

Form PTO-1595 6/93

U.S. Department of Commerce, U.S. Patent and Trademark Office
RECORDATION FORM COVER SHEET
PATENTS ONLY

To the Honorable Commissioner of Patents and Trademarks, Please record the attached original documents or copy thereof.

1 Name of conveying party(ies).

IBEX Technologies Inc
IBEX Pharmaceuticals Inc
IBEX Technologies LLC
IBEX Technologies Corp ; and
Technologies IBEX R&D Inc.

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

Name BioMarin Enzymes Inc.
Street Address 371 Bel Marin Keys Blvd., Suite 210
City Novato State California Zip Code 94949
Country: USA

Additional name(s) of conveying party(ies) attached? yes no

Additional name(s) & address(es) attached? yes no

3. Nature of Conveyance

- Assignment Merger
- Security Agreement Change of Name
- Other _____

Execution Date(s): October 9, 2001

4. Application number(s) or patent number(s)

If this document is being filed together with a new application, the execution date of the application is

A. Patent Application No(s)

B. Patent No(s)

SEE ATTACHED LIST

Additional numbers attached? yes no

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

Name: **HOWREY SIMON ARNOLD & WHITE, LLP**

Internal Address:

Street Address: 301 Ravenswood Avenue
Box 34

City: Menlo Park State: CA Zip Code: 94025

6 Total number of applications and patents involved

11

7. Total fee (37 C.F.R. § 3.41) -- \$ 440.00

Enclosed

Authorized to be charged to Deposit Account

8. Deposit Account Number: 08-3038, referencing Attorney Docket No. 00800 0001.000000

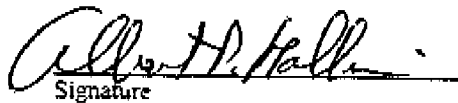
DO NOT USE THIS SPACE

9 Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Albert P. Hallum (25 227)

Name of Person Signing
Registration No.


Signature

10/30/01
Date

Total number of pages including cover sheet, attachments and document 91

OMB NO 0651-0011 (exp. 4/94)

Mail documents to be recorded with required cover sheet information to
Commissioner of Patents and Trademarks, Box Assignments
Washington, D.C. 20231

Title	Application/Patent No.
Chondroitin Lyase Enzymes	6,093,563
Chondroitin Lyase Enzymes	6,054,569
Attenuation of Wound Healing Processes	5,997,863
Attenuation of Fibroblast Proliferation	60/168,518
Matrix Stabilized Enzyme Crystals	60/269,316
Use of Heparinases to Decrease Inflammatory Responses	60/004,622
Nucleic Acid Sequences and Expression Systems for Heparinase II and Heparinase III Derived from Flavobacterium Heparinum	5,681,733
Method for Enzymatic Neutralization of Heparin	5,262,325
Heparinase Free of an Anticoagulant Component from Flavobacterium Heparinum	5,338,677
Nucleic Aid Sequences and Expression Systems for Heparinase II and Heparinase III derived from flavobacterium heparinum	5,919,693
Flavobacterium Heparinum Expression System	09/766,873

BIOMARIN PHARMACEUTICAL INC.

- and -

BIOMARIN ENZYMES INC.

- and -

IBEX TECHNOLOGIES INC.

- and -

IBEX PHARMACEUTICALS INC.

- and -

IBEX TECHNOLOGIES LLC

- and -

IBEX TECHNOLOGIES CORP.

- and -

TECHNOLOGIES IBEX R&D INC.

UNITED STATES ASSET PURCHASE AGREEMENT

CASSELS BROCK & BLACKWELL LLP

Barristers & Solicitors

Scotia Plaza

Suite 2100

40 King Street West

Toronto, Ontario

M5H 3C2

PATENT

REEL: 012177 FRAME: 0039

THIS UNITED STATES ASSET PURCHASE AGREEMENT made as of the 9th day of October, 2001.

AMONG:

BIOMARIN PHARMACEUTICAL INC.

a corporation incorporated pursuant to the laws of Delaware

("BioMarin")

OF THE FIRST PART

- and -

BIOMARIN ENZYMES INC.

a corporation incorporated pursuant to the laws of Delaware

("BioMarin US")

OF THE SECOND PART

- and -

IBEX TECHNOLOGIES INC.

a corporation incorporated pursuant to the laws of Canada

("IBEX")

OF THE THIRD PART

- and -

IBEX PHARMACEUTICALS INC.

a corporation incorporated pursuant to the laws of Canada

("IBEX Pharma")

OF THE FOURTH PART

- and -

IBEX TECHNOLOGIES LLC

a limited liability company organized under the laws of Delaware

("IBEX LLC")

- and -

OF THE FIFTH PART

IBEX TECHNOLOGIES CORP.

a corporation incorporated pursuant to the laws of Delaware

("IBEX Corp.")

OF THE SIXTH PART

- and -

TECHNOLOGIES IBEX R&D INC.

a corporation incorporated pursuant to the laws of the Province of Quebec

("IBEX R&D")

OF THE SEVENTH PART

WHEREAS IBEX, IBEX Pharma, IBEX Corp., IBEX LLC and IBEX R&D (collectively, the "**Vendors**") are in the business of the research and development of enzymes for diagnostic and therapeutic use in a variety of tissue repair and cardiovascular and genetic diseases and the Vendors wish to sell and BioMarin US wishes to purchase certain Worldwide (as hereinafter defined) assets pertaining to the operation of the therapeutic portion of such business Worldwide in connection with the Products (as hereinafter defined) and BioMarin US wishes to assume only certain liabilities in connection therewith, all on and subject to the terms and conditions hereinafter set forth and the parties hereto are therefore desirous of entering into this Agreement;

AND WHEREAS BioMarin joins in this Agreement to make certain representations and warranties as well as covenants, including without limitation, with respect to the BioMarin Worldwide Transaction Shares (as hereinafter defined);

AND WHEREAS contemporaneous herewith the parties (exclusive of BioMarin US) together with BioMarin NS (as hereinafter defined) are executing and delivering the Canadian Purchase Agreement (as hereinafter defined);

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants, agreements and premises herein contained and for other good and valuable consideration (the receipt and sufficiency whereof being hereby acknowledged by each party), the Parties do hereby covenant and agree as follows:

1. **DEFINITIONS AND SCHEDULES**

1.1 **Definitions.** In this Agreement:

"Acquisition Proposal" means any proposal (other than a proposal made with respect to the Worldwide Transaction) regarding; (i) any merger, consolidation, share exchange, business combination or other similar transaction or series of related transactions involving the members of the IBEX Group or any of their Affiliates which would or could defeat the purchase by BioMarin NS or BioMarin US, as the case may be, of all of the Canadian Assets (as defined in the Canadian Purchase Agreement) and/or the Worldwide Assets and/or all of the IBEX Pharma Canadian Business (as defined in the Canadian Purchase Agreement) and/or all of the Worldwide Business and/or the hiring of all of the Therapeutic Asset Employees (as defined in the Canadian Purchase Agreement); (ii) any sale, lease, license, exchange, transfer or other disposition of any of the Canadian Assets, the Worldwide Assets and/or any of the Therapeutic Asset Employees and/or any portion of the IBEX Pharma Canadian Business and/or the IBEX Group Worldwide Business; or (iii) any other substantially similar transaction or series of related transactions that would or could hinder the consummation of the Canadian Transaction, the Worldwide Transaction or otherwise defeat the purposes of this Agreement or the Canadian Purchase Agreement.

"Action" has the meaning ascribed thereto in section 10.1.

"Actual Knowledge" means such knowledge as the current officers of the members of the IBEX Group would have after diligent inquiry of the current officers and employees of the members of the IBEX Group of the matter in question.

"Affiliate" of a Person means any Person that directly or indirectly controls, is controlled by or is under control with the indicated Person.

"Agreement", "this Agreement", "hereto" and "herein" means this Agreement and all schedules attached hereto, as may be amended from time to time.

"Assumed Worldwide Liabilities" means collectively, the IBEX Pharma Worldwide Assumed Liabilities and the IBEX LLC Worldwide Assumed Liabilities.

"Best Knowledge" means such knowledge as the Party would have after diligent inquiry of the matter in question.

"BioMarin" means BioMarin Pharmaceutical Inc., a Delaware corporation.

"BioMarin Financial Statements" has the meaning ascribed thereto in section 6.1(k).

"BioMarin Group" means collectively, BioMarin and BioMarin US.

"BioMarin NS" means BioMarin Pharmaceutical Nova Scotia Company, a Nova Scotia unlimited liability company.

"BioMarin Share Current Market Price" means the daily volume weighted average price (based on a trading day from 9:30 a.m. to 4:00 p.m., Eastern Time) of the shares of common stock of BioMarin on the Nasdaq National Market for the 20 trading days ending on the trading day prior to the date of this Agreement (as reported by Bloomberg Financial LP using the AQR function).

"BioMarin US" means BioMarin Enzymes Inc., a Delaware corporation.

"BioMarin Worldwide Transaction Shares" means the number of shares of common stock of BioMarin equal to: (i) the Worldwide Purchase Price divided by: (ii) the product of (A) the BioMarin Share Current Market Price and (B) the average value in Canadian dollars of one US dollar calculated at the average rate of exchange between Canadian dollars and US dollars (as reported in International Financial Statistics, published by the International Monetary Fund) for the 20 trading days ending on the trading day prior to the date of this Agreement.

"BioMarin Year End" has the meaning ascribed thereto in section 6.1(k).

"Bulk Sales Carve-Out" means any non-compliance by members of the IBEX Group with Article 1767 ss of the Civil Code of the Province of Quebec in connection with: (i) that certain intercorporate transfer effected by agreement dated September 1, 1999, between IBEX and IBEX Pharma; and (ii) the Canadian Transaction.

"Business Day" means a day other than a Saturday or a Sunday or any other day which is a statutory holiday in the Province of Quebec or in the State of California.

"Canadian Purchase Agreement" means that certain agreement dated as of even date among BioMarin, BioMarin NS and the IBEX Group.

"Capital Reorganization" has the meaning ascribed thereto in section 14.5.

"Cash Payment" means an amount equal to the cash equivalent of 200,000 shares of common stock of BioMarin calculated on the same basis as the calculation of the BioMarin Worldwide Transaction Shares.

"Claims" has the meaning ascribed thereto in the definition of Environmental Claims.

"Closing" means the consummation of the Worldwide Transaction as herein contemplated.

"Closing Date" means October 31, 2001 or such earlier or later date which is five (5) Business Days following the satisfaction of all conditions to the Closing set forth in sections 11.1 and 12.1 or as may otherwise be agreed to in writing by the Parties and in no event shall be later than December 31, 2001.

"Closing Documents" means any document or undertaking delivered in relation to the Closing as provided in this Agreement.

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

"Confidential Information" has the meaning ascribed thereto in section 15.1.

"Contract" means any order, agreement, engagement, indenture, contract, bond, debenture, security agreement, lease, deed of trust, license, option, instrument or other legally binding commitment, whether written or oral.

"Control" means the ability to grant assignments, licenses or sub-licenses without violating the terms of any agreement or other arrangement with, or the rights of, any other Person.

"Employee Plan" means all pension, retirement, disability, medical, dental or other health insurance plans, life insurance or other death benefit plans, any stock option, bonus or other incentive plans, vacation benefit plans, severance plans or other employee benefit plans or arrangements to which IBEX is a party in connection with any Therapeutic Asset Employee or by which IBEX is bound in connection with any Therapeutic Asset Employee. **"Employee Plan"** does not include any government-sponsored employee benefit arrangements.

"Encumbrances" means any and all claims, liens, security interests, hypothecs, rights, prior claims, mortgages, pledges, pre-emptive rights, charges, options, equity interests, encumbrances, proxies, voting agreements, voting trusts, leases, tenancies, easements, reserves, conditional sale contracts, ownership or title retention agreements, or other interests of any nature or kind whatsoever, howsoever created.

"Environment" means surface waters, groundwaters, soil, subsurface strata and ambient air.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, stop orders, investigations, injunctions, restrictions, control orders, liens, notices of noncompliance or violation, investigations, proceedings, consent orders or consent agreements (collectively, the **"Claims"**), relating in any way to Environmental Laws or

Environmental Permits including without limitation; (i) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to applicable Environmental Laws; and (ii) any and all Claims by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Condition" means a condition relating to or arising or resulting from a failure to comply with any Environmental Laws or Environmental Permits or a Release of a Hazardous Material into the Environment.

"Environmental Laws" means any Law, now or hereafter in effect and as amended and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to the Environment, health, safety or Hazardous Materials.

"Environmental Permits" means all permits, approvals, identification numbers, licenses and other authorizations required under applicable Environmental Laws.

"ETA" means the *Excise Tax Act* (Canada).

"Exchange Act" means the United States Exchange Act of 1934, as amended.

"Excluded Liabilities" means all liabilities of the Vendors that are not Assumed Worldwide Liabilities and for greater certainty and without limitation, Assumed Worldwide Liabilities do not include liabilities that relate to the Excluded Assets.

"FDA" means the United States Food and Drug Administration and any successor agency thereto.

"Filter Technology" means the assets set forth on Schedule 2.1.

"Governmental Authority" means any Canadian federal, provincial, municipal or local or any United States federal, state or local or any other foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body, board, bureau or instrumentality in any jurisdiction in the world.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Hazardous Materials" means; (i) petroleum and petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain

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polychlorinated biphenyls and radon gas; (ii) any other chemicals, materials or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants" or words of similar import, under any applicable Environmental Law; and (iii) any other chemical, material or substance exposure to which is regulated by any Governmental Authority.

"**IBEX**" means IBEX Technologies Inc., a Canadian corporation.

"**IBEX Corp**" means IBEX Technologies Corp., a Delaware corporation.

"**IBEX Financial Statements**" has the meaning ascribed thereto in section 5.1(p).

"**IBEX Group**" means collectively, IBEX, IBEX Pharma, IBEX LLC, IBEX Corp. and IBEX R&D.

"**IBEX Group Worldwide Business**" means collectively, the IBEX Pharma Worldwide Business and the IBEX LLC Worldwide Business.

"**IBEX Group Worldwide Intellectual Property**" means all IBEX LLC Worldwide Intellectual Property and all IBEX Pharma Worldwide Intellectual Property.

"**IBEX LLC**" means IBEX Technologies LLC, a Delaware limited liability company.

"**IBEX LLC Products**" means: (i) Heparinase I in respect of its use in a biopharmaceutical human therapeutic business (i.e. Neutralase); (ii) Heparinase III (i.e. Extravase); and (iii) Flavobacterium Production Technology with respect to Heparinase I and Heparinase III.

"**IBEX LLC Worldwide Assumed Liabilities**" has the meaning ascribed thereto in section 2.4.

"**IBEX LLC Worldwide Assets**" means the assets of IBEX LLC and IBEX Corp. used in connection with or related to the IBEX LLC Worldwide Business, including, without limitation, the IBEX LLC Worldwide Intellectual Property, the IBEX LLC Worldwide Fixed Assets and the IBEX LLC Worldwide Inventory, but excluding the IBEX LLC Worldwide Excluded Assets.

"**IBEX LLC Worldwide Business**" means the therapeutic portion of the research, development, production, manufacture, use, sale, technology and marketing Worldwide of the IBEX LLC Products.

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"IBEX LLC Worldwide Excluded Assets" has the meaning ascribed thereto in section 2.5.

"IBEX LLC Worldwide Fixed Assets" means all of the machinery, equipment, moveable property, chattels and other assets located Worldwide and described in section 2.3(b).

"IBEX LLC Worldwide Intellectual Property" means all Intellectual Property owned or Controlled by IBEX LLC or IBEX Corp. relating to or being used in connection with the IBEX LLC Worldwide Business, including without limitation, those listed in Schedule 2.3(e), but excluding the IBEX LLC Worldwide Excluded Assets.

"IBEX LLC Worldwide Inventory" means all inventories of and pertaining to the IBEX LLC Worldwide Business, including without limitation, clinical supply materials, packaging materials, raw, semi-finished and finished products, work in progress, raw materials, all other materials and supplies on hand to be used or consumed in the production of items purchased for resale and inventories in transit from suppliers if paid for or owned by IBEX LLC or IBEX Corp. and all inventories of general stores and supplies (if any), likewise if paid for or owned by IBEX LLC or IBEX Corp., including, without limitation, those described in Schedule 2.3(c), but excluding the IBEX LLC Worldwide Excluded Assets.

"IBEX Pharma" means IBEX Pharmaceuticals Inc., a Canadian corporation.

"IBEX Pharma Products" means: (i) Heparinase II; (ii) Chondroitinase AC (IBT9401) and Chondroitinase B; (iii) Oralase Technology (including Phenylase); and (iv) Flavobacterium Production technology with respect to Heparinase II.

"IBEX Pharma Worldwide Assets" means the Worldwide assets of IBEX Pharma, IBEX R&D or IBEX used in connection with or related to the IBEX Pharma Worldwide Business, including without limitation, the IBEX Pharma Worldwide Fixed Assets, the IBEX Pharma Worldwide Inventory and the IBEX Pharma Worldwide Intellectual Property, but excluding the IBEX Pharma Worldwide Excluded Assets.

"IBEX Pharma Worldwide Assumed Liabilities" has the meaning ascribed thereto in section 2.2.

"IBEX Pharma Worldwide Business" means the therapeutic portion (excluding the diagnostic portion retained by the IBEX Group and the diagnostic, reagent and limited therapeutic use portion licensed to the IBEX Group pursuant to the agreement set forth in Schedule 11.1(g)) of the research, development, manufacture, use, sale, production, technology and marketing Worldwide of the IBEX Pharma Products.

"IBEX Pharma Worldwide Excluded Assets" has the meaning ascribed thereto in section 2.5.

"IBEX Pharma Worldwide Fixed Assets" means all of the machinery, equipment, moveable property, chattels and other assets located in Canada and described in section 2.1(b), save and except the Filter Technology.

"IBEX Pharma Worldwide Intellectual Property" means all Intellectual Property owned or Controlled by IBEX Pharma, IBEX R&D or IBEX relating to or being used in connection with the IBEX Pharma Worldwide Business, including, without limitation, those identified in Schedule 2.1(c), but excluding the IBEX Pharma Worldwide Excluded Assets.

"IBEX Pharma Worldwide Inventory" means all inventories of and pertaining to the IBEX Pharma Worldwide Business, including without limitation, clinical supply materials, packaging materials, raw, semi-finished and finished products, work in progress, raw materials, all other materials and supplies on hand to be used or consumed in the production of products, work in progress, items purchased for resale and inventories in transit from suppliers if paid for or owned by IBEX Pharma, IBEX R&D or IBEX and all inventories of general stores and supplies (if any), likewise if paid for or owned by IBEX Pharma, IBEX R&D or IBEX, including without limitation, those described in Schedule 2.1(d), but excluding the IBEX Pharma Worldwide Excluded Assets.

"IBEX R&D" means Technologies IBEX R&D Inc., a Quebec company.

"IBEX Year End" has the meaning ascribed thereto in section 5.1(p).

"Indemnified Party" has the meaning ascribed thereto in section 10.3.

"Indemnitor" has the meaning ascribed thereto in section 10.3.

"Intellectual Property" means any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States and other Worldwide patents (including utility models, supplementary protection certificates and applications therefor) and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof and equivalent or similar rights Worldwide in inventions and discoveries; (ii) all inventions (whether patentable or not), improvements, trade secrets, proprietary information, know-how, technology, technical data research notes, computer system architecture and customer lists and all documentation embodying or evidencing any of the foregoing; (iii) all copyrights, copyright registrations and applications therefor and all other rights corresponding thereto Worldwide; (iv) all mask works, mask work registrations and applications therefor and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology; (v) all industrial designs and any registrations and applications therefor in Canada and Worldwide; (vi) all

trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor and all goodwill associated therewith Worldwide; (vii) all rights in databases and data collections Worldwide; (viii) all rights in Software, data, databases, web content and Internet sites Worldwide; (ix) all rights in domain names, domain name registrations and applications therefor Worldwide; and (x) any similar, corresponding or equivalent rights to any of the foregoing Worldwide.

"IRS" means the Internal Revenue Service of the United States.

"Law" means any Canadian federal, provincial, municipal, local or any US federal, state or local or any other foreign statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including without limitation, common law).

"Liabilities" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including without limitation, those arising under any Law (including without limitation, any Environmental Law), action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

"Losses" means any and all claims, demands, debts, suits, actions, obligations, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation, all reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement).

"Material Adverse Effect" means a material adverse effect on the business, assets, liabilities, condition (financial or otherwise), operations or prospects of the Party in question.

"Minimum Threshold" has the meaning ascribed thereto in section 10.6.

"NDA" means a New Drug Application in accordance with the requirements of the FDA.

"Neutralase" means the product Heparinase I in respect of its use in a biopharmaceutical human therapeutic business.

"Neutralase Contingency Payment" means 18,280,872 multiplied by Cdn.\$0.50 or Cdn.\$9,140,436.

"Parties" means collectively, the parties to this Agreement.

"Permits and Licenses" has the meaning ascribed thereto in section 5.1(r).

"Person" means any individual, partnership, company, corporation, firm, unincorporated association, joint venture, trust however designated or constituted or wheresoever organized and any Governmental Authority.

"Phenylase" means the therapeutic application of Phenylalanine Ammonia Lyase.

"Phenylase Contingency Payment" means 18,280,872 multiplied by Cdn.\$0.30 or Cdn.\$5,484,262.

"Products" means collectively, the IBEX LLC Products and the IBEX Pharma Products.

"Quebec Securities Commission Approval" has the meaning set forth in section 12.1(j).

"Regulations" means the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Code or other federal tax statutes.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land, water or air or otherwise entering into the Environment.

"Representatives" has the meaning ascribed thereto in section 9.2.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Software" means computer software and programs in any form, including source code, object code, operating systems and specifications, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms and data formats, all versions, updates, corrections, enhancements and modifications thereof and all related documentation, developer notes, comments and annotations.

"Successor Company" has the meaning ascribed thereto in section 14.5.

"Suspension Period" has the meaning ascribed thereto in section 7.1(b).

"Tax Act" means *The Income Tax Act* (Canada).

"Taxes" means all taxes and any liability, whether disputed or not, imposed by Canada or the United States or any province, state or municipality thereof or by any other country or foreign government or any subdivision or agency thereof.

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"Therapeutic Assets" means the assets currently used, owned or Controlled by the members of the IBEX Group in the conduct of their biopharmaceutical human therapeutic business.

"Third Party Claim" has the meaning ascribed thereto in section 10.3.

"Time of Closing" means 2:00 p.m. (New York time) on the Closing Date or if the Worldwide Transaction is not completed at such time, then such other time on the Closing Date on which the Worldwide Transaction is completed.

"Vendors" has the meaning ascribed thereto in the preambles to this Agreement.

"Worldwide" means throughout the world, exclusive of Canada.

"Worldwide Assets" means collectively, the IBEX Pharma Worldwide Assets and the IBEX LLC Worldwide Assets.

"Worldwide Assigned Rights" has the meaning ascribed thereto in section 12.1(l).

"Worldwide Assigned Rights Consents" has the meaning ascribed thereto in section 12.1(l).

"Worldwide Purchase Price" has the meaning ascribed thereto in section 3.1.

"Worldwide Transaction" means the purchase and sale of the Worldwide Assets as contemplated by this Agreement.

All capitalized terms used but not otherwise defined in this Agreement shall have their respective meanings set forth in the Canadian Purchase Agreement.

1.2 **Act.** Any reference in this Agreement to any act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any act, by-law, rule, regulation or provision enacted in substitution or amendment thereof.

1.3 **New York Time.** Except where otherwise expressly provided in this Agreement any reference to time shall be deemed to be a reference to New York time.

1.4 **Gender and Extended Meanings.** In this Agreement words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun. For greater certainty and without limitation, in this Agreement the word "**shall**" has the same meaning as the word "**will**".

1.5 **Canadian Dollars and Payment.** All dollar amounts referred to in this Agreement are in Canadian funds, unless otherwise expressly specified.

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1.6 **Section Headings.** The division of this Agreement into sections is for the convenience of reference only and shall not effect the interpretation or construction of this Agreement.

1.7 **Business Day.** If the date for the taking of any action under this Agreement falls on a day which is not a Business Day, then such action shall be taken on the next following Business Day.

1.8 **Ordinary Course.** For the purposes of this Agreement, a transaction or activity shall be considered to be in the ordinary course of business of IBEX Group Worldwide Business if it constitutes an ordinary business activity of the Vendors relating to the IBEX Group Worldwide Business conducted in a commercially reasonable and business-like manner consistent with past practices of the Vendors in respect of the IBEX Group Worldwide Business.

2. **AGREEMENT TO PURCHASE AND SELL**

2.1 **IBEX Pharma Worldwide Assets.** Based on the covenants, representations and warranties set forth herein and subject to the conditions herein, IBEX Pharma, IBEX R&D and IBEX hereby agree to sell, transfer, assign, convey and set over to BioMarin US and BioMarin US hereby agrees to purchase from IBEX Pharma, IBEX R&D and IBEX on the Closing Date, free and clear of any and all Encumbrances, with good and marketable title thereto, all of the following with the exception of the Filter Technology:

- (a) **IBEX Pharma Worldwide Fixed Assets.** The fixed assets owned or used by IBEX Pharma, IBEX R&D or IBEX in the operation of the IBEX Pharma Worldwide Business, as itemized at Schedule 2.1(a), on an "as is - where is" basis without warranty, except as to title.
- (b) **Contracts, Permits and Licenses.** The Contracts to which IBEX Pharma, IBEX R&D or IBEX is a party or otherwise a beneficiary and the Permits and Licenses obtained by IBEX Pharma, IBEX R&D or IBEX, in each case in connection with the IBEX Pharma Worldwide Business, as itemized at Schedule 2.1(b).
- (c) **IBEX Pharma Worldwide Inventory.** The IBEX Pharma Worldwide Inventory, as itemized at Schedule 2.1(c).
- (d) **IBEX Pharma Worldwide Intellectual Property.** The IBEX Pharma Worldwide Intellectual Property, as itemized at Schedule 2.1(d).
- (e) **All Pre-Clinical and Clinical Trial Data.** All pre-clinical and clinical trial data owned or Controlled by IBEX Pharma, IBEX R&D or IBEX relating to

the Therapeutic Assets or the IBEX Pharma Products located outside of Canada.

2.2 IBEX Pharma Worldwide Assumed Liabilities. From and after the Closing Date, BioMarin US shall assume and perform in due course only those liabilities of IBEX Pharma, IBEX R&D and IBEX in connection with the IBEX Pharma Worldwide Business listed on Schedule 2.2 (the "**IBEX Pharma Worldwide Assumed Liabilities**"). Notwithstanding anything to the contrary contained in this Agreement, BioMarin US shall not assume or have any responsibility for any of the Excluded Liabilities. As and by way of a post-closing covenant, the members of the BioMarin Group shall jointly and severally indemnify and save harmless IBEX Pharma, IBEX R&D and IBEX from all Losses which may be incurred by IBEX Pharma, IBEX R&D or IBEX in respect of the IBEX Pharma Worldwide Assumed Liabilities, arising from and after the Closing Date, and the members of the IBEX Group shall, jointly and severally, indemnify and save harmless the members of the BioMarin Group from all Losses which may be incurred by the BioMarin Group in respect of the Excluded Liabilities.

2.3 IBEX LLC Worldwide Assets. Based on the covenants, representations and warranties set forth herein and subject to the conditions herein, IBEX LLC and IBEX Corp. hereby agree to sell, transfer, assign, convey and set over to BioMarin US and BioMarin US hereby agrees to purchase from IBEX LLC and IBEX Corp. on the Closing Date, free and clear of any and all Encumbrances, with good and marketable title thereto, all of the following:

- (a) **IBEX LLC Worldwide Fixed Assets.** The fixed assets owned or used by IBEX LLC or IBEX Corp. in the operation of the IBEX LLC Worldwide Business as itemized at Schedule 2.3(a), on an "as is – where is" basis without warranty, except as to title.
- (b) **Contracts, Permits and Licenses.** The Contracts to which IBEX LLC or IBEX Corp. is a party or otherwise a beneficiary and the Permits and Licenses obtained by IBEX LLC or IBEX Corp., in each case in connection with the IBEX LLC Worldwide Business, as itemized at Schedule 2.3(b).
- (c) **IBEX LLC Worldwide Inventory.** The IBEX LLC Worldwide Inventory, as itemized at Schedule 2.3(c).
- (d) **IBEX LLC Worldwide Intellectual Property.** The IBEX LLC Worldwide Intellectual Property, as itemized at Schedule 2.3(d).
- (e) **All Pre-Clinical and Clinical Trial Data.** All pre-clinical and clinical trial data owned or Controlled by IBEX LLC or IBEX Corp. relating to the Therapeutic Assets or the IBEX LLC Products.

2.4 IBEX LLC Worldwide Assumed Liabilities. From and after the Closing Date, BioMarin US shall assume and perform in due course only those liabilities of IBEX LLC

and IBEX Corp. in connection with the IBEX LLC Worldwide Business listed on Schedule 2.4 (the "**IBEX LLC Worldwide Assumed Liabilities**"). Notwithstanding anything to the contrary contained in this Agreement, BioMarin US shall not assume or have any responsibility for any of the Excluded Liabilities. As and by way of a post-closing covenant, the members of the BioMarin Group shall jointly and severally indemnify and save harmless IBEX LLC and IBEX Corp. from all Losses which may be incurred by IBEX LLC or IBEX Corp. in respect of the IBEX LLC Worldwide Assumed Liabilities, arising from and after the Closing Date and the members of the IBEX Group shall jointly and severally indemnify and save harmless the members of the BioMarin Group from all Losses which may be incurred by the BioMarin Group in respect of the Excluded Liabilities.

2.5 **Excluded Assets.** For greater certainty and without limitation, the assets of IBEX Pharma and IBEX LLC that are not being sold in connection with, respectively, the IBEX Group Worldwide Business, are itemized or described at Schedule 2.5 and constitute respectively, the "**IBEX Pharma Worldwide Excluded Assets**" and the "**IBEX LLC Worldwide Excluded Assets**" which do not form a part of the Worldwide Assets.

3. **WORLDWIDE PURCHASE PRICE FOR WORLDWIDE ASSETS AND TAXES**

3.1. **Worldwide Purchase Price.** The purchase price for the Worldwide Assets which includes, for purposes of this section, the Filter Technology (the "**Worldwide Purchase Price**") shall be an amount equal to Cdn.\$15,131,076 plus the value of the Assumed Worldwide Liabilities.

3.2. **Payment of Worldwide Purchase Price.** The Worldwide Purchase Price shall be paid on the Closing Date by: (i) the assumption by BioMarin US of the Assumed Worldwide Liabilities; (ii) the delivery by BioMarin to the Vendors in accordance with Schedule 3.2 of certificates representing the BioMarin Worldwide Transaction Shares; and (iii) the delivery by BioMarin to the Vendors in accordance with Schedule 3.2 of the Cash Payment.

3.3. **Allocation of Worldwide Purchase Price.** The Worldwide Purchase Price shall be allocated among the Worldwide Assets as set out in Schedule 3.3 and the Parties shall co-operate in the filing of elections under any applicable taxation statutes as may be necessary or desirable to give effect to such allocation.

3.4. **Retail Sales Tax.** Within 30 days of Closing, BioMarin US shall pay to all relevant federal, state and municipal authorities, any exigible sales tax on the Worldwide Assets.

3.5. **Contingency Payments.** From and after Closing, but as hereinafter provided, BioMarin shall additionally pay by certified cheque or wire transfer, payable at par, in immediately available funds in Canadian dollars, the following: (i) to IBEX Corp, the Neutralase Contingency Payment, not later than five Business Days following such time

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as Neutralase achieves initial NDA approval by the FDA for the marketing of such product in the United States, if at all, provided that such approval is procured prior to the fifth anniversary of the Closing Date; and (b) to IBEX Pharma, the Phenalyse Contingency Payment, not later than five Business Days following such time as Phenalyse achieves initial NDA approval by the FDA for the marketing of such product in the United States, if at all, provided that such approval is procured prior to the fifth anniversary of the Closing Date. The members of the BioMarin Group shall advise the Vendors forthwith upon receipt of either or both of the aforesaid approvals. The covenant of BioMarin to pay the Neutralase Contingency Payment and the Phenalyse Contingency Payment shall be construed as post-closing covenants.

4. CLOSING

4.1 **Closing**. Closing shall occur at the Time of Closing at the offices of Messrs. Cassels Brock & Blackwell LLP, Scotia Plaza, Suite 2100, 40 King Street West, Toronto, Ontario or at such other place or other time and date as the Parties may agree. Any cheque, document, share certificate, instrument or thing which is to be delivered by any Party at the Closing shall be tabled at the Closing at the place of closing referred to above by the Party that is to deliver such cheque, document, instrument or thing and any cheque, document, share certificate, instrument or thing so tabled by a Party shall:

- (a) be deemed to have been delivered by such Party for the purposes of this Agreement;
- (b) be held in escrow by counsel for such Party to be dealt with in accordance with paragraphs (c) and (d);
- (c) be delivered to the Party to which it is to be delivered pursuant to the terms hereof, if all cheques, documents, share certificates, instruments and things that are to be delivered at Closing are tabled in accordance with this section at Closing; and
- (d) be delivered to or in accordance with the directions of, the Party which tabled it, if paragraph (c) does not apply.

5. REPRESENTATIONS AND WARRANTIES OF THE MEMBERS OF THE IBEX GROUP

5.1 **Representations and Warranties**. The members of IBEX Group hereby jointly and severally represent and warrant to the members of the BioMarin Group as follows and acknowledge and confirm that the members of the BioMarin Group are relying upon such representations and warranties in connection with the Worldwide Transaction and that unless otherwise indicated herein, such representations and warranties shall be true and correct as at the Closing Date:

- (a) **Organization.** Each member of the IBEX Group is duly incorporated or organized, as applicable, and validly subsisting under the laws of its jurisdiction of incorporation or organization and has the power (including full corporate power as applicable) to own or lease its property and to carry on its business as it is now being conducted. Each of the Vendors is duly qualified to do business and carries on business in those jurisdictions wherein the failure to so qualify could have a Material Adverse Effect, being those jurisdictions set forth on Schedule 5.1(a).
- (b) **Corporate Authority.** Each of the Vendors now has and on the Closing Date will have full power and authority (including full corporate power and authority as applicable) to sell the Worldwide Assets, free and clear of any and all Encumbrances, subject to the rights of creditors pursuant to the Bulk Sales Carve-Out. Each member of the IBEX Group now has and on the Closing Date will have the full power and authority (including full corporate power and authority as applicable) to execute and deliver this Agreement and to carry out all of the terms and conditions hereof on the part of the respective members of the IBEX Group to be carried out. The execution and delivery of this Agreement and the consummation of the Worldwide Transaction have been duly authorized by all necessary corporate or entity action, including without limitation, all necessary actions by the respective officers, directors, stockholders, members and managers, as applicable, on the part of each member of the IBEX Group.
- (c) **No Violations.** The execution and delivery of this Agreement and all other agreements contemplated herein by each member of the IBEX Group and the observance and performance of the terms and provisions of this Agreement and any such agreements; (i) does not and will not require any member of the IBEX Group to obtain or make any consent, authorization, approval, filing or registration under any Law, subject to the Bulk Sales Carve-Out and the procurement of the Worldwide Assigned Rights Consents, which is binding upon any member of the IBEX Group; (ii) does not and will not constitute a violation or breach of the charter documents, operating agreements or by-laws of any member of the IBEX Group; (iii) does not and will not constitute a violation or breach of any Law, subject to the Bulk Sales Carve-Out, applicable to any member of the IBEX Group; (iv) does not and will not constitute a default or breach (nor would with the passage of time or the giving of notice or both or otherwise, constitute a default or breach) under any Contract having an aggregate value of a minimum of Cdn.\$10,000 to which any member of the IBEX Group is a party or by which any member of the IBEX Group is bound, subject to procurement of the Worldwide Assigned Rights Consents; and (v) does not and will not result in the creation or imposition of any Encumbrance on all or part of the Worldwide Assets, subject to the rights of creditors pursuant to the Bulk Sales Carve-Out.

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- (d) **Enforceability of Obligations.** This Agreement constitutes a valid and binding obligation of each member of the IBEX Group, enforceable against each member of the IBEX Group in accordance with its terms, subject however to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (e) **Acts of Bankruptcy.** None of the members of the IBEX Group is insolvent, has proposed a compromise or arrangement to its creditors generally, has taken any proceeding with respect to a compromise or arrangement, has taken any proceeding to have itself declared bankrupt or wound-up, has taken any proceeding to have a receiver appointed of any part of its assets and at present, no encumbrancer or receiver has taken possession of any of its property and no execution or distress is enforceable or levied upon any of its property and no petition for a receiving order in bankruptcy is filed against it.
- (f) **Resident.** Each of the Vendors is a resident of and maintains its principal place of business in the country and, as applicable, the state, province, municipality, county and city set out in Schedule 5.1(f).
- (g) **Title.** Each of the Vendors now has and on the Closing Date will have good and marketable title to the Worldwide Assets to be conveyed by such Vendor and the Vendors, collectively, now have and on the Closing Date will have good and marketable title to all of the Worldwide Assets, in each case, free and clear of any and all Encumbrances, subject to the rights of creditors pursuant to the Bulk Sales Carve-Out. The Vendors (and no other member of the IBEX Group or their respective Affiliates) are the only owners of the Worldwide Assets. Upon transfer of the Worldwide Assets to BioMarin US on the Closing Date pursuant to this Agreement, BioMarin US will acquire good and marketable title to all of the Worldwide Assets free and clear of any and all Encumbrances, subject to the rights of creditors pursuant to the Bulk Sales Carve-Out. Each of the Vendors is exclusively entitled to possess and dispose of the Worldwide Assets, as the case may be. To the Best Knowledge of the members of the IBEX Group, no other Person owns or uses any assets that are required to carry on the IBEX Group Worldwide Business as currently conducted. All tangible (corporeal) assets forming a part of the Worldwide Assets are located as indicated at Schedule 2.1(a) and Schedule 2.3(a). The Worldwide Assets represent all of the Therapeutic Assets consisting of Intellectual Property, Contracts, Permits and Licenses, pre-clinical and clinical trial data and books and records other than the Canadian Assets (as defined in the Canadian Purchase Agreement).
- (h) **Certain Interests.** No member of the IBEX Group and no shareholder, officer, director or Affiliate of any member of the IBEX Group nor any

relative or spouse (or relative of such spouse) who resides with, or is a dependent of any such Person, owns, directly or indirectly, in whole or in part or has any other interest in any tangible or intangible property which any of the Vendors uses or has used in connection with the IBEX Group Worldwide Business.

- (i) **Absence of Conflicting Agreements.** No Person has any written or oral agreement, option, understanding or commitment or any right or privilege capable of becoming an agreement, for the purchase from any of the Vendors of any right, title or interest in or to any of the Worldwide Assets and there has been no assignment, subletting or granting of any license (of occupation or otherwise) of or in respect of any of the Worldwide Assets.
- (j) **Suppliers.** Schedule 5.1(j) contains a list of the suppliers of materials and/or services to the Vendors in connection with the IBEX Group Worldwide Business during the twelve month period ended on the date hereof. There is no sole-source supplier of significant materials or services to the IBEX Group Worldwide Business with respect to which practical alternative sources of supply are not available on comparable terms and conditions. There are no contingency payments or commitments payable to any suppliers of materials and/or services other than as indicated in Schedule 5.1(j).
- (k) **Clinical Sites.** Schedule 5.1(k) contains a list of the clinical sites of the Vendors in connection with the IBEX Group Worldwide Business during the twelve-month period ended July 31, 2001. To the Best Knowledge of the members of the IBEX Group, the relations between the Vendors and the clinical sites of the IBEX Group Worldwide Business are mutually satisfactory. None of the members of the IBEX Group have received written notice and, to the Actual Knowledge of the members of the IBEX Group, none of the members of the IBEX Group have otherwise been made aware of, any possible termination of normal relations with any such Person in connection with the IBEX Group Worldwide Business which termination may have a Material Adverse Effect on the IBEX Group Worldwide Business.
- (l) **Litigation.** There are no Claims at Law or in equity or before or by any Governmental Authority, either pending or outstanding or, to the Actual Knowledge of the members of the IBEX Group, threatened against any member of the IBEX Group, relating to any member of the IBEX Group or which may have a Material Adverse Effect on the IBEX Group Worldwide Business, any of the Worldwide Assets or the Worldwide Transaction.
- (m) **Inventory.** Except as set forth in Schedule 5.1(m), all items of the IBEX Pharma Worldwide Inventory itemized at Schedule 2.1(c) and all items of

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the IBEX LLC Worldwide Inventory itemized at Schedule 2.3(c) have been produced in accordance with current Good Manufacturing Practices as established by all applicable Governmental Authorities including the FDA. The IBEX Pharma Worldwide Inventory and the IBEX LLC Worldwide Inventory represent that proportion of the total inventory of the IBEX Group relating to the Products set forth at Schedule 2.1(c) and 2.3(c).

- (n) **Absence of Changes.** Since July 31, 2000, there has not been and up to the Closing Date there will not be;
- (i) any event or occurrence which either individually or in the aggregate with other events or occurrences that has resulted in or will result in a Material Adverse Effect on the condition or operation of the IBEX Group Worldwide Business and/or the Worldwide Assets, or
 - (ii) any damage, destruction or loss, labour trouble or other event, development or condition of any character (whether or not covered by insurance) which would have a Material Adverse Effect on the IBEX Group Worldwide Business and/or the Worldwide Assets.
- (o) **Absence of Unusual Transaction.** Since July 30, 2000, none of the Vendors has and up to the Closing Date none of the Vendors will have;
- (i) transferred, assigned, sold or otherwise disposed of any of the Worldwide Assets or cancelled any debts or claims with respect thereto, except in each case for fair consideration and in the ordinary and usual course of the IBEX Group Worldwide Business;
 - (ii) waived any rights of substantial value or entered into any commitment or transaction with respect to the Worldwide Asset or the IBEX Group Worldwide Business where such rights, commitment or transaction is or would be material in relation to any of the IBEX Group Worldwide Business or the Worldwide Assets, as the case may be;
 - (iii) made any general wage or salary increases in respect of, or material changes to the benefits, of the Transferred Employees, except in the ordinary course of business;
 - (iv) mortgaged, pledged, subjected to lien, hypothecated, granted a security interest in or otherwise encumbered any of the Worldwide Assets, whether tangible or intangible, corporeal or incorporeal;
 - (v) delayed or postponed the payment of accounts payable or other Liabilities with respect to the Worldwide Assets or in connection

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with the IBEX Group Worldwide Business outside the ordinary and usual course of the IBEX Group Worldwide Business;

- (vi) incurred any forward commitments for supplies or materials or prepaid services in connection with the Worldwide Assets or the IBEX Group Worldwide Business except in the ordinary course of the IBEX Group Worldwide Business;
 - (vii) made any capital expenditures except in the ordinary course of the IBEX Group Worldwide Business; or
 - (viii) authorized or agreed or otherwise become committed to do any of the foregoing.
- (p) **Financial Statements.** A true copy of the unaudited financial statements of IBEX and the statements of operations and retained earnings and of changes in financial position of IBEX as at July 31, 2001 (the "**IBEX Year End**"), the internally prepared statements of operations and retained earnings and of changes in financial position of IBEX as at July 31, 2001 and the audited consolidated financial statements of IBEX as at July 31, 2000 (collectively, the "**IBEX Financial Statements**") is annexed hereto as Schedule 5.1(p). The IBEX Financial Statements:
- (i) Have been prepared in accordance with Canadian generally accepted accounting principles applied on a basis consistent with those of the preceding fiscal period.
 - (ii) Present fairly, among other things, the Worldwide Assets, liabilities and financial position of IBEX (on a consolidated basis) as at the IBEX Year End and the period indicated, as the case may be, and the results of operations for the period then ended. Other than as disclosed in the Schedules hereto, and the liabilities specified in the balance sheet forming part of the IBEX Financial Statements or incurred since the IBEX Year End in the ordinary course of business (all of which are consistent with past practice and are not, in the aggregate material to the financial condition of the members of the IBEX Group) or otherwise noted or disclosed in this Agreement, there are no liabilities or obligations of any of the members of the IBEX Group (whether absolute, contingent or otherwise), including without limitation, any Tax liabilities, due or to become due or contingent losses for unasserted claims which are capable of assertion, which may be and become the responsibility or obligation of BioMarin US from and after the Closing Date.
 - (iii) Are substantially in accordance with the books and records of IBEX (on a consolidated basis).

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- (iv) Contain and reflect all necessary adjustments for a fair presentation of the results of operations and financial position of IBEX (on a consolidated basis) for the period covered thereby.
- (v) Contain and reflect adequate provision or allowance for all reasonably anticipated liabilities, expenses and losses of IBEX (on a consolidated basis).
- (q) **Books of Account.** The books of account and financial records of the Vendors fairly set out and disclose, in all material respects, the current financial position of the IBEX Group Worldwide Business. All material transactions with respect to the Worldwide Assets and the IBEX Group Worldwide Business have been accurately recorded in such books and records. All bonuses, commissions and other payments relating to the Therapeutic Asset Employees are reflected in the books of IBEX in a manner consistent with past record keeping practices and none of such payables are in arrears.
- (r) **Permits and Licenses.** Schedule 5.1(r) contains a full, complete and accurate list of all permits, certificates, licenses, approvals, consents and other authorizations (collectively, the "**Permits and Licenses**") obtained to carry on and conduct the IBEX Group Worldwide Business and to own, lease or operate its respective Worldwide Assets at the places and in the manner in which the IBEX Group Worldwide Business is currently conducted. The consummation of the Worldwide Transaction will not result in the revocation, suspension or limitation of any of the Permits and Licenses. The conduct of the IBEX Group Worldwide Business as currently conducted by the members of the IBEX Group is not impeded by the absence of any Permit or License and the members of the IBEX Group are not aware of any Permits or Licenses required to carry on and conduct the IBEX Group Worldwide Business as currently conducted other than as itemized in Schedule 5.1(r).
- (s) **Material Contracts.** Except for the Contracts listed in Schedule 5.1(s), no member of the IBEX Group or any of its Affiliates is a party to nor bound by any Contract with respect to the Worldwide Assets, the IBEX Pharma Canadian Assets (as defined in the Canadian Purchase Agreement), the IBEX Group Worldwide Business or the IBEX Pharma Canadian Business (as defined in the Canadian Purchase Agreement). Schedule 5.1(s) additionally sets forth a true and complete list of all Worldwide Assigned Rights and Canadian Assigned Rights (as defined in the Canadian Purchase Agreement) requiring the consent of any party thereto as a result of the Worldwide Transaction or the Canadian Transaction and all additional consents, authorizations and approvals of any Person to or as a result of the consummation of the Worldwide Transaction. All such

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consents, authorizations and approvals described in Schedule 5.1(s) will be lawfully and validly obtained prior to or after the Closing Date (as indicated in such Schedule). For greater certainty and without limitation, the members of the IBEX Group have no unfilled orders in connection with the IBEX Group Worldwide Business and no forward commitments for suppliers or materials. The Contracts listed in Schedule 5.1(s) having a minimum aggregate value of CDN\$10,000 are all in full force and effect, unamended and no material default or breach exists (nor would the passage of time or the giving of notice of both or otherwise, constitute a default or breach) in respect thereof on the part of any of the parties thereto. No member of the IBEX Group has entered into any Contract limiting or restricting the IBEX Group Worldwide Business.

- (t) **Employees, etc.** There are set forth in Schedule 5.1(t), the names and titles of all Therapeutic Asset Employees employed or engaged by the members of the IBEX Group in connection with the IBEX Group Worldwide Business, together with particulars of the material terms and conditions of employment or engagement of such persons, including without limitation, rates of remuneration, benefits, all accrued and/or deferred compensation, benefits and remuneration, positions held and the length of their employment.
- (u) **Employee Plans.** Except as set forth in Schedule 5.1(u), there are no Employee Plans with respect to the Therapeutic Asset Employees. All obligations of each of the Vendors, whether arising by operation of Law, by contract, pursuant to the Employee Plans, by past custom or practice or otherwise, for salary, severance, vacation and holiday pay, bonuses and other forms of compensation which were payable to the Therapeutic Asset Employees for the period ending prior to the Closing Date, have been paid as of the applicable payment dates.
- (v) **Collective Agreements.** None of the Vendors nor their Affiliates has made any agreements with any labour union or employee association with respect to any of its employees (including any Therapeutic Asset Employees) and none of the Vendors nor their Affiliates has made commitments to or conducted negotiations with any labour union or employee association further to any future agreements with respect to any of its employees (including any Therapeutic Asset Employees). To the Best Knowledge of each member of the IBEX Group, there are no current attempts to organize or to establish any labour union or employee association with respect to the Therapeutic Asset Employees.
- (w) **Labour Matters.** There are no controversies pending or to the Best Knowledge of each Vendor, threatened between any member of the IBEX Group or their Affiliates and any of the Therapeutic Asset Employees.

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- (x) **Insurance.** Each of the Vendors maintains such policies of insurance, issued by responsible insurers, as are appropriate to the IBEX Group Worldwide Business and the Worldwide Assets, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets. All such policies of insurance are in full force and effect and none of the Vendors is in default thereof, whether as to the payment of premiums or otherwise under the terms of any such policy. All of such policies are listed in Schedule 5.1(x). All premiums in connection with such policies are fully paid. None of the Vendors has failed to give any notice or present any Claim under any such insurance policies in due and timely fashion. The proceeds of such policies are and until Closing shall continue to be fully payable to the Vendors. None of the Vendors is in default with respect to any of the provisions contained in such insurance policies and none of the Vendors have failed to give any notice or present any claim under any such insurance policies in due and timely fashion.
- (y) **Taxes.** There are no liens or prior Claims for Taxes upon any of the Worldwide Assets. Schedule 5.1(y) sets forth all Taxes upon the Worldwide Assets currently due and payable and, to the Best Knowledge of the members of the IBEX Group, all Taxes upon the Worldwide Assets which will become payable in the next six months, except as may result from the Worldwide Transaction.
- (z) **Compliance with Laws.** The IBEX Group Worldwide Business has been conducted and will continue to be conducted through Closing in accordance with all applicable Laws and Governmental Orders, except where the failure to comply with such Laws and Governmental Orders would not have a material adverse effect on the Worldwide Assets or the condition, operations or prospects of the IBEX Group Worldwide Business and the Vendors have not received any notice in writing and, to the Actual Knowledge of members of the IBEX Group, the members of the IBEX Group have not otherwise received any notice that the IBEX Group Worldwide Business is not in violation of any such Law or Governmental Order. There are no Governmental Orders applicable to the Worldwide Assets and/or the IBEX Group Worldwide Business.
- (aa) **Environmental Matters.** Each of the Vendors is in compliance with all Environmental Laws.
- (i) Without limiting the generality of the foregoing, each of the Vendors and their respective Affiliates has obtained and complied with, and is in compliance with, all Environmental Permits for the occupation of its facilities and the operation of the IBEX Group Worldwide Business. A list of all such Environmental Permits are set forth on Schedule 5.1(aa).

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- (ii) With respect to the IBEX Pharma Canadian Business, the Canadian Assets and the leased premises of IBEX located in Pare Street in the Town of Mount Royal, Quebec, none of the Vendors nor their respective Affiliates has received any written notice, report or other information regarding any actual or alleged violation of any Environmental Law, or any liabilities or potential liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to any of them or their facilities arising under any Environmental Law.
- (iii) With respect to the IBEX Pharma Canadian Business, the Canadian Assets and the leased premises of IBEX located in Pare Street in the Town of Mount Royal, Quebec, none of the Vendors or their respective Affiliates has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled or released any substance, including without limitation, any Hazardous Materials in a manner that has given or would give rise to liabilities, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney fees, pursuant to Environmental Law.
- (iv) With respect to the IBEX Pharma Canadian Business, the Canadian Assets and the leased premises of IBEX located in Pare Street in the Town of Mount Royal, Quebec, neither the execution and delivery of this Agreement nor the consummation of the Worldwide Transaction will result in any obligations for site investigation or cleanup or notification to or consent of Government Authorities or third Persons, pursuant to any of the so-called "transaction-triggered" or "responsible property transfer" Environmental Law.
- (v) With respect to the IBEX Pharma Canadian Business, the Canadian Assets and the leased premises of IBEX located in Pare Street in the Town of Mount Royal, Quebec, neither the Vendors nor any of their respective Affiliates has either expressly or by operation of law assumed or undertaken any liability, including without limitation, any obligation for corrective or remedial action of any other Person relating to Environmental Laws.

) **IBEX Group Worldwide Intellectual Property.**

- (i) The Vendors collectively own all right, title and interest in or have the right to use pursuant to a valid license, sublicense agreement or permission, all of the IBEX Group Worldwide Intellectual Property used in the conduct of the IBEX Group Worldwide Business as

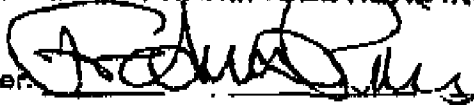
- 26 -

presently conducted and have the right to use, execute, reproduce, display, perform, modify, enhance, distribute, prepare derivative works from and sublicense the IBEX Group Worldwide Intellectual Property, without requirement to make royalty or other payments to any other Person (except in the case of the IBEX Group Worldwide Intellectual Property licensed by any of the Vendors, from a third Person licensor where the terms of such license make provision for royalties or other payments and the terms of such royalties or other payments are listed on Schedule 5.1(bb)(i)). Schedules 2.1(d), and 2.3(d) set forth a true and complete list of all of the Intellectual Property used in the current conduct of the IBEX Group Worldwide Business and all other filings, applications, registrations or other formal actions taken with respect to the foregoing pursuant to federal, state, local and foreign law or regulations with respect to protections of intellectual property as well as a nonconfidential disclosure of inventions owned and used in the current conduct of the IBEX Group Worldwide Business, provided that such schedules shall in no way limit the IBEX Group Worldwide Intellectual Property to be transferred to BioMarin US pursuant to this Agreement. None of the Vendors has received written notice of any loss, cancellation, termination or expiration of any such application, registration or other filings or formal actions that are owned or controlled by any of the Vendors in connection with the IBEX Group Worldwide Business.

No member of the IBEX Group has received any written and, to the Actual Knowledge of the members of the IBEX Group, no members of the IBEX Group has received any oral, communication alleging that the operation of the IBEX Group Worldwide Business as currently conducted, the use of the IBEX Group Worldwide Intellectual Property in connection therewith and the transmission, use, linking and other practices related to the operation of the Vendors' respective web sites in connection with the IBEX Group Worldwide Business, the content thereof and the advertisements contained therein, conflict with, infringe, misappropriate or otherwise violate third Person Intellectual Property or other proprietary rights, including rights of privacy, publicity and endorsement of any third Person and no Claims are pending or, to the Actual Knowledge of the members of the IBEX Group, threatened against any of the Vendors or their Affiliates alleging any of the foregoing. No member of the IBEX Group has received any written and, to the Actual Knowledge of the members of the IBEX Group, no members of the IBEX Group has received any oral, communication alleging that any member of the IBEX Group has violated or misappropriated any rights relating to third Person Intellectual Property nor has any reason to believe that any

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date and year first above written.

BIOMARIN PHARMACEUTICAL INC.

Per: 

BIOMARIN ENZYMES INC

Per: _____

IBEX TECHNOLOGIES INC.

Per: _____

IBEX PHARMACEUTICALS INC.

Per: _____

IBEX TECHNOLOGIES LLC

Per: _____

IBEX TECHNOLOGIES CORP.

Per: _____

TECHNOLOGIES IBEX R&D INC.

Per: _____

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date and year first above written.

BIOMARIN PHARMACEUTICAL INC.

Per: _____

BIOMARIN ENZYMES INC.

Per: *[Signature]*

IBEX TECHNOLOGIES INC.

Per: _____

IBEX PHARMACEUTICALS INC.

Per: _____

IBEX TECHNOLOGIES LLC

Per: _____

IBEX TECHNOLOGIES CORP.

Per: _____

TECHNOLOGIES IBEX R&D INC.

Per: _____

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date and year first above written.

BIOMARIN PHARMACEUTICAL INC.

Per: _____

BIOMARIN ENZYMES INC.

Per: _____

IBEX TECHNOLOGIES INC.

Per: 


IBEX PHARMACEUTICALS INC.

Per: 

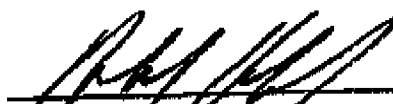
IBEX TECHNOLOGIES LLC

Per: 

IBEX TECHNOLOGIES CORP.

Per: 

TECHNOLOGIES IBEX R&D INC.

Per: 

- Department of Orphan Drug - PAL Orphan Drug Grant of Approval (#950881). IBEX Pharma will deliver a letter to Biomarin US on Closing requesting the assignment of Orphan Drug Grant of Approval #950881 to Biomarin US.
- **CAMR License** The License Agreement dated the 22nd day of December 1995 between The Microbiological Research Authority ("CAMR") and IBEX Technologies Inc., which was subsequently assigned by IBEX Technologies Inc. to IBEX Technologies LLC on December 11, 1996 pursuant to the Technology Transfer and Marketing Agreement (described below). Patents included within the said license are listed in Exhibit A, Section 1 to this Schedule.

EXHIBIT "A"

	US Patent Number or Application No.	Canadian Patent Registration or Application?	Other Patent Registrations or Applications?
CAMR Agreement			
Intron-free gene which expresses phenylalanine ammonia lyase	No	No	UK8621626 and PCT/GB87/00628

This Schedule will include any Intellectual Property set out in 2.3(d) of the U.S. Purchase Agreement and 2.1(d) of the Canadian Purchase Agreement to the extent that any of IBEX Pharma, IBEX R&D, or IBEX own or Control such Intellectual Property.

- The Phenylase Orphan Drug Status
- The CAMR PAL license -see Schedule 2.1 (b)
- Patents owned by IBEX Pharma:

Patents owned by IBEX Pharma Patent rights are transferred from IBEX Technologies, Inc. to IBEX Pharma, Inc.			
Chondroitin Lyase Enzymes	6,093,563		
Chondroitin Lyase Enzymes	6,054,569		707007 Australia 95926645.3 European 8-504443 Japan
Attenuation of Wound Healing Processes	5,997,663		

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				MC9601648
Other (US, Switzerland, France, Canada, IBEX Pharma)				
Attenuation of Fibroblast Proliferation		USSN 60/168,518		PCT/US00/32399
Attenuation of tumor growth, metastasis and angiogenesis				IT 106
Mainix Stabilized Enzyme Crystals		USSN 60/269,316		

Trademarks

Name	Country	Application# / Registrations#	Status	Ownership
Extravase	USA	75-607,143	Suspended pending the registration of the Canadian application	IBEX Tech LLC
Neuralase	USA	74-514,296	Suspended pending the registration of the Canadian application	IBEX Tech LLC
Extravase	European Community	1,038,439	Issued	IBEX Tech LLC
Neuralase	Austria	156,010	Issued	IBEX Tech LLC
Neuralase	Benelux	555,988	Issued	IBEX Tech LLC
Neuralase	Denmark	VA 06.016 1994	Abandoned	IBEX Tech LLC
Neuralase	Finland	4481-94	Abandoned	IBEX Tech LLC
Neuralase	Finland	201910	Issued	IBEX Tech LLC

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Neurtralase	France	94,538,533	Issued	IBEX Tech LLC
Neurtralase	Germany	2,910,636	Issued	IBEX Tech LLC
Neurtralase	Greece	121,137	Issued	IBEX Tech LLC
Neurtralase	Hungary	144,566	Issued	IBEX Tech LLC
Neurtralase	Ireland	164,739	Issued	IBEX Tech LLC
Neurtralase	Italy	699,302	Issued	IBEX Tech LLC
Neurtralase	Japan	3,290,972	Issued	IBEX Tech LLC
Neurtralase	Norway	170,326	Issued	IBEX Tech LLC
Neurtralase	Portugal	303,165	Issued	IBEX Tech LLC
Neurtralase	Spain	1,921,194	Issued	IBEX Tech LLC
Neurtralase	Sweden	303,663	Issued	IBEX Tech LLC
Neurtralase	Switzerland	423,754	Issued	IBEX Tech LLC
Neurtralase	United Kingdom	1,583,753	Abandoned	IBEX Tech LLC
Neurtralase	United Kingdom	1,044,476	Issued	IBEX Tech LLC

IBEX LLC/IBEX Corp. Material Contracts

- A. Neutralase IND (this to be transferred by way of a letter on closing to the FDA assigning this IND to BioMarin).
- B. The MIT "First" License Agreement dated May 8, 1984, as amended by April 21, 1988 Amended First License Agreement, as further amended August 6, 1993, as assigned to IBEX Technologies LLC on December 11, 1996 pursuant to the Technology Transfer and Marketing Agreement (described below). Patents included within the said license are listed in Exhibit A, Section 1 to this Schedule.
- C. The MIT "Second" License Agreement dated July 23, 1987, as amended April 21, 1988, as amended April 14, 1992, as amended December 7, 1992, as amended August 6, 1993, as amended August 14, 1995, and as assigned to IBEX Technologies LLC on December 11, 1996 pursuant to the Technology Transfer and Marketing Agreement (described below). Patents included within the said license are listed in Exhibit A, Section 2 to this Schedule.
- D. The Technology Transfer and Marketing Agreement effective December 11, 1996 between IBEX Technologies Inc. and IBEX Technologies LLC (assigned in 1999 to IBEX Pharmaceuticals). Patents included within the said license are listed in Exhibit A, Section 3 to this Schedule.

EXHIBIT "A"

	US Patent Number or Application No.	Canadian Patent Registration or Application?	Other Patent Registrations or Applications?
1. First MIT Agreement			
"Process for Producing Heparinase"	4,341,869	No	No E18255 Austria 58686 France P3173878.8 Germany 502836/81 Japan 58686 Luxembourg 58686 Netherlands 58686 Sweden 58686 Switzerland 0.0058686 United Kingdom
"Process for Producing Heparinase"	4,443,545	No	
"Process for Neutralizing Heparin"	4,373,023	No	No
"Heparinase Derived Anticoagulants"	4,396,762	No	No
"Process and Composition for Neutralizing Heparin"	Application No. 054,972	No	No
2. Second MIT Agreement			

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"Process for Producing Heparinase"	US 4,443,545	No	See above
"Heparin Assay"	US Application 837,517 US 4,795,703	1288673	EPO259463 WO8705333
"Neutralization of the Anticoagulant Activities of Low Molecular Weight Heparin"	US Application 915,152	1298550	
"Neutralization of Heparin" AKA "Extracorporeal Systems for Heparin Neutralization Using Porous Fibres or Tubes" AKA "Heparin Neutralization Using Compounds Immobilized and in Direct Contact with whole blood"	US Application 024,175	1315676	354916 EPC 354916 France P3875114.3 Germany 354916 Switzerland 354916 United Kingdom
"Large Scale Method for Purification of High Purity Heparinase" AKA "Prodecure for Purification of High Purity Heparinase"	US 5,169,772	1,341,079	E 113991 Austria 420894 Belgium 420894 EPC 420894 France 68919360 Germany 420894 Italy 2869039 Japan 2603349 Japan 89907019 Luxembourg 420894 Netherlands

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			420894 Sweden
			420894 Switzerland
			.0058686 United Kingdom
			061 0408 Austria
			0610 408 Belgium
			061 0408 Denmark
			061 0408 EPC
			061 0408 France
			061 0408 Germany
			061 0408 Greece
			061 0408 Ireland
			061 0408 Italy
			Serial No.5-507945 Japan
			061 0408 Liechtenstein
			061 0408 Luxembourg
			061 0408 Monaco
			061 0408 Netherlands
Heparinase Gene from Flavobacterium Heparinum AKA Cloning of the heparinase Gene from Flavobacterium Heparinum	Application 783,706 5,714,376	2,122,004	061 0408 Spain

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			061 0408 Sweden
			061 0408 Switzerland
			061 0408 United Kingdom
Purification of Heparinase I, II and III from Flavobacterium Heparinum	Application 983,367 5,389,539		Serial No. 94902450.9 EPC Serial No.6-513425 Japan Serial No. US93/11541 PTC
Purification, composition and specificity of Heparinase I, II and III from Flavobacterium Heparinum	Application 378,789 5,569,600	2,150,263	See above
Method For Obtaining A Modified Heparinase Gene	5,830,726	No	No
<p>3. Patents Assigned by IBEX Technologies, Inc. to IBEX Technologies, Inc. pursuant to Technology Transfer and Marketing Agreement</p>			
Use of Heparinases to Decrease Inflammatory Responses	US Application No. 60/004,622	2,233,343	EPO852491 WO971684
Nucleic Acid Sequences and Expression Systems for Heparinase II and Heparinase III Derived from Flavobacterium Heparinum	5,681,733	2,192,159	EPO763101 WO9534635
(Method for) Enzymatic Neutralization of Heparin	5,262,325	2,083,162	658418 Australia E186.217 Austria 537325 Belgium 537325 Denmark 537325 France

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			69230243.3 Germany 537325 Greece 537325 Italy 2,542,780 Japan 537325 Luxembourg 537325 Monaco 537325 Netherlands 537325 Spain 537325 Sweden 537325 Switzerland 537325 United Kingdom WO9217203
Heparinase Free of an Anticoagulant Component from Flavobacterium Heparinum	5,338,677		

This Schedule will include any Intellectual Property listed in Schedule 2.1(d) of the U.S. Purchase Agreement and 2.1(d) of the Canadian Purchase Agreement to the extent that IBEX LLC or IBEX Corp. own or Control such Intellectual Property.

- The MIT License Agreements described in Schedule 2.3(b)
- The Technology Transfer and Marketing Agreement effective December 11, 1996 between IBEX Technologies Inc. and IBEX Technologies LLC (see Schedule 2.3(b))

Patents Assigned by IBEX Technologies, Inc. pursuant to Technology Transfer and Marketing Agreement	US Patents	Canadian Patents	Patents in other Jurisdictions
Use of Heparinases to Decrease Inflammatory Responses	US Application No. 60/004,622	2,233,343	
Nucleic Acid Sequences and Expression Systems for Heparinase II and Heparinase III Derived from Flavobacterium Heparinum	5,681,733	2,192,159	558418 Australia E186.217 Austria 537325 Belgium 537325
(Method for) Enzymatic Neutralization of Heparin	5,262,325	2,083,162	

Denmark			
537325 France			
69230243.3 Germany			
537325 Greece			
537325 Italy			
2,542,780 Japan			
537325 Luxembourg			
537325 Monaco			
537325 Netherlands			
537325 Spain			
537325 Sweden			
537325 Switzerland			
537325 United Kingdom			
W09217203			

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Heparinase Free of an Anticoagulant Component from Flavobacterium Heparinum	5,338,677		EP0537325
Patents owned by IBEX Technologies Corp.			
Nucleic acid sequences and expression systems for heparinase II and Heparinase III derived from flavobacterium heparinum	5,919,603		
Other US Patents/Foreign Patents Pending			
Flavobacterium Heparinum Expression System	USSN 09/766,873		PCT 10/385,132

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member of the IBEX Group has violated or is violating or misappropriating any rights relating to third Person Intellectual Property, except as disclosed in Schedule 5.1(bb)(ii). The IBEX Group Worldwide Intellectual Property includes all of the Intellectual Property used in the ordinary day-to-day conduct of the IBEX Group Worldwide Business. Each item of the IBEX Group Worldwide Intellectual Property is subsisting, valid and enforceable and has not been adjudged invalid or unenforceable in whole or part. All registrations and filings related to the IBEX Group Worldwide Intellectual Property owned by members of the IBEX Group are in good standing and all maintenance and renewal fees necessary to preserve the rights of the IBEX Group in respect of the IBEX Group Worldwide Intellectual Property have been paid. Except as disclosed in Schedule 5.1(bb)(ii), no Claim has been asserted or is pending or, to the Actual Knowledge of the members of the IBEX Group, threatened against any of the Vendors or their Affiliates based upon or challenging or seeking to deny or restrict the use by any of the Vendors or their Affiliates of any of the IBEX Group Worldwide Intellectual Property or alleging that any services provided by processes used by, or products manufactured or sold by any of the Vendors infringe or misappropriate any third Person Intellectual Property nor to the Actual Knowledge of the members of the IBEX Group is there any reasonable basis upon which any such material Claim might at any time be founded.

- (iii) To the Best Knowledge of each of the members of the IBEX Group, the Software forming part of the IBEX Group Worldwide Intellectual Property, which may contain viruses, worms, Trojan horses and other material known contaminants, do not disrupt its operation because the IBEX Group possesses and uses anti virus software in connection therewith. No rights in the Software forming part of the IBEX Group Worldwide Intellectual Property have been transferred to any third Person. Each of the Vendors has the right to use all Software development tools, library functions, compilers and other third Person software that are material to the IBEX Group Worldwide Business or that are required to operate or modify the Software forming part of the IBEX Group Worldwide Intellectual Property.
- (iv) Each of the Vendors and their Affiliates has taken reasonable steps in accordance with normal industry practice to maintain the confidentiality of the trade secrets and other confidential Intellectual Property used in connection with the IBEX Group Worldwide Business. To the Best Knowledge of the members of the IBEX Group there has been no misappropriation of any material trade secrets or other material confidential Intellectual Property used in

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connection with the IBEX Group Worldwide Business by any Person. To the Best Knowledge of the members of the IBEX Group, no employee, independent contractor or agent of any member of the IBEX Group has misappropriated any trade secrets of any other Person in the course of the performance of its duties as an employee, independent contractor or agent and no employee, independent contractor or agent of any member of the IBEX Group is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of invention agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of intellectual property.

- (v) Each employee and independent contractor of any member of the IBEX Group has executed a valid and binding assignment of all rights they may hold related to the IBEX Group Worldwide Intellectual Property. Each employee and independent contractor of any member of the IBEX Group has executed a valid and binding confidentiality agreement pursuant to which he has agreed to protect the confidential nature of the IBEX Group Worldwide Intellectual Property and all other confidential information of any member of the IBEX Group or relating to any of the Worldwide Assets.
- (cc) **No Brokers.** There is no broker, finder or other intermediary acting on behalf of any member of the IBEX Group who has or will have a Claim against the members of the BioMarin Group for a brokerage commission, finder's fee or other like payment for the Worldwide Transaction and as and by way of a post-closing covenant the members of the IBEX Group will jointly and severally indemnify and save harmless the members of the BioMarin Group of and from any such Claim.
- (dd) **Omissions and Misrepresentations.** None of the foregoing representations and warranties contains any untrue statement of material fact or omits to state any material fact necessary to make any such warranty or representation not misleading.

5.2 Investment Representations. Each Vendor hereby jointly and severally represents and warrants to BioMarin that:

- (a) Such Vendor is acquiring the BioMarin Worldwide Transaction Shares for investment purposes only, for its own account and not as nominee or agent for any other Person and not with the view to or for resale in connection with any distribution thereof within the meaning of the Securities Act.

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- (b) Such Vendor knows of no public solicitation or advertisement of an offer in connection with the BioMarin Worldwide Transaction Shares.
- (c) Such Vendor has carefully reviewed this Agreement. During the course of the Worldwide Transaction and prior to the purchase of the BioMarin Worldwide Transaction Shares, such Vendor has had the opportunity to ask questions of and receive answers from BioMarin concerning the terms and conditions of the Worldwide Transaction and to obtain additional information concerning the Worldwide Transaction, BioMarin and the BioMarin Worldwide Transaction Shares. Such Vendor has received all information that it has requested regarding BioMarin and believes that such information is sufficient to make an informed decision with respect to the purchase of the BioMarin Worldwide Transaction Shares.
- (d) Such Vendor is able to bear the economic risk of its investment in the BioMarin Worldwide Transaction Shares and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of and protecting its interests with respect to its investment in the BioMarin Worldwide Transaction Shares. Such Vendor is aware of the risk involved in its investment in the BioMarin Worldwide Transaction Shares and has determined that such investment is suitable for such Vendor in light of its financial circumstances and available investment opportunities.
- (e) Such Vendor is an "accredited investor" as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act.
- (f) The purchase by such Vendor of the BioMarin Worldwide Transaction Shares hereunder does not violate or conflict with any Law applicable to such Vendor.
- (g) Each Vendor hereby further agrees with BioMarin that the instruments or certificates evidencing the BioMarin Worldwide Transaction Shares and each instrument or certificate issued in transfer thereof will bear the following legend:

"The securities evidenced by this certificate have not been registered under the Securities Act of 1933 and have been taken for investment purposes only and not with a view to the distribution thereof, and, except as stated in an agreement between the holder of this certificate, or its predecessor in interest, and the issuer corporation, such securities may not be sold or transferred unless there is an effective registration statement under such Act covering such securities or the issuer corporation receives an opinion, in form and content reasonably satisfactory to the issuer corporation, of counsel

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reasonably acceptable to the issuer corporation (which may be counsel for the issuer corporation) stating that such sale or transfer is exempt from the registration and prospectus delivery requirements of such Act."

- (h) The instruments or certificates representing the BioMarin Worldwide Transaction Shares and each instrument or certificate issued in transfer thereof will also bear any legend required under any applicable state securities law.
- (i) Prior to any proposed sale, assignment, transfer or pledge of any of the BioMarin Worldwide Transaction Shares by such Vendor, unless there is in effect a registration statement under the Securities Act covering the proposed transfer, such Vendor shall give written notice to BioMarin of such Vendor's intention to effect such transfer, sale, assignment or pledge. Each such notice shall describe the manner and circumstances of the proposed transfer, sale, assignment or pledge in sufficient detail and shall be accompanied, at such Vendor's expense, by an unqualified written opinion of legal counsel who shall and whose legal opinion shall be reasonably satisfactory to BioMarin addressed to BioMarin (which may be counsel for BioMarin), to the effect that the proposed transfer of the BioMarin Worldwide Transaction Shares may be effected without registration under the Securities Act, whereupon the holder of such BioMarin Worldwide Transaction Shares shall be entitled to transfer such BioMarin Worldwide Transaction Shares in accordance with the terms of the notice delivered by such Vendor to BioMarin.
- (j) Such Vendor consents to BioMarin's making a notation on its records or giving instructions to any transfer agent of its common stock in order to implement the restrictions on transfer of the BioMarin Worldwide Transaction Shares mentioned above.
- (k) Such Vendor is aware that the BioMarin Worldwide Transaction Shares are being issued and sold in reliance on an exemption from the registration requirements of the Securities Act and that such exemption is expressly conditioned on the accuracy of the representations and warranties contained in this section 5.2.
- (l) Such Vendor is not a company established solely to acquire the BioMarin Worldwide Transaction Shares.
- (m) Such Vendor has been independently advised as to restrictions with respect to the trading in the BioMarin Worldwide Transaction Shares in Canada imposed by applicable Canadian securities legislation, confirms that: (i) no representation has been made to it by or on behalf of BioMarin; (ii) BioMarin is not a "reporting issuer" in any jurisdiction in Canada; (iii) the applicable "hold period", under the applicable securities law of Canada

will not commence until BioMarin becomes a "reporting issuer" in the province of residence of such Vendor and such Vendor will not be able to resell the BioMarin Canadian Transaction Shares except in accordance with limited exemptions under applicable securities legislation and regulatory policy; and (iv) the BioMarin Worldwide Transaction Shares will be subject to resale restrictions.

6. **REPRESENTATIONS AND WARRANTIES OF THE MEMBERS OF THE BIOMARIN GROUP**

6.1 **Representations and Warranties.** The members of the BioMarin Group hereby jointly and severally represent and warrant to the members of the IBEX Group as follows and acknowledge and confirm that the members of the IBEX Group are relying upon such representations and warranties in connection with the Worldwide Transaction and that unless otherwise indicated herein, such representations and warranties shall be true and correct as at the Closing Date:

- (a) **Organization.** Each of the members of the BioMarin Group is duly incorporated and validly subsisting under the laws of its jurisdiction of incorporation and has the power (including full corporate power) to own or lease its property and to carry on its business as it is now being conducted.
- (b) **Corporate Authority.** Each of the members of the BioMarin Group now has and on the Closing Date will have full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to carry out all of the terms and conditions hereof on the part of the members of the BioMarin Group to be carried out. The execution and delivery of this Agreement and the consummation of the Worldwide Transaction have been duly authorized by all necessary corporate action on the part of the members of the BioMarin Group, including without limitation, all necessary action by the respective officers, directors, and stockholders, as applicable.
- (c) **No Violations.** The execution and delivery of this Agreement and all other agreements contemplated herein by the members of the BioMarin Group and the observance and performance of the terms and provisions of this Agreement and any such agreements; (i) does not and will not require the members of the BioMarin Group to obtain or make any consent, authorization, approval, filing or registration under any Law which is binding upon any member of the BioMarin Group; (ii) does not and will not constitute a violation or breach of the charter documents, operating agreements or by-laws of any member of the BioMarin Group; (iii) does not and will not constitute a violation or breach of any Law applicable to any member of the BioMarin Group; and (iv) does not and will not

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constitute a default or breach (nor would with the passage of time or the giving of notice or both or otherwise, constitute a default) under any Contract to which any member of the BioMarin Group is a party, except where such default would not have a Material Adverse Effect on any member of the BioMarin Group.

- (d) **Enforceability of Obligations.** This Agreement constitutes a valid and legally binding obligation of each member of the BioMarin Group, enforceable against each member of the BioMarin Group in accordance with its terms, subject however to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (e) **Acts of Bankruptcy.** None of the members of the BioMarin Group is insolvent, has proposed a compromise or arrangement to its creditors generally, has taken any proceeding with respect to a compromise or arrangement, has taken any proceeding to have itself declared bankrupt or wound-up, has taken any proceeding to have a receiver appointed of any part of its assets and at present, no encumbrancer or receiver has taken possession of any of its property and no execution or distress is enforceable or levied upon any of its property and no petition for a receiving order in bankruptcy is filed against it.
- (f) **Resident.** Each member of the BioMarin Group is a resident of and maintains its principal place of business in the country and, as applicable, the state, province, country and city set out in Schedule 6.1(f).
- (g) **BioMarin Worldwide Transaction Shares.** The BioMarin Worldwide Transaction Shares are duly authorized and, in the case of the BioMarin Worldwide Transaction Shares, when issued and paid for in accordance with the terms of this Agreement will be duly authorized, validly issued and outstanding, fully paid and non-assessable and free and clear of all Encumbrances, other than Encumbrances which might have been created or suffered by the Vendors and restrictions imposed by the Securities Act, other securities laws or this Agreement.
- (h) **Regulatory Approvals.** Based in part on the representations and warranties made by the members of the IBEX Group in section 5.2, no authorization from any Governmental Authority is required on the part of BioMarin in connection with the issuance of the BioMarin Worldwide Transaction Shares, save and except for the Quebec Securities Commission Approval referred to in section 12(j) hereof.
- (i) **Registrant Status.** No securities commission or similar regulatory authority has issued any order preventing or suspending trading in any securities of BioMarin or prohibiting the issue and sale of the BioMarin

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Worldwide Transaction Shares and to the Best Knowledge of the members of the BioMarin Group, no such proceedings for such purposes are pending or threatened.

- (j) **Litigation.** There are no Claims at Law or in equity or before or by any Governmental Authority either threatened, pending, outstanding or contemplated against any member of the BioMarin Group or relating to or which may have a Material Adverse Effect on any member of the BioMarin Group nor to the Best Knowledge of any member of the BioMarin Group, is there any basis upon which any such Claims might at any time in the future be founded.
- (k) **Financial Statements.** A true copy of the consolidated balance sheets of BioMarin and the consolidated statements of operations and consolidated statements of changes in stockholder equity and the consolidated statements of cash flows (the "**BioMarin Financial Statements**") as of December 31, 2000 (the "**BioMarin Year End**") is annexed hereto as Schedule 6.1(k). The BioMarin Financial Statements:
- (i) Have been prepared in accordance with United States generally accepted accounting principles applied on a basis consistent with those of the preceding fiscal period.
 - (ii) Present fairly, among other things, the assets, liabilities and financial position of BioMarin as at the BioMarin Year End and the results of operations for the period then ended.
 - (iii) Are substantially in accordance with the books and records of BioMarin (on a consolidated basis).
- (l) **Compliance with Laws.** Each member of the BioMarin Group has been carrying on business in all material respects in accordance with all applicable Laws and Governmental Orders and no member of the BioMarin Group is in violation of any such Law or Governmental Order, except where such violation would not have a Material Adverse Effect on the members of the BioMarin Group.
- (m) **No Brokers.** There is no broker, finder or other intermediary acting on behalf of any member of the BioMarin Group, other than Leerink, Swann & Associates, who has or will have a claim against the members of the IBEX Group for a brokerage commission, finders' fee or other like payment for the Worldwide Transaction and as and by way of a post-closing covenant the members of the BioMarin Group will jointly and severally indemnify and save harmless the members of the IBEX Group of and from such Claim.

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- (n) **Reporting Status; No Termination of Registration.** Except as set forth on Schedule 6.1(n) hereto, BioMarin has filed in a timely manner all documents that BioMarin was required to file under the Exchange Act during the 24 months preceding the date of this Agreement and such documents complied in all material respects with the Commission's requirements as of their respective filing dates, and the information contained therein as of the date thereof did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances in which they were made not misleading. BioMarin has not received notice of the issuance by the Commission of any stop order suspending the qualification of any shares of BioMarin common stock for offering or sale in any jurisdiction or the initiation of any proceeding for such purpose.

7. **REGISTRATION OF BIOMARIN WORLDWIDE TRANSACTION SHARES**

7.1 **Required Registration.**

- (a) Within five days following the Closing Date, BioMarin shall prepare and file a registration statement on Form S-3 under the Securities Act, covering the BioMarin Worldwide Transaction Shares and shall use its best efforts to cause such registration statement to become effective as expeditiously as possible and to remain effective until the earliest to occur of: (i) the date the BioMarin Worldwide Transaction Shares covered thereby have been sold; (ii) the date by which all BioMarin Worldwide Transaction Shares covered thereby may be sold under Rule 144 without restriction as to volume; or (iii) the date which is the twenty-fourth month anniversary of the Closing Date.
- (b) Following the effectiveness of a registration statement filed pursuant to this section, BioMarin may at any time suspend the effectiveness of such registration for up to 60 days, as appropriate (a "**Suspension Period**"), by giving notice to the Vendors, if BioMarin shall have determined that BioMarin may be required to disclose any material corporate development which disclosure may have a Material Adverse Effect on BioMarin. Notwithstanding the foregoing, no more than two Suspension Periods may occur during any 12 month period. BioMarin shall use its best efforts to limit the duration and number of any Suspension Periods. The Vendors agree that upon receipt of any notice from BioMarin of a Suspension Period, the Vendors shall forthwith discontinue disposition of BioMarin Worldwide Transaction Shares covered by such registration statement or prospectus until the Vendors: (i) are advised in writing by BioMarin that the use of the applicable prospectus may be resumed; (ii) have received copies of a supplemental or amended prospectus, if applicable; and (iii) have received copies of any additional or supplemental filings which are

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incorporated or deemed to be incorporated by reference into such prospectus.

7.2 Registration Procedures. At such time as BioMarin effects the registration of the BioMarin Worldwide Transaction Shares under the Securities Act pursuant to section 7.1(a) BioMarin will, at its expense and as expeditiously as possible;

- (a) In accordance with the Securities Act and the rules and regulations of the Commission, prepare and file in accordance with section 7.1(a) a registration statement with respect to the BioMarin Worldwide Transaction Shares and will use its best efforts to cause such registration statement to become and remain effective for the period described herein and BioMarin will prepare and file with the Commission such amendments to such registration statement and supplements to the prospectus contained therein as may be necessary to keep such registration statement effective for such period and such registration statement and prospectus accurate and complete for such period.
- (b) Furnish to the Vendors participating in such registration such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents as such Vendors may reasonably request in order to facilitate the public offering of the BioMarin Worldwide Transaction Shares.
- (c) Use its best efforts to register or qualify the BioMarin Worldwide Transaction Shares covered by such registration statement under such state securities or blue sky laws of such jurisdictions as such participating Vendors may reasonably request within 20 days following the original filing of such registration statement, except that BioMarin shall not for any purpose be required to execute a general consent to service of process or to qualify to do business as a foreign corporation in any jurisdiction where it is not so qualified.
- (d) Notify the Vendors participating in such registration, promptly after BioMarin shall receive notice thereof, of the date and time when such registration statement and each post-effective amendment thereto has become effective or a supplement to any prospectus forming a part of such registration statement has been filed.
- (e) Notify such Vendors promptly of any request by the Commission for the amending or supplementing of such registration statement or prospectus or for additional information.
- (f) Prepare and file with the Commission, promptly upon the request of any such Vendors, any amendments or supplements to such registration statement or prospectus which, in the opinion of counsel for such

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Vendors, is required under the Securities Act or the rules and regulations thereunder in connection with the distribution of the BioMarin Worldwide Transaction Shares by such Vendors.

- (g) Prepare and promptly file with the Commission and promptly notify such Vendors of the filing of, such amendments or supplements to such registration statement or prospectus as may be necessary to correct any statements or omissions if at the time when a prospectus relating to such securities is required to be delivered under the Securities Act any event has occurred as the result of which any such prospectus or any other prospectus as then in effect would include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.
- (h) Advise such Vendors, promptly after BioMarin shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such registration statement or the initiation or threatening of any proceeding for that purpose and promptly use its best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued.

7.3 Covenant Regarding Disposition of BioMarin Shares Following the effectiveness of a registration statement filed pursuant to section 7.1, and without limitation of the provisions of section 7.1(b), the Vendors jointly and severally covenant and agree that any disposition of the BioMarin Worldwide Transaction Shares shall be made in a manner that does not unduly prejudice the trading price of BioMarin's common stock on the Nasdaq National Market or the SWX Swiss Market.

7.4 Indemnification.

- (a) BioMarin will indemnify and hold harmless each Vendor which is an owner of shares of BioMarin Worldwide Transaction Shares included in a registration statement pursuant to the provisions of Article 7 hereof, and any officer, director, employee, agent, partner, member or affiliate of such Vendor (for purposes of this section 7.4(a), the "**Indemnified Parties**"), from and against, and will reimburse such Vendor and each such Indemnified Party with respect to, any and all claims, actions, demands, losses, damages, liabilities, costs and expenses to which such Vendor or any such Indemnified Party may become subject under the Securities Act or otherwise, insofar as such claims, actions, demands, losses, damages, liabilities, costs or expenses arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such registration statement, any prospectus contained therein or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not

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misleading; provided, however, that BioMann will not be liable in any such case to the extent that any such claim, action, demand, loss, damage, liability, cost or expense is caused by an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Vendor or such Indemnified Party in writing specifically for use in the preparation thereof.

- (b) Each Vendor which is an owner of shares of BioMarin Worldwide Transaction Shares included in a registration statement pursuant to the provisions of Article 7 hereof will indemnify and hold harmless BioMarin, and any Person who controls BioMarin within the meaning of the Securities Act, from and against, and will reimburse BioMarin and such controlling Persons with respect to, any and all losses, damages, liabilities, costs or expenses to which BioMarin or such controlling Person may become subject under the Securities Act or otherwise, insofar as such losses, damages, liabilities, costs or expenses are caused by any untrue or alleged untrue statement of any material fact contained in such registration statement, any prospectus contained therein or any amendment or supplement thereto, or are caused by the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was so made solely in reliance upon and in conformity with written information furnished by such Vendor specifically for use in the preparation thereof; provided, however, that the liability of any Vendor pursuant to this subsection (b) shall be limited to an amount not to exceed the net proceeds received by such Vendor pursuant to the registration statement which gives rise to such obligation to indemnify.
- (c) Promptly after receipt by a party indemnified pursuant to the provisions of paragraph (a) or (b) of this section 7.4 of notice of the commencement of any action involving the subject matter of the foregoing indemnity provisions, such indemnified party will, if a claim thereof is to be made against the indemnifying party pursuant to the provisions of paragraph (a) or (b), notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to an indemnified party otherwise than under this section 7.4 and shall not relieve the indemnifying party from liability under this section 7.4 unless such indemnifying party is prejudiced by such omission. In case such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party shall have the right to participate in, and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably

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satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party pursuant to the provisions of such paragraph (a) or (b) for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall be liable to an indemnified party for any settlement of any action or claim without the consent of the indemnifying party. No indemnifying party will consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

- (d) If the indemnification provided for in subsection (a) or (b) of this section 7.4 is held by a court of competent jurisdiction to be unavailable to a party to be indemnified with respect to any claims, actions, demands, losses, damages, liabilities, costs or expenses referred to therein, then each indemnifying party under any such subsection, in lieu of indemnifying such indemnified party thereunder, hereby agrees to contribute to the amount paid or payable by such indemnified party as a result of such claims, actions, demands, losses, damages, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions which resulted in such claims, actions, demands, losses, damages, liabilities, costs or expenses, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount any Vendor shall be obligated to contribute pursuant to this subsection (d) shall be limited to an amount not to exceed the net proceeds received by such Vendor pursuant to the registration statement which gives rise to such obligation to contribute. No person guilty of fraudulent misrepresentation (within the meaning of section 11(f) of the Securities Act) shall be entitled to contribution hereunder from any person who was not guilty of such fraudulent misrepresentation.

8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

8.1 **Survival.** No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any

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representation or warranty made by any Party. No waiver by any Party of any condition, in whole or in part, shall operate as a waiver of any other condition. The representations and warranties contained in Article 5 and 6 respectively or in any certificate or other document delivered in connection with the Closing shall survive the making of this Agreement and the Closing as to the representations and warranties contained in section 5.1(g), 5.1(l), 5.1(y) and 5.1(bb), for a period of six years and as to all other representations and warranties, for a period of three years following the Closing unless a *bona fide* notice of a Claim shall have been given in writing prior to the expiry of that period, in which case the representations and warranties to which such notice applies shall survive in respect of that Claim until the final determination or the applicable settlement, in each case, of that Claim.

9. COVENANTS

9.1 Interim Covenants. From the date hereof and up to and including the Closing Date or other termination of this Agreement, except as otherwise consented to in writing by the members of the BioMarin Group, the members of the IBEX Group shall jointly and severally observe and perform the provisions stated below:

- (a) Operations. The Vendors shall carry on the IBEX Group Worldwide Business in the usual and ordinary course in substantially the same manner as heretofore conducted and shall preserve their relationships with customers, suppliers and third Persons having business dealings with the Vendors and shall take any and all such further actions reasonably requested by the members of the BioMarin Group to the end that the IBEX Group Worldwide Business shall not be impaired in any material respect on the Closing Date.
- (b) Insurance. The Vendors shall keep in full force their current insurance policies relating to the Worldwide Assets and the IBEX Group Worldwide Business without permitting any termination, cancellation or lapse thereof and the Vendors shall enter into replacement policies providing coverage equal to or greater than the coverage under those cancelled, terminated or lapsed policies for substantially similar premiums.
- (c) Contracts. The Vendors shall perform in all material respects their respective obligations under Contracts relating to or affecting the Worldwide Assets and/or the IBEX Group Worldwide Business.
- (d) Books and Records. The Vendors shall maintain the books of account and records relating to the Worldwide Assets and/or the IBEX Group Worldwide Business in the usual and ordinary course of business.
- (e) Compliance With Laws. The Vendors shall comply in all material respects with all Laws applicable to the Worldwide Assets and/or the IBEX Group Worldwide Business.

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- (f) **Additional Contracts.** No member of the IBEX Group or their Affiliates shall enter into or assume any Contract relating to the IBEX Group Worldwide Business except for; (i) purchases of supplies or inventories in the usual and ordinary course of the IBEX Group Worldwide Business consistent with prior practice; and (ii) Contracts which, individually or in the aggregate, are not material to the IBEX Group Worldwide Business. For purposes of the proceeding sentence, any Contract in excess of Cdn.\$50,000 shall be considered material to the IBEX Group Worldwide Business. No member of the IBEX Group or their Affiliates shall otherwise make any material change in the conduct of the IBEX Group Worldwide Business.
- (g) **Disposition of Worldwide Assets.** The Vendors shall not sell, lease or transfer or agree to sell, lease or transfer or cause any Encumbrance upon, any of the Worldwide Assets, out of the ordinary course of business or approve or undertake any other transaction out of the ordinary course of business or furnish or cause to be furnished any information concerning the Worldwide Assets and/or the IBEX Group Worldwide Business to any third Person who is interested in any such transaction.
- (h) **Representations and Warranties.** The members of the IBEX Group shall not do anything that would cause any of the representations and warranties under Article 5 to be false, incomplete or misleading in such a fashion as to have a Material Adverse Effect on the members of the IBEX Group.
- (i) **Advice.** The members of the IBEX Group shall promptly advise the members of the BioMarin Group in writing of any change that would have a Material Adverse Effect on the condition, financial or otherwise of the Worldwide Assets and/or the IBEX Group Worldwide Business.
- (j) **Accounting.** With respect to the IBEX Group Worldwide Business and the Worldwide Assets, no member of the IBEX Group shall make any change in the accounting principles, methods, records or practices followed by it or depreciation or amortization policies or rates theretofore adopted by it. Each member of the IBEX Group shall maintain its books, records and accounts in accordance with Canadian generally accepted accounting principles applied on a basis consistent with past practice.
- (k) **Discharge.** No member of the IBEX Group shall cancel, compromise, release or discharge any Claim in connection with the operations of the Worldwide Assets upon or against any Person or waive any right of material value except, in any case, in the ordinary course of the IBEX Group Worldwide Business and consistent with past practice.

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- (I) **McGill License.** The members of the IBEX Group shall, upon the request of BioMarin, introduce representatives of BioMarin to appropriate representatives of McGill University with a view to obtaining a license from McGill University to use US Patent 5,147,641 and its foreign counterparts on substantially the same terms and conditions as the license dated August 30, 1994 between McGill University and IBEX. The members of the IBEX Group shall not enter into any license in respect of such patent or otherwise interfere with the negotiation of such license by BioMarin.

9.2 **Interim Access.** From and after the execution and delivery of this Agreement and until Closing or other termination of this Agreement, the members of the IBEX Group shall continue to make available to the members of the BioMarin Group and their respective directors, officers, auditors, employees, investment bankers, counsel and other authorized representatives (the "**Representatives**") all title documents, policies of insurance. Contracts and other documents in the possession of the members of the IBEX Group or under the control of the members of the IBEX Group relating to the Worldwide Assets and the IBEX Group Worldwide Business. The members of the IBEX Group shall also continue to forthwith make available to the members of the BioMarin Group and their respective Representatives for examination, all books of account, accounting records, documents, information and data relating to the Worldwide Assets and the IBEX Group Worldwide Business and shall also continue to make available to the members of the BioMarin Group and their respective Representatives full and complete access to the key personnel, customers, suppliers, independent accountants and counsel of members of the IBEX Group, as requested by the members of the BioMarin Group or their respective Representatives. The members of the IBEX Group shall afford the members of the BioMarin Group and their respective Representatives every reasonable opportunity to have access to and inspect the Worldwide Assets.

10. **INDEMNITY**

10.1 **Indemnity by the Members of the BioMarin Group.** The members of the BioMarin Group shall jointly and severally indemnify and save harmless the members of the IBEX Group from all Losses actually incurred by the members of the IBEX Group as a result of: (i) any breach by the members of the BioMarin Group or any inaccuracy of any covenant, representation or warranty of the members of the BioMarin Group contained in this Agreement; and (ii) any actual action, suit, investigation, inquiry or proceeding (each, an "**Action**") arising out of or resulting from the conduct of the IBEX Group Worldwide Business or any of the Worldwide Assets by members of the BioMarin Group after the Closing Date.

10.2 **Indemnity by the Members of the IBEX Group.** The members of the IBEX Group shall jointly and severally indemnify and save harmless the members of the BioMarin Group from all Losses actually incurred by the members of the BioMarin Group as a result of: (i) any breach by any member of the IBEX Group or any inaccuracy of any covenant, representation or warranty of any member of the IBEX

Group contained in this Agreement; (ii) any Action arising from rights of creditors pursuant to the Bulk Sales Carve-Out or any Action arising from rights of creditors pursuant to any non-compliance by BioMarin US with section 1767 ss of the Civil Code of Quebec in connection with the Worldwide Transaction or the Vendor's or BioMarin US's failure to comply with applicable bulk sales or sale of an enterprise legislation; (iii) any Excluded Liability; (iv) any Action arising out of or resulting from the conduct of the IBEX Group Worldwide Business or any of the Worldwide Assets by the members of the BioMarin Group prior to the Closing Date; and (v) any Action arising from the failure of the members of the IBEX Group to comply with any covenants contained in this Agreement.

10.3 Indemnification Procedure. An indemnified party pursuant to the provisions hereof (the "**Indemnified Party**") shall give the other Party (the "**Indemnitor**") notice of any matter which an Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement, within 60 days of such determination, stating the amount of the Loss if known and the method of computation thereof and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed. If an Indemnified Party shall receive notice of any third party claim (a "**Third Party Claim**"), the Indemnified Party shall give the Indemnitor notice of the Third Party Claim within 30 days of the receipt by the Indemnified Party of such notice. The failure to provide such notice shall not release the Indemnitor from its obligations under this Article except to the extent that the Indemnitor is materially prejudiced by such failure and shall not relieve the Indemnitor from any other obligation or liability that it may have to the Indemnified Party other than under this Article. If the Indemnitor acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim within 20 days of receipt of notice of such Claim, the Indemnitor shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within five days of the receipt of such notice from the Indemnified Party. If there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the judgment of the Indemnified Party, in its sole and absolute discretion, for the same counsel to represent both the Indemnified Party and the Indemnitor or if the Indemnitor does not so assume and defend such Third Party Claim, the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnitor. If the Indemnitor exercises the right to undertake any such defense against any Third Party Claim, the Indemnified Party shall cooperate with the Indemnitor in such defense and shall make available to the Indemnitor, at the Indemnitor's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnitor. If the Indemnified Party is directly or indirectly conducting the defense against any such Third Party Claim, the Indemnitor shall cooperate with the Indemnified Party in such defense and shall make available to the Indemnified Party, at the Indemnitor's expense, all such witnesses, records, materials and information in the Indemnitor's possession or under the Indemnitors' control relating thereto as is reasonably required by the Indemnified

Party. No such Third Party Claim may be settled by the Indemnitor without the prior written consent of the Indemnified Party, acting reasonably. For the purposes of this Article 10, the members of the BioMarin Group shall be treated as one Party and the members of the IBEX Group shall be treated as one Party.

10.4 **Supplemental Rights**. The rights and benefits provided in this Article 10 are supplemental to and are without prejudice to any other rights, actions or causes of action which may arise pursuant to any other section of this Agreement or pursuant to applicable law.

10.5 **Reduction of Worldwide Purchase Price**. All amounts received by the members of the BioMarin Group pursuant to the provisions of this Article shall be received in reduction of the Worldwide Purchase Price.

10.6 **Minimum and Maximum Indemnification Claim**. Notwithstanding the provisions of section 10.1(i) and (ii) or 10.2(i) and (iv), as the case may be, the obligation of the members of the BioMarin Group or the members of the IBEX Group, as the case may be, to indemnify the other Parties in respect of any of the matters described therein, as the case may be, shall become applicable only when the Losses actually incurred by the Person entitled to indemnification exceed in the aggregate Cdn.\$100,000 under this Agreement and/or the Canadian Purchase Agreement (the "**Minimum Threshold**"). Once the Minimum Threshold has been exceeded, the obligations of indemnification with respect to such matters shall apply to: (i) 50% of any and all Losses from dollar one above Cdn. \$50,000 to Cdn. \$100,000; and (ii) any and all Losses from dollar one above Cdn.\$100,000 of such Losses. The right of indemnification with respect to such matters shall only apply to Losses (exclusive of Losses relating to breaches of representations and warranties set forth in sections 5.1(l) and 5.1(bb), and any other matters relating to the Excluded Liabilities and rights of creditors pursuant to the Bulk Sales Carve-Out and rights of creditors pursuant to matters described in section 10.2(ii), for which there shall be no limitation) under this Agreement and the Canadian Purchase Agreement which aggregate up to and including the sum of (a) the Canadian Purchase Price (as defined in the Canadian Purchase Agreement), (b) the Worldwide Purchase Price and (c) the Contingency Payments.

10.7 **Rights of Set-Off**. Subject to section 10.6, in the event the members of the BioMarin Group have incurred Losses and the members of the IBEX Group must indemnify the members of the BioMarin Group pursuant to the provisions hereof, BioMarin shall have the right to set off such Losses including, without limitation, any Losses of the BioMarin Group under the Canadian Purchase Agreement, as against the Contingency Payments.

11. **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE MEMBERS OF THE IBEX GROUP AT CLOSING**

11.1 **Conditions Precedent.** All obligations of the Vendors to sell the Worldwide Assets to BioMarin US at Closing under this Agreement are subject to the fulfillment (or waiver in writing by the members of the IBEX Group) prior to or at the Closing of each of the following conditions:

- (a) **Representations and Warranties.** The representations and warranties made by each member of the BioMarin Group in or under this Agreement shall be true in all material respects (except where already qualified as to materiality) on and as of the Closing Date and the Vendors shall have received from each member of the BioMarin Group a certificate signed as of the Closing Date to such effect in the form set out in Schedule 11.1(a).
- (b) **Compliance with Covenants.** Each member of the BioMarin Group shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by each member of the BioMarin Group prior to Closing and the members of the IBEX Group shall have received from each member of the BioMarin Group a certificate signed as of the Closing Date to such effect in the form set out in Schedule 11.1(b).
- (c) **Corporate Authorizations.** The members of the BioMarin Group shall have delivered to the members of the IBEX Group evidence satisfactory to the members of the IBEX Group that all necessary corporate authorizations by the members of the BioMarin Group authorizing and approving the execution and delivery of this Agreement and the consummation of the Worldwide Transaction have been obtained.
- (d) **Assumption of Assumed Worldwide Liabilities.** On Closing, the members of the BioMarin Group and the Vendors shall execute and deliver an assignment and assumption agreement with respect to the Assumed Worldwide Liabilities in the form set out in Schedule 11.1(d).
- (e) **Opinion.** On Closing, the members of the IBEX Group shall receive from United States counsel to the members of the BioMarin Group legal opinions in the form set out in Schedule 11.1(e).
- (f) **BioMarin Worldwide Transaction Shares.** On Closing, BioMarin shall deliver certificates representing the BioMarin Worldwide Transaction Shares to the Vendors as provided in section 3.2 hereof.
- (g) **License Agreement.** On Closing, (i) the members of the BioMarin Group shall execute and deliver with the members of the IBEX Group a license agreement in the form set forth in Schedule 11.1(g) and (ii) Massachusetts Institute of Technology shall have consented to the license of Intellectual

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Property covered by the Contracts with the Massachusetts of Technology set forth in Schedule 2.3(b) to the members of IBEX Group contemplated in the license agreement set forth in Schedule 11.1(g).

- (h) **Insurance.** On Closing, BioMarin NS shall have insured the Worldwide Assets, with effect as and from the Closing Date, in such amounts and against such risks, including general liability and tenant's liability, as are customarily carried and insured against by BioMarin in respect of comparable assets in the conduct of its business.

In case any of the foregoing conditions cannot be fulfilled at or before the Time of Closing to the satisfaction of the members of the IBEX Group, the members of the IBEX Group may rescind this Agreement by notice to the members of the BioMarin Group and in such event all of the Parties shall be released from all obligations hereunder, unless the members of the IBEX Group can show that the condition or conditions which have not been satisfied are reasonably capable of being performed or caused to be performed by the members of the BioMarin Group and are the obligation of the members of the BioMarin Group to perform or to cause to be performed or have not been satisfied by reason of a default by the members of the BioMarin Group, in which case, the members of the BioMarin Group, at the option of the members of the IBEX Group, shall not be released from any obligations hereunder. Any such conditions may be waived in whole or in part by the members of the IBEX Group without prejudice to the members of the IBEX Group's rights of rescission in the event of the non-fulfillment of any other condition or conditions, any such waiver to be binding on the members of the IBEX Group only if the same is in writing.

12. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE MEMBERS OF THE BIOMARIN GROUP AT CLOSING

12.1 **Conditions Precedent.** All obligations of BioMarin US to purchase the Worldwide Assets from the Vendors at Closing under this Agreement are subject to the fulfillment (or waiver in writing by the members of the BioMarin Group) prior to or at the Closing of each of the following conditions:

- (a) **Representations and Warranties.** The representations and warranties made by each member of the IBEX Group in or under this Agreement shall be true in all material respects (except where already qualified as to materiality) on and as of the Closing Date and the members of the BioMarin Group shall have received from each member of the IBEX Group a certificate signed as of the Closing Date to such effect, in the form set out in Schedule 12.1(a).
- (b) **Actions, Etc.** All actions, proceedings, instruments and documents required for the members of the IBEX Group to carry out the Worldwide Transaction and all other related legal matters shall have been approved

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by the members of the BioMarin Group and the members of the BioMarin Group shall have been furnished with such certified copies of actions and proceedings with respect to the members of the IBEX Group and other such instruments and documents as the members of the BioMarin Group shall have requested.

- (c) **Compliance with Covenants.** Each member of the IBEX Group shall have complied with all covenants and agreements herein agreed to be performed or caused to be performed by each member of the IBEX Group and the members of the BioMarin Group shall have received from each member of the IBEX Group a certificate signed as of the Closing Date to such effect, in the form set out in Schedule 12.1(c).
- (d) **Corporate Authorizations.** The members of the IBEX Group shall have delivered to the members of the BioMarin Group evidence satisfactory to the members of the BioMarin Group that all necessary corporate authorizations by the members of the IBEX Group authorizing and approving the execution and delivery of this Agreement, the consummation of the Worldwide Transaction and the transfer of the Worldwide Assets as herein contemplated have been obtained.
- (e) **Assumption of Assumed Worldwide Liabilities.** On Closing, the members of the BioMarin Group and the Vendors shall execute and deliver an assignment and assumption agreement with respect to the Assumed Worldwide Liabilities, in the form set out in Schedule 11.1(d).
- (f) **Approvals and Consents.** At or before Closing there shall have been obtained from all appropriate federal, state, municipal or other governmental or administrative bodies all such approvals and consents, if any, in form and on terms satisfactory to the members of the BioMarin Group as may be required in order to transfer the Worldwide Assets and to enable BioMarin US to assume the Assumed Worldwide Liabilities at Closing as herein provided.
- (g) **No Material Loss.** There shall have been no material loss or damage to the Worldwide Assets not adequately covered by insurance.
- (h) **No Material Adverse Change.** There shall have been no change that would have a Material Adverse Effect on the condition, financial or otherwise of the Worldwide Assets and/or the IBEX Group Worldwide Business.
- (i) **Litigation.** No court order shall have been entered that enjoins, restrains, prohibits or restricts Closing of the Worldwide Transaction. None of the Parties nor any of their respective directors, officers, employees or agents shall be a defendant or third party to or have received written or oral notice

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of the threat of any litigation or proceedings before any court or Governmental Authority which, in the opinion of the members of the BioMarin Group, could prevent or restrict such Party from performing any of its obligations in this Agreement or any of the Closing Documents or could expose such Person to damages.

- (j) **Quebec Securities Commission.** On or before Closing, BioMarin shall have received the approval of the Quebec Securities Commission to the issuance of the BioMarin Worldwide Transaction Shares (the "**Quebec Securities Commission Approval**").
- (k) **Receipt of Closing Documents by the Members of the BioMarin Group.** All instruments of conveyance and other documentation relating to the sale and purchase of the Worldwide Assets, including without limitation, the Closing Documents, assignments, bills of sale, conveyances and other documentation and all actions and proceedings taken on or prior to the Closing in connection the performance by the members of the IBEX Group of their obligations under this Agreement shall be satisfactory to the members of the BioMarin Group and their counsel and the members of the BioMarin Group shall have received duly executed copies of the Closing Documents and all such documentation or other evidence as they may reasonably request in order to establish the consummation of the Worldwide Transaction and the taking of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to the members of the BioMarin Group and their counsel. For greater certainty and without limitation, the Vendors shall have delivered to BioMarin US duly executed, in form and substance reasonably satisfactory to the members of the BioMarin Group and their counsel and in proper form for registration, if required, under applicable Laws, all instruments of conveyance and other documentation relating to the sale and purchase of the Worldwide Assets, including without limitation:
- (i) bills of sale and assignment of interest for the Worldwide Assets (including all Permits, Licenses and Contracts), in the form set out in Schedule 12.1(k)(i); and
 - (ii) assignments in registrable form of all Intellectual Property, in the forms set out in Schedule 12.1(k)(ii).
- (l) **Consents to Assignments.** With respect to any IBEX Group Worldwide Intellectual Property, Permits and Licenses and the Contracts (the "**Worldwide Assigned Rights**") forming a part of the Worldwide Assets in connection with the IBEX Group Worldwide Business and which BioMarin US shall assume at Closing in accordance with this Agreement identified at Schedule 5.1(s), on Closing, the members of the IBEX Group shall

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deliver to BioMarin US, such unconditional written consents to the assignment thereof (the "**Worldwide Assigned Rights Consents**") as are applicable, to assign the Worldwide Assigned Rights to BioMarin US together with written acknowledgements from the other party to such Worldwide Assigned Rights, in the form set out in Schedule 12.1(i) acknowledging that all amounts due and payable by the Vendors have been paid in full to the Closing Date.

- (m) **Possession of Worldwide Assets.** On Closing, the Vendors shall deliver title to and possession of all of the Worldwide Assets to BioMarin US.
- (n) **Non-Competition Agreement.** On Closing, the members of the IBEX Group shall execute and deliver non-competition agreements in the form set out in Schedule 12.1(n).
- (o) **Termination.** On Closing, the members of the IBEX Group shall execute and deliver with the members of the BioMarin Group an agreement in the form set out in Schedule 12.1(o) terminating all written or oral agreements among the members of the IBEX Group with respect to the Worldwide Assets and the IBEX Group Worldwide Business, including for greater certainty and without limitation, marketing agreements with respect to the IBEX Group Worldwide Intellectual Property, on terms and conditions satisfactory to the members of the BioMarin Group and their counsel.
- (p) **Services, Equipment and Space Sharing Agreement.** On Closing, the members of the BioMarin Group shall execute and deliver with the members of the IBEX Group an agreement in form set out in Schedule 12.1(p).
- (q) **License Agreement.** On Closing, (i) the members of the BioMarin Group shall execute and deliver with the members of the IBEX Group a license agreement in the form set forth in Schedule 11.1(g) and (ii) Massachusetts Institute of Technology shall have consented to the license of Intellectual Property covered by the Contracts with the Massachusetts of Technology set forth in Schedule 2.3(b) to the members of IBEX Group contemplated in the license agreement set forth in Schedule 11.1(g).
- (r) **Canadian Purchase Agreement.** On Closing, the transaction set forth under the Canadian Purchase Agreement shall have been contemporaneously successfully consummated.
- (s) **Opinions.** On Closing, the members of the BioMarin Group shall receive from U.S. and Quebec counsel to the members of the IBEX Group a legal opinion in the form set out in Schedule 12.1(s).
- (t) **No Orders.** No order of any court or administrative agency shall be in effect which restrains or prohibits the Worldwide Transaction and no suit,

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action, inquiry, investigation or proceeding in which it will be or it is sought to restrain, prohibit or change the terms of or obtain damages or other relief in connection with the Worldwide Transaction and which in the judgment of the members of the BioMarin Group and their counsel, acting reasonably, makes it inadvisable to proceed with the consummation of the Worldwide Transaction shall have been made, instituted or threatened by any Person.

In case any of the foregoing conditions cannot be fulfilled at or before the Time of Closing to the satisfaction of the members of the BioMarin Group, the members of the BioMarin Group may rescind this Agreement by notice to the members of the IBEX Group and in such event all of the Parties shall be released from all obligations hereunder, unless the members of the BioMarin Group can show that the condition or conditions which have not been satisfied are reasonably capable of being performed or caused to be performed by the members of the IBEX Group and are the obligation of the members of the IBEX Group to perform or to cause to be performed or have not been satisfied by reason of a default by the members of the IBEX Group, in which case, the members of the IBEX Group, at the option of the members of the BioMarin Group, shall not be released from any obligations hereunder. Any such conditions may be waived in whole or in part by the members of the BioMarin Group without prejudice to the members of the BioMarin Groups' rights of rescission in the event of the non-fulfillment of any other condition or conditions, any such waiver to be binding on the members of the BioMarin Group only if the same is in writing.

13. THIRD PARTY ASSIGNMENT AND CONSENTS

13.1 **Third Party Assignments.** Neither this Agreement nor any Closing Document shall constitute an assignment or an attempted assignment of any Worldwide Assigned Right contemplated to be assigned to BioMarin US hereunder where such Worldwide Assigned Right; (i) is not assignable without the consent of a third Person if such consent has not been obtained and such assignment or attempted assignment would constitute a breach thereof; or (ii) in respect of which Worldwide Assigned Right the remedies for enforcement thereof available to the Vendors would not pass to BioMarin US. In respect of the foregoing, the members of the IBEX Group, as and by way of a post-closing covenant, jointly and severally agree to take such action or cause to be taken such action in their own name or otherwise as the members of the BioMarin Group shall reasonably require so as to provide BioMarin US the benefits thereof and to effect collection of money to become due and payable by the other party thereto and the members of the IBEX Group shall promptly pay over to BioMarin US all money received by the Vendors in respect of the foregoing. If and when any Worldwide Assigned Right Consent is obtained or such Worldwide Assigned Right otherwise becomes assignable, the Vendors shall promptly assign all of their rights and obligations thereunder to BioMarin US and BioMarin US shall, without the payment of any further consideration therefor, assume such rights and obligations and the Vendors shall be relieved of any and all liability therefor.

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13.2 Further Assurances; Consents. From and after the date hereof and before and after Closing: (i) each of the Parties shall use their reasonable best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth herein, including, without limitation, the procurement of the post-Closing Worldwide Assigned Rights Consents as set forth in Schedule 13.2; (ii) each of the Parties shall use their reasonable best efforts to cause the Worldwide Transaction to be consummated; (iii) the Parties shall cooperate with each other to provide such information, to execute and deliver such other documents, instruments of transfer or assignment, files, books and records and to do all such further acts and things as may be reasonably required to carry out the Worldwide Transaction; (iv) the Parties shall use all reasonable efforts to comply promptly with all legal requirements that may be imposed upon them with respect to the consummation of the Worldwide Transaction and to obtain any consent or any exemption by and to make any registration, declaration or filing with any Governmental Authority or other third Person required to be obtained or made by such Person in connection with the taking of any action contemplated hereby, including, without limitation, the post-Closing Worldwide Assigned Rights Consents. The Parties covenant and agree to proceed diligently and in a coordinated fashion to apply for and obtain any and all necessary approvals and/or Worldwide Assigned Rights Consents. For greater certainty and without limitation, at the request of any member of the BioMarin Group, prior to and after the Closing, the Representatives of the BioMarin Group shall have full right to participate in discussions with all third Persons with a view to procuring all pre-Closing and post-Closing Worldwide Assigned Rights Consents; provided, however, that in the event that from and after Closing, any member of the IBEX Group has not proceeded diligently and in a coordinated fashion to apply for and obtain any and all such necessary approvals and/or Canadian Assigned Rights Consents, the members of the BioMarin Group, without any further or other act or formality shall be irrevocably appointed to act as attorney and mandatory for and on behalf of any or all of the members of the IBEX Group in their place and stead, with full power of substitution, such power of attorney being coupled with an interest to survive the insolvency of any Party. Notwithstanding the foregoing, the members of the IBEX Group shall ensure that all necessary Representatives of the IBEX Group are entitled to be present and/or participate, as applicable, at all reasonable times to accomplish the objectives of this section 13.2.

14. ADDITIONAL POST-CLOSING COVENANTS

14.1 Financial Statements. The members of the IBEX Group jointly and severally covenant and agree as and by way of a post-closing covenant to preserve the financial statements and working papers relating to the IBEX Group Worldwide Business for a period of at least 10 years from the Closing and to allow the members of the BioMarin Group or the Representatives to have access thereto at all reasonable times in connection with the affairs of the BioMarin Group and to make copies thereof and to take extracts therefrom. The members of the IBEX Group jointly and severally covenant and agree as and by way of a post-closing covenant to use their reasonable best efforts

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to maintain and preserve such books of account and to at least exercise the same degree of care with respect thereto as they do now in connection with their other business records.

14.2 **Resale Payments.** The members of the BioMarin Group jointly and severally covenant and agree as and by way of a post-closing covenant to pay to the Vendors a sum equal to 50% of any consideration received by any member of the BioMarin Group within three months of the Closing Date, as a result of a license or sale by only such member of the BioMarin Group of any of the IBEX Group Worldwide Intellectual Property.

14.3 **Filter Technology.** The members of the IBEX Group jointly and severally covenant and agree as and by way of a post-closing covenant that, for no additional consideration (the consideration therefor being included in the Worldwide Purchase Price), on or before August 31, 2002, they shall transfer to BioMarin US, good and marketable title to the Filter Technology, free and clear of any and all Encumbrances, subject to the rights of creditors pursuant to the Bulk Sales Carve Out and pursuant to a general conveyance which shall contain representations and warranties on the part of the members of the IBEX Group with respect to the Filter Technology which are similar to the representations and warranties with respect to the Worldwide Assets that are contained in this Agreement.

14.4 **McGill License.** The members of the IBEX Group jointly and severally agree as a post-closing covenant that members of the IBEX Group shall not enter into any license in respect of US Patent 5,147,641 and its foreign counterparts or otherwise interfere with the negotiation of such license by BioMarin.

14.5 **Retention Agreement.** The members of the IBEX Group jointly and severally covenant and agree as and by way of a post-closing covenant that for a period of three (3) years following Closing, the members of the IBEX Group shall not enter into an amalgamation, consolidation, merger or transfer of the undertaking or assets of the IBEX Group as an entirety or substantially as an entirety (a "**Capital Reorganization**") with or to another person (a "**Successor Company**") unless the Successor Company resulting from the Capital Reorganization (if not one of the members of the IBEX Group) shall agree to be bound by the provisions of this Agreement including, without limitation, Article 10 hereof. For greater certainty, this section 14.5 shall not apply to: (i) a Capital Reorganization involving only members of the IBEX Group; or (ii) a sale of BioMarin Worldwide Transaction Shares by any member of the IBEX Group.

14.6 **License Agreement.** The members of the BioMarin Group jointly and severally covenant and agree as a post-closing covenant to use their commercially reasonable efforts to cause the Contracts with Massachusetts Institute of Technology set forth on Schedule 2.3(b) or any amendments or extensions thereof to remain in good standing and to preserve BioMarin's ability to license Intellectual Property licensed to BioMarin under such Contracts to the IBEX Group under the agreement set forth in Schedule 11.1(g).

15. CONFIDENTIALITY

15.1 Confidentiality. For a period of five years from Closing, each Party shall keep confidential all information (the "**Confidential Information**") obtained from the other Party or its Representatives in connection with the other Party, this Agreement and the Worldwide Transaction and that all such Confidential Information obtained by it from the other Party or any of its Representatives shall be used solely for the purpose of evaluating the Worldwide Transaction and for no other purpose. The term "**Confidential Information**" shall not include any information which; (i) is or becomes generally available to the public other than as a result of a disclosure by the receiving Party or the Representatives, (ii) becomes known to the receiving Party or the Representatives on a non-confidential basis from a source (other than the disclosing Party) which is not known to the receiving Party to be bound to the disclosing Party by a legal, contractual or fiduciary obligation; (iii) was known to the receiving Party or the Representatives on or prior to the date hereof; or (iv) was independently discovered or developed by the receiving Party without reference to any of the Confidential Information. If this Agreement is terminated without consummation of the Worldwide Transaction, each Party shall return to the other Party all Confidential Information in its possession regarding the other Party and all copies and extracts thereof or with the consent of the other Party shall destroy all such Confidential Information and copies and extracts and shall deliver to the other Party evidence of destruction of such Confidential Information and copies and extracts as such other Party may reasonably request. For the purpose of this Article 15, the members of the BioMarin Group shall be one Party and the members of the IBEX Group shall be one Party. Confidential Information includes all information transferred from the IBEX Group to the BioMarin Group as part of the Worldwide Assets. Notwithstanding the foregoing, it is acknowledged and agreed that (x) no information provided by the BioMarin Group to the IBEX Group concerning BioMarin or its business constitutes Confidential Information of the members of the BioMarin Group and (y) from and after the Closing, no information relating to the Worldwide Assets or the IBEX Group Worldwide Business constitutes Confidential Information to be held in confidence by any member of the BioMarin Group.

15.2 Public Disclosure. No Party shall issue any press release or other public announcement, written or oral, relating to this Agreement or to performance hereunder or the existence of any arrangement among the Parties without the prior approval of the other Parties acting reasonably and on a timely basis, except to the extent that such press release or announcement is reasonably concluded by a Party to be required by applicable Law. The forms of press release to be issued by IBEX and BioMarin upon the execution and delivery of this Agreement are set forth in Schedule 15.2. Each member of the IBEX Group acknowledges that BioMarin will be required to file a copy of this Agreement and the other agreements and instruments contemplated hereby with the Commission and to describe the Worldwide Transaction in its public filings.

16. SOLICITATION

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16.1 **No Solicitation**. From the date hereof and up to and including the Closing Date or other termination of this Agreement, other than in connection with the Worldwide Transaction, the members of the IBEX Group jointly and severally covenant and agree that neither they nor any their Affiliates shall nor shall any of the members of the IBEX Group or any of their Affiliates permit their respective Representatives to initiate, solicit or encourage, directly or indirectly, any inquiries or the making or implementation of any proposal or offer (including without limitation, any proposal or offer to shareholders) with respect to an Acquisition Proposal or engage in negotiations concerning or provide any confidential information or data to, have any discussions with or endorse or recommend a proposal of or enter into any contract or understanding with any Person relating to an Acquisition Proposal or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal. The members of the IBEX Group shall notify the members of the BioMarin Group immediately if any such inquiries or proposals are received by, any such information is requested from or any such negotiations or discussions are sought to be initiated or continued with the members of the IBEX Group or any of their Affiliates or Representatives; provided however that nothing contained in this section shall prohibit the board of directors of IBEX from furnishing non-public information to or entering into discussions or negotiations with any Person that makes an unsolicited *bona fide* Acquisition Proposal, if and only to the extent that: (i) the board of directors of IBEX, based upon the advice of outside counsel, determines in good faith that such action is required for the board of directors of IBEX to comply with its fiduciary duties to shareholders imposed by applicable Law; (ii) prior to furnishing such information to or entering into discussions or negotiations with such Person, the members of the IBEX Group keep the members of the BioMarin Group informed of the status and all material information with respect to any such discussions or negotiations. Nothing in this section shall permit the members of the IBEX Group to terminate this Agreement or permit the members of the IBEX Group to enter into any agreement with respect to an Acquisition Proposal for so long as this Agreement remains in effect (it being agreed that for so long as this Agreement remains in effect, none of the members of the IBEX Group nor their Affiliates shall enter into any agreement with any Person that provides for or in any way facilitates an Acquisition Proposal or affect any other obligation of the members of the IBEX Group under this Agreement).

17. **WORLDWIDE ASSETS AT RISK UNTIL CLOSING**

17.1. **Risk**. Notwithstanding anything herein contained, title and risk of loss of the Worldwide Assets shall remain with the Vendors until the Worldwide Transaction has been completed as herein contemplated. The Vendors shall maintain the insurance represented herein to be held by them on the Worldwide Assets until the Closing Date and the Vendors shall hold any proceeds thereof in trust for the Parties as their interests may appear.

17.2. **Reduction of Worldwide Purchase Price**. In the event of damage or destruction to the IBEX Pharma Worldwide Fixed Assets prior to the Closing Date, to the extent not repaired or replaced by the members of the IBEX Group on or before the

Closing Date to the satisfaction of the members of the BioMarin Group, the replacement value of the IBEX Pharma Worldwide Fixed Assets so damaged or destroyed as determined by the members of the BioMarin Group and the members of the IBEX Group in consultation with the insurer of the members of the IBEX Group shall be deducted from the Worldwide Purchase Price. Without limitation of any of the rights of the members of the IBEX Group hereunder, such amounts may be reduced from the Worldwide Purchase Price by the cancellation of a sufficient number of BioMarin Worldwide Transaction Shares that would otherwise be issuable hereunder.

18. DELIVERY OF BOOKS AND RECORDS OF THE VENDORS

18.1. **Books and Records.** On the Closing Date, all documents and data solely relating to the IBEX Group Worldwide Business shall be transferred by the IBEX Group to BioMarin at the portion of the premises leased by IBEX to be made available to the BioMarin Group under the agreement referred to in section 12.1(p).

19. MISCELLANEOUS

19.1 **Tender.** Any tender of documents or money hereunder may be made upon the Parties or upon their respective solicitors as set forth herein.

19.2 **Notice.** All notices, requests, demands or other communications by the Parties required or permitted to be given by one Party to another shall be given in writing by personal delivery, telecopy or by registered or certified mail, postage prepaid, addressed, telecopied or delivered to such other Party as follows:

- (a) if to the members of the IBEX Group in c/o of:

5485 Paré
Montreal, Quebec H4P 1P7

Attention: President
Fax No.: (514) 344-8827

with a copy to:

McCarthy Tetrault
Le Windsor, 1170 rue Peel
Montreal, Quebec H3B 4S8

Attention: Peter Martin
Fax No.: (514) 875-6246

- (b) if to the members of the BioMarin Group, to:

371 Bel Marin Keys Boulevard, Suite 210
Novato, California
94949 USA

Attention: Raymond W. Anderson
Fax No.: (415) 382-7889

with a copy to:

Messrs. Cassels Brock & Blackwell LLP
Scotja Plaza, Suite 2100
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Mark Bennett
Fax No.: (416) 360-8877

with a copy to:

Paul, Hastings, Janofsky & Walker LLP
555 South Flower Street, 23rd Floor
Los Angeles, California
90071-2371 USA

Attention: Siobhan Burke
Fax No.: (213) 627-0705

or at such other address or telecopier number as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been received when delivered, if personally delivered, on the date telecopied (with receipt confirmed) if telecopied and received at or prior to 5:00 p.m. local time and, if not, on the next Business Day, and if mailed, on the date received as certified.

19.3 **Further Assurances.** The Parties shall sign such other papers, cause such meetings to be held, resolutions passed and by-laws enacted and exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

19.4 **Laws.** This Agreement shall be governed by the laws of the State of Delaware and the federal laws of the United States applicable therein and the Parties hereby irrevocably attorn to the federal and state courts of the State of California sitting in San Francisco, California. Each party hereby irrevocably submits to the exclusive jurisdiction of such courts with respect to such matters. Each party hereby irrevocably

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waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue in any suit, action or proceeding in any of such courts or any claims that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

19.5 **Expenses.** All out-of-pocket expenses (including legal and accounting expenses) incurred in connection with the Worldwide Transaction shall be borne the Party incurring the same.

19.6 **Time of the Essence.** Time shall be of the essence of this Agreement and of every part hereof and no extension nor variation of this Agreement shall operate as a waiver of this provision.

19.7 **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to all of the matters herein. This Agreement supersedes any and all agreements, understandings and representations made among the Parties prior to the date hereof, including, without limitation, that certain Term Sheet dated June 4, 2001 and that certain memorandum from Mr. Gary Mattan to Mr. Doug Cotter, dated July 17, 2001 as amended by agreements dated August 22, 2001 and September 21, 2001. This Agreement shall not be amended except by a memorandum in writing signed by all of the Parties and any amendment hereof shall be null and void and shall not be binding upon any Party which has not given its consent as aforesaid.

19.8 **Assignment.** No Party may assign this Agreement or any part hereof without the prior written consent of the other Parties which may not be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns, but no other Person.

19.9 **Invalidity.** In the event that any of the covenants, representations and warranties or any portion of them contained in this Agreement are unenforceable or are declared invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining terms or portions thereof contained in this Agreement and such unenforceable or invalid, covenant, representation and warranty or covenant or portion thereof shall be severable from the remainder of this Agreement.

19.10 **Counterpart.** This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts when taken together shall constitute one and the same original agreement which shall be binding on the Parties.

19.11 **Waiver of Jury Trial.** The Parties hereby agree to waive the right to a trial by jury in any action arising hereunder.