate, and provide adequate assurance of, their ability to perform under the Assigned  
15 Contracts and Leases. Bidding at the Auction will continue until such time as the highest or best  
16 offer is determined by the Debtor. The Debtor may adopt rules for the bidding process that, in its  
17 judgment, will better promote the goals of the bidding process, and that are not inconsistent with  
18 any of the provisions of this Order. Upon conclusion of the Auction, the Debtor shall review the  
19 Qualified Bid(s) on the basis of among other things, the following: (a) the amount of the  
20 Qualified Bid(s), (b) the form of consideration, (c) the form of the proposed transaction, (d) the  
21 ability to obtain approval from this Court and other required approvals for the sale and close in a  
22 timely fashion, and (e) the net value provided to the Debtor and such other aspects as determined  
23 by the Debtor and shall submit the highest or otherwise best bid for approval by the Court  
24 pursuant to §363 of the Bankruptcy Code. Upon failure to consummate the Asset sale because of  
25 a breach or failure on the part of the successful Qualified Bidder, the Debtor may select in its  
26 business judgment the next highest or otherwise best Qualified Bidder to be the successful bidder  
27 without further order of this Court and consummate the Asset sale with such next highest or  
28 otherwise best Qualified Bidder. If the Debtor does not receive any Qualified Bids by the Bid

1 Deadline, other than from the Purchaser, the Debtor shall report the same to this Court and may  
2 proceed to seek approval of the Proposed Sale of the Assets to Purchaser pursuant to the Purchase  
3 Agreement at the Sale Hearing.

4 8. The Auction and Sale Hearing shall be conducted at \_\_\_\_\_, on \_\_\_\_\_,  
5 2003, or as soon thereafter as counsel may be heard, before this Court.

6 9. The Debtor's proposals set forth in the Sale Procedures Motion regarding the form  
7 and scope of notices relating to the Sale Motion are approved as follows:

8 (a) The Debtor shall provide at least twenty-eight (28) days notice of the Sale  
9 Hearing to creditors and other interested parties, including all parties listed on Debtor's mailing  
10 matrix.

11 (b) The Debtor need serve only the Sale Notice on all creditors and other  
12 interested parties *except for* (1) the Committee and its counsel, if any has been appointed in this  
13 case at that time, or if not, the Debtor's twenty largest unsecured creditors, (2) the Debtor's  
14 secured creditors; (3) any party in interest who at the time has served on the Debtor's counsel and  
15 filed with the Clerk of the Court a request that all notices be mailed to them; (4) all individuals  
16 and entities who the Debtor believes may have an interest in purchasing the Debtor's Assets; (5)  
17 the non-Debtor parties to potential Assigned Contracts and Leases; and (6) the Office of the  
18 United States Trustee (collectively, the "Full Notice Parties").

19 (c) The Debtor shall serve the Sale Motion and all supporting pleadings, plus  
20 the Sale Notice and the Assumption and Assignment Notice, to the Full Notice Parties.

21 10. \_\_\_\_\_, 2003 at 4:00 p.m. PT, shall be the last date to file with the Clerk  
22 of this Court written objections to the Proposed Sale or to the proposed assumption and  
23 assignment of the Assigned Contracts and Leases or the proposed Cure Amounts, if any, related  
24 to the Assigned Contracts and Leases, and to serve any such objections on counsel for the Debtor,  
25 counsel for the Purchaser, counsel for any appointed Committee if such counsel is employed, or  
26 the members of such Committee if appointed but no counsel is employed, and the Office of the  
27 United States Trustee.

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Dated: \_\_\_\_\_

UNITED STATES BANKRUPTCY JUDGE

COOLEY GOSWARD LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

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9.

ORDER APPROVING SALE PROCEDURES,  
OVERBID PROTECTIONS, ETC.

**EXHIBIT E**  
**APPROVAL ORDER**

**See Tab 3**

**EXHIBIT 2.1(a)(ix)**

**NON-COMPETITION AGREEMENTS**

**TRADEMARK**

**REEL: 003328 FRAME: 0232**

Exhibit 2.1(a)(ix)

**NON-COMPETITION AGREEMENTS**

None

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**EXHIBIT 2.1(b)**

**EXCLUDED ASSETS (as amended)**

**EXCLUDED ASSETS**

1. All minute books, stock records and corporate seals.
2. All personnel records and other records that Seller is required by any Law to retain in its possession.
3. Physical assets located in Fremont building:
  - Onan DFAC Diesel Emergency Generator.
  - MGE EPS 3000 UPS System.
  - Busch Vacuum System.
  - Atlas Capco SF15 Clean Dry Air System.
  - DI/RO Water System.
  - CCure Security System Hardware.
  - Definity G3i Phone System (including Lucent 6408D+ phone sets).
  - Octel 250 Voice Mail System.
  - Six (6) Chemical Fume Hoods.
  - Praxair Minibulk Liquid Nitrogen System (tanks are property of Praxair).
  - Two (2) Ikon ImageRunner Copiers.
  - Pitney-Bowes Postage Meter.
4. Patents:
  - U.S.
    - No. 60/129,129; filed April 13, 1999. Nucleotide Polymorphism Identification Through Fluorescence Resonance Energy Transfer Label Generation.
    - No. 09/960,867; filed September 21, 2001. Sample Injection System And Method.
    - No. 10/005,848; filed October 25, 2001. Variable Geometry Fluid Sample Loader.
    - No. 09/938,271; filed August 23, 2001. Microchannel Turn Design.
5. Trademarks:
  - U.S.
    - KIVA GENETICS; Application No. 76/155,273, filed October 27, 2000. (abandoned)
    - KIVA GENETICS; Application No. 76/154,919, filed October 27, 2000. (abandoned)
  - United Kingdom
    - KIVA GENETICS; Registration No. 2249587, registered April 6, 2001.
6. Research, Development and Commercialization Agreement by and between Amersham Pharmacia Biotech Inc. and DNA Sciences, Inc. dated as of December 29, 2000, including all amendments thereto.

7. Research Agreement between DNA Sciences, Inc. and Rush-Presbyterian-St. Luke's Medical Center dated as of January 25, 2002.
8. Research Collaboration Agreement by and between DNA Sciences, Inc. and NYU School of Medicine dated as of January 18, 2002.
9. Scientific Advisory Board Agreement between DNA Sciences, Inc. and Raymond White dated as of October 20, 2002.
10. Scientific Advisory Board Agreement between DNA Sciences, Inc. and Mickey S. Urdea dated as of August 29, 2000.
11. Letter Agreement between DNA Sciences, Inc. and Susan Berland dated as of August 20, 2001, including all amendments thereto.
12. Letter Agreement between DNA Sciences, Inc. and Steven Lehrer dated as of December 2, 1999, including all amendments thereto.
13. Employment Offer Letter between DNA Sciences, Inc. and G. Sloan Rausser dated as of July 13, 2000, including all amendments thereto.
14. Employment Offer Letter between DNA Sciences, Inc. and Geoff Joslyn dated as of January 30, 2001, including all amendments thereto.
15. Employment Offer Letter between DNA Sciences, Inc. and Mark Curran dated as of December 5, 2000, including all amendments thereto.
16. Employment Offer Letter between DNA Sciences, Inc. and Christine D. Foster dated as of July 9, 2001, including all amendments thereto.
17. Employment Offer Letter between DNA Sciences, Inc. and Christopher R. Burrow dated as of December 6, 2000, including all amendments thereto.
18. Employment Offer Letter between DNA Sciences, Inc. and Mathew C. Cayouette dated as of January 26, 1999, including all amendments thereto.
19. Bonus Agreement between DNA Sciences, Inc. and Christopher Burrow dated as of December 6, 2000.
20. Bonus Agreement between DNA Sciences, Inc. and Geoff Joslyn dated as of August 20, 2001.
21. Bonus Agreement between DNA Sciences, Inc. and G. Sloan Rausser dated as of August 16, 2000.
22. Bonus Agreement between DNA Sciences, Inc. and Ray White dated as of July 27, 2000.
23. Copy Management Program Agreement between Kiva Genetics, Inc. and IKON/IOS Capital dated as of March 18, 1999.

24. Images Plus Agreement between Kiva Genetics, Inc. and IOS Capital dated as of November 13, 2000.
25. Information Services Agreement between DNA Sciences, Inc. and Burrelle's Information Services dated as of July 12, 2000.
26. Consultant Agreement between DNA Sciences, Inc. and Dr. Lynn DeLisi dated as of January 23, 2002.
27. Agreement between DNA Sciences, Inc. and EKG Sales Associates, Inc. to provide DNA Sciences lead generation and follow-up services, dated as of March 18, 2001.
28. Consultant Agreement between DNA Sciences, Inc. and Garret A. FitzGerald, M.D. dated as of December 1, 2000.
29. Search Fee Agreement between DNA Sciences, Inc. and Life Science Recruiters, Inc. dated as of October 1, 2002.
30. Financial Services Engagement Letter between DNA Sciences, Inc. and Macias & Ryan, Inc. dated as of April 12, 2002.
31. Amended and Restated Scientific Advisory Board Agreement between DNA Sciences, Inc. and Anthony Monaco dated as of September 1, 2000.
32. Consulting Agreement for Non-Technical Services between DNA Sciences, Inc. and Michael Richey, October 16, 2000.
33. Consulting Agreement for Non-Technical Services between DNA Sciences, Inc. and Carl Schaper dated as of December 17, 2001.
34. Independent Contractor Services Agreement between DNA Sciences, Inc. and Shannon Wilson.
35. Services Agreement between DNA Sciences, Inc. and Aerotek Scientific, a division of Onsite Companies, Inc. dated as of June 26, 2002.
36. Photocopy Authorization License, including all amendments thereto, from the Copyright Clearance Center, Inc. to DNA Sciences, Inc.
37. NIGMS Human Genetic Cell Repository Assurance Form for Human Cell Lines, Somatic Cell Hybrids, and DNA Samples executed by DNA Sciences, Inc. and Coriell Cell Repositories, dated January 3, 2001.
38. Engagement Agreement between DNA Sciences, Inc. and Grant Lee Bradley State and Local Tax Consultants, Inc. dated as of September 12, 2001.
39. Material Transfer Agreement between Kiva mGenetics, Inc. and Incyte Pharmaceuticals, Inc. dated as of August 4, 1999.



40. Hosting Services Ordering Document between DNA Sciences, Inc. and Oracle Corporation dated as of June 29, 2001.
41. Software License and Services Agreement between DNA Sciences, Inc. and Oracle Corporation dated as of February 16, 2000.
42. Agreement between DNA Sciences, Inc. and EKG Sales Associates, Inc. to provide DNA Sciences lead generation and follow-up services, dated as of March 24, 2003.
43. Master Agreement #2101057 between DNA Sciences and the University of Utah dated as of December 29, 2000.
44. Service Agreement and License between DNA Sciences, Inc. and the University of Utah dated as of November 9, 2001.
45. Inspection Service Agreement between DNA Sciences, Inc. and Western Allied Service Company dated as of August 30, 2002.
46. Proposal for Services by Comtel Systems Technology, Inc. accepted by DNA Sciences, Inc. effective as of October 20, 2000.
47. Full Recourse Secured Promissory Note between DNA Sciences and G. Sloan Rausser dated as of August 16, 2000.
48. Security Agreement between Kiva Genetics, Inc. and Steven Lehrer dated as of December 30, 1999.
49. Full Recourse Secured Promissory Note between DNA Sciences and Ray White dated as of July 27, 2000.
50. Full Recourse Secured Promissory Note between DNA Sciences and Christopher Burrow dated as of December 6, 2000.



**TRADEMARK**  
**REEL: 003328 FRAME: 0239**

DNA SCIENCES, INC.  
AMENDMENT NO. 1 TO  
ASSET PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT ("Amendment") is made as of May 5, 2003, by and between Genaisance Pharmaceuticals, Inc., a Delaware corporation (the "Purchaser") and DNA Sciences, Inc., a Delaware corporation (the "Seller" and, together with the Purchaser, each, a "Party" and, collectively, the "Parties"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Parties have entered into that certain Asset Purchase Agreement, dated as of March 28, 2003 (the "Asset Purchase Agreement");

WHEREAS, under Section 12.11 of the Asset Purchase Agreement, any provision of the Asset Purchase Agreement can be amended, supplemented or modified by written agreement of the Parties; and

WHEREAS, in accordance with Section 12.11 of the Asset Purchase Agreement, the Parties desire to amend the Asset Purchase Agreement in the manner provided herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. The following sentence shall be added to the end of Section 12.11 of the Asset Purchase Agreement:

"Notwithstanding any provision to the contrary contained in this Agreement, the Purchaser may, upon the written consent of Seller, amend or supplement Exhibit 2.1(b) solely to include additional assets as "Excluded Assets" at any time prior to the Closing, and any other document delivered pursuant to this Agreement may be modified by Seller solely in order to make such document consistent with such amendment or supplement; *provided, however*, that no such amendment or supplement shall affect the obligations of the Purchaser to consummate the Closing or shall give rise to any right of the Purchaser to terminate this Agreement or abandon the transactions contemplated hereby."

2. Exhibit 2.1(b) to the Asset Purchase Agreement shall be amended to add the following to the list of Excluded Assets:

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51. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Package Policy, No. 3577-49-49. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  52. Federal Insurance Company (Chubb Group of Insurance Companies): Contract Research Organization Liability Policy, No. 3577-49-50. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  53. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Automobile Policy, No. 7351-26-60. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  54. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Umbrella Policy, No. 9363-09-31. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  55. AON Financial Services Group, Inc.: Insured Persons' and Private Company Directors and Officers Liability Insurance, Policy No. DA0201917-02. Policy period: September 18, 2002 to September 18, 2003.
  56. Kemper Insurance Company: Worker's Compensation Insurance, No. 236182. Policy period: January 2003 to March 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  57. Letter Agreement between DNA Sciences, Inc. and Glen Ferguson dated as of January 6, 1999, including all amendments thereto.
  58. Consulting Agreement for Non-Technical Services between DNA Sciences, Inc., and Judith Wilbur, Ph.D. dated November 13, 2002.
  59. Any avoidance power causes of action under Bankruptcy Code §§ 544-551."
3. All other terms of the Asset Purchase Agreement shall remain in full force and effect.
  4. This Amendment shall in no way affect the obligations of the Purchaser to consummate the Closing or give rise to any right of Purchaser to terminate the Asset Purchase Agreement or abandon the transactions contemplated thereby.

5. THIS AMENDMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH U.S. FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN, WITHOUT REFERENCE TO CHOICE OF LAW PRINCIPLES, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

6. This Amendment may be executed in two or more counterparts, in original form or by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this AMENDMENT as of the day and year first set forth above.

GENAISSANCE PHARMACEUTICALS, INC.

By: 

Gerald F. Yovis, Ph.D.  
Executive Vice President &  
Chief Technology Officer

DNA SCIENCES, INC.

By: 

Steven F. Lehrer  
President and Chief Operating Officer

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**TRADEMARK**  
**REEL: 003328 FRAME: 0243**

May 15, 2003

DNA Sciences, Inc.  
6540 Kaiser Drive  
Fremont, CA 94555-3613

Ladies and Gentlemen:

This letter confirms our agreement that, pursuant to the last sentence of Section 12.11 of the Asset Purchase Agreement by and between Genaissance Pharmaceuticals, Inc. (the "Purchaser") and DNA Sciences, Inc. (the "Seller") dated as of March 28, 2003, as amended by (i) Amendment No. 1 to Asset Purchase Agreement dated as of May 5, 2003, and (ii) the Order Under 11 U.S.C. §§ 363 and 365 Approving Asset Purchase Agreement and Sale of Assets of DNA Sciences, Inc. Free and Clear of Liens, Claims, Encumbrances and Interests and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases entered on May 12, 2003 by the United States Bankruptcy Court for the Northern District of California (as amended, the "Agreement"), (i) Exhibit 2.1(b), Excluded Assets, to the Agreement is hereby supplemented to add the following to the list of Excluded Assets (as defined in the Agreement):

- "60. United States Patent Application No. 09/803,724; filed March 9, 2001.  
Cross Channel Device For Serial Sample Injection.
61. No. 06/170,432; filed December 13, 1999. Tracking Of Clinical Study Samples,  
Information And Results.";

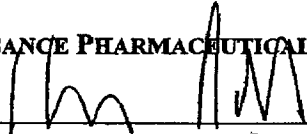
and (ii) Exhibit B, Assignment of Patent Rights, to the Agreement is hereby modified and restated to be in the form attached hereto as Exhibit I in order to make such document consistent with such supplement; *provided, however*, that such supplement and modification shall in no way affect the obligations of the Purchaser to consummate the Closing (as defined in the Agreement) or give rise to any right of the Purchaser to terminate the Agreement or abandon the transactions contemplated thereby.

In addition, this letter confirms our agreement that, pursuant to Section 4.1 of the Agreement, the Closing (as defined in the Agreement) will be at 10:00 a.m. Pacific Time, or at such other time as the parties may designate in accordance with the Agreement, at the offices of Cooley Godward LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, California 94306 on May 15, 2003.

If you agree to the terms and conditions contained herein, please sign below.

Sincerely,

GENAISSANCE PHARMACEUTICALS, INC.

By: 

Name: Kevin Rakon

Title: President & CEO

UNDERSTOOD AND AGREED:

DNA SCIENCES, INC.

By: \_\_\_\_\_

Steven B. Lehrer  
President and Chief Operating Officer



If you agree to the terms and conditions contained herein, please sign below.

Sincerely,

**GENAISSANCE PHARMACEUTICALS, INC.**


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UNDERSTOOD AND AGREED:**

**DNA SCIENCES, INC.**

By:  \_\_\_\_\_  
Steven B. Lehrer  
President and Chief Operating Officer

**EXHIBIT 1**

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**Exhibit B**

**Attorney Docket No:**

**PATENT**

**ASSIGNMENT OF PATENT RIGHTS  
(Company to Company)**

DNA Sciences, Inc., a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at 6540 Kaiser Dr., Fremont, California (herein referred to as "Assignor") owns the entire right, title and interest in any Letters Patent(s) ("said patent(s)") and any Patent application(s) ("said application(s)") set forth in Schedule 1 attached hereto, as well as any invention(s) ("said invention(s)") disclosed in said application(s) and said patent(s).

WHEREAS, Genaissance Pharmaceuticals, Inc., a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at Five Science Park, New Haven, Connecticut (herein referred to as "Assignee"), is desirous of acquiring the entire right, title, and interest in and to said invention(s), said application(s), and said patent(s), the right to file applications on said invention(s), the entire right, title and interest in and to any applications for Letters Patent of the United States or other countries claiming priority to said application(s), the entire right, title and interest in and to any and all causes of action for infringement of said application(s) and said patent(s), including, but not limited to the right to recover damages, including provisional or other royalties, for prior infringements of said application(s) and said patent(s), and the entire right, title, and interest in and to any Letters Patent or Patents, United States or foreign, to be obtained for said invention(s) and said application(s);

NOW, THEREFORE, in consideration of the purchase price set forth in Section 3.1 of that certain Asset Purchase Agreement by and between DNA Sciences, Inc. and Genaissance Pharmaceuticals, Inc. dated as of March 28, 2003, the receipt of which is hereby acknowledged, the Assignor has granted, sold, assigned, transferred, conveyed and delivered, and by these presents does grant, sell, assign, transfer, convey and deliver, unto the Assignee, its successors and legal representatives, and assigns the entire right, title, and interest in and to said invention(s), said application(s), and said patent(s), the right to file applications on said invention(s), the entire right, title and interest in and to any applications for Letters Patent of the United States or other countries claiming priority to said application(s), including divisions, continuations, and continuations-in-part of said application(s), the entire right, title and interest in and to any and all causes of action for infringement of said application(s) and said patent(s), including, but not limited to the right to recover damages, including provisional or other royalties, for prior infringements of said application(s) and said patent(s), the entire right, title and interest in and to any and all Letters Patent or Patents, United States or foreign, to be obtained for said invention(s) and said application(s), the entire right, title and interest in and to any and all reissues and extensions of said patent(s), and all rights under the Hague Convention, the Paris Convention for the Protection of Industrial Property, and under the Patent Cooperation Treaty, the same to be held and enjoyed by the Assignee, for its own use and behalf and the use and behalf of its successors, legal representatives, and assigns, to the full end of the term or terms

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for which Letters Patent or Patents may be granted as fully and entirely as the same would have been held and enjoyed by the Assignor had this sale and assignment not been made;

AND for the same consideration, the Assignor hereby covenants and agrees to and with the Assignee, its successors, legal representatives, and assigns that the Assignor will, whenever counsel of the Assignee, or the counsel of its successors, legal representatives, and assigns, shall reasonably request in connection with said invention(s), said application(s), said patent(s), any application claiming priority to said application(s), any reissue or extension of said patent(s), and any United States or foreign Letters Patent or Patents for said invention(s) or said application(s), including interference proceedings, sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of Letters Patent or Patents for said invention(s), without charge to the Assignee, its successors, legal representatives, and assigns, but at the cost and expense of the Assignee, its successors, legal representatives, and assigns;

AND the Assignor hereby requests the Commissioner of Patents to issue any and all aforementioned patent(s) of the United States to the Assignee, as the assignee of said invention(s) and the Letters Patent to be issued thereon for the sole use and behalf of the Assignee, its successors, legal representatives, and assigns.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Steven Lehrer  
Title: President  
Company: DNA Sciences, Inc.

State of:

County of:

The preceding Assignment was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## SCHEDULE 1

### UNITED STATES PATENTS ISSUED AND PENDING

1. US Patent No. 6,458,544; issued October 1, 2002. Methods For Determining Single Nucleotide Variations And Genotyping.
2. No. 09/805,619; filed March 13, 2001. A Method And System For Aggregating Persons With A Select Profile For Further Medical Characterization.
3. No. 09/558,245; filed April 25, 2000. Detection Of Nucleotide Sequence Variations Via The Proofreading Activities Of Polymerases.
4. No. 09/861,078; filed May 26, 2000. System For Genetically Characterizing An Individual For Evaluation Using Genetic And Phenotypic Variations Over A Wide Area Network
5. No. 09/861,081; filed May 18, 2001. Computer Program Product For Genetically Characterizing An Individual For Evaluation Using Genetic And Phenotypic Variations Over A Wide Area Network.
6. No. 10/214,914; filed August 7, 2002. Polymorphisms Associated With Multiple Sclerosis.
7. No. 10/224,683; filed August 20, 2002. Polymorphisms Associated With Ion-channel Genetic Pathways.
8. No. 60/369,961; filed April 3, 2002. Methods of Diagnosing Schizophrenia.
9. No. 60/378,451; filed May 3, 2002. Polymorphisms Associated With Inflammatory Bowel Disease.
10. No. 10/163,598; filed June 5, 2002. Method Of Identifying A Polymorphism In CYP2D6.
11. US Patent No. 5,714,329; issued February 3, 1998; assigned to DNA Sciences, Inc. January 14, 2002. Diagnosis Of A Genetic Predisposition To Cancer Associated With Variant CDK4 Allele.
12. US Patent No. 6,432,639; issued August 13, 2002. Genotyping Of Human CYP3A4.
13. No. 10/085,612; filed February 26, 2002. Methods For Evaluating The Ability To Metabolize Pharmaceuticals And Compositions Therefor.
14. US Patent No. 6,448,003; issued September 10, 2002. Genotyping The Human Phenol Sulfotransferase 2 Gene.
15. US Patent No. 6,479,236; issued November 12, 2002. Genotyping The Human UDP-Glucuronosyltransferase 1 (UGT1) Gene.

16. No. 09/356,806; filed July 20, 1999. Genotyping Human UDP-Glucuronosyl Transferase 2B4 (UGT2B4) 2B7 (UGT2B7) And 2B15 (UGT2B15) Genes.
17. US Patent No. 6,492,115; issued December 10, 2002. Genetic Typing Of The Human Cytochrome P450 2A6 Gene And Related Materials And Methods.
18. No. 09/724,389; filed November 28, 2000. Genetic Typing Of Human Genes And Related Materials And Methods.
19. US Patent No. 6,355,433; issued March 12, 2003. Determination of Nucleotide Sequence Variations Through Limited Primer Extension.
20. No. 09/805,813; filed March 13, 2001. Database System and Method.
21. No. 60/412,092; filed September 18, 2002. Genotyping the Human UDP - glucuronosyltransferase 1 (UGT1) Gene.
22. No. 10/247,159; filed September 18, 2002. Genotyping the Human UDP - Glucuronosyltransferase 1 (UGT1) Gene.
23. No. 10/232,634; filed August 30, 2002. Genotyping of the Human Cytochrome P450 2A6 Gene and Related Materials and Methods.

**EXHIBIT 9.2(i)**  
**ASSIGNMENT AND ASSUMPTION**

**Exhibit 9.2(i)**

**ASSIGNMENT AND ASSUMPTION**

1. License and Option Agreement by and between St. Jude Children's Research Hospital and PPGx, Inc. dated as of February 29, 2000.
2. License Agreement by and between the University of Utah Research Foundation, Yale University and DNA Sciences, Inc. dated as of August 8, 2000.
3. Sublicense Agreement between Prometheus Laboratories, Inc. and DNA Sciences, Inc. dated as of August 16, 2001.
4. Sublicense Agreement between Specialty Laboratories, Inc. and DNA Sciences, Inc. dated as of September 6, 2001.
5. Each license, sublicense and any other agreements that are required for DNA Sciences to transfer to Genaissance the laboratory information management system (LIMS) used in or developed by a third party for the North Carolina facility, as well as DNA Science's license rights to use the LIMS.



**EXHIBIT 9.2(j)**

**CUSTOMERS**

**TRADEMARK**

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**Exhibit 9.2(i)**

**CUSTOMERS**

1. Eli Lilly & Company
2. Pfizer, Inc.

**DNA SCIENCES, INC.**  
**AMENDMENT NO. 1 TO**  
**ASSET PURCHASE AGREEMENT**

THIS AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT ("Amendment") is made as of May 5, 2003, by and between Genaissance Pharmaceuticals, Inc., a Delaware corporation (the "Purchaser") and DNA Sciences, Inc., a Delaware corporation (the "Seller" and, together with the Purchaser, each, a "Party" and, collectively, the "Parties"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement (as defined below).

**RECITALS**

WHEREAS, the Parties have entered into that certain Asset Purchase Agreement, dated as of March 28, 2003 (the "Asset Purchase Agreement");

WHEREAS, under Section 12.11 of the Asset Purchase Agreement, any provision of the Asset Purchase Agreement can be amended, supplemented or modified by written agreement of the Parties; and

WHEREAS, in accordance with Section 12.11 of the Asset Purchase Agreement, the Parties desire to amend the Asset Purchase Agreement in the manner provided herein.

**AGREEMENT**

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. The following sentence shall be added to the end of Section 12.11 of the Asset Purchase Agreement:

"Notwithstanding any provision to the contrary contained in this Agreement, the Purchaser may, upon the written consent of Seller, amend or supplement Exhibit 2.1(b) solely to include additional assets as "Excluded Assets" at any time prior to the Closing, and any other document delivered pursuant to this Agreement may be modified by Seller solely in order to make such document consistent with such amendment or supplement; *provided, however*, that no such amendment or supplement shall affect the obligations of the Purchaser to consummate the Closing or shall give rise to any right of the Purchaser to terminate this Agreement or abandon the transactions contemplated hereby."

2. Exhibit 2.1(b) to the Asset Purchase Agreement shall be amended to add the following to the list of Excluded Assets:

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51. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Package Policy, No. 3577-49-49. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  52. Federal Insurance Company (Chubb Group of Insurance Companies): Contract Research Organization Liability Policy, No. 3577-49-50. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  53. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Automobile Policy, No. 7351-26-60. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  54. Federal Insurance Company (Chubb Group of Insurance Companies): Commercial Umbrella Policy, No. 9363-09-31. Policy period: June 2002 to June 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  55. AON Financial Services Group, Inc.: Insured Persons' and Private Company Directors and Officers Liability Insurance, Policy No. DA0201917-02. Policy period: September 18, 2002 to September 18, 2003.
  56. Kemper Insurance Company: Worker's Compensation Insurance, No. 236182. Policy period: January 2003 to March 2003.  
Producer: CALCO Insurance Brokers & Agents Incorporated
  57. Letter Agreement between DNA Sciences, Inc. and Glen Ferguson dated as of January 6, 1999, including all amendments thereto.
  58. Consulting Agreement for Non-Technical Services between DNA Sciences, Inc., and Judith Wilbur, Ph.D. dated November 13, 2002.
  59. Any avoidance power causes of action under Bankruptcy Code §§ 544-551."
3. All other terms of the Asset Purchase Agreement shall remain in full force and effect.
  4. This Amendment shall in no way affect the obligations of the Purchaser to consummate the Closing or give rise to any right of Purchaser to terminate the Asset Purchase Agreement or abandon the transactions contemplated thereby.

5. THIS AMENDMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH U.S. FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN, WITHOUT REFERENCE TO CHOICE OF LAW PRINCIPLES, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

6. This Amendment may be executed in two or more counterparts, in original form or by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this AMENDMENT as of the day and year first set forth above.

GENAISSANCE PHARMACEUTICALS, INC.

By: 

Gerald F. Vovis, Ph.D.  
Executive Vice President &  
Chief Technology Officer

DNA SCIENCES, INC.

By: 

Steven B. Lehrer  
President and Chief Operating Officer

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May 15, 2003

DNA Sciences, Inc.  
6540 Kaiser Drive  
Fremont, CA 94555-3613

Ladies and Gentlemen:

This letter confirms our agreement that, pursuant to the last sentence of Section 12.11 of the Asset Purchase Agreement by and between Genaissance Pharmaceuticals, Inc. (the "Purchaser") and DNA Sciences, Inc. (the "Seller") dated as of March 28, 2003, as amended by (i) Amendment No. 1 to Asset Purchase Agreement dated as of May 5, 2003, and (ii) the Order Under 11 U.S.C. §§ 363 and 365 Approving Asset Purchase Agreement and Sale of Assets of DNA Sciences, Inc. Free and Clear of Liens, Claims, Encumbrances and Interests and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases entered on May 12, 2003 by the United States Bankruptcy Court for the Northern District of California (as amended, the "Agreement"), (i) Exhibit 2.1(b), Excluded Assets, to the Agreement is hereby supplemented to add the following to the list of Excluded Assets (as defined in the Agreement):

- "60. United States Patent Application No. 09/803,724; filed March 9, 2001.  
Cross Channel Device For Serial Sample Injection.
61. No. 06/170,432; filed December 13, 1999. Tracking Of Clinical Study Samples,  
Information And Results.";

and (ii) Exhibit B, Assignment of Patent Rights, to the Agreement is hereby modified and restated to be in the form attached hereto as Exhibit 1 in order to make such document consistent with such supplement; *provided, however*, that such supplement and modification shall in no way affect the obligations of the Purchaser to consummate the Closing (as defined in the Agreement) or give rise to any right of the Purchaser to terminate the Agreement or abandon the transactions contemplated thereby.

In addition, this letter confirms our agreement that, pursuant to Section 4.1 of the Agreement, the Closing (as defined in the Agreement) will be at 10:00 a.m. Pacific Time, or at such other time as the parties may designate in accordance with the Agreement, at the offices of Cooley Godward LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, California 94306 on May 15, 2003.

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TRADEMARK  
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If you agree to the terms and conditions contained herein, please sign below.

Sincerely,

GENAISSANCE PHARMACEUTICALS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UNDERSTOOD AND AGREED:**

DNA SCIENCES, INC.

By: \_\_\_\_\_

Steven B. Lehrer  
President and Chief Operating Officer

If you agree to the terms and conditions contained herein, please sign below.

Sincerely,

**GENAISSANCE PHARMACEUTICALS, INC.**


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**UNDERSTOOD AND AGREED:**

**DNA SCIENCES, INC.**

By:  \_\_\_\_\_  
Steven B. Lehrer  
President and Chief Operating Officer



**EXHIBIT 1**

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**Exhibit B**

Attorney Docket No:

**PATENT**

**ASSIGNMENT OF PATENT RIGHTS  
(Company to Company)**

DNA Sciences, Inc., a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at 6540 Kaiser Dr., Fremont, California (herein referred to as "Assignor") owns the entire right, title and interest in any Letters Patent(s) ("said patent(s)") and any Patent application(s) ("said application(s)") set forth in Schedule 1 attached hereto, as well as any invention(s) ("said invention(s)") disclosed in said application(s) and said patent(s).

WHEREAS, Genaissance Pharmaceuticals, Inc., a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at Five Science Park, New Haven, Connecticut (herein referred to as "Assignee"), is desirous of acquiring the entire right, title, and interest in and to said invention(s), said application(s), and said patent(s), the right to file applications on said invention(s), the entire right, title and interest in and to any applications for Letters Patent of the United States or other countries claiming priority to said application(s), the entire right, title and interest in and to any and all causes of action for infringement of said application(s) and said patent(s), including, but not limited to the right to recover damages, including provisional or other royalties, for prior infringements of said application(s) and said patent(s), and the entire right, title, and interest in and to any Letters Patent or Patents, United States or foreign, to be obtained for said invention(s) and said application(s);

NOW, THEREFORE, in consideration of the purchase price set forth in Section 3.1 of that certain Asset Purchase Agreement by and between DNA Sciences, Inc. and Genaissance Pharmaceuticals, Inc. dated as of March 28, 2003, the receipt of which is hereby acknowledged, the Assignor has granted, sold, assigned, transferred, conveyed and delivered, and by these presents does grant, sell, assign, transfer, convey and deliver, unto the Assignee, its successors and legal representatives, and assigns the entire right, title, and interest in and to said invention(s), said application(s), and said patent(s), the right to file applications on said invention(s), the entire right, title and interest in and to any applications for Letters Patent of the United States or other countries claiming priority to said application(s), including divisions, continuations, and continuations-in-part of said application(s), the entire right, title and interest in and to any and all causes of action for infringement of said application(s) and said patent(s), including, but not limited to the right to recover damages, including provisional or other royalties, for prior infringements of said application(s) and said patent(s), the entire right, title and interest in and to any and all Letters Patent or Patents, United States or foreign, to be obtained for said invention(s) and said application(s), the entire right, title and interest in and to any and all reissues and extensions of said patent(s), and all rights under the Hague Convention, the Paris Convention for the Protection of Industrial Property, and under the Patent Cooperation Treaty, the same to be held and enjoyed by the Assignee, for its own use and behalf and the use and behalf of its successors, legal representatives, and assigns, to the full end of the term or terms

for which Letters Patent or Patents may be granted as fully and entirely as the same would have been held and enjoyed by the Assignor had this sale and assignment not been made;

AND for the same consideration, the Assignor hereby covenants and agrees to and with the Assignee, its successors, legal representatives, and assigns that the Assignor will, whenever counsel of the Assignee, or the counsel of its successors, legal representatives, and assigns, shall reasonably request in connection with said invention(s), said application(s), said patent(s), any application claiming priority to said application(s), any reissue or extension of said patent(s), and any United States or foreign Letters Patent or Patents for said invention(s) or said application(s), including interference proceedings, sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of Letters Patent or Patents for said invention(s), without charge to the Assignee, its successors, legal representatives, and assigns, but at the cost and expense of the Assignee, its successors, legal representatives, and assigns;

AND the Assignor hereby requests the Commissioner of Patents to issue any and all aforementioned patent(s) of the United States to the Assignee, as the assignee of said invention(s) and the Letters Patent to be issued thereon for the sole use and behalf of the Assignee, its successors, legal representatives, and assigns.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Steven Lehrer  
Title: President  
Company: DNA Sciences, Inc.

State of:

County of:

The preceding Assignment was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## SCHEDULE 1

### UNITED STATES PATENTS ISSUED AND PENDING

1. US Patent No. 6,458,544; issued October 1, 2002. Methods For Determining Single Nucleotide Variations And Genotyping.
2. No. 09/805,619; filed March 13, 2001. A Method And System For Aggregating Persons With A Select Profile For Further Medical Characterization.
3. No. 09/558,245; filed April 25, 2000. Detection Of Nucleotide Sequence Variations Via The Proofreading Activities Of Polymerases.
4. No. 09/861,078; filed May 26, 2000. System For Genetically Characterizing An Individual For Evaluation Using Genetic And Phenotypic Variations Over A Wide Area Network
5. No. 09/861,081; filed May 18, 2001. Computer Program Product For Genetically Characterizing An Individual For Evaluation Using Genetic And Phenotypic Variations Over A Wide Area Network.
6. No. 10/214,914; filed August 7, 2002. Polymorphisms Associated With Multiple Sclerosis.
7. No. 10/224,683; filed August 20, 2002. Polymorphisms Associated With Ion-channel Genetic Pathways.
8. No. 60/369,961; filed April 3, 2002. Methods of Diagnosing Schizophrenia.
9. No. 60/378,451; filed May 3, 2002. Polymorphisms Associated With Inflammatory Bowel Disease.
10. No. 10/163,598; filed June 5, 2002. Method Of Identifying A Polymorphism In CYP2D6.
11. US Patent No. 5,714,329; issued February 3, 1998; assigned to DNA Sciences, Inc. January 14, 2002. Diagnosis Of A Genetic Predisposition To Cancer Associated With Variant CDK4 Allele.
12. US Patent No. 6,432,639; issued August 13, 2002. Genotyping Of Human CYP3A4.
13. No. 10/085,612; filed February 26, 2002. Methods For Evaluating The Ability To Metabolize Pharmaceuticals And Compositions Therefor.
14. US Patent No. 6,448,003; issued September 10, 2002. Genotyping The Human Phenol Sulfotransferase 2 Gene.
15. US Patent No. 6,479,236; issued November 12, 2002. Genotyping The Human UDP-Glucuronosyltransferase 1 (UGT1) Gene.

16. No. 09/356,806; filed July 20, 1999. Genotyping Human UDP-Glucuronosyl Transferase 2B4 (UGT2B4) 2B7 (UGT2B7) And 2B15 (UGT2B15) Genes.
17. US Patent No. 6,492,115; issued December 10, 2002. Genetic Typing Of The Human Cytochrome P450 2A6 Gene And Related Materials And Methods.
18. No. 09/724,389; filed November 28, 2000. Genetic Typing Of Human Genes And Related Materials And Methods.
19. US Patent No. 6,355,433; issued March 12, 2003. Determination of Nucleotide Sequence Variations Through Limited Primer Extension.
20. No. 09/805,813; filed March 13, 2001. Database System and Method.
21. No. 60/412,092; filed September 18, 2002. Genotyping the Human UDP - glucuronosyltransferase 1 (UGT1) Gene.
22. No. 10/247,159; filed September 18, 2002. Genotyping the Human UDP - Glucuronosyltransferase 1 (UGT1) Gene.
23. No. 10/232,634; filed August 30, 2002. Genotyping of the Human Cytochrome P450 2A6 Gene and Related Materials and Methods.

1 COOLEY GODWARD LLP  
2 J. MICHAEL KELLY (133657)  
3 GREGG S. KLEINER (141311)  
4 AMY HALLMAN RICE (136189)  
5 DAVID A. LEVINE (219006)  
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10 Attorneys for Debtor  
11 DNA SCIENCES, INC.

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BANKRUPTCY COURT  
OAKLAND, CALIFORNIA

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 In re

Case No. 03-41843 N11

16 DNA SCIENCES, INC., a  
17 Delaware corporation

Chapter 11

18 Debtor.

Hearing:

19 Tax Identification No. 77-0490090

Date: May 7, 2003  
Time: 9:30 a.m. Pacific Time  
Place: 1300 Clay Street  
Oakland, CA 94612  
Judge: Hon. Randall J. Newsome

20 **ORDER UNDER 11 U.S.C. §§ 363 AND 365 APPROVING ASSET PURCHASE**  
21 **AGREEMENT AND SALE OF ASSETS OF DNA SCIENCES, INC. FREE AND CLEAR**  
22 **OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND ASSUMPTION AND**  
23 **ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

24 On May 7, 2003, a hearing ("Sale Hearing") was held on the motion ("Motion") of DNA  
25 Sciences, Inc., a Delaware corporation, the debtor and debtor-in-possession in the above-  
26 captioned case ("DNAS" or the "Debtor"), for an order (the "Approval Order") under 11 U.S.C.  
27 §§ 363 and 365, and Fed. R. Bankr. P. 2002 and 6004, authorizing the Debtor to sell, subject to  
28 the receipt of competing offers submitted pursuant to the Sale Procedures (as defined below),  
substantially all of the assets of the Debtor (collectively, the "Assets"), free and clear of all liens,  
claims, encumbrances and interests, exclusive of any and all debts, liabilities, obligations,

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1 commitments or responsibilities associated therewith, and to assume and assign certain unexpired  
2 leases and executory contracts in connection therewith (the "Assigned Contracts and Leases"), to  
3 (a) Genaissance Pharmaceuticals, Inc. ("GPI"), pursuant to the terms and conditions of that  
4 certain Asset Purchase Agreement by and between the Debtor and GPI dated as of March 28,  
5 2003, substantially in the form of Exhibit A to the Declaration of Steven B. Lehrer In Support of  
6 Chapter 11 Petition And First Day Motions filed herein on April 1, 2003, as amended by that  
7 Amendment No. 1 to Asset Purchase Agreement ("First Amendment") attached hereto as Exhibit  
8 A (such Asset Purchase Agreement, as amended by the First Amendment and as otherwise  
9 amended by this Approval Order, being hereinafter referred to as the "Purchase Agreement") or  
10 (b) another qualified bidder if such qualified bidder were determined to have made the highest  
11 and/or best qualified bid for the Assets in accordance with the Sale Procedures (defined below),  
12 pursuant to an Asset Purchase Agreement entered into by the Debtor and such other qualified  
13 bidder.

14 By prior order dated April 11, 2003 (the "Procedures Order"), this Court scheduled the  
15 Sale Hearing, prescribed the form and manner of notice thereof, approved certain sale procedures,  
16 including the terms and conditions of sale and bidding for the Assets (the "Sale Procedures"), and  
17 approved a BreakUp Fee on terms and conditions set forth in the Procedures Order.

18 Capitalized terms used and not otherwise defined herein shall have the respective  
19 meanings assigned to them in the Purchase Agreement.

20 Due notice of the proposed sale, the Procedures Order, and the Sale Hearing has been  
21 given to all parties entitled thereto under the Procedures Order, as evidenced by the Declaration  
22 of J. Michael Kelly and the certificates of service and publication previously filed with this Court  
23 (the "Certificates").

24 The Sale Hearing was held at the above-noted time and place to consider the proposed  
25 sale of the Assets, at which time all parties in interest were afforded an opportunity to be heard,  
26 and evidence was received in support of approval of the sale of the Assets. Upon the conclusion  
27 of the evidence and the arguments of counsel, and the Court's resolution of outstanding issues  
28 and objections, the Court presided over an Auction of the Assets. At the conclusion of such

1 Auction, the Court determined that GPI (hereinafter referred to as the "Purchaser"), was a  
2 qualified bidder and submitted the highest and best qualified bid for the Assets in accordance with  
3 the Sale Procedures, in the amount of \$1,350,000, all cash (no stock), in addition to the other  
4 Consideration (excluding the Shares) provided for under the terms of the Purchase Agreement  
5 (collectively the "Amended Consideration").

6 **THEREFORE**, based upon the Court's review of the Motion, the Notice of the Motion,  
7 the Declarations of Steven B. Lehrer and J. Michael Kelly, the Certificates, the Purchase  
8 Agreement, and upon all of the evidence proffered or adduced at the Sale Hearing, memoranda  
9 and objections, if any, filed in connection with the Sale Hearing, and arguments of counsel made  
10 at the Sale Hearing; and upon the entire record of the Sale Hearing and this case; and after due  
11 deliberation thereon; and good cause appearing therefor:

12 **THE COURT FINDS THAT:**

13 A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C.  
14 §§ 157 and 1334.

15 B. Venue of this case in this district is proper pursuant to 28 U.S.C. § 1409(a).

16 C. Determination of the Motion is a core proceeding under 28 U.S.C. §§ 157(b)  
17 (2)(A) and (N). The statutory predicates for the relief requested herein are Sections 363 and 365  
18 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy  
19 Code"), and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002 and 6004.

20 D. The Debtor has followed the procedures for giving notice of the Motion and the  
21 Sale Hearing on the sale of the Assets as set forth in the Procedures Order.

22 E. Proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing and  
23 the proposed sale of the Assets has been provided in accordance with Section 102(1) of the  
24 Bankruptcy Code and Bankruptcy Rules 2002 and 6004, and no other or further notice of the  
25 Motion, the Sale Hearing or the entry of this Approval Order is required. This Approval Order  
26 shall apply to all entities that have received the foregoing notice in this case.

27 F. A reasonable opportunity to object or be heard regarding the relief requested in the  
28 Motion has been afforded to creditors and interested persons.

GABLE COMMERCIAL  
ATTORNEYS AT LAW  
2000 EIGHTH ST. N.W.

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1 G. It is uncontroverted that (a) the Debtor has full corporate power and authority to  
2 execute the Purchase Agreement and all other documents contemplated thereby, (b) the sale of the  
3 Assets by the Debtor has been duly and validly authorized by all necessary corporate action of the  
4 Debtor, (c) the Debtor has all corporate power and authority necessary to consummate the  
5 transactions contemplated by the Purchase Agreement, and (d) no consents or approvals, other  
6 than those expressly provided for in the Purchase Agreement, are required for the Debtor to  
7 consummate such transactions.

8 H. The sale of the Assets reflects the exercise of the Debtor's sound business  
9 judgment and is further justified by the compelling circumstances described in the Motion.

10 I. Approval of the Purchase Agreement and consummation of the sale of the Assets  
11 at this time are in the best interests of the Debtor, its creditors and the Debtor's estate. The Court  
12 finds that for the following reasons, among others, the Debtor has articulated good and sufficient  
13 business justification for the sale of the Assets pursuant to Section 363(b) of the Bankruptcy Code  
14 outside of a plan of reorganization:

15 (1) in the absence of a prompt sale of the Assets, the value of the Assets will  
16 steadily decline because the Debtor lacks sufficient revenue and/or cash to continue its business  
17 operations;

18 (2) a sale pursuant to Section 363(b) is likely to produce a greater return to  
19 creditors in the Debtor's case than if the Assets were sold in connection with a liquidating plan of  
20 reorganization, because the unavoidable delay and expense required to confirm such a plan would  
21 deprive the Debtor's estate of the opportunity to realize the maximum value of the Assets  
22 available through an immediate sale and would force the Debtor to liquidate its assets in a  
23 piecemeal fashion;

24 (3) claims against the Debtor's estate will be minimized as a result of the  
25 prompt consummation of a sale of the Assets; and

26 (4) unless a sale to the Purchaser is concluded expeditiously as provided for in  
27 the Motion and under the Purchase Agreement, the Debtor, its estate and its creditors may realize  
28 substantially less value for the Assets.

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1 J. The terms and conditions of the Purchase Agreement (as amended by the First  
2 Amendment and as otherwise amended herein) are fair and reasonable. The Purchase Agreement  
3 represents the highest and best offer for the Assets, and the Amended Consideration is fair and  
4 reasonable and constitutes reasonably equivalent and fair market value under the Bankruptcy  
5 Code and applicable nonbankruptcy law.

6 K. The Purchaser has demonstrated the ability to provide adequate assurance of future  
7 performance as to the Assigned Contracts and Leases, and the Debtor and Purchaser have  
8 provided adequate assurance that any outstanding defaults under the Assigned Contracts and  
9 Leases, if any, will be cured.

10 L. The provisions of Section 365 of the Bankruptcy Code, including, without  
11 limitation, those relating to adequate assurance of future performance, have been complied with  
12 as to the Assigned Contracts and Leases, and the provisions of Sections 363(b) and (f) of the  
13 Bankruptcy Code have been complied with as to the Assets. The Assigned Contracts and Leases  
14 are lawfully assignable to Purchaser, either because consents have been obtained or otherwise  
15 pursuant to Section 365 of the Bankruptcy Code, notwithstanding 11 U.S.C. §365(c).

16 M. It is uncontroverted that: 1) The Purchase Agreement was negotiated, proposed  
17 and entered into by the parties without collusion, in good faith, and on an arms' length basis. The  
18 Purchaser is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is  
19 entitled to the protections afforded thereby. This finding is based on the evidence currently  
20 before the Court and known to the Court at this time. 2) Further, no evidence was presented or  
21 came before the Court indicating that either the Debtor or the Purchaser has engaged in any  
22 conduct that would cause or permit the Purchase Agreement to be avoided under Section 363(n)  
23 of the Bankruptcy Code.

24 N. In the absence of a stay pending appeal, the Purchaser will be acting in good faith  
25 within the meaning of Section 363(m) of the Bankruptcy Code in closing the transactions  
26 contemplated by the Purchase Agreement at any time after the entry of this Approval Order.

27 O. The transfer of the Assets pursuant to the Purchase Agreement (a) is or will be a  
28 legal, valid and effective transfer of property of the Debtor's estate to the Purchaser, and (b) vests

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ATTORNEYS AT LAW  
THE ROCKEFELLER CENTER  
100 WALL STREET  
NEW YORK, NY 10038

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ORDER AUTH. SALE OF ASSETS AND  
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1 or will vest in the Purchaser all right, title and interest of the Debtor in and to the Assets free and  
2 clear of all liens, claims, interests and encumbrances under Section 363(f) of the Bankruptcy  
3 Code.

4 P. Other than as expressly provided in the Purchase Agreement with respect to the  
5 Assumed Liabilities, and subject to any applicable non-bankruptcy law, the transfer of the Assets  
6 does not and will not subject the Purchaser to any debts, liabilities, obligations, commitments,  
7 responsibilities or claims of any kind or nature whatsoever, whether known or unknown,  
8 contingent or otherwise, existing as of the date hereof or hereafter arising, of or against the  
9 Debtor or any affiliate of the Debtor, by reason of such transfer under the laws of the United  
10 States, any state, territory or possession thereof or the District of Columbia applicable to such  
11 transactions.

12 Q. The Debtor may sell the Assets free and clear of all Liens (as defined below) and  
13 Claims (as defined below) because there are no security interests of record or otherwise asserted  
14 against the Debtor or the Assets. Alternatively, the Debtor may sell the Assets free and clear of  
15 all Liens and Claims because the holders of such Liens and Claims have consented to the sale  
16 either because they explicitly consented to the sale, or they did not object to the sale in  
17 accordance with 11 U.S.C. § 363(f)(2).

18 R. All of the provisions of this Approval Order and the Purchase Agreement are  
19 nonseverable and mutually dependent.

20 **NOW THEREFORE, IT IS ORDERED:**

21 1. The Motion be, and it hereby is, granted.  
22 2. All objections, if any, to the Motion or the relief requested therein that have not  
23 been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled  
24 on the merits.

25 3. The Purchase Agreement is hereby amended to reflect the Amended  
26 Consideration. The terms and conditions and transactions contemplated by the Purchase  
27 Agreement (as amended by the First Amendment and as otherwise amended by this Approval  
28 Order) are hereby approved in all respects, and the sale of the Assets pursuant to the Purchase

COOLEY GODDARD LLP  
ATTORNEYS AT LAW  
NEW YORK, NY

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1 Agreement is hereby authorized and directed under Section 363(b) of the Bankruptcy Code.

2 4. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtor, its officers,  
3 directors, employees and agents, are hereby authorized fully to perform, consummate and  
4 implement the Purchase Agreement, together with all additional instruments and documents that  
5 may be reasonably necessary or desirable to implement and carry out the terms of the Purchase  
6 Agreement, and to take all further actions as may reasonably be requested by the Purchaser for  
7 the purpose of assigning and transferring the Assets to the Purchaser, or as may be necessary or  
8 appropriate to the performance of the obligations of the Debtor contemplated by the Purchase  
9 Agreement.

10 5. Pursuant to Section 365 of the Bankruptcy Code, the Debtor is authorized to  
11 assume and assign the Assigned Contracts and Leases to the Purchaser on the Closing Date.

12 6. In connection with the assignment to Purchaser under the Purchase Agreement of  
13 the Sublicense Agreement between the Debtor and Prometheus Laboratories, Inc., dated as of  
14 August 16, 2001, the Debtor shall transfer to Purchaser at the Closing a bank account containing  
15 \$43,844 which constitutes the Debtor's entire obligation with regard to the Collaboration Account  
16 as defined in the Sublicense Agreement. This transfer shall not be considered the payment of a  
17 Cure Cost.

18 7. In connection with the assumption and assignment of the Assigned Contracts and  
19 Leases, except as specifically provided in the Purchase Agreement, the Debtor and the Purchaser  
20 shall cure any outstanding defaults that must be cured in accordance with the Purchase  
21 Agreement. All payments and other actions required to cure any outstanding defaults with  
22 respect to the Assigned Contracts and Leases other than the defaults that exist with respect to the  
23 Debtor's license agreement with the University of Utah Research Foundation ("UofU Research")  
24 are specified on Exhibit A to that Notice of (1) Proposed Assumption, Assignment Of Executory  
25 Contracts And Unexpired Leases In Connection With Proposed Sale (2) Proposed Cure Amounts  
26 For Assumed And Assigned Agreements; And (3) Deadline For Objection To Same filed herein  
27 on April 14, 2003. To cure all outstanding defaults with respect to the Debtor's license  
28 agreement with UofU Research, on or before the Closing Date: (1) the Debtor shall provide UofU

DAVID COOWARD LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO, CA

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1 Research with a written accounting and report of the Debtor's sublicensing and sales activities  
2 under the agreement and (2) either the Debtor or the Purchaser shall pay UofU Research  
3 \$44,221.80. Neither the Debtor nor the Purchaser shall be required to take any other action or to  
4 make any other payment with respect to the cure of outstanding defaults under the Assigned  
5 Contracts and Leases.

6 8. The Assigned Contracts and Leases shall, upon assignment to the Purchaser, be  
7 deemed to be valid and binding and in full force and effect and enforceable in accordance with  
8 their terms notwithstanding any provision in any of the Assigned Contracts and Leases  
9 (including, without limitation, those of the type described in Sections 365(b)(2) and (f) of the  
10 Bankruptcy Code) or other restrictions that prohibit, restrict or condition such assignment or  
11 transfer. Pursuant to Section 365(k) of the Bankruptcy Code, the Debtor and the Debtor's estate  
12 are each relieved from any further liability with respect to the Assigned Contracts and Leases  
13 after such assignment.

14 9. The assumption and assignment of the Assigned Contracts and Leases and the sale,  
15 conveyance and assignment of the Assets pursuant to this Approval Order and the Purchase  
16 Agreement shall be binding upon the Debtor, the Purchaser, all creditors (including, without  
17 limitation, current and former employees of the Debtor) and stockholders of the Debtor, all  
18 persons having or asserting a Claim (as defined below) against, a Lien (as defined below) on, or  
19 any interest in, the Debtor or any of the Assets, all parties to the Assigned Contracts and Leases,  
20 and all parties to any actions or proceedings that directly or indirectly contest the power or  
21 authority of the Debtor to assume and assign the Assigned Contracts and Leases or to sell, assign  
22 and convey the Assets pursuant to the Purchase Agreement and this Approval Order, or that seek  
23 to enjoin any such assumption, sale, assignment or conveyance.

24 10. Pursuant to Section 363(f) of the Bankruptcy Code, the Assets shall be transferred  
25 to the Purchaser and, upon the closing of the transactions contemplated by the Purchase  
26 Agreement, shall be free and clear of all mortgages, security interests, conditional sale or other  
27 title retention agreements, pledges, liens, judgments, demands, encumbrances, restrictions or  
28 charges of any kind or nature, if any, including, without limitation, any restriction on the use,

COLLETT COPWARD LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

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1 voting, transfer, receipt of income or other exercise of any attributes of ownership (the foregoing  
2 collectively referred to herein as "Liens") and all debts arising in any way in connection with any  
3 acts of the Debtor, claims (as such term is defined in the Bankruptcy Code), obligations,  
4 demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters  
5 of any kind and nature, whether arising prior to or subsequent to the commencement of this case,  
6 and whether imposed by agreement, understanding, law, equity or otherwise (the foregoing  
7 collectively referred to herein as "Claims"), with all such Liens and Claims to attach to the  
8 Amended Consideration in the order of their priority, with the same validity, force and effect  
9 which they now have as against the Assets.

10 11. Except as expressly permitted by the Purchase Agreement, all persons and entities  
11 holding Liens, Claims or interests of any kind or nature with respect to the Assets hereby are  
12 barred from asserting any such Liens, Claims or interests against the Purchaser, its successors or  
13 assigns, or the Assets.

14 12. Except as expressly provided in the Purchase Agreement with respect to the  
15 Assumed Liabilities, and subject to applicable non-bankruptcy law, the Purchaser is not assuming  
16 nor shall it in any way whatsoever be liable or responsible, as a successor or otherwise, for any  
17 liabilities, debts or obligations of the Debtor or any liabilities, debts or obligations in any way  
18 whatsoever relating to or arising from the Assets or the Debtor's ownership of the Assets prior to  
19 consummation of the transactions contemplated by the Purchase Agreement, or any liabilities  
20 calculable by reference to the Debtor or its assets or operations, or relating to continuing  
21 conditions existing on or prior to consummation of the transactions contemplated by the Purchase  
22 Agreement, which liabilities, debts and obligations are hereby extinguished insofar as they may  
23 give rise to successor liability, without regard to whether the claimant asserting any such  
24 liabilities, debts or obligations has delivered to the Purchaser a release thereof.

25 13. On and after the Closing Date, each of the Debtor's creditors is authorized to  
26 execute such documents and take all other actions as may be necessary to release its Liens, if any,  
27 on or Claims, if any, against the Assets, as such Liens or Claims may have been recorded or may  
28 otherwise exist.

WALTON COVINGTON  
ATTORNEYS AT LAW  
NEW ORLEANS, LOUISIANA

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1           14. As to the Purchase Agreement and the Assets transferred thereunder, this Approval  
2 Order (a) is and shall be effective as a determination that, on and as of the Closing Date, all Liens  
3 existing as to the Assets prior to the Closing Date have been unconditionally released, discharged  
4 and terminated and that the conveyance described in paragraph 10 hereof has been effected, and  
5 (b) is and shall be binding upon and shall govern the acts of all persons and entities, including,  
6 without limitation, all persons and entities who may be required by operation of law, the duties of  
7 their office, or contract, to accept, file, register or otherwise record or release any documents or  
8 instruments, or who may be required to report or insure any title or state of title in or to the  
9 Assets.

10           15. As of the Closing Date, all agreements of any kind whatsoever and all orders of  
11 this Court entered prior to the date hereof shall be deemed amended or modified to the extent  
12 required to permit the consummation of the transactions contemplated by the Purchase  
13 Agreement, including, without limitation, the transfer of the Assets to the Purchaser and the  
14 assignment of the Assigned Contracts and Leases to the Purchaser.

15           16. This Court retains jurisdiction (i) to enforce and implement the terms and  
16 provisions of the Purchase Agreement, all amendments thereto, any waivers and consents  
17 thereunder, and of each of the agreements executed in connection therewith, (ii) to compel  
18 delivery of the Assets to the Purchaser, (iii) to compel delivery of the Amended Consideration to  
19 the Debtor, (iv) to resolve any disputes arising under or related to the Purchase Agreement, except  
20 as otherwise provided therein, and (v) to interpret, implement and enforce the provisions of this  
21 Approval Order.

22           17. Nothing contained in any plan of reorganization (or liquidation) confirmed in this  
23 case or any related case or any order of confirmation confirming any such plan of reorganization  
24 (or liquidation) shall conflict with or derogate from the provisions of the Purchase Agreement or  
25 the terms of this Approval Order.

26           18. The evidence before the Court indicates that the Purchaser is a purchaser in good  
27 faith of the Assets and is entitled to all of the protections afforded by Section 363(m) of the  
28 Bankruptcy Code.

CASDY COWARD LLP  
ATTORNEY AT LAW  
San Francisco, CA

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ORDER AUTH. SALE OF ASSETS AND  
ASSUMPTION AND ASSIGNMENT

1           19. In the absence of a stay pending appeal, if the Purchaser elects or is required to  
2 consummate the purchase of the Assets under the Purchase Agreement at any time after entry of  
3 this Approval Order, then, with respect to the Purchase Agreement approved and authorized  
4 herein and in the Procedures Order, the Purchaser shall be entitled to the protections of Section  
5 363(m) of the Bankruptcy Code if this Approval Order or any authorization contained herein is  
6 reversed or modified on appeal.

7           20. The terms and provisions of the Purchase Agreement, together with the terms and  
8 provisions of this Approval Order, shall be binding in all respects upon, and shall inure to the  
9 benefit of, the Debtor, the Debtor's estate and creditors, the Purchaser, and their respective  
10 affiliates, successors and assigns, and any affected third parties, including, without limitation, all  
11 persons asserting a claim against or interest in the Debtor's estate or any portion of the Assets to  
12 be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent  
13 appointment of any trustee for the Debtor under any chapter of the Bankruptcy Code, as to which  
14 trustee such terms and provisions likewise shall be binding in all respects.

15           21. The failure specifically to reference or include any particular provisions of the  
16 Purchase Agreement in this Approval Order shall not diminish or impair the effect of such  
17 provision, it being the intent of the Court that the Purchase Agreement be authorized and  
18 approved in its entirety.

19           22. The Purchase Agreement and any related agreements, documents or other  
20 instruments may be modified, amended or supplemented by the parties thereto in accordance with  
21 the terms thereof without further order of the Court, provided that any such modification,  
22 amendment or supplement is not material.

23           23. Notwithstanding Bankruptcy Rule 7062, this Approval Order shall be effective and  
24 enforceable immediately upon entry. The transfer of the Assets to the Purchaser and the  
25 assumption and assignment of the Assigned Contracts and Leases to the Purchaser shall not be  
26 stayed pursuant to Bankruptcy Rules 6004(g) and 6006(d).

27           24. Pursuant to statements made on the record at the Sale Hearing, the definition of  
28 "Final Approval Order" provided in Section 1.1 of the Purchase Agreement has been modified to



1 mean "the Approval Order, the operation or effect of which has not been stayed, reversed or  
2 amended (including any revisions, modifications or amendment thereof)."

3 25. This Approval Order is the Approval Order contemplated by the Purchase  
4 Agreement.

5 26. Certain executory contracts and certain samples in the possession of Debtor as  
6 described in the Limited Objection filed by the University of Utah are not being assumed and  
7 assigned or transferred pursuant to this Approval Order. These executory contracts are that  
8 certain Service Agreement & License No. \_\_\_ by and between DNA Sciences and The University  
9 of Utah dated on or about November 9, 2001, defined in the Limited Objection as the Service  
10 Agreement, and that certain Master Agreement #2101057 between DNA Sciences and The  
11 University of Utah dated on or about December 29, 2000, defined in the Limited Objection as the  
12 Master Agreement. The samples are those blood and/or DNA samples in the possession of  
13 Debtor from the University of Utah research collaboration and defined in the Limited Objection  
14 as the Materials and the Tissue Samples.

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16  
17 DATED: \_\_\_\_\_

**RANDALL J. NEWSOME**

18  
19 HON. RANDALL J. NEWSOME  
20 UNITED STATES BANKRUPTCY JUDGE

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COLEY COWARD LLP  
ATTORNEYS AT LAW  
San Francisco, CA

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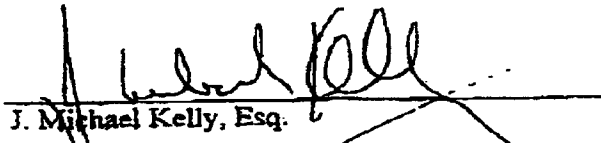
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ORDER AUTH. SALE OF ASSETS AND  
ASSUMPTION AND ASSIGNMENT

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Submitted by:

COOLEY GODWARD LLP



J. Michael Kelly, Esq.

Attorneys for DNA Sciences, Inc.  
Debtor and Debtor in Possession

EXHIBIT A

Amendment No. 1 To Purchase Agreement

COOLEY GODWARD LLP  
ATTORNEYS AT LAW  
300 FRANKLIN ST.

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13.

ORDER AUTH. SALE OF ASSETS AND  
ASSUMPTION AND ASSIGNMENT

## BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT ("Bill of Sale, Assignment and Assumption Agreement") is being entered into as of May 15, 2003, by and between GENAISSANCE PHARMACEUTICALS, INC., a Delaware corporation ("Purchaser"), and DNA SCIENCES, INC., a Delaware corporation ("Seller"). Seller and Purchaser are referred to in this Bill of Sale, Assignment and Assumption Agreement individually as a "Party" and collectively as the "Parties." Capitalized terms used but not defined herein shall have the meanings assigned to them in the Asset Purchase Agreement (as defined below).

### RECITALS

The Parties have entered into an Asset Purchase Agreement dated as of March 28, 2003 (the "Asset Purchase Agreement") which provides for the purchase by Purchaser of the Acquired Assets from Seller, for the assumption by Purchaser of the Assumed Liabilities and for certain related transactions.

This Bill of Sale, Assignment and Assumption Agreement is being entered into pursuant to Section 4.2(i) and Section 4.3(i) of the Asset Purchase Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Bill of Sale, Assignment and Assumption Agreement, intending to be legally bound, agree as follows:

#### 1. SALE AND ASSIGNMENT.

(a) Subject to the terms of the Asset Purchase Agreement, Seller does hereby grant, sell, transfer, convey, assign and deliver to Purchaser all of Seller's right, title and interest as of the Closing Date in and to the Acquired Assets.

(b) The Seller does hereby irrevocably constitute and appoint the Purchaser, its successors and assigns, its true and lawful attorney, with full power of substitution, in its name or otherwise, and on behalf of the Seller, or for its own use, to claim, demand, collect and receive at any time and from time to time any and all of the Acquired Assets, and to prosecute the same at law or in equity and, upon discharge thereof, to complete, execute and deliver any and all necessary instruments of satisfaction and release.

#### 2. ASSUMPTION OF LIABILITIES.

(a) Subject to the terms of the Asset Purchase Agreement, Purchaser hereby assumes, and agrees to cause to be timely discharged and performed, duly paid and duly satisfied in accordance with their respective terms, each of the Assumed Liabilities.

(b) The Purchaser does not hereby assume or agree to perform, pay or discharge, and the Seller shall remain unconditionally liable for, any and all liabilities or obligations (whether known, unknown, accrued, absolute, matured, unmatured, contingent or otherwise, and whether arising before or after the Closing) of the Seller that are not Assumed Liabilities.

(c) Nothing herein shall be deemed to deprive the Purchaser of any defenses, set-offs or counterclaims which the Seller may have had or which the Purchaser shall have with respect to any of the Assumed Liabilities (the "Defenses and Claims"). The Seller hereby transfers, conveys and assigns to the Purchaser all Defenses and Claims and agrees to use reasonable commercial efforts to cooperate with the Purchaser, to the extent reasonably requested by the Purchaser and at the Purchaser's sole expense, to maintain, secure, perfect and enforce such Defenses and Claims, including the signing of any documents, the giving of any testimony or the taking of any such other action as is reasonably requested by the Purchaser in connection with such Defenses and Claims.

**3. NO ADDITIONAL RIGHTS, OBLIGATIONS OR LIMITATION OF REMEDIES.** Except with respect to Section 4 and Section 5 hereof, (i) nothing contained in this Bill of Sale, Assignment and Assumption Agreement is intended to provide any rights to Purchaser or Seller beyond those rights expressly provided to such Party in the Asset Purchase Agreement; and (ii) nothing contained in this Bill of Sale, Assignment and Assumption Agreement is intended to impose any obligations or liabilities on Purchaser or Seller beyond those obligations and liabilities imposed on such Party in the Asset Purchase Agreement. Nothing contained in this Bill of Sale, Assignment and Assumption Agreement is intended to limit or restrict in any manner any of the rights or remedies available to Purchaser or Seller under the Asset Purchase Agreement.

**4. FURTHER ASSURANCES.** It is the intent of the Parties that all of the Seller's right, title and interest in and to each of the Acquired Assets be granted, sold, transferred, assigned and conveyed to Purchaser as more fully set forth in the Asset Purchase Agreement. Each Party will, to the extent reasonably requested by the other Party and at such other Party's sole expense, execute and/or cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing the intent of this Bill of Sale, Assignment and Assumption Agreement.

**5. MISCELLANEOUS PROVISIONS.**

(a) **Governing Law.** THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH U.S. FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN, WITHOUT REFERENCE TO CHOICE OF LAW PRINCIPLES, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

(b) **Jurisdiction; Waiver of Jury Trial.** THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS BILL OF

SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT; PROVIDED, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF CALIFORNIA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF CALIFORNIA WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY CONSENTS AND SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) **Notices.** All notices, requests, demands, waivers and other communications required or permitted to be given under this Bill of Sale, Assignment and Assumption Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed, certified or registered mail with postage prepaid, or sent by telex, telegram or telecopy and a confirmation of transmission is obtained, as follows:

(i) if to the Seller, to:

DNA Sciences, Inc.  
6540 Kaiser Dr.  
Fremont, CA 94555  
Facsimile: (510) 494-4014  
Attention: Steve Lehrer, President

with a copy to:

Cooley Godward LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306  
Facsimile: (650) 849-7400  
Attention: Laura A. Berezin

(ii) if to the Purchaser, to:

Genaissance Pharmaceuticals, Inc.  
Five Science Park  
New Haven, CT 06511  
Facsimile: (203) 786-3656  
Attention: Kevin L. Rakin, President and Chief Executive Officer

with a copy to:

Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
Facsimile: (617) 526-5000  
Attention: Steven D. Singer

or to such other Person or address as any Party shall specify by notice in writing to each of the other Parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of delivery unless if mailed, in which case on the third Business Day after the mailing thereof except for a notice of a change of address, which shall be effective only upon receipt thereof.

**(d) Parties in Interest.** This Bill of Sale, Assignment and Assumption Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

**(e) Severability.** The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each Party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by Law, and each Party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

**(f) Amendments; Waiver.** This Bill of Sale, Assignment and Assumption Agreement may not be changed orally, but only by an agreement in writing signed by all Parties. Any provision of this Bill of Sale, Assignment and Assumption Agreement can be waived, amended, supplemented or modified by written agreement of the Parties. The failure of any Party to enforce at any time any of the provisions of this Bill of Sale, Assignment and Assumption Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Bill of Sale, Assignment and Assumption Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Bill of Sale, Assignment and Assumption Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance.

**(g) Counterparts.** This Bill of Sale, Assignment and Assumption Agreement may be executed in two (2) or more counterparts, in original form or by facsimile, each of which shall be deemed an original, but all of which together will constitute one and the same document.

**(h) No Strict Construction.** The Parties hereto have participated jointly in the negotiation and drafting of this Bill of Sale, Assignment and Assumption Agreement. In the event any ambiguity or question of intent or interpretation arises, this Bill of Sale, Assignment and Assumption Agreement shall be construed as if drafted jointly by all Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Bill of Sale, Assignment and Assumption Agreement.

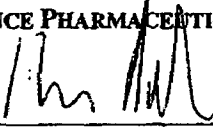
(i) **Pronouns.** As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof whenever the context and facts require such construction.

(j) **Captions; Headings.** The Section captions and the headings set forth herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Bill of Sale, Assignment and Assumption Agreement.

(k) **No Third Party Beneficiaries.** Nothing express or implied in this Bill of Sale, Assignment and Assumption Agreement is intended to confer, nor shall anything herein confer, upon any Person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

IN WITNESS WHEREOF, the Parties have caused this Bill of Sale, Assignment and Assumption Agreement to be executed as of the date first written above.

GENAISSANCE PHARMACEUTICALS, INC.

By:   
Kevin L. Rakin  
President and Chief Executive Officer

DNA SCIENCES, INC.

By: \_\_\_\_\_  
Steve Lehrer  
President and Chief Operating Officer

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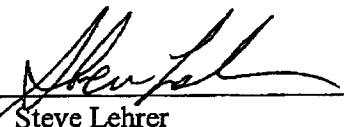


IN WITNESS WHEREOF, the Parties have caused this Bill of Sale, Assignment and Assumption Agreement to be executed as of the date first written above.

**GENAISSANCE PHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Kevin L. Rakin  
President and Chief Executive Officer

**DNA SCIENCES, INC.**

By:  \_\_\_\_\_  
Steve Lehrer  
President and Chief Operating Officer

**ASSIGNMENT OF TRADEMARKS**

WHEREAS, DNA Sciences, Inc., a Delaware corporation (the "Assignor"), having its principal offices at 6540 Kaiser Dr., Fremont, California, has used and is using the trademarks identified on the attached Schedule A and is the owner of the trademark applications and registrations listed on the attached Schedule A, including the goodwill of the business connected with the use of, and symbolized by, such marks; and

WHEREAS, Genaissance Pharmaceuticals, Inc., a Delaware corporation (the "Assignee"), having its principal offices at Five Science Park, New Haven, Connecticut, is desirous of acquiring such marks;

NOW, THEREFORE, subject to and pursuant to the Asset Purchase Agreement dated as of March 28, 2003 between the parties, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor hereby assigns and transfers to the Assignee all right, title and interest in the United States and throughout the world, in and to the trademark applications and registrations listed on the attached Schedule A and the trademarks which are the subject thereof, including the goodwill of the business connected with the use of, and symbolized by, such marks.

It is the intent of the parties that all of the Assignor's right, title and interest in and to each of the trademark applications and registrations listed on the attached Schedule A be assigned and transferred to the Assignee. Each party will, to the extent reasonably requested by the other party and at such other party's sole expense, execute and/or cause to be delivered to each other party such instruments and other documents, and shall take such other actions, as such other party may reasonably request for the purpose of carrying out or evidencing such assignment and transfer.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Trademarks to be effective as of May 15, 2003.

DNA SCIENCES, INC.

Date: May 15, 2003

By: 

Print Name: Steven Lehrer

Title: President

GENAISSANCE PHARMACEUTICALS, INC.

Date: 5/15/03

By: 

Print Name: Kevin L. Rakin

Title: President and Chief Executive Officer

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## SCHEDULE A

### TRADEMARK APPLICATIONS AND REGISTRATIONS

#### United States:

1. DNA and design; Application No. 76/088,938, filed July 13, 2000.
2. DNA.COM and design; Application No. 76/089,692, filed July 13, 2000.
3. DNA SCIENCES; Application No. 76/090,965, filed July 17, 2000.
4. DNA SCIENCES and design; Application No. 76/089,917, filed July 13, 2000.
5. THE DNA SCIENCES GENE TRUST PROJECT; Application No. 76/089,905, filed July 13, 2000.
6. G THE GENE TRUST and design; Application No. 76/089,903, filed July 13, 2000.
7. WEB GENOME PROJECT; Application No. 76/087,520, filed July 11, 2000.
8. PGx; Registration No. 2,591,885, registered July 9, 2000.

#### Canada

9. DNA SCIENCES and design; Application No. 1,088,519, filed January 10, 2001.
10. THE GENE TRUST and design; Application No. 1,088,520, filed January 10, 2001.
11. PGx; Registration No. TMA549,932, registered August 20, 2001.

#### European Union

12. DNA SCIENCES and design; Registration No. 1899897, registered January 9, 2002.
13. G THE GENE TRUST and design; Registration No. 1899905, registered January 8, 2002.
14. THE DNA SCIENCES GENE TRUST; Registration No. 1899889, registered January 9, 2002.
15. PGx; Registration No. 97366, registered February 24, 2000.

#### Japan

16. DNA SCIENCES and design; Registration No. 4567207, registered May 10, 2002.
17. G THE GENE TRUST and design; Registration No. 4567208, registered May 10, 2002.
18. PGx; Registration No. 4345574, registered December 17, 1999.

**Mexico**

19. DNA SCIENCES and design; Registration No. 746,432, registered January 12, 2001.
20. THE GENE TRUST and design; Registration No. 708,632, registered July 30, 2001.

**United Kingdom**

21. DNA SCIENCES and design; Registration No. 2246413, registered March 8, 2002.
22. THE GENE TRUST and design; Registration No. 2246408, registered August 3, 2001.
23. THE DNA SCIENCES GENE TRUST PROJECT; Registration No. 2246411, registered October 19, 2001.

**Switzerland**

24. PGx; Registration No. 463013, registered October 30, 1998.

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