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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 30, 2012

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to .

Commission file number: 001-35406

Illumina, Inc.

(Exact name of registrant as specified in Its charter)

Delaware	**33-0804655**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
5200 Illumina Way **San Diego, California**	**92122**
(Address of principal executive offices)	*(Zip Code)*

Registrant's telephone number, including area code: (858) 202-4500

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Name of each exchange on which registered**
Common Stock, $0.01 par value (including associated Preferred Stock Purchase Rights)	The NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☑	Accelerated filer ☐	Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

As of January 31, 2013, there were 124,040,754 shares (excluding 46,449,505 shares held in treasury) of the Registrant's Common Stock outstanding. The aggregate market value of the Common Stock held by non-affiliates of the R egistrant as of July 2, 2012 (the last business day of the registrant's most recently completed second fiscal quarter), based on the closing price for the Common Stock on The NASDAQ Global Select Market on June 29, 2012 (the last trading day before July 2, 2012), was $3.8 billion. This amount excludes an aggregate of approximately 29.3 million shares of Common Stock held by officers and directors and each person known by the registrant to own 10% or more of the outstanding Common Stock. Exclusion of shares held by any person should not be construed to indicate that such person possesses the power, directly or indirectly, to direct or cause the direction of the management or policies of the registrant, or that the registrant is controlled by or under common control with such person.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for the 2013 annual meeting of stockholders are incorporated by reference into Items 10 through 14 of Part III of this Report.

ILLUMINA, INC.

FORM 10-K

FOR THE FISCAL YEAR ENDED December 30, 2012

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Special Note Regarding Forward-Looking Statements

This annual report on Form 10-K contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements discuss our current expectations concerning future results or events, including our future financial performance. We make these forward-looking statements in reliance on the safe harbor protections provided under the Private Securities Litigation Reform Act of 1995. These statements include, among others:

- statements concerning our expectations as to our future financial performance, results of operations, or other operational results or metrics;
- statements concerning the benefits that we expect will result from our business activities and certain transactions we have completed, such as product introductions, increased revenue, decreased expenses, and avoided expenses and expenditures; and
- statements of our expectations, beliefs, future plans and strategies, anticipated developments (including new products and services), and other matters that are not historical facts.

These statements may be made expressly in this document or may be incorporated by reference to other documents we have filed or will file with the Securities and Exchange Commission, or SEC. You can identify many of these statements by looking for words such as "anticipates," "believes," "can," "continue," "could," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "should," or "will" or the negative of these terms or other comparable terminology and similar references to future periods. These forward-looking statements are subject to numerous assumptions, risks, and uncertainties that may cause actual results or events to be materially different from any future results or events expressed or implied by us in those statements. Many of the factors that will determine or affect these results or events are beyond our ability to control or project. Specific factors that could cause actual results or events to differ from those in the forward-looking statements include:

- our ability to maintain our revenue levels and profitability during periods of research funding reduction or uncertainty and adverse economic and business conditions, including as a result of slowing economic growth in the United States or worldwide;
- our ability to further develop and commercialize our sequencing, array, PCR, consumables, and diagnostics technologies and to deploy new products, services, and applications, and expand the markets, for our technology platforms;
- our ability to manufacture robust instrumentation and consumables;
- our ability to successfully identify and integrate acquired technologies, products, or businesses;
- our expectations and beliefs regarding future prospects and growth of the business and the markets in which we operate;
- the assumptions underlying our critical accounting policies and estimates, including our estimates regarding stock volatility and other assumptions used to estimate the fair value of share-based compensation; the future cash flows used to estimate the cease-use loss upon our exit of certain facilities; and expected future amortization of acquired intangible assets;
- our belief that the investments we hold are not other-than-temporarily impaired;
- our assessments and estimates that determine our effective tax rate;
- our assessments and beliefs regarding the future outcome of pending legal proceedings and the liability, if any, that we may incur as a result of those proceedings; and
- other factors detailed in our filings with the SEC, including the risks, uncertainties, and assumptions described in Item 1A "Risk Factors" below, or in information disclosed in public conference calls, the date and time of which are released beforehand.

Our forward-looking statements speak only as of the date of this annual report. We undertake no obligation, and do not intend, to publicly update or revise forward-looking statements, to review or confirm analysts' expectations, or to provide interim reports or updates on the progress of any current financial quarter, whether as a result of new information, future events, or otherwise. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this annual report. Given these uncertainties, we caution investors not to unduly rely on our forward-looking statements.

Available Information

Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports are available free of charge on our website, *www.illumina.com*. The information on our website is not incorporated by reference into this report. Such reports are made available as soon as reasonably practicable after filing with, or furnishing to, the SEC. The SEC also maintains an Internet site at *www.sec.gov* that contains reports, proxy and information statements, and other information regarding issuers that electronically file with the SEC. Copies of our annual report on Form 10-K will be made available, free of charge, upon written request.

Unless the context requires otherwise, references in this annual report on Form 10-K to "Illumina," the "Company," "we," "us," and "our" refer to Illumina, Inc. and its subsidiaries.

PART I

ITEM 1. *Business*

Overview

We are a leading developer, manufacturer, and marketer of life science tools and integrated systems for the analysis of genetic variation and function. We were incorporated in California in April 1998 and reincorporated in Delaware in July 2000. Our principal executive offices are located at 5200 Illumina Way, San Diego, California 92122. Our telephone number is (858) 202-4500.

Using our proprietary technologies, we provide a comprehensive line of genetic analysis solutions, with products and services that serve a broad range of highly interconnected markets, including sequencing, genotyping, and gene expression. Our customers include leading genomic research centers, academic institutions, government laboratories, and clinical research organizations, as well as pharmaceutical, biotechnology, agrigenomics, and consumer genomics companies, and in vitro fertilization clinics.

Our broad portfolio of systems, consumables, and analysis tools are designed to simplify genetic analysis. This portfolio addresses a range of genomic complexity, price points, and throughputs, enabling researchers to select the best solution for their scientific challenge. Our leading edge sequencing instruments can be used to efficiently perform a range of nucleic acid (DNA, RNA) analyses on large numbers of samples. For more focused studies, our array-based solutions provide ideal tools to perform genome-wide association studies (GWAS) involving single-nucleotide polymorphism genotyping and copy number variation analyses, as well as gene expression profiling, and other DNA, RNA, and protein studies.

In 2012 and early 2013, we took significant steps to support our goal of becoming the leader in genomic-based diagnostics by acquiring BlueGnome Ltd. (BlueGnome) in September 2012 and signing a definitive agreement to acquire Verinata Health, Inc. (Verinata) in January 2013. Our acquisition of BlueGnome, a leading provider of solutions for the screening of genetic abnormalities associated with developmental delay, cancer, and infertility, enhances our ability to establish integrated solutions in reproductive health and cancer. Upon completion of the Verinata acquisition, our focus on reproductive health will be further strengthened by having access to Verinata's verifi® prenatal test, the broadest non-invasive prenatal test (NIPT) available today for high-risk pregnancies, and what we believe to be the most comprehensive intellectual property portfolio in the NIPT industry. To further enhance our genetic analysis workflows, in 2011 we acquired Epicentre Technologies Corporation, a leading provider of nucleic acid sample preparation reagents and specialty enzymes for sequencing and microarray applications. In 2010, through our acquisition of Helixis, Inc. (Helixis), we expanded our portfolio to include real-time polymerase chain reaction (PCR), one of the most widely used technologies in life sciences. Our Eco Real-Time PCR System provides researchers with an affordable, full-featured system to perform targeted validation studies.

Industry Background

Genetics Primer

The instruction set for all living cells is encoded in deoxyribonucleic acid, or DNA, with the complete set of DNA for any organism referred to as its genome. DNA contains small regions called genes, which comprise a string of nucleotide bases labeled A, C, G, and T, representing adenine, cytosine, guanine, and thymine, respectively. These nucleotide bases are present in a precise order known as the DNA sequence. When a gene is "expressed," a partial copy of its DNA sequence - called messenger RNA (mRNA) - is used as a template to direct the synthesis of a particular protein. Proteins, in turn, direct all cellular function. The illustration below is a simplified gene expression schematic.

Variations among organisms are due, in large part, to differences in their DNA sequences. Changes caused by insertions, deletions, inversions, or duplications of nucleotide bases may result in certain genes becoming over-expressed (excessive protein production), under-expressed (reduced protein production), or silenced altogether, sometimes triggering changes in cellular function. These changes can be the result of heredity, but most often they occur at random. The most common form of variation in humans is called a single nucleotide polymorphism (SNP), which is a variation in a single position of a nucleotide base in a DNA sequence. Copy number variations (CNVs) occur when there are fewer or more copies of certain genes, segments of a gene, or stretches of DNA.

In humans, genetic variation accounts for many of the physical differences we see (e.g., height, hair, eye color, etc.). More importantly, these genetic variations can have medical consequences affecting disease susceptibility, including predisposition to complex genetic diseases such as cancer, diabetes, cardiovascular disease, and Alzheimer's disease. They can also impact an individual's response to certain drug treatments, causing them to respond well, not respond at all, or experience adverse side effects - an area of study known as pharmacogenomics.

Scientists are studying these variations and their consequences in humans, as well as a broad range of animals, plants, and microorganisms. Researchers investigating human, viral, and bacterial genetic variation are helping us to better understand the mechanisms of disease, and thereby develop more effective therapeutics and diagnostics. Greater insight into genetic variation in plants (e.g., food and biofuel crops) and animals (e.g., livestock and domestic animals) is enabling scientists to improve crop yields and animal breeding programs.

The methods for studying genetic variation and biological function include sequencing, SNP genotyping, CNV analysis, gene expression profiling, and gene regulation and epigenetic analysis, each of which is addressed by our breadth of products and services.

Life Sciences Research Primer

Life science research encompasses the study of all living things, from humans, animals, and plants, to viruses and bacteria. It is being performed in government, university, pharmaceutical, biotechnology, and agrigenomics laboratories around the world, where scientists are seeking to expand our knowledge of the biological functions essential for life. Beginning at the genetic level, where our tools are used to elucidate the correlation between gene sequence and biological processes, life science research expands to include the study of the cells, tissues, organs, systems, and other components that make up living organisms. This research supports development of new, more effective clinical diagnostics and medicines to improve human health, as well as advances in agriculture and animal husbandry to meet the world's growing needs for food and energy.

Molecular Diagnostics Primer

Molecular diagnostic assays (or tests) are designed to identify the biological indicators linked with disease and drug response, providing physicians with information to more effectively diagnose, treat, and monitor both acute and chronic disease conditions. They are an integral part of personalized healthcare, where the unique makeup of each individual can be taken into account in diagnosing disease and managing treatment through the use of more tailored therapies. Biological indicators that can be measured by these assays include protein or gene expression, methylation levels, copy number variations, and the presence or absence of a specific gene or group of genes.

There are molecular diagnostics assays on the market, including assays for infectious disease, cancer, and heart disease, as well as molecular-based drug metabolism and response assays to help physicians select the most effective therapy with the fewest side effects. Our innovative technologies and products are contributing to the development of a wide range of potential genomic-based molecular diagnostics assays.

Growing news coverage about the clinical relevance of newly discovered genetic markers has prompted consumer interest in having personal genomes analyzed, sparking the development of the consumer genomics market. We believe there are distinct medical benefits, especially for people with family histories of certain diseases, of knowing potential disease predispositions. Several companies, including Illumina, now offer personal sequencing or genotyping services, working with physician groups and genetic counselors to interpret the results for consumers.

We believe the growth in consumer genomics and the use of genomic-based diagnostic assays will trigger a fundamental shift in the practice of medicine and the economics of the pharmaceutical industry and health care by facilitating an increased emphasis on preventative and predictive molecular medicine, ushering in the era of personalized medicine.

Our Principal Markets

From the company's inception, we have believed that the analysis of genetic variation and function will play an increasingly important role in molecular biology, and that by empowering genetic analysis, our tools will advance disease research, drug development, and the creation of molecular diagnostic tests. In addition to developing sequencing- and array-based solutions for life science, applied, and consumer genomics markets, we are facilitating the transition of sequencing to the clinic, by supporting and carrying out clinical trials to gather data for regulatory submissions in the US and globally, and establishing infrastructure to offer products designed and manufactured in compliance with global quality standards for medical devices.

Life Sciences Research Market

Our core business is in the life sciences research market, which consists of laboratories generally associated with universities, medical research centers, and government institutions, as well as biotechnology and pharmaceutical companies. Researchers at these institutions are using our products and services in a broad spectrum of scientific activities, such as: next-generation sequencing, mid-to-high-complexity genotyping and gene expression (for whole-genome discovery and profiling), and low complexity genotyping and gene expression (for high-throughput targeted screening). DNA sequencing is growing the most rapidly among these three areas due to the creation of next generation sequencing technologies. It is fueled by private and public funding, new global initiatives to broadly characterize genetic variation, and the migration of legacy genetic applications to sequencing-based technologies.

Applied Markets

We provide products and services for various other markets, which we refer to as "applied markets." The largest among these is the agricultural market, where government and corporate researchers use our sequencing and array-based tools to accelerate and enhance agricultural research. For example, we currently offer microarrays that contain SNPs for custom and focused genotyping of seeds and crops (such as maize, tomatoes, apples, and potatoes), livestock (such as cattle, horses, pigs, goats, and sheep), and companion animals (such as dogs). Customers use these tools to perform selective breeding through high-value trait screening methods, thereby accelerating and enhancing the process as compared to traditional methods such as cross-breeding. We have developed a high-growth recurring revenue business in both the livestock and agricultural segments, and emerging opportunities in the applied markets include forensics and pet genomics.

Molecular Diagnostics Market

Molecular diagnostics is the fastest growing segment of the diagnostics market. At present, this growth is largely driven by infectious disease testing, but molecular diagnostics is rapidly expanding into new areas such as reproductive health (including non-invasive prenatal testing) and cancer management - both are areas of focus for our diagnostics business. The increasing efficacy of molecular diagnostics is driven by the continued discovery of genetic markers with proven clinical utility, the increasing adoption of genetic-based diagnostic tests, and the expansion of reimbursement programs to include a greater number of approved molecular diagnostic tests. We believe our sequencing and array instrument platforms are foundational to continued growth in this market.

In September 2012 we acquired BlueGnome, a leading provider of solutions for screening genetic abnormalities associated with developmental delay, cancer, and infertility. The combination of BlueGnome's solutions with our microarray

and sequencing platforms will enable the development of next-generation tools for these markets. In January 2013, we signed a definitive agreement to acquire Verinata Health, Inc. Upon completion of the Verinata acquisition, our focus on reproductive health will be further strengthened by having access to Verinata's verifi® prenatal test, the broadest non-invasive prenatal test (NIPT) available today for high-risk pregnancies, and what we believe to be the most comprehensive intellectual property portfolio in the NIPT industry.

In December 2012, we submitted a 510(k) application for a version of our MiSeq system (the MiSeqDx) to the U.S. Food and Drug Administration, or FDA, for marketing as a cleared device for use with in vitro diagnostic (IVD) products. In connection with our FDA submission of the MiSeqDx system, we submitted two cystic fibrosis (CF) assays - a diagnostic assay and a carrier screening assay - to the FDA that, if cleared, would be sold as IVD kits to be run on the MiSeqDx system. The MiSeqDx Cystic Fibrosis Diagnostic Assay is designed for simultaneous detection of all mutations and variants within the cystic fibrosis transmembrane conductance regulator (CFTR) gene. The test is intended to be used as an aid in the diagnosis of individuals with suspected CF or congenital bilateral absence of vas deferens (CBAVD). Results of this test are intended to be interpreted by a certified clinical molecular geneticist or equivalent. The MiSeqDx Cystic Fibrosis Carrier Screening Assay is designed for simultaneous detection of clinically relevant variants within the CFTR gene, including those currently recommended for carrier screening purposes by the American College of Medical Genetics (ACMG) and the American College of Obstetricians and Gynecologists (ACOG). The test is intended to be used in general population screening to determine CF carrier status, as an aid in newborn screening for CF, and as an initial genetic test to aid in the diagnosis of individuals with suspected CF or CBAVD.

As the molecular diagnostics market continues to evolve and emerge, we believe the translational market will prove to be another growth opportunity for us. In September 2012, Illumina introduced TruSight content sets for use by laboratories with next-generation sequencing systems such as the MiSeq. Comprised of oligonucleotide probes targeting genes and gene regions thought to be relevant for specific genetic diseases or conditions, TruSeq content sets are designed for use by laboratories in the development of their own unique targeted sequencing tests.

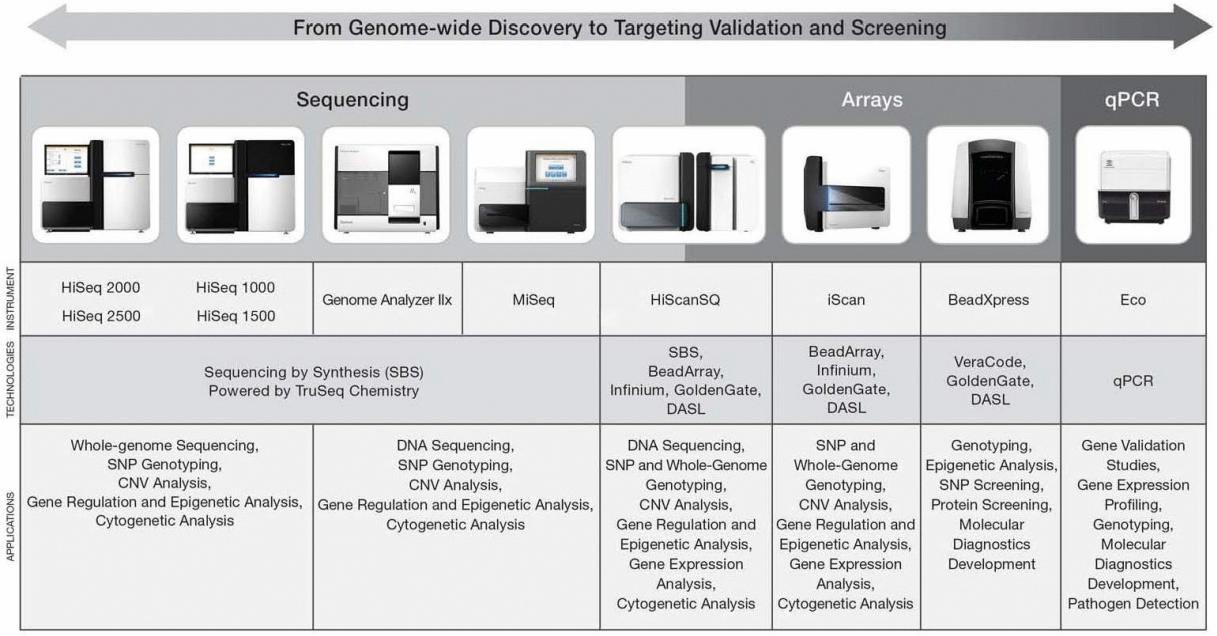
Consumer Genomics Markets

New sequencing and genotyping technologies, such as those developed by Illumina, are driving down the cost of performing comprehensive sequencing and genotyping analyses, rapidly paving the way to improving diagnosing of diseases and evaluation of disease risk. Consumer genomics is a nascent market, but one we believe has the potential for high growth as the cost per analysis continues to drop. In 2009, we launched our Individual Genome Sequencing Service, the first physician-intermediated personal genome sequencing service for consumers. Built around physician-patient consultation, the service requires a physician's order to initiate the process, with genome sequencing performed using our CLIA-certified, CAP-accredited laboratory.

Our Principal Technologies

Our unique technology platforms enable the scale of experimentation necessary for genome-wide discovery, target selection, and validation studies (see Figure 1 below). More than 8,000 customer-authored scientific papers have been published to date using these technologies, representing the efforts of a large and dynamic Illumina user community. Through rapid innovation, we are changing the economics of genetic research, enabling projects that were previously considered unapproachable.

Figure 1: Illumina Platform Overview:



Sequencing Technology

DNA sequencing is the process of determining the order of nucleotide bases (A, C, G, or T) in a DNA sample. Our HiSeq 2500/2000, HiSeq 1500/1000, Genome Analyzer IIx, MiSeq, and HiScanSQ systems represent a family of systems that we believe are setting the standard for productivity, cost-effectiveness, and accuracy among next-generation sequencing technologies. They are used by customers to perform whole-genome, de novo, and targeted re-sequencing of genomes, and to analyze specific gene regions and genes.

Whole-genome sequencing determines an organism's complete DNA sequence. In de novo sequencing, the goal is to sequence a representative sample from a species never before sequenced. In targeted re-sequencing, a sequence of nucleotide bases is compared to a standard or reference sequence from a previously sequenced species to identify changes that reflect genetic variation. Understanding the similarities and differences in DNA sequence between and within species furthers our understanding of the function of the structures encoded in the DNA.

Our DNA sequencing technology is based on our proprietary reversible terminator-based sequencing chemistry, referred to as sequencing by synthesis (SBS) biochemistry. Our SBS sequencing technology provides researchers with a broad range of applications and the ability to sequence even large mammalian genomes in days rather than weeks or years. Our highest throughput sequencing instrument, the HiSeq 2500, has the ability to generate up to 600 gigabases (Gb) (five human genomes) of DNA sequence in ten days, or up to 120 Gb in approximately one day in rapid run mode. Since the launch of our first sequencing system in 2007, our systems have reduced the cost of sequencing by more than a factor of 100.

BeadArray Technology

Our BeadArray technology combines microscopic beads and a substrate in a proprietary manufacturing process to produce arrays that can perform many assays simultaneously, enabling large-scale analysis of genetic variation and biological function in a unique high-throughput, cost effective, and flexible manner. The arrays manufactured using BeadArray technology are imaged by our iScan, HiScan, and HiScanSQ systems for a broad range of DNA and RNA analysis applications including SNP discovery, SNP genotyping, CNV analysis, gene expression analysis, and methylation analysis.

Our proprietary BeadArray technology consists of microscopic silica beads, with each bead covered with hundreds of thousands of copies of oligonucleotides, or oligos, that act as the capture sequences in one of our assays. We deploy our BeadArray technology on BeadChips - silicon wafers the size of a microscope slide, with varying numbers of sample sites per slide. BeadChips are chemically etched to create tens of millions of wells for each sample site.

Using our BeadArray technology, we achieve high-throughput analysis with a high density of test sites per array, and are able to format arrays in various configurations. We seek to maximize cost effectiveness by reducing consumption of expensive consumables and valuable samples, and through the low manufacturing costs associated with our technologies. Our ability to vary the size, shape, and format of the well patterns and to create specific bead pools for different applications provides the flexibility to address multiple markets and market segments. These features enable our BeadArray technology to be applied to high-growth markets of SNP genotyping and CNV analysis and have allowed us to be a key player in the gene expression market.

Eco Real-Time PCR Technology

In 2010, we purchased Helixis and its novel real-time PCR technology and introduced the Eco Real-Time PCR System to the market. Real-Time PCR (also known as quantitative PCR or qPCR) is used to amplify and simultaneously quantify a targeted DNA molecule, with applications in gene expression, viral quantification, array data validation, pathogen detection, and genotyping. The procedure follows the same steps as PCR, whereby thermal cycling (alternately heating and cooling the DNA sample from 20 to 40 times) causes the DNA to self-replicate, resulting in the doubling of DNA product with each cycle. Real-time PCR uses various fluorescent detection chemistries to enable the monitoring of the PCR reaction as it progresses. Data are collected at each cycle rather than at the end of the reaction, providing higher precision, increased sensitivity, increased dynamic range, and higher resolution.

The Eco System combines a proprietary thermal system, four-color multiplex capabilities, and a fine-tuned optical system to deliver accurate qPCR results. Its unique design provides superior thermal uniformity, supporting high-quality PCR performance for demanding applications such as high resolution melt (HRM) curve analysis used for SNP genotyping, DNA fingerprinting, species identification, HLA compatibility typing, allelic prevalence, and DNA methylation analysis. Measuring just over one cubic foot in size, we believe the Eco System's overall performance rivals larger, more expensive systems.

Our Products

Using our proprietary technologies, our products give our customers the ability to analyze the genome at any level of complexity, from whole-genome sequencing to low-multiplex assays, and enable us to serve a number of markets, including research, agriculture, forensics, pharmaceuticals, and genomic-based molecular diagnostics.

The majority of our product sales consist of instruments and consumables (which include reagents, flow cells, and BeadChips) based on our proprietary technologies. For the fiscal years ended December 30, 2012, January 1, 2012, and January 2, 2011, instrument sales comprised 27%, 35%, and 36%, respectively, of total revenues, and consumable sales represented 64%, 56%, and 56%, respectively, of total revenues.

Sequencing Platforms

Based on our proprietary SBS technology, our next-generation sequencing platforms are designed to meet the workflow, output, and accuracy demands of a full range of sequencing applications. Designed for high-throughput sequencing, the HiSeq 2500 is a fast, easy-to-use instrument that can generate either up to 600 Gb of data in high-output mode or up to 120 Gb in rapid run mode. In the high-output mode, the HiSeq 2500 processes either up to five human genomes (120 Gb per genome) in ten days or a single human genome at 30x coverage in approximately one day. Offering the same flexibility, the HiSeq 1500 accommodates lower throughput needs, with an easy upgrade path to the HiSeq 2500. Launched in 2011, our MiSeq Personal Sequencing System delivers the fastest time to an answer (as little as 2-3 hours) and offers a breadth of sequencing applications in a compact and economical instrument to meet the needs of individual researchers.

Sequencing/Array Combination Platforms

The HiScanSQ combines our SBS sequencing technology and HiScan microarray analysis instrumentation into one system, with a modular design that can evolve with changing research needs. This flexible system allows researchers to use our sequencing and array technologies interactively to bring increased power to their experiments.

Array Platforms

The HiScan and iScan Systems are dedicated array scanners that support the rapid, sensitive, and accurate imaging of our array-based genetic analysis products. They incorporate high-performance lasers, optics, and detection systems, delivering sub-micron resolution and unmatched throughput rates. The HiScan and iScan support our Infinium, GoldenGate, DASL, gene expression, and methylation assays.

Consumables

We have developed a variety of sample preparation and sequencing kits to simplify workflows and accelerate analysis. Some provide all the necessary consumables needed for analyses, such as our Standard Sequencing Kit (SBS chemistry on our sequencing platforms) and Infinium Assay Kit (array-based genotyping on our array platforms). Others support more discrete analyses, such as our Paired-End Genomic DNA Sample Prep Kit for streamlining library preparation for the generation of 200-500 kb insert paired-end reads for sequencing, gene expression, and epigenetic analysis. Our TruSeq SBS Sequencing Kit enhances sequencing studies with our HiSeq, Genome Analyzer IIx, and MiSeq systems, by enabling researchers to extend the read lengths, achieve higher Gb of mappable data, and deliver the highest yield of perfect reads to maximize the ability to accurately characterize the genome. Through our acquisition of Epicentre Technologies Corporation in 2011, we acquired the proprietary Nextera technology for next-generation sequencing library preparation. This technology has enabled us to offer sequencing library preparation kits with lower sample input requirements that greatly simplify genetic analysis workflows and significantly reduce the time from sample preparation to answer.

Our InfiniumHD Whole-Genome BeadChips represent our most technologically advanced multi-sample DNA analysis microarrays, enabling the interrogation of up to approximately 5 million markers per sample, depending on the BeadChip. The most recent additions to the Omni family, the HumanOmni5-Quad, the HumanOmni2.5, and the HumanOmni1S BeadChips, provide comprehensive coverage of common and rare variants identified by the 1000 Genomes Project for performing rich GWAS projects. This product line also includes agriculturally relevant genome panels such as the BovineHD and MaizeSNP50 BeadChips.

For researchers who want to study focused genomic regions of interest, or are interested in organisms for which there are no standard products, we offer iSelect Custom Genotyping BeadChips. Easily developed to fit any experimental design, these SNP genotyping arrays can be used to investigate from 3,000 to 1,000,000 markers targeting any species.

Through our acquisition of BlueGnome in 2012, we are a leading provider of solutions for the screening of genetic abnormalities associated with developmental delay, cancer, and infertility. BlueGnome supplies to some of the world's leading in vitro fertilization (IVF) centers a preimplantation genetic screening (PGS) test for counting the chromosomes in a single human cell. Studies have shown that PGS improves IVF success, increasing pregnancy rates for women and reducing miscarriages and multiple births.

Our reproductive health offerings also include CytoChip, a test for the investigation of genetic abnormalities mainly associated with developmental delay or with complex leukemias. CytoChip is used by more than 200 labs across 40 countries worldwide as a first-line cytogenetic test, replacing traditional G-band karyotyping.

Real-time PCR Platforms

The Eco Real-Time PCR System provides fast, accurate qPCR results. Its icon-driven user interface simplifies experimental design and setup, while a straightforward workflow streamlines operation, enabling the system to perform qPCR on 48 samples in less than 40 minutes. As our first entry into the qPCR market, we believe the smaller, lower-cost, full-featured Eco System will enable more scientists to use real-time PCR technology in their research.

Our Services

In addition to the products we supply to customers, we also provide sequencing and genotyping services through our CLIA-certified, CAP-accredited laboratory.

FastTrack Services

One of the ways in which we compete and extend the reach of our systems in the genetic analysis market is to deliver services that leverage our proprietary technologies and the expertise of our scientists to perform genotyping and sequencing services for our customers. We began offering genotyping services to academic institutions, biotechnology, and pharmaceutical customers in 2002. The in-house molecular geneticists that make up our FastTrack Genotyping team help customers perform GWAS projects, linkage analysis, and fine mapping studies to meet their deadlines, employing a range of our products, including standard and custom GoldenGate, standard Infinium and Infinium HD, and iSelect Infinium assays. These projects range in size from a few hundred to over 10,000 samples.

After five years of building an infrastructure to support genotyping services, we expanded to deliver sequencing services in 2007. We continue to combine the power of our proprietary SBS technology, with the consultative and analytical capabilities of our FastTrack Sequencing team to execute high-value projects such as whole-genome sequencing, targeted resequencing, digital expression profiling, and small RNA discovery. Projects range from small sample sets requiring as little as one run, to large-scale projects such as de novo whole-genome sequencing that demand multiple instruments running in parallel for extended periods of time.

Service Partnership Programs

To complement our own service capabilities, we have developed partnered programs such as our Certified Service Providers (CSPro) and Illumina Genome Network (IGN), to create a world-wide network of Illumina technology-enabled service offerings that broaden our market reach. Illumina CSPro is a collaborative service partnership established between Illumina and leading genome centers and research laboratories to ensure the delivery of high-quality genetic analysis services. It provides a competitive advantage for service providers, while also ensuring that customers will receive Illumina data quality and service. To become a CSPro provider, participating laboratories must complete a three-phased Illumina certification process. There are over 65 Illumina CSPro-certified organizations worldwide providing sequencing, genotyping, and gene expression services using our technologies and products.

Introduced in 2010, the IGN links researchers interested in conducting large whole genome sequencing projects with leading institutes worldwide that possess our next-generation sequencing technology. The IGN provides a cost-effective and dependable way to complete large sequencing projects. All IGN partners are experienced and well-published using Illumina technology, and each has completed Illumina's Certified Service Provider (CSPro) certification. Each IGN partner possesses ten or more high-throughput Illumina sequencing systems, providing the scalability to handle even the largest sequencing projects with rapid completion times. Current members include: the Broad Institute, British Columbia Cancer Agency's Genome Science Centre, Cold Spring Harbor Laboratory, University of Washington Department of Genome Sciences, National Center for Genome Resources, Macrogen/Genomic Medicine Institute, and Illumina's own FastTrack Services.

Individual Genome Sequencing

Since June 2009, Illumina's Clinical Services Laboratory has been offering the Individual Genome Sequencing Service providing personal genome sequencing from our CLIA-certified, CAP-accredited laboratory using Illumina next-generation sequencing technology. We offer a variety of reporting options. The Individual Genome Sequencing Service requires individuals to follow our physician-mediated process, which involves pre-service consultation and informed consent that includes review of the information potentially to be learned in the report. The final genome data is returned to the physician who then meets with the patient and discusses implications and possible actions based on the results. If the physician and patient agree, the information can also be downloaded to the individual's personal iPad® for additional exploration. We are collaborating with a number of partners to provide additional evaluations, such as ancestry, and information on traits of interest.

Intellectual Property

We have an extensive intellectual property portfolio, including, as of February 1, 2013, ownership of, or exclusive licenses to, 270 issued U.S. patents and 172 pending U.S. patent applications, including 11 allowed applications that have not yet issued as patents. Our issued patents include those directed to various aspects of our arrays, assays, oligo synthesis, sequencing technology, instruments, and chemical detection technologies, and have terms that expire between 2013 and 2030. We continue to file new patent applications to protect the full range of our technologies. We have filed or have been granted counterparts for many of these patents and applications in foreign countries.

We also rely upon trade secrets, know-how, copyright, and trademark protection, as well as continuing technological innovation and licensing opportunities to develop and maintain our competitive position. Our success will depend in part on our ability to obtain patent protection for our products and processes, to preserve our trade secrets, to enforce our patents, copyrights and trademarks, to operate without infringing the proprietary rights of third parties, and to acquire licenses related to enabling technology or products.

We are party to various exclusive and non-exclusive license agreements and other arrangements with third parties that grant us rights to use key aspects of our array and sequencing technologies, assay methods, chemical detection methods, reagent kits, and scanning equipment. We have exclusive licenses from Tufts University to patents that are directed to our BeadArray technology. These patents were filed by Dr. David Walt, who is a member of our board of directors, the Chairman of our Scientific Advisory Board, and one of our founders. Our exclusive licenses expire with the termination of the underlying patents, which will occur between 2013 and 2020. We have additional nonexclusive license agreements with various third

parties for other components of our products. In most cases, the agreements remain in effect over the term of the underlying patents, may be terminated at our request without further obligation, and require that we pay customary royalties while the agreement is in effect.

Research and Development

We have made substantial investments in research and development since our inception. We have assembled a team of skilled scientists and engineers who are specialists in biology, chemistry, informatics, instrumentation, optical systems, software, manufacturing, and other related areas required to complete the development of our products. Our research and development efforts have focused primarily on the tasks required to optimize and support commercialization of the products and services derived from our technologies.

Our research and development expenses for fiscal 2012, 2011, and 2010 were $231.0 million, $196.9 million, and $177.9 million, respectively. We expect research and development expense to increase during 2013 as a result of the growth of our business and as we continue to expand our research and product development efforts.

Marketing and Distribution

Our current products address the genetic analysis portion of the life sciences market, in particular, experiments involving sequencing, SNP genotyping, and gene expression profiling. These experiments may be involved in many areas of biologic research, including basic human disease research, pharmaceutical drug discovery and development, pharmacogenomics, toxicogenomics, and animal and agricultural research. Our potential customers include leading genomic research centers, academic institutions, government laboratories, and clinical research organizations, as well as pharmaceutical, biotechnology, agri-genomics, and consumer genomics companies. The genetic analysis market is relatively new and emerging and its size and speed of development will ultimately be driven by, among other items:

- the ability of the research community to extract medically valuable information from genomics and to apply that knowledge to multiple areas of disease-related research and treatment;
- the availability of sufficiently low cost, high-throughput research and analysis tools to enable the large amount of experimentation and analysis required to study genetic variation and biological function; and
- the availability of government and private industry funding to perform the research required to extract medically relevant information from genomic analysis.

We market and distribute our products directly to customers in North America, Europe, Latin America, and the Asia-Pacific region. In each of these areas, we have dedicated sales, service, and application support personnel responsible for expanding and managing their respective customer bases. In addition, in certain markets within Europe, the Asia-Pacific region, Latin America, the Middle East, and South Africa we sell our products and provide services to customers through distributors that specialize in life science products. Likewise, in the United States we sell our qPCR portfolio (including the Eco Real-Time PCR System and associated reagents) through a distributor. We expect to continue to increase our sales and distribution resources during 2013 and beyond as we launch a number of new products and expand the number of customers that can use our products.

Manufacturing

We manufacture sequencing and array platforms, reagent kits, scanning equipment, and oligos. Our manufacturing capacity for consumables and instruments has grown during 2012 to support increased customer demand. To continue to increase throughput and improve the quality and manufacturing yield as we increase the complexity of our products, we are exploring ways to continue increasing the level of automation in the manufacturing process. We adhere to access and safety standards required by federal, state, and local health ordinances, such as standards for the use, handling, and disposal of hazardous substances.

Raw Materials

Our manufacturing operations require a wide variety of raw materials, electronic and mechanical components, chemical and biochemical materials, and other supplies. We have multiple commercial sources for many of our components and supplies; however, there are some raw materials and components that we obtain from single source suppliers. To mitigate potential risks arising from single source suppliers, we believe that we can redesign our products for alternative components or

use alternative reagents, if required. In addition, while we generally attempt to keep our inventory at minimal levels, we purchase incremental inventory as circumstances warrant to protect our supply chain.

Competition

Although we believe that our products and services provide significant advantages over products and services currently available from other sources, we expect to continue to encounter intense competition from other companies that offer products and services for sequencing, SNP genotyping, gene expression, and molecular diagnostics markets. These include companies such as Affymetrix, Inc.; Agilent Technologies, Inc.; Complete Genomics, Inc.; General Electric Company; Life Technologies Corporation; Luminex Corporation; Pacific Biosciences of California, Inc.; QIAGEN N.V.; and Roche Diagnostics Corp., among others. Some of these companies have or will have substantially greater financial, technical, research, and other resources and larger, more established marketing, sales, distribution, and service organizations than we do. In addition, they may have greater name recognition than we do in the markets we address and in some cases a larger installed base of systems. Each of these markets is very competitive and we expect new competitors to emerge and the intensity of competition to increase. In order to effectively compete with these companies, we will need to demonstrate that our products have superior throughput, cost, and accuracy advantages over competing products.

Segment and Geographic Information

In accordance with the authoritative accounting guidance for segment reporting, we have determined that we have two operating segments for purposes of recording and reporting our financial results: Life Sciences and Diagnostics. Our Life Sciences operating segment includes all products and services related to the research market, namely the product lines based on our sequencing, array, and real-time PCR technologies. Our Diagnostics operating segment focuses on the emerging opportunity in molecular diagnostics. During all periods presented, our Diagnostics operating segment had limited activity. Accordingly, our financial results for both operating segments are reported on an aggregate basis as one reportable segment. We will begin reporting in two operating segments once revenues, operating profit or loss, or assets of the Diagnostics operating segment exceed 10% of the consolidated amounts.

We currently sell our products to a number of customers outside the United States, including customers in other areas of North America, Europe, and the Asia-Pacific region. Shipments to customers outside the United States totaled $580.1 million, or 51% of our total revenue, during fiscal 2012, compared to $526.8 million, or 50%, and $403.8 million, or 45%, in fiscal 2011 and 2010, respectively. The U.S. dollar has been determined to be the functional currency of the Company's international operations due to the primary economic environment of our foreign subsidiaries. We expect that sales to international customers will continue to be an important and growing source of revenue. See note "15. Segment Information, Geographic Data, and Significant Customers" in Part II, Item 8 of this Form 10-K for further information concerning our foreign and domestic operations.

Backlog

Our backlog was approximately $260 million and $251 million at December 30, 2012 and January 1, 2012, respectively. Generally, our backlog consists of orders believed to be firm as of the balance sheet date; however, we may allow customers to make product substitutions as we launch new products. The timing of shipments depends on several factors, including agreed upon shipping schedules, which may span multiple quarters, and whether the product is catalog or custom. We expect the majority of the backlog as of December 30, 2012 to be shipped within the fiscal year ending December 29, 2013. Although we generally recognize revenue upon the transfer of title to a customer, we may be required to defer the recognition of revenue even after title transfer depending on the specific arrangement with a customer and the applicable accounting treatment.

Seasonality

Historically, demand for our products is usually lowest in the first quarter of the calendar year and highest in the third quarter of the calendar year as a result, in part, of U.S. academic customers spending unused budget allocations before the end of the U.S. government's fiscal year on September 30 of each year. However, this historical pattern has decreased during the past two years as a result, in part, of uncertainty concerning government and academic research funding and reduced usage of our consumable products during the summer vacation season.

Environmental Matters

We are committed to the protection of our employees and the environment. Our operations require the use of hazardous materials that subject us to a variety of federal, state, and local environmental and safety laws and regulations. We believe we are in material compliance with current applicable laws and regulations; however, we could be held liable for damages and fines should contamination of the environment or individual exposures to hazardous substances occur. In addition, we cannot predict how changes in these laws and regulations, or the development of new laws and regulations, will affect our business operations or the cost of compliance.

Government Regulation

As we continue to expand our product lines to encompass products that are intended to be used for the diagnosis of disease, such as molecular diagnostic products, regulation by governmental authorities in the United States and other countries will be a significant factor in the development, testing, production, and marketing of such products. Products that we develop in the molecular diagnostic markets, depending on their intended use, will be regulated as medical devices by the FDA and comparable agencies of other countries and may require either receiving clearance following a pre-market notification process, also known as a 510(k) clearance, or premarket approval (PMA), from the FDA prior to marketing. Obtaining the requisite regulatory approvals can be expensive and may involve considerable delay.

The shorter 510(k) clearance process, which generally takes from three to six months after submission, but can take significantly longer, may be utilized if it is demonstrated that the new product is "substantially equivalent" to a similar product that has already been cleared by the FDA. The longer PMA process is much more costly, uncertain, and generally takes from nine months to two years after filing. Because we cannot be certain that any molecular diagnostic products that we develop will be subject to the shorter 510(k) clearance process, or will ultimately be approved at all, the regulatory approval process for such products may be significantly delayed and may be significantly more expensive than anticipated. If we fail to obtain, or experience significant delays in obtaining, regulatory approvals for molecular diagnostic products that we develop, we may not be able to launch or successfully commercialize such products in a timely manner, or at all.

Changes to the current regulatory framework, including the imposition of additional or new regulations, could arise at any time during the development or marketing of our products, which may negatively affect our ability to obtain or maintain FDA or comparable regulatory approval of our products, if required.

In addition, the regulatory approval or clearance process required to design, manufacture, market, sell, and support our existing and future products that are intended for, and marketed and labeled as, "Research Use Only," or RUO, is uncertain if such products are used or could be used, even without our consent, for the diagnosis of disease. If the FDA or other regulatory authorities assert that any of our RUO products are subject to regulatory clearance or approval, our business, financial condition, or results of operations could be adversely affected.

Employees

As of December 30, 2012, we had a total of approximately 2,400 employees. We consider our employee relations to be positive. Our success will depend in large part upon our ability to attract and retain employees. In addition, we employ a number of temporary and contract employees. We face competition in this regard from other companies, research and academic institutions, government entities, and other organizations.

ITEM 1A. *Risk Factors*

Our business is subject to various risks, including those described below. In addition to the other information included in this Form 10-K, the following issues could adversely affect our operating results or our stock price.

Reduction or delay in research and development budgets and government funding may adversely affect our revenue.

A substantial portion of our revenue is derived from genomic research centers, academic institutions, government laboratories, and clinical research organizations, as well as pharmaceutical, biotechnology, agrigenomics, and consumer genomics companies, and their capital spending budgets can have a significant effect on the demand for our products and services. These budgets are based on a wide variety of factors, including the allocation of available resources to make purchases, funding from government sources, the spending priorities among various types of research equipment, and policies regarding capital expenditures during recessionary periods. Any decrease in capital spending or change in spending priorities of our customers could significantly reduce our revenue. Moreover, we have no control over the timing and amount of

purchases by our customers, and, as a result, revenue from these sources may vary significantly due to factors that can be difficult to forecast. Any delay or reduction in purchases by our customers or our inability to forecast fluctuations in demand could harm our future operating results.

The timing and amount of revenues from customers that rely on government and academic research funding may vary significantly due to factors that can be difficult to forecast, and there remains significant uncertainty concerning government and academic research funding worldwide as governments in the United States and Europe, in particular, focus on reducing fiscal deficits while at the same time confronting slowing economic growth. Funding for life science research has increased more slowly during the past several years compared to previous years and has declined in some countries. Government funding of research and development is subject to the political process, which is inherently fluid and unpredictable. Other programs, such as defense, entitlement programs, or general efforts to reduce budget deficits could be viewed by governments as a higher priority. These budgetary pressures may result in reduced allocations to government agencies that fund research and development activities, such as the U.S. National Institute of Health, or NIH. For instance, the significance and timing of anticipated reductions to the NIH budget from March 2013 may be significantly impacted by the sequestration provisions of the Budget Control Act of 2011 and whether these provisions remain in effect. Past proposals to reduce budget deficits have included reduced NIH and other research and development allocations. Any shift away from the funding of life sciences research and development or delays surrounding the approval of government budget proposals may cause our customers to delay or forego purchases of our products, which could adversely affect our business, financial condition, or results of operations.

We face intense competition, which could render our products obsolete, result in significant price reductions, or substantially limit the volume of products that we sell.

We compete with life sciences companies that design, manufacture, and market products for analysis of genetic variation and biological function and other applications using a wide-range of competing technologies. We anticipate that we will continue to face increased competition as existing companies develop new or improved products and as new companies enter the market with new technologies. One or more of our competitors may render our technology obsolete or uneconomical. Some of our competitors have greater financial and personnel resources, broader product lines, a more established customer base, and more experience in research and development than we do. Furthermore, life sciences and pharmaceutical companies, which are our potential customers and strategic partners, could also develop competing products. We believe that customers in our markets display a significant amount of loyalty to their initial supplier of a particular product; therefore, it may be difficult to generate sales to potential customers who have purchased products from competitors. To the extent we are unable to be the first to develop or supply new products, our competitive position may suffer.

The market for molecular diagnostics products is currently limited and highly competitive, with several large companies already having significant market share, intellectual property portfolios, and regulatory expertise. Established diagnostic companies also have an installed base of instruments in several markets, including clinical and reference laboratories, which could deter acceptance of our products. In addition, some of these companies have formed alliances with genomics companies that provide them access to genetic information that may be incorporated into their diagnostic tests.

Our acquisitions expose us to risks that could adversely affect our business, and we may not achieve the anticipated benefits of acquisitions of businesses or technologies.

As part of our strategy to develop and identify new products, services, and technologies, we have made, and may continue to make, acquisitions of technologies, products, or businesses. Acquisitions involve numerous risks and operational, financial, and managerial challenges, including the following, any of which could adversely affect our business, financial condition, or results of operations:

- difficulties in integrating new operations, technologies, products, and personnel;
- lack of synergies or the inability to realize expected synergies and cost-savings;
- difficulties in managing geographically dispersed operations;
- underperformance of any acquired technology, product, or business relative to our expectations and the price we paid;
- negative near-term impacts on financial results after an acquisition, including acquisition-related earnings charges;
- the potential loss of key employees, customers, and strategic partners of acquired companies;

- claims by terminated employees and shareholders of acquired companies or other third parties related to the transaction;
- the issuance of dilutive securities, assumption or incurrence of additional debt obligations or expenses, or use of substantial portions of our cash;
- diversion of management's attention and company resources from existing operations of the business;
- inconsistencies in standards, controls, procedures, and policies;
- the impairment of intangible assets as a result of technological advancements, or worse-than-expected performance of acquired companies; and
- assumption of, or exposure to, unknown contingent liabilities or liabilities that are difficult to identify or accurately quantify.

In addition, the successful integration of acquired businesses requires significant efforts and expense across all operational areas, including sales and marketing, research and development, manufacturing, finance, legal, and information technologies. There can be no assurance that any of the acquisitions we make will be successful or will be, or will remain, profitable. Our failure to successfully address the above risks may prevent us from achieving the anticipated benefits from any acquisition in a reasonable time frame, or at all.

Our success depends upon the continued emergence and growth of markets for analysis of genetic variation and biological function.

We design our products primarily for applications in the life sciences, diagnostic, agricultural, and pharmaceutical industries. The usefulness of our technologies depends in part upon the availability of genetic data and its usefulness in identifying or treating disease. We are focusing on markets for analysis of genetic variation and biological function, namely sequencing, genotyping, and gene expression profiling. These markets are new and emerging, and they may not develop as quickly as we anticipate, or reach their full potential. Other methods of analysis of genetic variation and biological function may emerge and displace the methods we are developing. Also, researchers may not be able to successfully analyze raw genetic data or be able to convert raw genetic data into medically valuable information. For instance, demand for our microarray products may be adversely affected if researchers fail to find meaningful correlations between genetic variation, such as SNPs, and disease susceptibility through genome wide association studies. In addition, factors affecting research and development spending generally, such as changes in the regulatory environment affecting life sciences and pharmaceutical companies, and changes in government programs that provide funding to companies and research institutions, could harm our business. If useful genetic data is not available or if our target markets do not develop in a timely manner, demand for our products may grow at a slower rate than we expect, and we may not be able to sustain profitability.

If the quality of our products does not meet our customers' expectations, then our reputation could suffer and ultimately our sales and operating earnings could be negatively impacted.

In the course of conducting our business, we must adequately address quality issues associated with our products and services, including defects in our engineering, design, and manufacturing processes, as well as defects in third-party components included in our products. Because our instruments and consumables are highly complex, the occurrence of defects may increase as we continue to introduce new products and services and as we scale up manufacturing to meet increased demand for our products and services. Although we have established internal procedures to minimize risks that may arise from product quality issues, there can be no assurance that we will be able to eliminate or mitigate occurrences of these issues and associated liabilities. In addition, identifying the root cause of quality issues, particularly those affecting reagents and third-party components, may be difficult, which increases the time needed to address quality issues as they arise and increases the risk that similar problems could recur. Finding solutions to quality issues can be expensive, and we may incur significant costs or lost revenue in connection with, for example, shipment holds, product recalls, and warranty or other service obligations. In addition, quality issues can impair our relationships with new or existing customers and adversely affect our brand image, and our reputation as a producer of high quality products could suffer, which could adversely affect our business, financial condition, or results of operations.

Our continued growth is dependent on continuously developing and commercializing new products.

Our target markets are characterized by rapid technological change, evolving industry standards, changes in customer needs, existing and emerging competition, strong price competition, and frequent new product introductions. Accordingly, our continued growth depends on continuously developing and commercializing new products and services, including improving

our existing products and services, in order to address evolving market requirements on a timely basis. If we fail to innovate or adequately invest in new technologies, our products and services will become dated, and we could lose our competitive position in the markets that we serve as customers purchase new products offered by our competitors. We believe that successfully introducing new products and technologies in our target markets on a timely basis provides a significant competitive advantage because customers make an investment of time in selecting and learning to use a new product and may be reluctant to switch once that selection is made.

To the extent that we fail to introduce new and innovative products, or such products are not accepted in the market or suffer significant delays in development, we may lose market share to our competitors, which will be difficult or impossible to regain. An inability, for technological or other reasons, to develop successfully and timely introduce new products could reduce our growth rate or otherwise have an adverse effect on our business. In the past, we have experienced, and are likely to experience in the future, delays in the development and introduction of new products. There can be no assurance that we will keep pace with the rapid rate of change in our markets or that our new products will adequately meet the requirements of the marketplace, achieve market acceptance, or compete successfully with competing technologies. Some of the factors affecting market acceptance of new products and services include:

- availability, quality, and price relative to competing products and services;
- the functionality and performance of new and existing products and services;
- the timing of introduction of new products or services relative to competing products and services;
- scientists' and customers' opinions of the utility of new products or services;
- citation of new products or services in published research;
- regulatory trends and approvals; and
- general trends in life sciences research and applied markets.

We may also have to write off excess or obsolete inventory if sales of our products are not consistent with our expectations or the market requirements for our products change due to technical innovations in the marketplace.

If we do not successfully manage the development, manufacturing, and launch of new products or services, including product transitions, our financial results could be adversely affected.

We face risks associated with launching new products and pre-announcing products and services when the products or services have not been fully developed or tested. If our products and services are not able to deliver the performance or results expected by our target markets or are not delivered on a timely basis, our reputation and credibility may suffer. If we encounter development challenges or discover errors in our products late in our development cycle, we may delay the product launch date. In addition, we may experience difficulty in managing or forecasting customer reactions, purchasing decisions, or transition requirements or programs (such as trade-in programs) with respect to newly launched products (or products in development) relative to our existing products, which could adversely affect sales of our existing products. The expenses or losses associated with unsuccessful product development or launch activities or lack of market acceptance of our new products could adversely affect our business, financial condition, or results of operations.

We depend on third-party manufacturers and suppliers for components and materials used in our products, and if shipments from these manufacturers or suppliers are delayed or interrupted, or if the quality of the components or materials supplied do not meet our requirements, we may not be able to launch, manufacture, or ship our products in a timely manner, or at all.

The complex nature of our products requires customized, precision-manufactured components and materials that currently are available from a limited number of sources, and, in the case of some components and materials, from only a single source. If deliveries from these vendors are delayed or interrupted for any reason, or if we are otherwise unable to secure a sufficient supply, we may not be able to obtain these components or materials on a timely basis or in sufficient quantities or qualities, or at all, in order to meet demand for our products. We may need to enter into contractual relationships with manufacturers for commercial-scale production of some of our products, or develop these capabilities internally, and there can be no assurance that we will be able to do this on a timely basis, in sufficient quantities, or on commercially reasonable terms. In addition, the lead time needed to establish a relationship with a new supplier can be lengthy, and we may experience delays in meeting demand in the event we must switch to a new supplier. The time and effort required to qualify a new supplier could result in additional costs, diversion of resources, or reduced manufacturing yields, any of which would negatively impact our operating results. Accordingly, we may not be able to establish or maintain reliable, high-volume manufacturing at commercially

reasonable costs or at all. In addition, the manufacture or shipment of our products may be delayed or interrupted if the quality of the components or materials supplied by our vendors does not meet our requirements. Current or future social and environmental regulations or critical issues, such as those relating to the sourcing of conflict minerals from the Democratic Republic of the Congo or the need to eliminate environmentally sensitive materials from our products, could restrict the supply of components and materials used in production or increase our costs. Any delay or interruption to our manufacturing process or in shipping our products could result in lost revenue, which would adversely affect our business, financial condition, or results of operations.

If we lose our key personnel or are unable to attract and retain additional personnel, we may be unable to achieve our goals.

We are highly dependent on our management and scientific personnel, including Jay Flatley, our President and Chief Executive Officer. The loss of their services could adversely impact our ability to achieve our business objectives. In addition, the continued growth of our business depends on our ability to hire additional qualified personnel with expertise in molecular biology, chemistry, biological information processing, sales, marketing, and technical support. We compete for qualified management and scientific personnel with other life science companies, universities, and research institutions, particularly those focusing on genomics. Competition for these individuals, particularly in the San Diego and San Francisco area, is intense, and the turnover rate can be high. Failure to attract and retain management and scientific personnel would prevent us from pursuing collaborations or developing our products or technologies. Additionally, integration of acquired companies and businesses can be disruptive, causing key employees of the acquired business to leave. Further, we use stock options and restricted stock units to attract key personnel, incentivize them to remain with us, and align their interests with those of the Company by building long-term stockholder value. If our stock price decreases, the value of these equity awards decreases and therefore reduces a key employee's incentive to stay.

If we are unable to increase our manufacturing capacity and develop and maintain operation of our manufacturing capability, we may not be able to launch or support our products in a timely manner, or at all.

We continue to rapidly increase our manufacturing capacity to meet the anticipated demand for our products. Although we have significantly increased our manufacturing capacity and we believe we have plans in place sufficient to ensure we have adequate capacity to meet our current business plans, there are uncertainties inherent in expanding our manufacturing capabilities, and we may not be able to sufficiently increase our capacity in a timely manner. For example, manufacturing and product quality issues may arise as we increase production rates at our manufacturing facilities and launch new products. Also, we may not manufacture the right product mix to meet customer demand, especially as we introduce new products. As a result, we may experience difficulties in meeting customer, collaborator, and internal demand, in which case we could lose customers or be required to delay new product introductions, and demand for our products could decline. Additionally, in the past, we have experienced variations in manufacturing conditions and quality control issues that have temporarily reduced or suspended production of certain products. Due to the intricate nature of manufacturing complex instruments, consumables, and products that contain DNA, we may encounter similar or previously unknown manufacturing difficulties in the future that could significantly reduce production yields, impact our ability to launch or sell these products (or to produce them economically), prevent us from achieving expected performance levels, or cause us to set prices that hinder wide adoption by customers.

Additionally, we currently manufacture in a limited number of locations. Our manufacturing facilities are located in San Diego and Hayward, California; Madison, Wisconsin; Singapore; and Cambridge, United Kingdom. These areas are subject to natural disasters such as earthquakes, wildfires, or floods. If a natural disaster were to damage one of our facilities significantly or if other events were to cause our operations to fail, we may be unable to manufacture our products, provide our services, or develop new products.

Also, many of our manufacturing processes are automated and are controlled by our custom-designed laboratory information management system (LIMS). Additionally, the decoding process in our array manufacturing requires significant network and storage infrastructure. If either our LIMS system or our networks or storage infrastructure were to fail for an extended period of time, it may adversely impact our ability to manufacture our products on a timely basis and could prevent us from achieving our expected shipments in any given period.

Any inability to effectively protect our proprietary technologies could harm our competitive position.

Our success depends to a large extent on our ability to develop proprietary products and technologies and to obtain patents and maintain adequate protection of our intellectual property in the United States and other countries. If we do not protect our intellectual property adequately, competitors may be able to use our technologies and thereby erode our competitive advantage. The laws of some foreign countries do not protect proprietary rights to the same extent as the laws of the United States, and

many companies have encountered significant challenges in establishing and enforcing their proprietary rights outside of the United States. These challenges can be caused by the absence of rules and methods for the establishment and enforcement of intellectual property rights outside of the United States.

The proprietary positions of companies developing tools for the life sciences, genomics, agricultural, and pharmaceutical industries, including our proprietary position, generally are uncertain and involve complex legal and factual questions. We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary technologies are covered by valid and enforceable patents or are effectively maintained as trade secrets. We intend to apply for patents covering our technologies and products as we deem appropriate. However, our patent applications may be challenged and may not result in issued patents or may be invalidated or narrowed in scope after they are issued. Questions as to inventorship or ownership may also arise. Any finding that our patents or applications are unenforceable could harm our ability to prevent others from practicing the related technology, and a finding that others have inventorship or ownership rights to our patents and applications could require us to obtain certain rights to practice related technologies, which may not be available on favorable terms, if at all. Furthermore, as issued patents expire, we may lose some competitive advantage as others develop competing products, and, as a result, we may lose revenue.

In addition, our existing patents and any future patents we obtain may not be sufficiently broad to prevent others from practicing our technologies or from developing competing products and may therefore fail to provide us with any competitive advantage. We may need to initiate lawsuits to protect or enforce our patents, or litigate against third party claims, which would be expensive, and, if we lose, may cause us to lose some of our intellectual property rights and reduce our ability to compete in the marketplace. Furthermore, these lawsuits may divert the attention of our management and technical personnel. There is also the risk that others may independently develop similar or alternative technologies or design around our patented technologies. In that regard, certain patent applications in the United States may be maintained in secrecy until the patents issue, and publication of discoveries in the scientific or patent literature tend to lag behind actual discoveries by several months.

We also rely upon trade secrets and proprietary know-how protection for our confidential and proprietary information, and we have taken security measures to protect this information. These measures, however, may not provide adequate protection for our trade secrets, know-how, or other confidential information. Among other things, we seek to protect our trade secrets and confidential information by entering into confidentiality agreements with employees, collaborators, and consultants. There can be no assurance that any confidentiality agreements that we have with our employees, collaborators, and consultants will provide meaningful protection for our trade secrets and confidential information or will provide adequate remedies in the event of unauthorized use or disclosure of such information. Accordingly, there also can be no assurance that our trade secrets will not otherwise become known or be independently developed by competitors.

Litigation, other proceedings, or third party claims of intellectual property infringement could require us to spend significant time and money and could prevent us from selling our products or services.

Our success depends, in part, on our non-infringement of the patents or proprietary rights of third parties. Third parties have asserted and may in the future assert that we are employing their proprietary technology without authorization. As we enter new markets or introduce new products, we expect that competitors will likely claim that our products infringe their intellectual property rights as part of a business strategy to impede our successful competition. In addition, third parties may have obtained and may in the future obtain patents allowing them to claim that the use of our technologies infringes these patents. We could incur substantial costs and divert the attention of our management and technical personnel in defending ourselves against any of these claims. Any adverse ruling or perception of an adverse ruling in defending ourselves against these claims could have an adverse impact on our stock price, which may be disproportionate to the actual import of the ruling itself. Furthermore, parties making claims against us may be able to obtain injunctive or other relief, which effectively could block our ability to develop further, commercialize, or sell products or services, and could result in the award of substantial damages against us. In the event of a successful infringement claim against us, we may be required to pay damages and obtain one or more licenses from third parties, or be prohibited from selling certain products or services. In addition, we may be unable to obtain these licenses at a reasonable cost, if at all. We could therefore incur substantial costs related to royalty payments for licenses obtained from third parties, which could negatively affect our gross margins. In addition, we could encounter delays in product introductions while we attempt to develop alternative methods or products. Defense of any lawsuit or failure to obtain any of these licenses on favorable terms could prevent us from commercializing products, and the prohibition of sale of any of our products or services could adversely affect our ability to grow or maintain profitability.

Our products, if used for the diagnosis of disease, could be subject to government regulation, and the regulatory approval and maintenance process for such products may be expensive, time-consuming, and uncertain both in timing and in outcome.

Products are not subject to FDA clearance or approval if they are not intended to be used for the diagnosis of disease. However, as we expand our product line to encompass products that are intended to be used for the diagnosis of disease, certain of our products will become subject to regulation by the FDA, or comparable agencies of other countries, including requirements for regulatory clearance or approval of such products before they can be marketed. Such regulatory approval processes or clearances may be expensive, time-consuming, and uncertain, and our failure to obtain or comply with such approvals and clearances could have an adverse effect on our business, financial condition, or operating results. In addition, changes to the current regulatory framework, including the imposition of additional or new regulations, could arise at any time during the development or marketing of our products, which may negatively affect our ability to obtain or maintain FDA or comparable regulatory approval of our products, if required.

Molecular diagnostic products, in particular, depending on their intended use, may be regulated as medical devices by the FDA and comparable agencies of other countries and may require either receiving clearance from the FDA following a pre-market notification process or premarket approval from the FDA, in each case prior to marketing. Obtaining the requisite regulatory approvals can be expensive and may involve considerable delay. If we fail to obtain, or experience significant delays in obtaining, regulatory approvals for molecular diagnostic products that we develop, we may not be able to launch or successfully commercialize such products in a timely manner, or at all.

In addition, the regulatory approval or clearance process required to design, manufacture, market, sell, and support our existing and future products that are intended for, and marketed and labeled as, "Research Use Only," or RUO, is uncertain if such products are used or could be used, even without our consent, for the diagnosis of disease. If the FDA or other regulatory authorities assert that any of our RUO products are subject to regulatory clearance or approval, our business, financial condition, or results of operations could be adversely affected.

Doing business internationally creates operational and financial risks for our business.

Conducting and launching operations on an international scale requires close coordination of activities across multiple jurisdictions and time zones and consumes significant management resources. If we fail to coordinate and manage these activities effectively, including the risks noted below, our business, financial condition, or results of operations could be adversely affected. We are focused on expanding our international operations in key markets. We have sales offices located internationally throughout Europe, the Asia-Pacific region, and Brazil, as well as manufacturing facilities in the United Kingdom and Singapore. During 2012, the majority of our sales to international customers were denominated in foreign currencies while the majority of our purchases of raw materials from international suppliers were denominated in U.S. dollars. Shipments to customers outside the United States comprised 51%, 50%, and 45% of our total revenue for fiscal years 2012, 2011, and 2010, respectively. We intend to continue to expand our international presence by selling to customers located outside of the United States and we expect the total amount of non-U.S. sales to continue to grow.

International sales entail a variety of risks, including:

- longer payment cycles and difficulties in collecting accounts receivable outside of the United States;
- longer sales cycles due to the volume of transactions taking place through public tenders;
- currency exchange fluctuations;
- challenges in staffing and managing foreign operations;
- tariffs and other trade barriers;
- unexpected changes in legislative or regulatory requirements of foreign countries into which we sell our products;
- difficulties in obtaining export licenses or in overcoming other trade barriers and restrictions resulting in delivery delays; and
- significant taxes or other burdens of complying with a variety of foreign laws.

Changes in the value of the relevant currencies may affect the cost of certain items required in our operations. Changes in currency exchange rates may also affect the relative prices at which we are able sell products in the same market. Our revenues from international customers may be negatively impacted as increases in the U.S. dollar relative to our international customers local currency could make our products more expensive, impacting our ability to compete. Our costs of materials from international suppliers may increase if in order to continue doing business with us they raise their prices as the value of the U.S. dollar decreases relative to their local currency. Foreign policies and actions regarding currency valuation could result in actions by the United States and other countries to offset the effects of such fluctuations. The recent global financial downturn

has led to a high level of volatility in foreign currency exchange rates and that level of volatility may continue, which could adversely affect our business, financial condition, or results of operations.

We are subject to risks related to taxation in multiple jurisdictions.

We are subject to income taxes in both the United States and numerous foreign jurisdictions. Significant judgments based on interpretations of existing tax laws or regulations are required in determining the provision for income taxes. Our effective income tax rate could be adversely affected by various factors, including, but not limited to, changes in the mix of earnings in tax jurisdictions with different statutory tax rates, changes in the valuation of deferred tax assets and liabilities, changes in existing tax laws or tax rates, changes in the level of non-deductible expenses (including share-based compensation), changes in our future levels of research and development spending, mergers and acquisitions, or the result of examinations by various tax authorities. Although we believe our tax estimates are reasonable, if the U.S. Internal Revenue Service or other taxing authority disagrees with the positions taken by the Company on its tax returns, we could have additional tax liability, including interest and penalties. If material, payment of such additional amounts upon final adjudication of any disputes could have a material impact on our results of operations and financial position.

An inability to manage our growth or the expansion of our operations could adversely affect our business, financial condition, or results of operations.

Our business has grown rapidly, with total revenues increasing from $73.5 million for the year ended January 1, 2006 to $1.15 billion for the year ended December 30, 2012 and with the number of employees increasing from 375 to approximately 2,400 during the same period. We expect to continue to experience substantial growth in order to achieve our operating plans. The continued global expansion of our business and addition of new personnel may place a strain on our management and operational systems. Our ability to effectively manage our operations and growth requires us to continue to expend funds to enhance our operational, financial, and management controls, reporting systems, and procedures and to attract and retain sufficient numbers of talented employees on a global basis. If we are unable to scale up and implement improvements to our manufacturing process and control systems in an efficient or timely manner, or if we encounter deficiencies in existing systems and controls, then we will not be able to make available the products required to successfully commercialize our technology. Our future operating results will depend on the ability of our management to continue to implement and improve our research, product development, manufacturing, sales and marketing, and customer support programs, enhance our operational and financial control systems, expand, train, and manage our employee base, integrate acquired businesses, and effectively address new issues related to our growth as they arise. There can be no assurance that we will be able to manage our recent or any future expansion or acquisition successfully, and any inability to do so could adversely affect our business, financial condition, or results of operations.

Our operating results may vary significantly from period to period, and we may not be able to sustain operating profitability.

Our revenue is subject to fluctuations due to the timing of sales of high-value products and services, the effects of new product launches and related promotions, the timing and availability of our customers' funding, the impact of seasonal spending patterns, the timing and size of research projects our customers perform, changes in overall spending levels in the life sciences industry, and other unpredictable factors that may affect customer ordering patterns. Given the difficulty in predicting the timing and magnitude of sales for our products and services, we may experience quarter-to-quarter fluctuations in revenue resulting in the potential for a sequential decline in quarterly revenue. While we anticipate future growth, there is some uncertainty as to the timing of revenue recognition on a quarterly basis. This is because a substantial portion of our quarterly revenue is typically recognized in the last month of a quarter and because the pattern for revenue generation during that month is normally not linear, with a concentration of orders in the final week of the quarter. In light of that, our revenue cut-off and recognition procedures, together with our manufacturing and shipping operations, may experience increased pressure and demand during the time period shortly before the end of a fiscal quarter.

A large portion of our expenses are relatively fixed, including expenses for facilities, equipment, and personnel. In addition, we expect operating expenses to continue to increase significantly in absolute dollars, and we expect that our research and development and selling and marketing expenses will increase at a higher rate in the future as a result of the development and launch of new products. Accordingly, our ability to sustain profitability will depend, in part, on the rate of growth, if any, of our revenue and on the level of our expenses, and if revenue does not grow as anticipated, we may not be able to maintain annual or quarterly profitability. Any significant delays in the commercial launch of our products, unfavorable sales trends in our existing product lines, or impacts from the other factors mentioned above, could adversely affect our future revenue growth or cause a sequential decline in quarterly revenue. In addition, non-cash share-based compensation expense and expenses related to prior and future acquisitions are also likely to continue to adversely affect our future profitability. Due to the

possibility of significant fluctuations in our revenue and expenses, particularly from quarter to quarter, we believe that quarterly comparisons of our operating results are not a good indication of our future performance. If our operating results fluctuate or do not meet the expectations of stock market analysts and investors, our stock price could decline.

From time to time, we receive large orders that have a significant effect on our operating results in the period in which the order is recognized as revenue. The timing of such orders is difficult to predict, and the timing of revenue recognition from such orders may affect period to period changes in net sales. As a result, our operating results could vary materially from quarter to quarter based on the receipt of such orders and their ultimate recognition as revenue.

Changes in accounting standards and subjective assumptions, estimates, and judgments by management related to complex accounting matters could significantly affect our financial results or financial condition.

Generally accepted accounting principles and related accounting pronouncements, implementation guidelines, and interpretations with regard to a wide range of matters that are relevant to our business, such as revenue recognition, asset impairment and fair value determinations, inventories, business combinations and intangible asset valuations, and litigation, are highly complex and involve many subjective assumptions, estimates, and judgments. Changes in these rules or their interpretation or changes in underlying assumptions, estimates, or judgments could significantly change our reported or expected financial performance or financial condition.

Ethical, legal, and social concerns related to the use of genetic information could reduce demand for our products or services.

Our products may be used to provide genetic information about humans, agricultural crops, and other living organisms. The information obtained from our products could be used in a variety of applications, which may have underlying ethical, legal, and social concerns regarding privacy and the appropriate uses of the resulting information, including preimplantation genetic screening of embryos, prenatal genetic testing, genetic engineering or modification of agricultural products, or testing genetic predisposition for certain medical conditions, particularly for those that have no known cure. Governmental authorities could, for social or other purposes, call for limits on or regulation of the use of genetic testing or prohibit testing for genetic predisposition to certain conditions, particularly for those that have no known cure. Similarly, such concerns may lead individuals to refuse to use genetics tests even if permissible. These and other ethical, legal, and social concerns about genetic testing may limit market acceptance of our technology for certain applications or reduce the potential markets for our technology, either of which could have an adverse effect on our business, financial condition, or results of operations.

Our strategic equity investments may result in losses.

We periodically make strategic equity investments in various public and private companies with businesses or technologies that may complement our business. The market values of these strategic equity investments may fluctuate due to market conditions and other conditions over which we have no control. Other-than-temporary declines in the market price and valuations of the securities that we hold in other companies would require us to record losses in proportion to our ownership interest. This could result in future charges to our earnings. It is uncertain whether or not we will realize any long-term benefits associated with these strategic investments.

Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.

In the ordinary course of our business, we collect and store sensitive data, including intellectual property, our proprietary business information, and that of our customers, and personally identifiable information of our customers and employees, in our data centers and on our networks. The secure maintenance of this information is important to our operations and business strategy. Despite our security measures, our information technology and infrastructure may be vulnerable to attacks by hackers or breached due to employee error, malfeasance or other disruptions. Any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost, or stolen. Any such access, disclosure, or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, and damage to our reputation.

Conversion of our outstanding convertible notes may result in losses.

As of December 30, 2012, we had $40 million aggregate principal amount of convertible notes due 2014 and $920 million aggregate principal amount of convertible notes due 2016 outstanding. The notes are convertible into cash, and if applicable, shares of our common stock under certain circumstances, including trading price conditions related to our common

stock. If the trading price of our common stock remains significantly above the conversion price of $21.83 per share with respect to convertible notes due 2014 and $83.55 with respect to convertible notes due 2016, we expect that the noteholders will elect to convert the applicable notes. Upon conversion, we are required to record a gain or loss for the difference between the fair value of the notes to be extinguished and their corresponding net carrying value. The fair value of the notes to be extinguished depends on our current incremental borrowing rate. The net carrying value of our notes has an implicit interest rate of 8.3% with respect to convertible notes due 2014 and 4.5% with respect to convertible notes due 2016. If our incremental borrowing rate at the time of conversion is lower than the implied interest rate of the notes, we will record a loss in our consolidated statement of income during the period in which the notes are converted.

Our Certificate of Incorporation and Bylaws include anti-takeover provisions that may make it difficult for another company to acquire control of us or limit the price investors might be willing to pay for our stock.

Certain provisions of our Certificate of Incorporation and Bylaws could delay the removal of incumbent directors and could make it more difficult to successfully complete a merger, tender offer, or proxy contest involving us. These provisions include our Preferred Shares Rights Agreement, commonly known as a "poison pill" and provisions in our Certificate of Incorporation that give our Board the ability to issue preferred stock and determine the rights and designations of the preferred stock at any time without stockholder approval. The rights of the holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from acquiring, a majority of our outstanding voting stock. In addition, the staggered terms of our board of directors could have the effect of delaying or deferring a change in control.

In addition, certain provisions of the Delaware General Corporation Law ("DGCL"), including Section 203 of the DGCL, may have the effect of delaying or preventing changes in the control or management of Illumina. Section 203 of the DGCL provides, with certain exceptions, for waiting periods applicable to business combinations with stockholders owning at least 15% and less than 85% of the voting stock (exclusive of stock held by directors, officers, and employee plans) of a company.

The above factors may have the effect of deterring hostile takeovers or otherwise delaying or preventing changes in the control or management of Illumina, including transactions in which our stockholders might otherwise receive a premium over the fair market value of our common stock.

ITEM 1B. *Unresolved Staff Comments.*

None.

ITEM 2. *Properties.*

The following chart summarizes the facilities we lease as of December 30, 2012, including the location and size of each principal facility, and their designated use. We believe our facilities are adequate for our current and near-term needs, and that we will be able to locate additional facilities as needed.

Location	Approximate Square Feet	Operation	Lease Expiration Dates
San Diego, CA	502,000	R&D, Manufacturing, Warehouse, Distribution, and Administrative	2015 – 2031
Hayward, CA	109,000	R&D, Manufacturing, and Administrative	2013 – 2014
Singapore	87,000	Manufacturing and Administrative	2013 – 2015
Eindhoven, the Netherlands	42,000	Distribution and Administrative	2015
Cambridge, United Kingdom	66,000	R&D, Manufacturing, and Administrative	2021 - 2024
Madison, WI	27,000	R&D, Manufacturing, and Administrative	2018
Other	19,000	R&D, Manufacturing, Sales, and Administrative	2013 - 2015

ITEM 3. ***Legal Proceedings.***

We are involved in various lawsuits and claims arising in the ordinary course of business, including actions with respect to intellectual property, employment, and contractual matters. In connection with these matters, we assess, on a regular basis, the probability and range of possible loss based on the developments in these matters. A liability is recorded in the financial statements if it is believed to be probable that a loss has been incurred and the amount of the loss can be reasonably estimated. We recorded a legal contingency loss of $3.0 million in aggregate within cost of product revenue in 2012. Because litigation is inherently unpredictable and unfavorable resolutions could occur, assessing contingencies is highly subjective and requires judgments about future events. We regularly review outstanding legal matters to determine the adequacy of the liabilities accrued and related disclosures. The amount of ultimate loss may differ from these estimates. Each matter presents its own unique circumstances, and prior litigation does not necessarily provide a reliable basis on which to predict the outcome, or range of outcomes, in any individual proceeding. Because of the uncertainties related to the occurrence, amount, and range of loss on any pending litigation or claim, we are currently unable to predict their ultimate outcome, and, with respect to any pending litigation or claim where no liability has been accrued, to make a meaningful estimate of the reasonably possible loss or range of loss that could result from an unfavorable outcome. In the event that opposing litigants in outstanding litigations or claims ultimately succeed at trial and any subsequent appeals on their claims, any potential loss or charges in excess of any established accruals, individually or in the aggregate, could have a material adverse effect on our business, financial condition, results of operations, and/or cash flows in the period in which the unfavorable outcome occurs or becomes probable, and potentially in future periods.

On November 24, 2010, Syntrix Biosystems, Inc. filed suit against us in the United States District Court for the Western District of Washington at Tacoma (Case No. C10-5870-BHS) alleging that we willfully infringed U.S. Patent No. 6,951,682 by selling our BeadChip array products, and that we misappropriated Syntrix's trade secrets. Fact and expert discovery is complete in the case. In November and December 2012, we filed motions for summary judgment that the patent is not infringed and is invalid, and that Syntrix's trade secrets claims are barred by various statutes of limitation. Syntrix filed a motion for summary judgment that the patent is valid. On January 30, 2013, the court granted our motion for summary judgment on Syntrix's trade secret claims, and dismissed those claims from the case. The court denied Syntrix's motion for summary judgment on validity, and denied our motion for summary judgment for non-infringement and invalidity. A trial is scheduled to begin on February 26, 2013.

We have thoroughly investigated Syntrix's claims and believe the claims are without merit. While we believe there is no legal basis for the alleged liability, we cannot estimate the possible loss or range of possible loss as there are significant legal and factual issues to be resolved. For example, each party has filed motions seeking to exclude portions of the other party's expert testimony and to preclude the other party from introducing certain other evidence at trial. In addition to post-trial briefing, the parties would likely engage in appellate motion practice, the result of which is also unpredictable and could significantly affect the outcome of the case.

ITEM 4. ***Mine Safety Disclosures.***

Not applicable.

PART II

ITEM 5. ***Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.***

Market Information

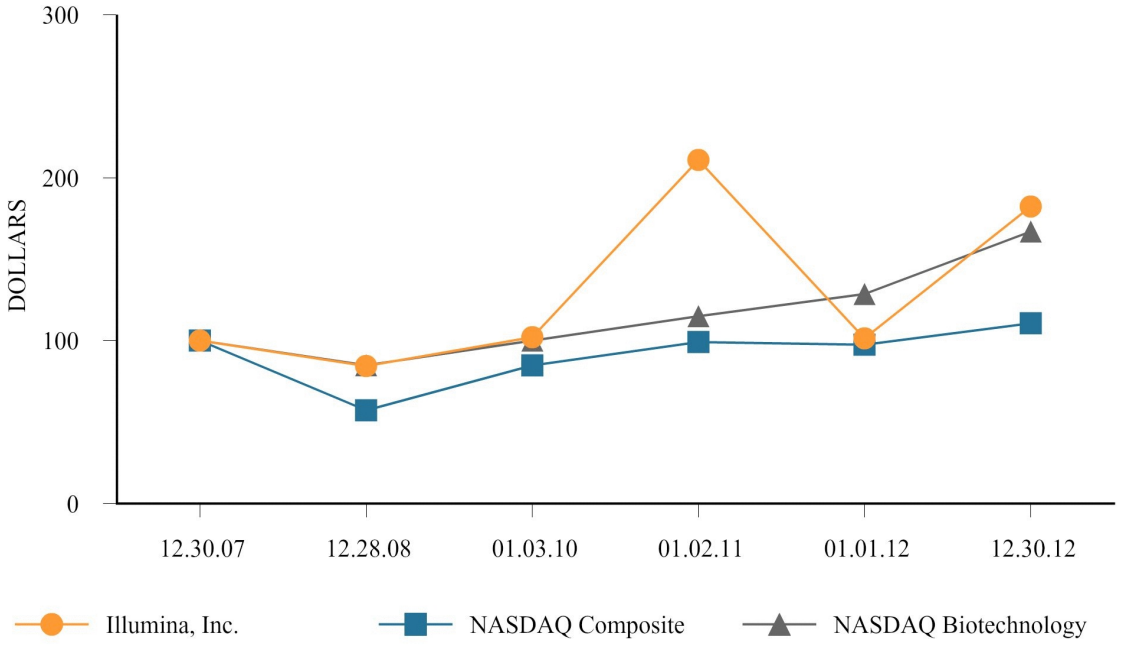
Our common stock has been quoted on The NASDAQ Global Select Market under the symbol "ILMN" since July 28, 2000. Prior to that time, there was no public market for our common stock. The following table sets forth, for the fiscal periods indicated, the quarterly high and low sales prices per share of our common stock as reported on The NASDAQ Global Select Market.

	2012		2011	
	High	Low	High	Low
First Quarter	$ 55.39	$ 28.72	$ 74.12	$ 61.87
Second Quarter	53.00	37.77	76.81	65.41
Third Quarter	49.27	38.92	79.40	39.82
Fourth Quarter	57.00	44.78	40.53	25.57

Stock Performance Graph

The graph below compares the cumulative total stockholder returns on our common stock for the last five fiscal years with the cumulative total stockholder returns on the NASDAQ Composite Index and the NASDAQ Biotechnology Index for the same period. The graph assumes that $100 was invested on December 30, 2007 in our common stock and in each index and that all dividends were reinvested. No cash dividends have been declared on our common stock. Stockholder returns over the indicated period should not be considered indicative of future stockholder returns.

Compare 5-Year Cumulative Total Return Among Illumina Inc, NASDAQ Composite Index, and NASDAQ Biotechnology Index



Holders

As of January 31, 2013 we had 224 record holders of our common stock.

Dividends

We have never paid cash dividends and have no present intention to pay cash dividends in the foreseeable future. The indentures for our 0.625% convertible senior notes due 2014 and 0.25% convertible senior notes due 2016, which notes are convertible into cash and, in certain circumstances, shares of our common stock, require us to increase the conversion rate applicable to the notes if we pay any cash dividends.

Purchases of Equity Securities by the Issuer

On April 18, 2012, the Company's Board of Directors authorized a $250 million stock repurchase program to be effected via a combination of Rule 10b5-1 and discretionary share repurchase programs. The following table summarizes shares repurchased pursuant to these programs during the quarter ended December 30, 2012.

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Programs
October 1, 2012 - October 28, 2012	97,289	$ 51.39	97,289	$ 187,518,994
October 29, 2012 - November 25, 2012	207,558	48.18	207,558	177,519,092
November 26, 2012 - December 30, 2012	190,921	52.38	190,921	167,519,168
Total	495,768	$ 50.43	495,768	$ 167,519,168

(1) All shares purchased during the fiscal quarter ended December 30, 2012 were made in open-market transactions.

Sales of Unregistered Securities

None during the fiscal quarter ended December 30, 2012.

ITEM 6. ***Selected Financial Data.***

The following table sets forth selected historical consolidated financial data for each of our last five fiscal years during the period ended December 30, 2012.

Statement of Operations Data

	Years Ended				
	December 30, 2012 (52 weeks)	January 1, 2012 (52 weeks)	January 2, 2011 (52 weeks)	January 3, 2010 (53 weeks)	December 28, 2008 (52 weeks)
	(In thousands, except per share data)				
Total revenue	$ 1,148,516	$ 1,055,535	$ 902,741	$ 666,324	$ 573,225
Income from operations	200,752	199,461	211,654	125,597	80,457
Net income	151,254	86,628	124,891	72,281	39,416
Net income per share:					
Basic	$ 1.23	$ 0.70	$ 1.01	$ 0.59	$ 0.34
Diluted	$ 1.13	$ 0.62	$ 0.87	$ 0.53	$ 0.30
Shares used in calculating net income per share:					
Basic	122,999	123,399	123,581	123,154	116,855
Diluted	133,693	138,937	143,433	137,096	133,607

Balance Sheet Data

	December 30, 2012	January 1, 2012	January 2, 2011	January 3, 2010	December 28, 2008
	(In thousands)				
Cash, cash equivalents and short-term investments(1),(2),(3)	$ 1,350,204	$ 1,189,568	$ 894,289	$ 693,527	$ 640,075
Working capital	1,482,477	1,317,698	723,881	540,354	483,113
Total assets	2,566,085	2,195,840	1,839,113	1,429,937	1,327,171
Long-term debt, current portion(1)	36,967	—	311,609	290,202	276,889
Long-term debt, less current portion(1)	805,406	807,369	—	—	—
Total stockholders' equity(2),(3)	1,318,581	1,075,215	1,197,675	864,248	798,667

In addition to the following notes, see Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and Item 8, "Financial Statements and Supplementary Data," for further information regarding our consolidated results of operations and financial position for periods reported therein and for known factors that will impact comparability of future results.

(1) During 2011, we issued $920.0 million principal amount of 0.25% Convertible Senior Notes due 2016, which was classified as long-term liability as of December 30, 2012 and January 1, 2012. In February 2007, we issued $400.0 million principal amount of 0.625% Convertible Senior Notes due 2014. Due to the 0.625% Convertible Senior Notes due 2014 being convertible during the fiscal years ended December 30, 2012, January 2, 2011, January 3, 2010, and December 28, 2008, we classified the outstanding principal amount of these notes as current in our consolidated balance sheet in the respective periods. As of January 1, 2012, the outstanding principal amount of the 0.625% Convertible Senior Notes was not convertible and was therefore reclassified to long-term liability. See note "7. Convertible Senior Notes" in Part II, Item 8, Notes to Consolidated Financial Statements, for further information.

(2) For the fiscal years ended December 30, 2012, January 1, 2012, January 2, 2011, January 3, 2010, and December 28, 2008, we repurchased 1.9 million, 9.2 million, 0.8 million, 6.1 million, and 3.1 million shares, respectively, of common stock for $82.5 million, $570.3 million, $44.0 million, $175.1 million, and $70.8 million, respectively. See note "10. Stockholders' Equity" in Part II, Item 8, Notes to Consolidated Financial Statements.

(3) In August 2008, a total of 8,050,000 shares were sold to the public at a public offering price of $43.75 per share, raising net proceeds to us of $342.7 million.

ITEM 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations.*

Our Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is provided in addition to the accompanying consolidated financial statements and notes to assist readers in understanding our results of operations, financial condition, and cash flows. This MD&A is organized as follows:

- *Business Overview and Outlook*. High level discussion of our operating results and significant known trends that affect our business.
- *Results of Operations*. Detailed discussion of our revenues and expenses.
- *Liquidity and Capital Resources*. Discussion of key aspects of our statements of cash flows, changes in our financial position, and our financial commitments.
- *Off-Balance Sheet Arrangements*. We have no significant off-balance sheet arrangements.
- *Contractual Obligations.* Tabular disclosure of known contractual obligations as of December 30, 2012.
- *Critical Accounting Policies and Estimates*. Discussion of significant changes since our most recent Annual Report on Form 10-K that we believe are important to understanding the assumptions and judgments underlying our financial statements.

This MD&A discussion contains forward-looking statements that involve risks and uncertainties. Please see "Special Note Regarding Forward-Looking Statements" for additional factors relating to such statements, and see "Risk Factors" in Item 1A of this report for a discussion of certain risk factors applicable to our business, financial condition, and results of operations. Operating results are not necessarily indicative of results that may occur in future periods.

Business Overview and Outlook

This overview and outlook provides a high level discussion of our operating results and significant known trends that affect our business. We believe that an understanding of these trends is important to understanding our financial results for the periods being reported herein as well as our future financial performance. This summary is not intended to be exhaustive, nor is it intended to be a substitute for the detailed discussion and analysis provided elsewhere in this Annual Report on Form 10-K.

About Illumina

We are a leading developer, manufacturer, and marketer of life science tools and integrated systems for the analysis of genetic variation and function. Using our proprietary technologies, we provide a comprehensive line of genetic analysis solutions, with products and services that address a broad range of highly interconnected markets, including sequencing, genotyping, gene expression, and genomic-based diagnostics. Our customers include leading genomic research centers, academic institutions, government laboratories, and clinical research organizations, as well as pharmaceutical, biotechnology, agrigenomics, consumer genomics companies, and in vitro fertilization clinics.

Our broad portfolio of instruments, consumables, and analysis tools are designed to simplify and accelerate genetic analysis. This portfolio addresses the full range of genomic complexity, price points, and throughputs, enabling researchers to select the best solution for their scientific challenge. These systems can be used to efficiently perform a range of nucleic acid (DNA, RNA) analyses on large numbers of samples. For more focused studies, our array-based solutions provide ideal tools to perform genome-wide association studies (GWAS) involving single-nucleotide polymorphism (SNP) genotyping and copy number variation (CNV) analyses, as well as gene expression profiling and other DNA, RNA, and protein studies.

In 2012 and early 2013, we took significant steps to support our goal to be the leader in genomic-based diagnostics by acquiring BlueGnome Ltd. (BlueGnome) in September 2012 and signing a definitive agreement to acquire Verinata Health, Inc. (Verinata) in January 2013. BlueGnome is a leading provider of solutions for the screening of genetic abnormalities associated with developmental delay, cancer, and infertility, and BlueGnome's offerings enhance our ability to establish integrated solutions in reproductive health and cancer. Upon completion of the Verinata acquisition, we will further strengthen our diagnostic focus on reproductive health by having access to Verinata's verifi® prenatal test, the broadest non-invasive prenatal test (NIPT) available today for high-risk pregnancies, and what we believe to be the most comprehensive intellectual propert

y portfolio in the NIPT industry. To further enhance our genetic analysis workflows, in 2011 we acquired Epicentre Technologies Corporation (Epicentre), a leading provider of nucleic acid sample preparation reagents and specialty enzymes for sequencing and microarray applications. In 2010, through our acquisition of Helixis, Inc., we expanded our portfolio to include real-time polymerase chain reaction (PCR), one of the most widely used technologies in life sciences. Our Eco Real-Time PCR System provides researchers with an affordable, full-featured system to perform targeted validation studies.

Our financial results have been, and will continue to be, impacted by several significant trends, which are described below. While these trends are important to understanding and evaluating our financial results, this discussion should be read in conjunction with our consolidated financial statements and the notes thereto in Item 1, Part I of this report, and the other transactions, events, and trends discussed in "Risk Factors" in Item 1A, Part I of this report.

Funding Environment

There remains significant uncertainty concerning government and academic research funding worldwide as governments in the United States and Europe, in particular, focus on reducing fiscal deficits while at the same time confronting slow economic growth. We believe this uncertainty will continue in 2013, which could lead to purchasing delays and could negatively impact our business.

While many of our customers receive funding from government agencies to purchase our products or services, we are increasingly less dependent on government funding. In fiscal 2012, approximately 30% of our total revenue came from commercial customers who are not reliant on government agencies for funding, and it is our strategy to diversify our customer base to increase further the portion of our revenue from commercial customers over time. However, we estimate that approximately one-third of our total revenue continues to be derived, directly or indirectly, from funding provided by the U.S. National Institute of Health (NIH). In fiscal 2012, the NIH budget increased 1% as compared to fiscal 2011 levels. NIH funding for the first quarter of 2013 will be subject to the continuing resolution that was signed into law by President Obama and funds the NIH at 90% of budget. The significance and timing of any reductions to the NIH budget from March 2013 may be significantly impacted by the sequestration provisions of the Budget Control Act of 2011 and by whether these provisions remain in effect. In addition, the U.S. Department of Health and Human Services (HHS), of which the NIH is a part, has the ability to reallocate funds within its budget to spare the NIH from the full effect of HHS budget reductions. We further believe that allocations within the NIH budget will continue to favor genetic analysis tools generally and, in particular, research programs that utilize next-generation sequencing.

Next-Generation Sequencing

Next-generation sequencing has become a core technology for modern life science research and is increasingly being used in the applied, molecular diagnostics, and translational markets. Over the next several years, expansion of the sequencing market, including an increase in the number of samples available and enhancements in our product portfolio will continue to drive demand for our next-generation sequencing technologies. Our sequencing instrument installed base continued to expand in 2012. As a result, we believe that our sequencing consumable revenue will continue to grow in future periods.

Our sequencing instrument portfolio primarily includes the HiSeq product family and MiSeq. We began full commercial shipments in the fourth quarter of 2012 of our previously announced HiSeq 2500 sequencing system, which allows customers to sequence an entire human genome in approximately a day. Our MiSeq sequencing system is a low-cost personal sequencing system that we believe will provide individual researchers a platform with rapid turnaround time, high accuracy, and streamlined workflow. We believe our MiSeq systems will continue to be a competitive offering in the lower throughput sequencing market and help us expand our presence in this emerging market segment.

MicroArrays

As a complement to next-generation sequencing, we believe microarrays offer a less expensive, faster, and highly accurate technology for use when genetic content is already known. The information content of microarrays is fixed and reproducible. As such, microarrays provide repeatable, standardized assays for certain subsets of nucleotide bases within the overall genome. As the cost of sequencing continues to decrease, we believe that life science researchers will migrate certain whole genome array studies to sequencing over the next few years; however, we expect this decline to be offset by demand from customers in applied and translational markets.

Financial Overview

Financial highlights for 2012 include the following:

- Net revenue increased by 9% during 2012 compared to 2011. The increase in revenue was primarily driven by an increase in consumable sales and instrument service contract revenue as our installed base continued to expand in 2012. We believe our revenue will continue to grow in 2013.
- Gross profit as a percentage of revenue (gross margin) was 67.4% in 2012, an increase from 67.2% in 2011. Gross margin improved in 2012 due in large part to the shift in sales mix from instruments to consumables, which have a higher gross margin than instruments. We believe our gross margin in future periods will depend on several factors, including market conditions that may impact our pricing power, product mix changes between consumable, instrument, and service sales, product mix changes between established products and new products in new markets, our cost structure for manufacturing operations, and our ability to create innovative and high premium products that meet or stimulate customer demand.
- Income from operations increased slightly by $1.3 million in 2012 compared to 2011. This was a result of higher gross profit, which was driven by increased revenue, being mostly offset by higher operating expenses. In 2012, our research and development expenses increased by $34.1 million and our selling, general and administrative expenses increased by $24.1 million as we continue to grow our business. We anticipate that the dollar amount of these expenses will increase as we continue to invest in our technology, people, and infrastructure to support our growth.

  In 2012, we completed the relocation of our headquarters that started in 2011 and incurred $26.3 million in headquarter relocation expense, which primarily included a cease-use loss upon vacating our prior headquarters, double rent expense during the transition to the new facility, and the accretion of interest expense on the related lease exit liability. We do not expect to incur significant additional headquarter relocation expense other than the accretion of interest expense on lease exit liability.

  In 2012, we also incurred $23.1 million in expenses associated with the unsolicited tender offer for shares of our common stock commenced by CKH Acquisition Corp. and Roche Holding Ltd. (together, “Roche”) in early 2012. We anticipate incurring additional advisory expenses through mid-2013.
- Our effective tax rate was 32.1% in 2012, as compared to 34.9% in 2011. The provision for income taxes is dependent on the mix of earnings in tax jurisdictions with different statutory tax rates and the other factors discussed in the risk factor “We are subject to risks related to taxation in multiple jurisdictions” in Item 1A of this report. For 2013 and beyond, we anticipate the provision for income taxes to increase in absolute dollars but the effective tax rate to trend lower than the U.S. federal statutory rate as the portion of our earnings subject to lower statutory tax rates increases.

  The American Taxpayer Relief Act of 2012, which was signed into law on January 2, 2013, included the retroactive reinstatement of the federal research and development credit from January 1, 2012, through December 31, 2013. Our provision for income taxes for the year ended December 30, 2012, did not include the impact of the federal research credit generated in 2012 since the law was enacted subsequent to our reporting period. Had the legislation been enacted in 2012, the provision for income taxes for the year ended December 30, 2012, would have been reduced by approximately $2.0 million. Our provision for income taxes in the first quarter of 2013 will include the tax benefit as a result of the retroactive reinstatement of the federal research credit for 2012.
- We ended 2012 with cash, cash equivalents, and short-term investments totaling $1.35 billion.

Results of Operations

To enhance comparability, the following table sets forth audited consolidated statement of operations data for the years ended December 30, 2012, January 1, 2012, and January 2, 2011 stated as a percentage of total revenue.

	2012	2011	2010
Revenue:			
Product revenue	91.9 %	93.5 %	93.3 %
Service and other revenue	8.1	6.5	6.7
Total revenue	100.0	100.0	100.0
Cost of revenue:			
Cost of product revenue	27.6	29.2	30.1
Cost of service and other revenue	3.8	2.5	2.4
Amortization of acquired intangible assets	1.2	1.1	0.9
Total cost of revenue	32.6	32.8	33.4
Gross profit	67.4	67.2	66.6
Operating expense:			
Research and development	20.1	18.7	19.7
Selling, general and administrative	24.9	24.8	24.4
Headquarter relocation expense	2.3	4.0	—
Unsolicited tender offer related expense	2.0	—	—
Restructuring charges	0.4	0.8	—
Acquisition related expense (gain), net	0.2	0.1	(0.9)
Total operating expense	49.9	48.4	43.2
Income from operations	17.5	18.8	23.4
Other income (expense):			
Cost-method investment related gain (loss), net	4.0	—	(1.1)
Interest income	1.4	0.7	0.9
Interest expense	(3.3)	(3.3)	(2.7)
Other (expense) income, net	(0.2)	(3.7)	—
Total other income (expense), net	1.9	(6.3)	(2.9)
Income before income taxes	19.4	12.5	20.5
Provision for income taxes	6.2	4.4	6.7
Net income	13.2 %	8.1 %	13.8 %

Our fiscal year is the 52 or 53 weeks ending the Sunday closest to December 31, with quarters of 13 or 14 weeks ending the Sunday closest to March 31, June 30, September 30, and December 31. The years ended December 30, 2012, January 1, 2012, and January 2, 2011 were 52 weeks, respectively.

Revenue

	2012 - 2011				2011 - 2010		
(Dollars in thousands)	2012	2011	Change	% Change	2010	Change	% Change
Product revenue	$ 1,055,826	$ 987,280	$ 68,546	7%	$ 842,510	$ 144,770	17%
Service and other revenue	92,690	68,255	24,435	36	60,231	8,024	13
Total revenue	$ 1,148,516	$ 1,055,535	$ 92,981	9%	$ 902,741	$ 152,794	17%

Product revenue consists primarily of revenue from the sale of consumables and instruments. Services and other revenue consists primarily of instrument service contract revenue as well as sequencing and genotyping service revenue.

2012 Compared to 2011

Consumables revenue increased $133.5 million, or 22%, to $729.3 million in 2012 compared to $595.8 million in 2011. The increase was primarily attributable to increased sales of sequencing consumables, driven by higher consumable sales per HiSeq instrument and the growth in both the HiSeq and MiSeq installed base.

Instrument revenue decreased $58.8 million, or 16%, to $314.3 million in 2012 compared to $373.1 million in 2011, driven by a decrease in HiSeq shipments, partially offset by a full year of MiSeq shipments in 2012 as compared to less than two quarters of shipments in 2011.

Revenue in 2011 reflects the impact of discounts provided to customers under our Genome Analyzer trade-in program. The estimated incremental sales incentive provided under this trade-in program was approximately $11.1 million, based on the total discount provided from list price in excess of our average discount on HiSeq 2000 sales during the period. The Genome Analyzer trade-in program was completed in Q4 2011. See "Revenue Recognition" in note "1. Summary of Significant Accounting Policies" in Part II, Item 8, of this Form 10-K for additional information on the Genome Analyzer trade-in program.

The increase in service and other revenue in 2012 compared to 2011 was driven by an increase in our instrument service contract revenue as a result of our growing installed base as well as an increase in our genotyping and sequencing service revenue.

2011 Compared to 2010

Consumables revenue increased $90.8 million, or 18%, to $595.8 million in 2011 compared to $505.0 million in 2010. The increase was primarily attributable to increased sales of sequencing consumables, which accounted for more than half of our consumables revenue in 2011, driven by growth in the installed base of our sequencing systems, partially offset by a decrease in the consumable revenue per sequencing instrument.

Instrument revenue increased $48.5 million, or 15%, to $373.1 million in 2011 compared to $324.6 million in 2010. The increase was primarily attributable to the launch of MiSeq in the third quarter of 2011 and higher HiSeq revenue primarily driven by increased average selling price following completion of the Genome Analyzer trade-in program during the first half of 2011. These increases in instrument revenue were partially offset by a decrease in sales of our Genome Analyzer from 2010 to 2011, as our Genome Analyzer customers upgraded to HiSeq 2000.

Revenue from HiSeq 2000 sales in 2011 and 2010 was impacted by discounts provided to customers under our Genome Analyzer trade-in program. The estimated incremental sales incentive provided under this trade-in program was approximately $11.1 million and $47.8 million in 2011 and 2010, respectively. See "Revenue Recognition" in note "1. Organization and Summary of Significant Accounting Policies" in Part II, Item 8, of this Form 10-K for additional information on the Genome Analyzer trade-in program.

The increase in service and other revenue in 2011 compared to 2010 was primarily driven by an increase in our instrument service contract revenue resulting from our expanded installed base and an increase in sequencing services.

Gross Margin

	2012 - 2011				2011 - 2010		
(Dollars in thousands)	2012	2011	Change	% Change	2010	Change	% Change
Total gross profit	$ 773,528	$ 709,098	$ 64,430	9%	$ 601,540	$ 107,558	18%
Total gross margin	67.4%	67.2%			66.6%		

2012 Compared to 2011

Gross profit in 2012 increased in comparison to 2011 primarily due to higher sales. Gross margin improved in 2012 due in large part to the shift in sales mix from instruments to consumables, which have a higher margin than instruments. This improvement was partially offset by a legal settlement charge recorded to cost of sales in 2012. In addition, instrument sales in 2011 were affected by promotional discounts provided to customers on HiSeq 2000 sales, including the Genome Analyzer trade-in program. Based on the estimated amount of incremental sales incentive provided, the Genome Analyzer trade-in

program negatively impacted our gross margin by approximately 1.1% in 2011. This trade-in program was completed in Q4 2011.

2011 Compared to 2010

Gross margin increased in 2011 compared to 2010. During the period, the gross margin of our instrument sales improved, primarily driven by an increase in average selling price per instrument as our Genome Analyzer trade-in program was substantially completed in the first half of 2011. The Genome Analyzer trade-in program negatively impacted our gross margin by approximately 1.1% and 5.3% in 2011 and 2010, respectively, based on the estimated amount of incremental sales incentive provided. The gross margin of our consumable sales also increased as we experienced a shift in sales mix from lower gross margin microarray consumables to higher gross margin sequencing consumables, primarily due to the expansion of our sequencing instrument installed base. The improvements in gross margins were partially offset by the negative impact from higher stock compensation expense and higher amortization expense of acquired intangible assets included in cost of revenue.

Operating Expense

	2012 - 2011				2011 - 2010		
(Dollars in thousands)	**2012**	**2011**	**Change**	**% Change**	**2010**	**Change**	**% Change**
Research and development	$ 231,025	$ 196,913	$ 34,112	17 %	$ 177,947	$ 18,966	11 %
Selling, general and administrative	285,991	261,843	24,148	9	220,454	41,389	19
Headquarter relocation expense	26,328	41,826	(15,498)	(37)	—	41,826	100
Unsolicited tender offer related expense	23,136	—	23,136	100	—	—	—
Restructuring charges	3,522	8,136	(4,614)	(57)	—	8,136	100
Acquisition related expense (gain), net	2,774	919	1,855	202	(8,515)	9,434	(111)
Total operating expense	$ 572,776	$ 509,637	$ 63,139	12 %	$ 389,886	$ 119,751	31 %

2012 Compared to 2011

Research and development expense increased by $34.1 million, or 17%, in 2012 from 2011, primarily due to a $21.4 million impairment loss recognized for IPR&D recorded as a result of a prior acquisition and increased personnel expenses as we continue to increase our investment in projects to develop and commercialize new products. In addition, we incurred increased facilities expenses in 2012 as the rental fees for our current headquarters are higher than our prior facility.

Selling, general and administrative expense increased by $24.1 million in 2012 from 2011. The increase is primarily driven by a $15.8 million increase in personnel expenses associated with increased headcount, and a $9.5 million increase in legal and other consulting fees. Personnel expenses included salaries, share-based compensation, and benefits. These increases in expense were partially offset by a $2.3 million decrease in bad debt expense, as certain customer bankruptcies impacted us in 2011. In addition, we had the benefit of a $2.3 million legal settlement gain recorded in selling, general and administrative expenses in 2011.

In Q3 2012, we completed the relocation of our headquarters that started in 2011. During 2012, we incurred $26.3 million in additional headquarter relocation expense, primarily consisting of cease-use loss associated with vacating our prior headquarters, double rent expense during the transition to our new facility, and accretion of interest expense on the lease exit liability. Headquarter relocation expense recorded in 2011 consisted of accelerated depreciation and rent expense on the new facility during the transition period of occupying both the current and new facility.

During Q1 2012, CKH Acquisition Corporation and Roche Holding Ltd. (together, “Roche”) made an unsolicited tender offer to purchase all outstanding shares of our common stock for up to $51.00 per share. During 2012, we recorded $23.1 million of expenses incurred in relation to Roche’s unsolicited tender offer, consisting primarily of legal, advisory, and other professional fees.

In late 2011, we announced restructuring plans to reduce our global workforce and to consolidate certain facilities. As a result of the restructuring effort, we recorded additional restructuring charges of $3.5 million during 2012, comprised primarily of separation and other employee costs.

Acquisition related expense (gain), net in 2012 consisted of acquisition transaction costs of $0.8 million and changes in fair value of contingent consideration of $2.0 million. Acquisition related expense (gain), net in 2011 consisted of gains related to changes in fair value of contingent consideration offset by acquired in-process research and development of $5.4 million related to a milestone payment for a prior acquisition.

2011 Compared to 2010

The increase in research and development expense in 2011 from 2010 was primarily attributable to an increase in personnel expenses of $17.5 million associated with increased average headcount during 2011 and an increase of $2.9 million in research and development supplies. Personnel expenses included salaries, share-based compensation, and benefits.

The increase in selling, general and administrative expense in 2011 from 2010 was primarily attributable to an increase in personnel expenses of $33.5 million associated with the growth of our business during the period. The remaining increase was primarily driven by a $4.0 million increase in bad debt expenses as a result of customer bankruptcies, and a $3.7 million increase in supplies, repairs, and maintenance expenses. These increases were partially offset by a legal settlement gain of $2.3 million, representing the payment we received to settle an outstanding commercial dispute.

In 2011, we relocated our headquarters to another facility in San Diego, California and incurred $41.8 million in headquarter relocation expense, which included a cease-use loss upon vacating our prior headquarters, accelerated depreciation of certain property and equipment, and double rent expense during the transition to the new facility.

In Q4 2011, we announced a restructuring plan to reduce our global workforce by approximately 200 employees, or approximately 8%, and to consolidate certain facilities. As a result of the restructuring effort, we recorded a restructuring charge of $8.1 million during Q4 2011, comprised primarily of severance pay and other employee separation costs.

Acquisition related expense, net, in 2011 included a $5.4 million charge of acquired in-process research and development related to a milestone payment for a prior acquisition partially offset by $4.5 million gains related to changes in fair value of contingent consideration. Acquisition related gain, net, in 2010 included a gain of $10.4 million from a change in the fair value of contingent consideration related to an acquisition, partially offset by an acquired in-process research and development charge of $1.3 million related to a milestone payment made related to a prior acquisition.

Other Income (Expense), Net

	2012 - 2011				2011 - 2010		
(Dollars in thousands)	**2012**	**2011**	**Change**	**% Change**	**2010**	**Change**	**% Change**
Cost-method investment related gain (loss), net	$ 45,911	$ —	$ 45,911	100 %	$ (10,309)	$ 10,309	(100)%
Interest income	16,208	7,052	9,156	130	8,378	(1,326)	(16)
Interest expense	(37,779)	(34,790)	(2,989)	9	(24,598)	(10,192)	41
Other (expense) income, net	(2,484)	(38,678)	36,194	(94)	254	(38,932)	(15,328)
Total other income (expense), net	$ 21,856	$ (66,416)	$ 88,272	(133)%	$ (26,275)	$ (40,141)	153 %

2012 Compared to 2011

During the fourth quarter of 2012, we recognized a gain of $48.6 million on the sale of our minority ownership interest in deCODE Genetics, a cost-method investment. We also recorded an impairment loss of $2.7 million on another cost-method investment that was determined to be other-than-temporarily impaired.

Interest income increased in 2012 primarily due to a $6.0 million recovery of a previously impaired note receivable and an increase in realized gains from our investment portfolio. Interest expenses in both 2012 and 2011 are primarily comprised of accretion of the discount on our convertible senior notes.

Other (expense) income, net, in 2012 primarily consisted of foreign exchange losses. Other (expense) income, net, in 2011 primarily consisted of a $37.6 million loss on the extinguishment of debt recorded on conversions of our 0.625% convertible senior notes due 2014.

2011 Compared to 2010

The decrease in interest income in 2011 compared to 2010 was primarily driven by lower interest rates, despite the increase in our cash, cash equivalents and short-term investment balance during the period. Interest expense increased during the period primarily due to the accretion of discount on our $920.0 million 0.25% convertible senior notes due 2016 issued in the first half of 2011, partially offset by the decrease in interest expense associated with the repayment of $349.9 million in principal for the 0.625% convertible senior notes due 2014 during 2011.

Other (expense) income, net, in 2011 primarily consisted of a loss of $37.6 million on the extinguishment of debt recorded on conversions of our 0.625% convertible senior notes due 2014 and a $1.1 million foreign exchange loss recorded during the period. The loss on extinguishment of debt was calculated as the difference between the carrying amount of the converted notes and their fair value as of the settlement dates. Other (expense) income, net, in 2010 primarily consisted of a $13.2 million impairment charge related to a cost-method investment and a related note receivable, partially offset by a $2.9 million gain on acquisition recorded for the difference between the carrying value of a cost method investment prior to the acquisition and the fair value of that investment at the time of acquisition, and foreign exchange gains.

Cost-method investment related gain (loss), net, in 2010 consisted of a $13.2 million impairment charge recorded on a cost-method investment and a related note receivable, partially offset by a $2.9 million gain on acquisition of a previous investee.

Provision for Income Taxes

	2012 - 2011				2011 - 2010		
(Dollars in thousands)	**2012**	**2011**	**Change**	**% Change**	**2010**	**Change**	**% Change**
Income before income taxes	$ 222,608	$ 133,045	$ 89,563	67%	$ 185,379	$ (52,334)	(28)%
Provision for income taxes	71,354	46,417	24,937	54	60,488	(14,071)	(23)
Net income	$ 151,254	$ 86,628	$ 64,626	75%	$ 124,891	$ (38,263)	(31)%
Effective tax rate	32.1%	34.9%			32.6%		

2012 Compared to 2011

Our effective tax rate was 32.1% for 2012. The variance from the U.S. statutory rate of 35% was primarily attributable to the change in the mix of earnings in tax jurisdictions with different statutory rates. Our future effective tax rate may vary from the U.S statutory tax rate due to the change in the mix of earnings in tax jurisdictions with different statutory rates, benefits related to tax credits, and the tax impact of non-deductible expenses and other permanent differences between income before income taxes and taxable income. The effective tax rate in 2011 closely approximated the U.S. statutory rate because a significant portion of our earnings were subject to U.S. taxation.

2011 Compared to 2010

The effective tax rate in 2011 closely approximated the U.S. statutory rate because a significant portion of our earnings was subject to U.S. taxation. The increase in the effective tax rate in 2011 from 2010 was primarily attributable to lower non-taxable gains recorded on the changes in fair value of contingent consideration related to prior acquisitions and higher nondeductible acquired IPR&D charges recorded in 2011.

Liquidity and Capital Resources

At December 30, 2012, we had approximately $434.0 million in cash and cash equivalents, a $131.0 million increase from last year, due to the factors described in the “Cash Flow Summary” below. Our primary source of liquidity has been cash flows from operations. Our ability to generate cash from operations provides us with the financial flexibility we need to meet operating, investing, and financing needs. Cash and cash equivalents held by our foreign subsidiaries at December 30, 2012 were approximately $265.5 million. It is our intention to indefinitely reinvest all current and future foreign earnings in foreign subsidiaries.

Historically, we have liquidated our short-term investments and/or issued debt and equity securities to finance our business needs as a supplement to cash provided by operating activities. At December 30, 2012, we have $916.2 million in

short-term investments. Our short-term investments include marketable securities consisting of debt securities in government-sponsored entities, corporate debt securities, and U.S. Treasury notes.

In 2011, we issued $920.0 million in principal amount of convertible senior notes that mature on March 15, 2016 (2016 notes). We pay 0.25% interest per annum on the principal amount of the 2016 notes semi-annually in arrears in cash on March 15 and September 15 of each year. In 2007, we issued $400.0 million in principal of convertible senior notes that mature on February 15, 2014 (2014 notes). We pay 0.625% interest per annum on the principal amount of the 2014 notes semi-annually in arrears in cash on February 15 and August 15 of each year. Additional information about the convertible notes, including their conversion features, is described in note "7. Convertible Senior Notes" in Part II, Item 8, of this Form 10-K. As of December 30, 2012, the principal amounts of our 2016 notes and 2014 notes were $920.0 million and $40.1 million, respectively. Our commitment of interest payment on these outstanding notes is $8.4 million on an annual basis.

Our primary short-term needs for capital, which are subject to change, include expenditures related to:

- support of commercialization efforts related to our current and future products, including expansion of our direct sales force and field support resources both in the United States and abroad;
- acquisitions of equipment and other fixed assets for use in our current and future manufacturing and research and development facilities;
- repurchases of our outstanding common stock;
- the continued advancement of research and development efforts;
- potential strategic acquisitions and investments; and
- the expansion needs of our facilities, including costs of leasing additional facilities.

In 2012, we acquired BlueGnome for total cash and other consideration of $95.5 million, which included $7.5 million in fair value of contingent cash consideration. In 2011, we acquired Epicentre for total cash and other consideration of $71.4 million, which included $4.6 million in the fair value of contingent consideration settled in stock and $7.4 million in the fair value of contingent cash consideration.

Our Board of Directors has authorized several common stock repurchase programs. In 2012, we used $82.5 million to repurchase our outstanding shares under these programs. As of December 30, 2012, we had authorization from our Board of Directors to repurchase to an additional $167.5 million of our common stock.

During 2011, we used $314.3 million of the net proceeds from the issuance of our 2016 notes to purchase 4.9 million shares of our common stock in privately negotiated transactions concurrently with the issuance. We also used part of the net proceeds for the extinguishment of $349.9 million principal amount of our 2014 notes upon conversion. We used the remaining net proceeds for other general corporate purposes, which included acquisitions and purchases of our common stock.

We expect that our revenue and the resulting operating income, as well as the status of each of our new product development programs, will significantly impact our cash management decisions.

We anticipate that our current cash, cash equivalents and short-term investments, together with cash provided by operating activities will be sufficient to fund our near term capital and operating needs for at least the next 12 months, including the pending acquisition of Verinata. Operating needs include the planned costs to operate our business, including amounts required to fund working capital and capital expenditures. Our future capital requirements and the adequacy of our available funds will depend on many factors, including:

- our ability to successfully commercialize and further develop our technologies and create innovative products in our markets;
- scientific progress in our research and development programs and the magnitude of those programs;
- competing technological and market developments; and
- the need to enter into collaborations with other companies or acquire other companies or technologies to enhance or complement our product and service offerings.

Cash flow Summary

(In thousands)	2012	2011	2010
Net cash provided by operating activities	$ 291,873	$ 358,140	$ 272,573
Net cash used in investing activities	(150,012)	(400,999)	(285,053)
Net cash (used in) provided by financing activities	(10,755)	97,016	116,474
Effect of exchange rate changes on cash and cash equivalents	(103)	(126)	320
Net increase in cash and cash equivalents	$ 131,003	$ 54,031	$ 104,314

Operating Activities

Cash provided by operating activities in 2012 consisted of net income of $151.3 million plus net adjustments to net income of $158.6 million, offset by a change in net operating assets of $18.0 million. The primary non-cash expenses added back to net income included share-based compensation of $94.3 million, depreciation and amortization expenses related to property and equipment and acquired intangible assets of $63.8 million, impairment of IPR&D of $21.4 million, and the accretion of the debt discount of $35.0 million. The adjustments to net income also included $20.8 million in incremental tax benefit related to share-based compensation, $45.9 million in net cost-method investment related gain, and $6.0 million in recovery of a previously impaired note receivable. The main drivers in the change in net operating assets included increases in accounts receivable, inventory, accounts payable, and accrued liabilities.

Cash provided by operating activities in 2011 consisted of net income of $86.6 million plus net adjustments to net income of $236.5 million and changes in net operating assets of $35.0 million. The primary non-cash expenses added back to net income included share-based compensation of $92.1 million, depreciation and amortization expenses related to property and equipment and acquired intangible assets of $68.3 million, debt extinguishment loss of $37.6 million, and the accretion of the debt discount of $32.2 million. The adjustments to net income also included $46.4 million in incremental tax benefit related to share-based compensation. The main drivers in the change in net operating assets included increases in accrued liabilities, and decreases in inventory and accounts payable.

Cash provided by operating activities in 2010 consisted of net income of $124.9 million plus net adjustments to net income of $150.1 million, offset by a $2.4 million decrease in net operating assets. The primary non-cash expenses added back to net income included share based compensation of $71.6 million, depreciation and amortization expenses related to property and equipment and intangible assets of $42.0 million, and accretion of the debt discount on our convertible notes totaling $21.4 million. The adjustments to net income also included $42.4 million in incremental tax benefit related to share-based compensation. The main drivers in the change in net operating assets included increases in accounts receivable, inventory, accounts payable and accrued liabilities.

Investing Activities

Cash used in investing activities totaled $150.0 million in 2012. We purchased $925.5 million of available-for-sale securities and $898.8 million of our available-for-sale securities matured or were sold during the period. We used $15.9 million for purchases of strategic investments and $12.2 million for purchases of intangible assets. We also paid net cash of $83.2 million for acquisitions, and invested $68.8 million in capital expenditures primarily associated with the purchase of manufacturing and servicing equipment, leasehold improvements, and information technology equipment and systems. We received $50.8 million in proceeds from a sale of a cost-method investment as well as $6.0 million from the recovery of a note receivable previously impaired.

Cash used in investing activities totaled $401.0 million in 2011. We purchased $1.3 billion of available-for-sale securities, and $1.1 billion of our available-for-sale securities matured or were sold during 2011. We used $58.3 million, net of cash acquired, in an acquisition and $13.8 million in the purchases of strategic investments. We also incurred $77.8 million in capital expenditures primarily associated with the purchase of manufacturing, R&D, and servicing equipment, leasehold improvements, and information technology equipment and systems.

Cash used in investing activities totaled $285.1 million in 2010. During the year we purchased $846.2 million of available-for-sale securities, and $688.6 million of our available-for-sale securities matured or were sold. We also paid net cash of $98.2 million for acquisitions, sold trading securities totaling $54.9 million, used $49.8 million for capital expenditures

primarily associated with the purchase of manufacturing equipment and infrastructure for additional production capacity and rental and loaner instruments, and made strategic investments totaling $27.7 million.

Financing Activities

Cash used in financing activities totaled $10.8 million in 2012. We received $54.4 million in proceeds from the issuance of common stock through the exercise of stock options and warrants and under our employee stock purchase plan. We used $82.5 million to repurchase our common stock in 2012. In addition, we received $20.8 million in incremental tax benefit related to share-based compensation.

Cash provided by financing activities totaled $97.0 million in 2011. We received $903.5 million in proceeds from the issuance of $920.0 million of our 0.25% convertible senior notes due 2016, net of issuance discounts, of which $349.9 million was used to repay the principal amount of our 0.625% convertible senior notes due 2014 upon conversions in 2011. We used $570.4 million in repurchases of our common stock. We also received $67.5 million in proceeds from the issuance of our common stock through the exercise of stock options and warrants and under our employee stock purchase plan. In addition, we received $46.4 million in incremental tax benefit related to share-based compensation.

Cash provided by financing activities totaled $116.5 million in 2010. We received $118.0 million in proceeds from the issuance of our common stock through the exercise of stock options and warrants and under our employee stock purchase plan. We also received $42.4 million in incremental tax benefit related to share-based compensation. Cash provided by these activities was partially offset by common stock repurchases of $44.0 million.

Off-Balance Sheet Arrangements

We do not participate in any transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. During the fiscal year ended December 30, 2012, we were not involved in any "off-balance sheet arrangements" within the meaning of the rules of the Securities and Exchange Commission.

Contractual Obligations

Contractual obligations represent future cash commitments and liabilities under agreements with third parties, and exclude orders for goods and services entered into in the normal course of business that are not enforceable or legally binding. The following table represents our contractual obligations as of December 30, 2012, aggregated by type (amounts in thousands):

	Payments Due by Period(1)				
Contractual Obligation	Total	Less Than 1 Year	1 – 3 Years	3 – 5 Years	More Than 5 Years
Debt obligations(2)	$ 968,551	$ 2,551	$ 44,850	$ 921,150	$ —
Operating leases	515,207	27,676	47,167	47,276	393,088
Purchase obligations	12,276	8,908	3,368	—	—
Amounts due under executive deferred compensation plan	12,071	12,071	—	—	—
Total	$ 1,508,105	$ 51,206	$ 95,385	$ 968,426	$ 393,088

(1) The table excludes $37.6 million of uncertain tax benefits. We have not included this amount in the table because we cannot make a reasonably reliable estimate regarding the timing of settlements with taxing authorities, if any. See note "13. Income Taxes" in Part II, Item 8 of this Form 10-K for further discussion of our uncertain tax positions. The table also excludes $35.0 million in potential contingent consideration payments related to acquisitions. We have not included this amount in the table because we cannot make a reasonably reliable estimate regarding whether the milestones required for these payments will be achieved. See note "4. Acquisitions" in Part II, Item 8 of this Form 10-K for further discussion of our contingent consideration.

(2) Debt obligations include the principal amount of our convertible senior notes due 2016 and 2014, as well as interest payments to be made under the notes. Although these notes mature in 2016 and 2014 respectively, they can be converted into cash and shares of our common stock prior to maturity if certain conditions are met. Any conversion prior to

maturity can result in repayments of the principal amounts sooner than the scheduled repayments as indicated in the table. See note "7. Convertible Senior Notes" in Part II, Item 8 of this Form 10-K for further discussion of the terms of the convertible senior notes.

Critical Accounting Policies and Estimates

The preparation of financial statements in accordance with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes. Management bases its estimates on historical experience, market and other conditions, and various other assumptions it believes to be reasonable. Although these estimates are based on management's best knowledge of current events and actions that may impact us in the future, the estimation process is, by its nature, uncertain given that estimates depend on events over which we may not have control. If market and other conditions change from those that we anticipate, our consolidated financial statements may be materially affected. In addition, if our assumptions change, we may need to revise our estimates, or take other corrective actions, either of which may also have a material effect on our consolidated financial statements.

We believe that the following critical accounting policies and estimates have a higher degree of inherent uncertainty and require our most significant judgments. In addition, had we used estimates different from any of these, our consolidated financial statements could have been materially different from those presented. Members of our senior management have discussed the development and selection of our critical accounting policies and estimates, and our disclosure regarding them, with the audit committee of our board of directors. Our accounting policies are more fully described in note "1. Organization and Significant Accounting Policies" in Part II, Item 8 of this Form 10-K.

Revenue Recognition

Our revenue is generated primarily from the sale of products and services. Product revenue primarily consists of sales of instruments and consumables used in genetic analysis. Service and other revenue primarily consists of revenue from instrument service contract sales, genotyping and sequencing services, and amounts earned under research agreements with government grants, which are recognized in the period during which the related costs are incurred. The timing of revenue recognition and the amount of revenue actually recognized in each case depends upon a variety of factors, including the specific terms of each arrangement and the nature of our deliverables and obligations. Determination of the appropriate amount of revenue recognized involves significant judgments and estimates and actual results may differ from our estimates.

We recognize revenue when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the seller's price to the buyer is fixed or determinable, and collectibility is reasonably assured. In instances where final acceptance of the product or system is required, revenue is deferred until all the acceptance criteria have been met. All revenue is recorded net of any discounts.

Revenue for product sales is recognized generally upon transfer of title to the customer, provided that no significant obligations remain and collection of the receivable is reasonably assured. Revenue from instrument service contracts is recognized as the services are rendered, typically evenly over the contract term. Revenue from genotyping and sequencing services is recognized when earned, which is generally at the time the genotyping or sequencing analysis data is made available to the customer or agreed upon milestones are reached.

In order to assess whether the price is fixed or determinable, we evaluate whether refund rights exist. If there are refund rights or payment terms based on future performance, we defer revenue recognition until the price becomes fixed or determinable. We assess collectibility based on a number of factors, including past transaction history with the customer and the creditworthiness of the customer. If we determine that collection of a payment is not reasonably assured, revenue recognition is deferred until receipt of payment.

We regularly enter into contracts where revenue is derived from multiple deliverables including any mix of products or services. These products or services are generally delivered within a short time frame, approximately three to six months, of the contract execution date. Revenue recognition for contracts with multiple deliverables is based on the individual units of accounting determined to exist in the contract. A delivered item is considered a separate unit of accounting when the delivered item has value to the customer on a stand-alone basis. Items are considered to have stand-alone value when they are sold separately by any vendor or when the customer could resell the item on a stand-alone basis.

For transactions with multiple deliverables, consideration is allocated at the inception of the contract to all deliverables based on their relative selling price. The relative selling price for each deliverable is determined using vendor specific objective

evidence (VSOE) of selling price or third-party evidence of selling price if VSOE does not exist. If neither VSOE nor third-party evidence exists, we use best estimate of the selling price for the deliverable.

In order to establish VSOE of selling price, we must regularly sell the product or service on a standalone basis with a substantial majority priced within a relatively narrow range. VSOE of selling price is usually the midpoint of that range. If there are not a sufficient number of standalone sales and VSOE of selling price cannot be determined, then we consider whether third party evidence can be used to establish selling price. Due to the lack of similar products and services sold by other companies within the industry, we have rarely established selling price using third-party evidence. If neither VSOE nor third party evidence of selling price exists, we determine our best estimate of selling price using average selling prices over a rolling 12-month period coupled with an assessment of current market conditions. If the product or service has no history of sales or if the sales volume is not sufficient, we rely upon prices set by our pricing committee adjusted for applicable discounts. We recognize revenue for delivered elements only when we determine there are no uncertainties regarding customer acceptance.

In 2010, we offered an incentive with the launch of the HiSeq 2000 that enabled existing Genome Analyzer customers to trade in their Genome Analyzer and receive a discount on the purchase of a HiSeq 2000. The incentive was limited to customers who had purchased a Genome Analyzer as of the date of the announcement and was the first significant trade-in program we have offered. The Genome Analyzer trade-in program was completed in 2011. We accounted for HiSeq 2000 discounts related to the trade-in program as reductions to revenue upon recognition of the HiSeq 2000 sales revenue, which is later than the date the trade-in program was launched.

In certain markets, the Company sells products and provides services to customers through distributors that specialize in life science products. In most sales through distributors, the product is delivered directly to customers. In cases where the product is delivered to a distributor, revenue recognition is deferred until acceptance is received from the distributor, and/or the end-user, if required by the applicable sales contract. The terms of sales transactions through distributors are consistent with the terms of direct sales to customers. These transactions are accounted for in accordance with the Company's revenue recognition policy described herein.

Investments

We invest in various types of securities, including debt securities in government-sponsored entities, corporate debt securities, and U.S. treasury securities. As of December 30, 2012, we have $916.2 million in short-term investments. In accordance with the accounting standard for fair value measurements, we classify our investments as Level 1, 2, or 3 within the fair value hierarchy. Fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets that we have the ability to access. Fair values determined by Level 2 inputs utilize data points that are observable such as quoted prices, interest rates and yield curves. Fair values determined by Level 3 inputs utilize unobservable data points for the asset.

As discussed in note "6. Fair Value Measurements" in Part II, Item 8 of this Form 10-K, a majority of our security holdings have been classified as Level 2. These securities have been initially valued at the transaction price and subsequently valued utilizing a third party service provider who assesses the fair value using inputs other than quoted prices that are observable either directly or indirectly, such as yield curve, volatility factors, credit spreads, default rates, loss severity, current market and contractual prices for the underlying instruments or debt, broker and dealer quotes, as well as other relevant economic measures. We perform certain procedures to corroborate the fair value of these holdings, and in the process, we apply judgments and estimates that if changed, could significantly affect our results of operations.

Allowance for Doubtful Accounts

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We evaluate the collectibility of our accounts receivable based on a combination of factors. We regularly analyze customer accounts, review the length of time receivables are outstanding, review historical loss rates and assess current economic trends that may impact the level of credit losses in the future. Our gross trade accounts receivables totaled $219.3 million and the allowance for doubtful accounts was $4.3 million at December 30, 2012. Our allowance for doubtful accounts has generally been adequate to cover our actual credit losses. However, since we cannot reliably predict future changes in the financial stability of our customers, we may need to increase our reserves if the financial conditions of our customers deteriorate.

Inventory Valuation

Inventories are stated at lower of cost or market. We record adjustments to inventory for potentially excess, obsolete, or impaired goods in order to state inventory at net realizable value. We must make assumptions about future demand, market conditions, and the release of new products that will supersede old ones. We regularly review inventory for excess and obsolete products and components, taking into account product life cycles, quality issues, historical experience, and usage forecasts. Our gross inventory totaled $178.6 million and the cumulative adjustment for potentially excess and obsolete inventory was $19.9 million at December 30, 2012. Historically, our inventory adjustment has been adequate to cover our losses. However, if actual market conditions are less favorable than anticipated, additional inventory adjustments could be required.

Contingencies

We are involved in various lawsuits and claims arising in the ordinary course of business, including actions with respect to intellectual property, employment, and contractual matters. In connection with these matters, we assess, on a regular basis, the probability and range of possible loss based on the developments in these matters. A liability is recorded in the financial statements if it is believed to be probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Because litigation is inherently unpredictable and unfavorable resolutions could occur, assessing contingencies is highly subjective and requires judgments about future events. We regularly review outstanding legal matters to determine the adequacy of the liabilities accrued and related disclosures in consideration of many factors, which include, but are not limited to, past history, scientific and other evidence, and the specifics and status of each matter. We may change our estimates if our assessment of the various factors changes and the amount of ultimate loss may differ from our estimates, resulting in a material effect on our business, financial condition, results of operations, and/or cash flows.

Business Combinations

Under the acquisition method of accounting, we allocate the fair value of the total consideration transferred to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values on the date of acquisition. The fair values assigned, defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between willing market participants, are based on estimates and assumptions determined by management. We record the excess consideration over the aggregate fair value of tangible and intangible assets, net of liabilities assumed, as goodwill. These valuations require us to make significant estimates and assumptions, especially with respect to intangible assets.

In connection with certain of our acquisitions, additional contingent consideration is earned by the sellers upon completion of certain future performance milestones. In these cases, a liability is recorded on the acquisition date for an estimate of the acquisition date fair value of the contingent consideration by applying the income approach utilizing variable inputs such as anticipated future cash flows, risk-free adjusted discount rates, and nonperformance risk. Any change in the fair value of the contingent consideration subsequent to the acquisition date is recognized in acquisition related expense (gain), net, a component of operating expenses, in our consolidated statements of income. This method requires significant management judgment, including the probability of achieving certain future milestones and discount rates. Future changes in our estimates could result in expenses or gains.

Management typically uses the discounted cash flow method to value our acquired intangible assets. This method requires significant management judgment to forecast future operating results and establish residual growth rates and discount factors. The estimates we use to value and amortize intangible assets are consistent with the plans and estimates that we use to manage our business and are based on available historical information and industry estimates and averages. If the subsequent actual results and updated projections of the underlying business activity change compared with the assumptions and projections used to develop these values, we could experience impairment charges. In addition, we have estimated the economic lives of certain acquired assets and these lives are used to calculate depreciation and amortization expense. If our estimates of the economic lives change, depreciation or amortization expenses could be accelerated or slowed.

Intangible Assets and Other Long-Lived Assets — Impairment Assessments

We regularly perform reviews to determine if the carrying values of our long-lived assets are impaired. A review of identifiable intangible assets and other long-lived assets is performed when an event occurs indicating the potential for impairment. If indicators of impairment exist, we assess the recoverability of the affected long-lived assets and compare their fair values to the respective carrying amounts.

In order to estimate the fair value of identifiable intangible assets and other long-lived assets, we estimate the present value of future cash flows from those assets. The key assumptions that we use in our discounted cash flow model are the amount and timing of estimated future cash flows to be generated by the asset over an extended period of time and a rate of return that considers the relative risk of achieving the cash flows, the time value of money, and other factors that a willing market participant would consider. Significant judgment is required to estimate the amount and timing of future cash flows and the relative risk of achieving those cash flows.

Assumptions and estimates about future values and remaining useful lives are complex and often subjective. They can be affected by a variety of factors, including external factors such as industry and economic trends, and internal factors such as changes in our business strategy and our internal forecasts. For example, if our future operating results do not meet current forecasts or if we experience a sustained decline in our market capitalization that is determined to be indicative of a reduction in fair value of one or more of our reporting units, we may be required to record future impairment charges for purchased intangible assets. Impairment charges could materially decrease our future net income and result in lower asset values on our balance sheet.

Share-Based Compensation

We are required to measure and recognize compensation expense for all share-based payments based on estimated fair value. We estimate the fair value of stock options granted and stock purchases under our employee stock purchase plan using the Black-Scholes-Merton (BSM) option-pricing model. The fair value of our restricted stock units is based on the market price of our common stock on the date of grant.

The determination of fair value of share-based awards using the BSM model requires the use of certain estimates and highly judgmental assumptions that affect the amount of share-based compensation expense recognized in our consolidated statements of income. These include estimates of the expected volatility of our stock price, expected life of an award, expected dividends, and the risk-free interest rate. We determine the volatility of our stock price by equally weighing the historical and implied volatility of our common stock. The historical volatility of our common stock over the most recent period is generally commensurate with the estimated expected life of our stock awards, adjusted for the impact of unusual fluctuations not reasonably expected to recur, and other relevant factors. Implied volatility is calculated from the implied market volatility of exchange-traded call options on our common stock. The expected life of an award is based on historical forfeiture experience, exercise activity, and on the terms and conditions of the stock awards. We determined expected dividend yield to be 0% given we have never declared or paid any cash dividends on our common stock and we currently do not anticipate paying such cash dividends. The risk-free interest rate is based upon U.S. Treasury securities with remaining terms similar to the expected term of the share-based awards. We amortize the fair value of share-based compensation on a straight-line basis over the requisite service periods of the awards. If any of the assumptions used in the BSM model change significantly, share-based compensation expense may differ materially from what we have recorded in the current period.

Warranties

We generally provide a one-year warranty on instruments. Additionally, we provide a warranty on consumables through the expiration date, which generally ranges from six to twelve months after the manufacture date. We establish an accrual for estimated warranty expenses based on historical experience as well as anticipated product performance. We periodically review the adequacy of our warranty reserve, and adjust, if necessary, the warranty percentage and accrual based on actual experience and estimated costs to be incurred. If our estimates of warranty obligation change or if actual product performance is below our expectations we may incur additional warranty expense.

Cease-Use Loss upon Exit of Facility

In 2012, we completed the relocation of our headquarters to a new facility in San Diego, California, and recorded headquarter relocation expense of $26.3 million, the majority of which was attributable to a cease-use loss recorded upon vacating our prior headquarter facility. The lease on our prior headquarter facility expires in 2023. The cease-use loss is calculated as the present value of the remaining lease obligation offset by estimated sublease rental receipts during the remaining lease period, adjusted for deferred items and leasehold improvements. In calculating the cease-use loss, management is required to make significant judgments to estimate the present value of future cash flows from the assumed sublease. The key assumptions that we use in our discounted cash flow model include the amount and timing of estimated sublease rental receipts, and the risk-adjusted discount rate. These assumptions are subjective in nature and the actual future cash flows could differ from our estimates, resulting in significant adjustments to the cease-use loss recorded.

Income Taxes

Our provision for income taxes, deferred tax assets and liabilities, and reserves for unrecognized tax benefits reflect our best assessment of estimated future taxes to be paid. Significant judgments and estimates based on interpretations of existing tax laws or regulations in the United States and the numerous foreign jurisdictions where we are subject to income tax are required in determining our provision for income taxes. Changes in tax laws, statutory tax rates, and estimates of the company's future taxable income could impact the deferred tax assets and liabilities provided for in the consolidated financial statements and would require an adjustment to the provision for income taxes.

Deferred tax assets are regularly assessed to determine the likelihood they will be recovered from future taxable income. A valuation allowance is established when we believe it is more likely than not the future realization of all or some of a deferred tax asset will not be achieved. In evaluating our ability to recover deferred tax assets within the jurisdiction which they arise, we consider all available positive and negative evidence. Factors reviewed include the cumulative pre-tax book income for the past three years, scheduled reversals of deferred tax liabilities, our history of earnings and reliability of our forecasts, projections of pre-tax book income over the foreseeable future, and the impact of any feasible and prudent tax planning strategies. Based on the available evidence as of December 30, 2012, we were not able to conclude it is more likely than not certain U.S. deferred tax assets will be realized. Therefore, we recorded a valuation allowance of $1.8 million against certain U.S. deferred tax assets.

We recognize the impact of a tax position in our financial statements only if that position is more likely than not of being sustained upon examination by taxing authorities, based on the technical merits of the position. Tax authorities regularly examine our returns in the jurisdictions in which we do business and we regularly assess the tax risk of the company's return filing positions. Due to the complexity of some of the uncertainties, the ultimate resolution may result in payments that are materially different from our current estimate of the tax liability. These differences, as well as any interest and penalties, will be reflected in the provision for income taxes in the period in which they are determined.

ITEM 7A. *Quantitative and Qualitative Disclosures about Market Risk.*

Interest Rate Sensitivity

Our investment portfolio is exposed to market risk from changes in interest rates. The fair market value of fixed rate securities may be adversely impacted by fluctuations in interest rates while income earned on floating rate securities may decline as a result of decreases in interest rates. Under our current policies, we do not use interest rate derivative instruments to manage exposure to interest rate changes. We attempt to ensure the safety and preservation of our invested principal funds by limiting default risk, market risk, and reinvestment risk. We mitigate default risk by investing in investment grade securities. We have historically maintained a relatively short average maturity for our investment portfolio, and we believe a hypothetical 100 basis point adverse move in interest rates along the entire interest rate yield curve would not materially affect the fair value of our interest sensitive financial instruments. In addition, if a 100 basis point change in overall interest rates were to occur in 2013, our interest income would change by approximately $13.5 million in relation to amounts we would expect to earn, based on our cash, cash equivalents, and short-term investments as of December 30, 2012.

Changes in interest rates may also impact gains or losses from the conversion of our outstanding convertible senior notes. During 2011, we issued $920 million in aggregate principal amount of our 0.25% convertible senior notes due 2016. At our election, the notes are convertible into cash, shares of our common stock, or a combination of cash and shares of our common stock in each case under certain circumstances, including trading price conditions related to our common stock. If the trading price of our common stock reaches a price for a sustained period at 130% above the conversion price of $83.55, the notes will become convertible. Upon conversion, we are required to record a gain or loss for the difference between the fair value of the debt to be extinguished and its corresponding net carrying value. The fair value of the debt to be extinguished depends on our then-current incremental borrowing rate. If our incremental borrowing rate at the time of conversion is higher or lower than the implied interest rate of the notes, we will record a gain or loss in our consolidated statement of income during the period in which the notes are converted. The implicit interest rate for the notes is 4.5%. An incremental borrowing rate that is a hypothetical 100 basis points lower than the implicit interest rate upon conversion of $100 million aggregate principal amount of the notes would result in a loss of approximately $3.0 million.

Market Price Sensitive Instruments

In order to reduce potential equity dilution, in connection with the issuance (and potential conversion) of our 0.625% convertible senior notes due 2014, we entered into convertible note hedge transactions, entitling us to purchase up to 18,322,000 shares of our common stock at a strike price of $21.83 per share, subject to adjustment. In addition, we sold to the hedge transaction counterparties warrants exercisable on a net-share basis, for up to 18,322,000 shares of our common stock at a strike price of $31.435 per share, subject to adjustment. The anti-dilutive effect of the note hedge transactions, if any, could be partially or fully offset to the extent the trading price of our common stock exceeds the strike price of the warrants on the exercise dates of the warrants, which occur during 2014, assuming the warrants are exercised.

Foreign Currency Exchange Risk

We conduct a portion of our business in currencies other than the company's U.S. dollar functional currency. These transactions give rise to monetary assets and liabilities that are denominated in currencies other than the U.S. dollar. The value of these monetary assets and liabilities are subject to changes in currency exchange rates from the time the transactions are originated until settlement in cash. Our foreign currency exposures are primarily concentrated in the Euro, Yen, British pound sterling, Australian dollar, and Singapore dollar. Both realized and unrealized gains or losses on the value of these monetary assets and liabilities are included in the determination of net income. We recorded a $3.7 million net currency exchange loss for the fiscal year ended December 30, 2012 on business transactions, net of hedging transactions, which are included in other (expense) income, net, in our consolidated statements of income.

We use forward exchange contracts to manage a portion of the foreign currency exposure risk for foreign subsidiaries with monetary assets and liabilities denominated in currencies other than the U.S. dollar. We only use derivative financial instruments to reduce foreign currency exchange rate risks; we do not hold any derivative financial instruments for trading or speculative purposes. We primarily use forward exchange contracts to hedge foreign currency exposures, and they generally have terms of one month or less. Realized and unrealized gains or losses on the value of financial contracts entered into to hedge the exchange rate exposure of these monetary assets and liabilities are also included in the determination of net income, as they have not been designated for hedge accounting. These contracts, which settle monthly, effectively fix the exchange rate at which these specific monetary assets and liabilities will be settled, so that gains or losses on the forward contracts offset the losses or gains from changes in the value of the underlying monetary assets and liabilities. As of December 30, 2012, the total notional amount of outstanding forward contracts in place for foreign currency purchases was approximately $51.2 million.

ITEM 8. ***Financial Statements and Supplementary Data.***

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of
Illumina, Inc.

We have audited the accompanying consolidated balance sheets of Illumina, Inc. as of December 30, 2012 and January 1, 2012, and the related consolidated statements of income, comprehensive income, stockholders' equity, and cash flows for each of the three fiscal years in the period ended December 30, 2012. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Illumina, Inc. at December 30, 2012 and January 1, 2012, and the consolidated results of its operations and its cash flows for each of the three fiscal years in the period ended December 30, 2012, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Illumina, Inc.'s internal control over financial reporting as of December 30, 2012, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 15, 2013 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Diego, California
February 15, 2013

ILLUMINA, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except par value)

	December 30, 2012	January 1, 2012
ASSETS		
Current assets:		
Cash and cash equivalents	$ 433,981	$ 302,978
Short-term investments	916,223	886,590
Accounts receivable, net	214,975	173,886
Inventory	158,718	128,781
Deferred tax assets, current portion	30,451	23,188
Prepaid expenses and other current assets	32,700	29,196
Total current assets	1,787,048	1,544,619
Property and equipment, net	166,167	143,483
Goodwill	369,327	321,853
Intangible assets, net	130,196	106,475
Deferred tax assets, long-term portion	40,183	19,675
Other assets	73,164	59,735
Total assets	$ 2,566,085	$ 2,195,840
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 65,727	$ 49,806
Accrued liabilities	201,877	177,115
Long-term debt, current portion	36,967	—
Total current liabilities	304,571	226,921
Long-term debt	805,406	807,369
Other long-term liabilities	134,369	80,613
Commitments and contingencies		
Conversion option subject to cash settlement	3,158	5,722
Stockholders' equity:		
Preferred stock, $0.01 par value, 10,000 shares authorized, no shares issued and outstanding at December 30, 2012 and January 1, 2012	—	—
Common stock, $0.01 par value: 320,000 shares authorized; 170,171 shares issued and 123,943 outstanding at December 30, 2012; 166,707 shares issued and 122,041 outstanding at January 1, 2012	1,703	1,668
Additional paid-in capital	2,419,831	2,249,900
Accumulated other comprehensive income	2,123	2,117
Retained earnings (accumulated deficit)	82,547	(68,707)
Treasury stock, 46,228 shares and 44,665 shares at cost at December 30, 2012 and January 1, 2012, respectively	(1,187,623)	(1,109,763)
Total stockholders' equity	1,318,581	1,075,215
Total liabilities and stockholders' equity	$ 2,566,085	$ 2,195,840

See accompanying notes to consolidated financial statements

ILLUMINA, INC.

CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts)

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Revenue:			
Product revenue	$ 1,055,826	$ 987,280	$ 842,510
Service and other revenue	92,690	68,255	60,231
Total revenue	1,148,516	1,055,535	902,741
Cost of revenue:			
Cost of product revenue	317,283	308,228	271,997
Cost of service and other revenue	43,552	26,118	21,399
Amortization of acquired intangible assets	14,153	12,091	7,805
Total cost of revenue	374,988	346,437	301,201
Gross profit	773,528	709,098	601,540
Operating expense:			
Research and development	231,025	196,913	177,947
Selling, general and administrative	285,991	261,843	220,454
Headquarter relocation expense	26,328	41,826	—
Unsolicited tender offer related expense	23,136	—	—
Restructuring charges	3,522	8,136	—
Acquisition related expense (gain), net	2,774	919	(8,515)
Total operating expense	572,776	509,637	389,886
Income from operations	200,752	199,461	211,654
Other income (expense):			
Cost-method investment related gain (loss), net	45,911	—	(10,309)
Interest income	16,208	7,052	8,378
Interest expense	(37,779)	(34,790)	(24,598)
Other (expense) income, net	(2,484)	(38,678)	254
Total other income (expense), net	21,856	(66,416)	(26,275)
Income before income taxes	222,608	133,045	185,379
Provision for income taxes	71,354	46,417	60,488
Net income	$ 151,254	$ 86,628	$ 124,891
Net income per basic share	$ 1.23	$ 0.70	$ 1.01
Net income per diluted share	$ 1.13	$ 0.62	$ 0.87
Shares used in calculating basic net income per share	122,999	123,399	123,581
Shares used in calculating diluted net income per share	133,693	138,937	143,433

See accompanying notes to consolidated financial statements

ILLUMINA, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Net income	$ 151,254	$ 86,628	$ 124,891
Unrealized gain (loss) on available-for-sale securities, net of deferred tax	6	352	(1,065)
Total comprehensive income	$ 151,260	$ 86,980	$ 123,826

See accompanying notes to the consolidated financial statements.

ILLUMINA, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Common Stock		Additional Paid-In	Accumulated Other Comprehensive	Retained Earnings (Accumulated	Treasury Stock		Total Stockholders'
	Shares	Amount	Capital	Income	Deficit)	Shares	Amount	Equity
				(In thousands)				
Balance as of January 3, 2010	143,544	1,436	1,637,751	2,830	(280,226)	(24,068)	(497,543)	864,248
Net income	—	—	—	—	124,891	—	—	124,891
Unrealized loss on available-for-sale securities, net of deferred tax	—	—	—	(1,065)	—	—	—	(1,065)
Issuance of common stock, net of repurchases	7,969	80	117,965	—	—	(836)	(44,016)	74,029
Share-based compensation	—	—	71,725	—	—	—	—	71,725
Incremental tax benefit related to share-based compensation	—	—	42,445	—	—	—	—	42,445
Reclassification of conversion option subject to cash settlement	—	—	21,402	—	—	—	—	21,402
Balance as of January 2, 2011	151,513	1,516	1,891,288	1,765	(155,335)	(24,904)	(541,559)	1,197,675
Net income	—	—	—	—	86,628	—	—	86,628
Unrealized gain on available-for-sale securities, net of deferred tax	—	—	—	352	—	—	—	352
Issuance of common stock, net of repurchases	15,194	152	104,268	—	—	(19,990)	(572,207)	(467,787)
Convertible note, equity portion, net of tax and issuance costs	—	—	155,366	—	—	—	—	155,366
Tax impact from the issuance of convertible debt	—	—	(59,427)	—	—	—	—	(59,427)
Tax benefit related to conversions of convertible debt	—	—	11,409	—	—	—	—	11,409
Reclassification of conversion option subject to cash settlement	—	—	7,667	—	—	—	—	7,667
Share-based compensation	—	—	92,153	—	—	—	—	92,153
Net incremental tax benefit related to share-based compensation	—	—	43,122	—	—	—	—	43,122
Equity based contingent compensation	—	—	3,457	—	—	—	—	3,457
Issuance of treasury stock	—	—	597	—	—	229	4,003	4,600
Balance as of January 1, 2012	166,707	$ 1,668	$ 2,249,900	$ 2,117	$ (68,707)	(44,665)	$ (1,109,763)	$ 1,075,215
Net income	—	—	—	—	151,254	—	—	151,254
Unrealized gain on available-for-sale securities, net of deferred tax	—	—	—	6	—	—	—	6
Issuance of common stock, net of repurchases	3,464	35	55,106	—	—	(1,875)	(83,306)	(28,165)
Reclassification of conversion option subject to cash settlement	—	—	2,565	—	—	—	—	2,565
Share-based compensation	—	—	94,385	—	—	—	—	94,385
Net incremental tax benefit related to share-based compensation	—	—	17,015	—	—	—	—	17,015
Equity based contingent compensation	—	—	6,306	—	—	—	—	6,306
Issuance of treasury stock	—	—	(5,446)	—	—	312	5,446	—
Balance as of December 30, 2012	170,171	$ 1,703	$2,419,831	$ 2,123	$ 82,547	(46,228)	$(1,187,623)	$ 1,318,581

See accompanying notes to consolidated financial statements

ILLUMINA, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Cash flows from operating activities:			
Net income	$ 151,254	$ 86,628	$ 124,891
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation expense	48,249	55,575	34,204
Amortization of acquired intangible assets	15,541	12,689	7,805
Share-based compensation expense	94,324	92,092	71,645
Accretion of debt discount	35,004	32,173	21,407
Cease-use loss	22,367	23,638	—
Contingent compensation expense	6,306	3,457	—
Incremental tax benefit related to share-based compensation	(20,783)	(46,354)	(42,445)
Deferred income taxes	(21,698)	19,227	48,696
Change in fair value of contingent consideration	1,975	(4,500)	(10,376)
Cost-method investment related (gain) loss, net	(45,911)	—	10,309
Recovery of previously impaired note receivable	(6,000)	—	—
Impairment of in-process research and development	21,438	—	—
Loss on extinguishment of debt	—	37,611	—
Other	7,780	10,877	8,811
Changes in operating assets and liabilities:			
Accounts receivable	(34,441)	(7,011)	(7,844)
Inventory	(23,707)	22,152	(48,583)
Prepaid expenses and other current assets	(3,062)	(2,016)	2,554
Other assets	(2,903)	(4,004)	(3,566)
Accounts payable	15,112	(21,097)	23,150
Accrued liabilities	24,388	38,945	32,028
Other long-term liabilities	6,640	8,058	(113)
Net cash provided by operating activities	291,873	358,140	272,573
Cash flows from investing activities:			
Purchases of available-for-sale securities	(925,478)	(1,310,269)	(846,208)
Sales of available-for-sale securities	733,326	900,884	539,161
Maturities of available-for-sale securities	165,424	160,007	149,450
Sales and maturities of trading securities	—	—	54,900
Net cash paid for acquisitions	(83,156)	(58,302)	(98,211)
Purchases of strategic investments	(15,938)	(13,769)	(27,677)
Purchases of property and equipment	(68,781)	(77,800)	(49,818)
Cash paid for intangible assets	(12,228)	(1,750)	(6,650)
Proceeds from sale of strategic investment	50,819	—	—
Recovery of previously impaired note receivable	6,000	—	—
Net cash used in investing activities	(150,012)	(400,999)	(285,053)
Cash flows from financing activities:			
Payments on current portion of long-term debt	—	(349,874)	—
Payments on acquisition related contingent consideration liability	(3,374)	—	—
Proceeds from issuance of convertible notes	—	903,492	—
Incremental tax benefit related to share-based compensation	20,783	46,354	42,445
Common stock repurchases	(82,522)	(570,406)	(44,016)
Proceeds from the exercise of warrants	—	5,512	16,029
Proceeds from issuance of common stock	54,358	61,938	102,016
Net cash (used in) provided by financing activities	(10,755)	97,016	116,474
Effect of exchange rate changes on cash and cash equivalents	(103)	(126)	320
Net increase in cash and cash equivalents	131,003	54,031	104,314
Cash and cash equivalents at beginning of year	302,978	248,947	144,633
Cash and cash equivalents at end of year	$ 433,981	$ 302,978	$ 248,947

ILLUMINA, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS — (Continued)
(In thousands)

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Supplemental cash flow information:			
Cash paid for interest	$ 2,551	$ 2,481	$ 2,437
Cash paid for income taxes	$ 74,037	$ 9,806	$ 31,566
Unsettled short-term investments purchase	$ 9,154	$ —	$ —

See accompanying notes to consolidated financial statements

ILLUMINA, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Unless the context requires otherwise, references in this report to "Illumina," "we," "us," the "Company," and "our" refer to Illumina, Inc. and its consolidated subsidiaries.

1. Organization and Summary of Significant Accounting Policies

Organization and Business

Illumina, Inc. is a leading developer, manufacturer, and marketer of life science tools and integrated systems for the analysis of genetic variation and function. Using its proprietary technologies, Illumina provides a comprehensive line of genetic analysis solutions, with products and services that address a broad range of highly interconnected markets, including sequencing, genotyping, gene expression, and genomic-based diagnostics. The Company's customers include leading genomic research centers, academic institutions, government laboratories, and clinical research organizations, as well as pharmaceutical, biotechnology, agrigenomics, consumer genomics companies, and in vitro fertilization clinics.

Basis of Presentation

The consolidated financial statements of the Company have been prepared in conformity with U.S. generally accepted accounting principles and include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Fiscal Year

The Company's fiscal year is 52 or 53 weeks ending the Sunday closest to December 31, with quarters of 13 or 14 weeks ending the Sunday closest to March 31, June 30, September 30, and December 31. The years ended December 30, 2012, January 1, 2012, and January 2, 2011 were 52 weeks, respectively.

Use of Estimates

The preparation of financial statements requires that management make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures of contingent assets and liabilities. Actual results could differ from those estimates.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation.

Segment Information

The Company is organized in two operating segments for purposes of recording and reporting our financial results: Life Sciences and Diagnostics. The Life Sciences operating segment includes all products and services related to the research market, namely the product lines based on the Company's sequencing, BeadArray, and real-time polymerase chain reaction (PCR) technologies. The Diagnostics operating segment focuses on the clinical and personalized application of our products and services for such uses as diagnosing disease, identifying genetic abnormalities, and identifying effective treatment therapies, with an initial emphasis on reproductive health and cancer. During all periods presented, the Diagnostics operating segment had been immaterial to the financial statements as a whole. Accordingly, the Company's operating results for both segments are reported on an aggregate basis as one reportable segment. The Company will begin reporting in two reportable segments once revenue, operating profit or loss, or asset of the Diagnostics operating segment exceeds 10% of the consolidated amounts.

Acquisitions

The Company measures all assets acquired and liabilities assumed, including contingent considerations and all contractual contingencies, at fair value as of the acquisition date. Contingent purchase considerations settled in cash are remeasured to estimated fair value at each reporting period with the change in fair value recorded in acquisition related expense (gain), net, a component of operating expenses. In addition, the Company capitalizes in-process research and development (IPR&D) and either amortizes it over the life of the product upon commercialization, or writes it off if the project is abandoned

or impaired. Post-acquisition adjustments related to business combination deferred tax asset valuation allowances and liabilities for uncertain tax positions are recorded in current period income tax expense.

Cash Equivalents and Short-Term Investments

Cash equivalents are comprised of short-term, highly liquid investments with maturities of 90 days or less at the date of purchase.

Short-term investments consist of U.S. treasury securities, debt securities in U.S. government-sponsored entities, and corporate debt securities. Management classifies short-term investments as available-for-sale at the time of purchase and evaluates such classification as of each balance sheet date. All short-term investments are recorded at estimated fair value. Unrealized gains and losses for available-for-sale securities are included in accumulated other comprehensive income, a component of stockholders' equity. The Company evaluates its investments to assess whether those with unrealized loss positions are other than temporarily impaired. Impairments are considered to be other than temporary if they are related to deterioration in credit risk or if it is likely that the Company will sell the securities before the recovery of their cost basis. Realized gains and losses and declines in value judged to be other than temporary are determined based on the specific identification method and are reported in other (expense) income, net in the consolidated statements of income.

Fair Value Measurements

The Company determines the fair value of its assets and liabilities based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value maximize the use of observable inputs and minimize the use of unobservable inputs. The Company uses a fair value hierarchy with three levels of inputs, of which the first two are considered observable and the last unobservable, to measure fair value:

- *Level 1* — Quoted prices in active markets for identical assets or liabilities.
- *Level 2* — Inputs, other than Level 1, that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- *Level 3* — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The carrying amounts of financial instruments such as cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable, and accrued liabilities, excluding acquisition related contingent consideration liabilities, approximate the related fair values due to the short-term maturities of these instruments.

Accounts Receivable

Trade accounts receivable are recorded at the net invoice value and are not interest bearing. The Company considers receivables past due based on the contractual payment terms. The Company reserves specific receivables if collectibility is no longer reasonably assured. The Company also reserves a percentage of its trade receivable balance based on collection history and current economic trends that might impact the level of future credit losses. The Company re-evaluates such reserves on a regular basis and adjusts its reserves as needed.

Concentrations of Risk

The Company operates in markets that are highly competitive and rapidly changing. Significant technological changes, shifting customer needs, the emergence of competitive products or services with new capabilities, and other factors could negatively impact the Company's operating results. A significant portion of the Company's customers consist of university and research institutions that management believes are, to some degree, directly or indirectly supported by the United States Government. A significant change in current research funding, particularly with respect to the National Institutes of Health, could have a material adverse impact on the Company's future revenues and results of operations.

The Company is also subject to risks related to its financial instruments including its cash and cash equivalents, investments, and accounts receivable. Most of the Company's cash and cash equivalents as of December 30, 2012 were deposited with U.S. financial institutions, either domestically or with their foreign branches. The Company's investment policy

restricts the amount of credit exposure to any one issuer to 5% of the portfolio at the time of purchase and to any one industry sector, as defined by Bloomberg classifications, to 25% of the portfolio at the time of purchase. There is no limit to the percentage of the portfolio that may be maintained in U.S. treasury securities, debt securities in U.S. government-sponsored entities, and money market funds.

The Company's products require customized components that currently are available from a limited number of sources. The Company obtains certain key components included in its products from single vendors.

The Company performs a regular review of customer activity and associated credit risks and does not require collateral or enter into netting arrangements. Shipments to customers outside the United States comprised 51%, 50%, and 45% of the Company's revenue for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively. Customers outside the United States represented 54% and 52% of the Company's gross trade accounts receivable balance as of December 30, 2012 and January 1, 2012, respectively.

International sales entail a variety of risks, including currency exchange fluctuations, longer payment cycles, and greater difficulty in accounts receivable collection. The Company is also subject to general geopolitical risks, such as political, social and economic instability, and changes in diplomatic and trade relations. The risks of international sales are mitigated in part by the extent to which sales are geographically distributed. The Company has historically not experienced significant credit losses from investments and accounts receivable. Approximately 18% of the Company's revenue is derived from European countries other than the United Kingdom. As the credit and economic conditions in certain southern European countries continue to deteriorate, the Company regularly reviews its accounts receivable outstanding in these countries and assesses the allowance for doubtful accounts accordingly. As of December 30, 2012, outstanding accounts receivables beyond standard payment terms from these countries accounted for approximately 5% of the Company's accounts receivable balance, and the Company has not experienced significant difficulties in collecting the accounts receivable outstanding in these countries.

Inventory

Inventory is stated at the lower of cost (on a first in, first out basis) or market. Inventory includes raw materials and finished goods that may be used in the research and development process and such items are expensed as consumed or expired. Provisions for slow moving, excess, and obsolete inventories are estimated based on product life cycles, quality issues, historical experience, and usage forecasts.

Property and Equipment

Property and equipment are stated at cost, subject to review of impairment, and depreciated over the estimated useful lives of the assets (generally three to seven years) using the straight-line method. Amortization of leasehold improvements is recorded over the shorter of the lease term or the estimated useful life of the related assets. Maintenance and repairs are charged to operations as incurred. When assets are sold, or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and any gain or loss is included in operating expense.

Goodwill, Intangible Assets and Other Long-Lived Assets

Goodwill, which has an indefinite useful life, represents the excess of cost over fair value of net assets acquired. The change in the carrying value of goodwill during the year ended December 30, 2012 was due to goodwill recorded in connection with the BlueGnome acquisition. Goodwill is reviewed for impairment at least annually during the second quarter, or more frequently if an event occurs indicating the potential for impairment. During its goodwill impairment review, the Company may assess qualitative factors to determine whether it is more likely than not that the fair value of its single reporting unit is less than its carrying amount, including goodwill. The qualitative factors include, but are not limited to, macroeconomic conditions, industry and market considerations, and the overall financial performance of the Company. If, after assessing the totality of these qualitative factors, the Company determines that it is not more likely than not that the fair value of its reporting unit is less than its carrying amount, then no more assessment is deemed necessary. Otherwise, the Company proceeds to perform the two-step test for goodwill impairment. The first step involves comparing the estimated fair value of the reporting unit with its carrying value, including goodwill. If the carrying amount of the reporting unit exceeds its fair value, the Company performs the second step of the goodwill impairment test to determine the amount of loss, which involves comparing the implied fair value of the goodwill to the carrying value of the goodwill. The Company may also elect to bypass the qualitative assessment in a period and elect to proceed to perform the first step of the goodwill impairment test. The Company performed its annual assessment for goodwill impairment in the second quarter of 2012, noting no impairment.

The Company's identifiable intangible assets are typically comprised of acquired core technologies, licensed technologies, IPR&D, customer relationships, and trade names. The cost of all identifiable intangible assets with finite lives is amortized on a straight-line basis over the assets' respective estimated useful lives.

IPR&D, which also has an indefinite useful life, is reviewed for impairment at least annually, or more frequently if an event occurs indicating the potential for impairment. The IPR&D impairment test requires the Company to assess the fair value of the asset as compared to its carrying value and record an impairment charge if the carrying value exceeds the fair value. The Company performed its annual impairment test of its IPR&D in the second fiscal quarter of 2012 and recorded $21.4 million in impairment charges within research and development expenses in the consolidated statements of income. Resources previously assigned to the research project were re-directed with no plans for additional investments to be made to the project in the foreseeable future.

The Company regularly performs reviews to determine if any event has occurred that may indicate its intangible assets with finite useful lives and other long-lived assets are potentially impaired. If indicators of impairment exist, the Company performs an impairment test to assess the recoverability of the affected assets by determining whether the carrying amount of such assets exceeds the undiscounted expected future cash flows. If the affected assets are not recoverable, the Company estimates the fair value of the assets and records an impairment loss if the carrying value of the assets exceeds the fair value. Factors that would indicate potential impairment include a significant decline in the Company's stock price and market capitalization compared to its net book value, significant changes in the ability of a particular asset to generate positive cash flows, and significant changes in the Company's strategic business objectives and utilization of a particular asset. The Company performed quarterly reviews of its intangible assets with finite useful lives and other long-lived assets and noted no indications of impairment for the year ended December 30, 2012.

Reserve for Product Warranties

The Company generally provides a one-year warranty on instruments. Additionally, the Company provides a warranty on its consumables through the expiration date, which generally ranges from six to twelve months after the manufacture date. At the time revenue is recognized, the Company establishes an accrual for estimated warranty expenses based on historical experience as well as anticipated product performance. The Company periodically reviews the adequacy of its warranty reserve and adjusts, if necessary, the warranty accrual based on actual experience and estimated costs to be incurred. Warranty expense is recorded as a component of cost of product revenue.

Revenue Recognition

The Company's revenue is generated primarily from the sale of products and services. Product revenue primarily consists of sales of instrumentation and consumables used in genetic analysis. Service and other revenue primarily consists of revenue received for performing genotyping and sequencing services, instrument service contract sales, and amounts earned under research agreements with government grants, which are recognized in the period during which the related costs are incurred.

The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the seller's price to the buyer is fixed or determinable, and collectibility is reasonably assured. In instances where final acceptance of the product or system is required, revenue is deferred until all the acceptance criteria have been met. All revenue is recorded net of any discounts.

Revenue from product sales is recognized generally upon transfer of title to the customer, provided that no significant obligations remain and collection of the receivable is reasonably assured. Revenue from instrument service contracts is recognized as the services are rendered, typically evenly over the contract term. Revenue from genotyping and sequencing services is recognized when earned, which is generally at the time the genotyping or sequencing analysis data is made available to the customer or agreed upon milestones are reached.

In order to assess whether the price is fixed or determinable, the Company evaluates whether refund rights exist. If there are refund rights or payment terms based on future performance, the Company defers revenue recognition until the price becomes fixed or determinable. The Company assesses collectibility based on a number of factors, including past transaction history with the customer and the creditworthiness of the customer. If the Company determines that collection of a payment is not reasonably assured, revenue recognition is deferred until receipt of payment.

The Company regularly enters into contracts where revenue is derived from multiple deliverables including any mix of products or services. These products or services are generally delivered within a short time frame, approximately three to six months, after the contract execution date. Revenue recognition for contracts with multiple deliverables is based on the individual units of accounting determined to exist in the contract. A delivered item is considered a separate unit of accounting when the delivered item has value to the customer on a stand-alone basis. Items are considered to have stand-alone value when they are sold separately by any vendor or when the customer could resell the item on a stand-alone basis. Consideration is allocated at the inception of the contract to all deliverables based on their relative selling price. The relative selling price for each deliverable is determined using vendor specific objective evidence (VSOE) of selling price or third-party evidence of selling price if VSOE does not exist. If neither VSOE nor third-party evidence exists, the Company uses its best estimate of the selling price for the deliverable.

In order to establish VSOE of selling price, the Company must regularly sell the product or service on a standalone basis with a substantial majority priced within a relatively narrow range. VSOE of selling price is usually the midpoint of that range. If there are not a sufficient number of standalone sales and VSOE of selling price cannot be determined, then the Company considers whether third party evidence can be used to establish selling price. Due to the lack of similar products and services sold by other companies within the industry, the Company has rarely established selling price using third-party evidence. If neither VSOE nor third party evidence of selling price exists, the Company determines its best estimate of selling price using average selling prices over a rolling 12-month period coupled with an assessment of current market conditions. If the product or service has no history of sales or if the sales volume is not sufficient, the Company relies upon prices set by the Company's pricing committee adjusted for applicable discounts. The Company recognizes revenue for delivered elements only when it determines there are no uncertainties regarding customer acceptance.

During the fiscal year ended January 1, 2012, the Company completed its Genome Analyzer trade-in program that enabled certain Genome Analyzer customers to trade in their Genome Analyzer and receive a discount on the purchase of a HiSeq 2000. The incentive was limited to customers who had purchased a Genome Analyzer prior to the beginning of the incentive program in early 2010 and was the only significant trade-in program offered by the Company to date. The Company accounted for HiSeq 2000 discounts related to the Genome Analyzer trade-in program as reductions to revenue upon recognition of the HiSeq 2000 sales revenue, which is later than the date the trade-in program was launched.

In certain markets, the Company sells products and provides services to customers through distributors that specialize in life science products. In most sales through distributors, the product is delivered directly to customers. In cases where the product is delivered to a distributor, revenue recognition is deferred until acceptance is received from the distributor, and/or the end-user, if required by the applicable sales contract. The terms of sales transactions through distributors are consistent with the terms of direct sales to customers. These transactions are accounted for in accordance with the Company's revenue recognition policy described herein.

Shipping and Handling Expenses

Shipping and handling expenses are included in cost of product revenue.

Research and Development

Research and development expenses include personnel expenses, contractor fees, license fees, facilities costs, and utilities. Expenditures relating to research and development are expensed in the period incurred.

Advertising Costs

The Company expenses advertising costs as incurred. Advertising costs were $7.3 million, $6.8 million, and $6.9 million for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively.

Leases

Leases are reviewed and classified as capital or operating at their inception. For leases that contain rent escalations, the Company records rent expense on a straight-line basis over the term of the lease, which includes the construction build-out period and lease extension periods, if appropriate. The difference between rent payments and straight-line rent expense is recorded as deferred rent in accrued liabilities and other long-term liabilities. Landlord allowances are amortized on a straight-

line basis over the lease term as a reduction to rent expense. The Company capitalizes leasehold improvements and amortizes them over the shorter of the lease term or their expected useful lives.

In 2012, the Company completed the relocation of its headquarters to another facility in San Diego, California. Headquarter relocation expenses recorded in years ended December 30, 2012 and January 1, 2012 primarily consisted of accelerated depreciation expense, impairment of assets, additional rent expense during the transition period when both the new and former headquarter facilities are occupied, moving expenses, and cease-use losses. The Company recorded accelerated depreciation expense for leasehold improvements at its former headquarter facility based on the reassessed useful lives of less than a year. The Company recorded cease-use losses and the corresponding facility exit obligation upon vacating certain buildings of its former headquarters, calculated as the present value of the remaining lease obligation offset by estimated sublease rental receipts during the remaining lease period, adjusted for deferred items and estimated lease incentives. The key assumptions used in the calculation include the amount and timing of estimated sublease rental receipts, and the risk-adjusted discount rate.

Restructuring Charges

During the fourth quarter of the year ended January 1, 2012, the Company announced and executed a restructuring plan, to reduce the Company's workforce and to consolidate certain facilities. The Company measured and accrued the liabilities associated with employee separation costs at fair value as of the date the plan was announced and terminations were communicated to employees, which primarily included severance pay and other separation costs such as outplacement services and benefits.

The fair value measurement of restructuring related liabilities requires certain assumptions and estimates to be made by the Company, such as the retention period of certain employees, the timing and amount of sublease income on properties to be vacated, and the operating costs to be paid until lease termination. It is the Company's policy to use the best estimates based on facts and circumstances available at the time of measurement, review the assumptions and estimates periodically, and adjust the liabilities when necessary.

Income Taxes

The provision for income taxes is computed using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, and for the expected future tax benefit to be derived from tax loss and credit carryforwards. Deferred tax assets and liabilities are determined using the enacted tax rates in effect for the years in which those tax assets are expected to be realized. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the provision for income taxes in the period that includes the enactment date.

Deferred tax assets are regularly assessed to determine the likelihood they will be recovered from future taxable income. A valuation allowance is established when the Company believes it is more likely than not the future realization of all or some of a deferred tax asset will not be achieved. In evaluating the ability to recover deferred tax assets within the jurisdiction which they arise the Company considers all available positive and negative evidence. Factors reviewed include the cumulative pre-tax book income for the past three years, scheduled reversals of deferred tax liabilities, history of earnings and reliable forecasting, projections of pre-tax book income over the foreseeable future, and the impact of any feasible and prudent tax planning strategies.

The Company recognizes excess tax benefits associated with share-based compensation to stockholders' equity only when realized. When assessing whether excess tax benefits relating to share-based compensation have been realized, the Company follows the with-and-without approach excluding any indirect effects of the excess tax deductions. Under this approach, excess tax benefits related to share-based compensation are not deemed to be realized until after the utilization of all other tax benefits available to the Company.

The Company recognizes the impact of a tax position in the financial statements only if that position is more likely than not of being sustained upon examination by taxing authorities, based on the technical merits of the position. Any interest and penalties related to uncertain tax positions will be reflected in income tax expense.

Functional Currency

The U.S. dollar is the functional currency of the Company's international operations. The Company remeasures its foreign subsidiaries' assets and liabilities and revenue and expense accounts related to monetary assets and liabilities to the U.S. dollar and records the net gains or losses resulting from remeasurement in other (expense) income, net in the consolidated statements of income. During the years ended December 30, 2012 and January 1, 2012, the Company recorded $2.2 million net gain and $2.0 million net loss from remeasurement, respectively. Gains and losses related to remeasurement were immaterial for the year ended January 2, 2011.

Derivatives

The Company is exposed to foreign exchange rate risks in the normal course of business. To manage a portion of the accounting exposure resulting from changes in foreign currency exchange rates, the Company enters into foreign exchange contracts to hedge monetary assets and liabilities that are denominated in currencies other than the U.S. dollar. These foreign exchange contracts are carried at fair value and are not designated as hedging instruments. Changes in the value of the derivatives are recognized in other (expense) income, net, in the consolidated statements of income in the respective periods, along with an offsetting remeasurement gain or loss on the underlying foreign currency denominated assets or liabilities.

As of December 30, 2012, the Company had foreign exchange forward contracts in place to hedge exposures in the euro, Japanese yen, and Australian dollar. As of December 30, 2012 and January 1, 2012, the total notional amount of outstanding forward contracts in place for foreign currency purchases was $51.2 million and $25.5 million, respectively. Non-designated foreign exchange forward contract related gain was $1.2 million for the year ended December 30, 2012 and immaterial for the years ended January 1, 2012 and January 2, 2011.

Share-Based Compensation

The Company uses the Black-Scholes-Merton option-pricing model to estimate the fair value of stock options granted and stock purchases under the Employee Stock Purchase Plan (ESPP). This model incorporates various assumptions including expected volatility, expected term of an award, expected dividends, and the risk-free interest rates. The Company determines the expected volatility by equally weighing the historical and implied volatility of the Company's common stock. The historical volatility of the Company's common stock over the most recent period is generally commensurate with the estimated expected term of the Company's stock awards, adjusted for the impact of unusual fluctuations not reasonably expected to recur and other relevant factors. The implied volatility is calculated from the implied market volatility of exchange-traded call options on the Company's common stock. The expected term of an award is based on historical forfeiture experience, exercise activity, and on the terms and conditions of the stock awards. The expected dividend yield is determined to be 0% given that the Company has never declared or paid cash dividends on its common stock and does not anticipate paying such cash dividends. The risk-free interest rate is based upon U.S. Treasury securities with remaining terms similar to the expected term of the share-based awards. The fair value of restricted stock units granted is based on the market price of the Company's common stock on the date of grant. The Company recognizes the fair value of share-based compensation on a straight-line basis over the requisite service periods of the awards.

Net Income per Share

Basic net income per share is computed by dividing net income by the weighted average number of common shares outstanding during the reporting period. Diluted net income per share is computed by dividing net income by the weighted average number of common shares outstanding during the reporting period increased to include dilutive potential common shares calculated using the treasury stock method. Diluted net income per share reflects the potential dilution from outstanding stock options, restricted stock units, ESPP, warrants, shares subject to forfeiture, and convertible senior notes. Under the treasury stock method, convertible senior notes will have a dilutive impact when the average market price of the Company's common stock is above the applicable conversion price of the respective notes. In addition, the following amounts are assumed to be used to repurchase shares: the amount that must be paid to exercise stock options and warrants and purchase shares under the ESPP; the average amount of compensation expense for future services that the Company has not yet recognized for stock options, restricted stock units, ESPP, and shares subject to forfeiture; and the amount of tax benefits that will be recorded in additional paid-in capital when the expenses related to respective awards become deductible.

ILLUMINA, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table presents the calculation of weighted average shares used to calculate basic and diluted net income per share (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Weighted average shares outstanding	122,999	123,399	123,581
Effect of dilutive potential common shares from:			
Convertible senior notes	967	3,783	9,058
Equity awards	3,906	4,703	4,674
Warrants sold in connection with convertible senior notes	5,821	7,052	5,317
Warrants assumed in a prior acquisition	—	—	803
Weighted average shares used in calculating diluted net income per share	133,693	138,937	143,433
Potentially dilutive shares excluded from calculation due to anti-dilutive effect	2,556	2,418	1,934

Accumulated Other Comprehensive Income

Comprehensive income is comprised of net income and other comprehensive income. Accumulated other comprehensive income on the consolidated balance sheets at December 30, 2012 and January 1, 2012 includes accumulated foreign currency translation adjustments and unrealized gains and losses on the Company's available-for-sale securities.

The components of accumulated other comprehensive income are as follows (in thousands):

	December 30, 2012	January 1, 2012
Foreign currency translation adjustments	$ 1,289	$ 1,289
Unrealized gain on available-for-sale securities, net of deferred tax	834	828
Total accumulated other comprehensive income	$ 2,123	$ 2,117

2. Balance Sheet Account Details

Investments

The following is a summary of short-term investments (in thousands):

	December 30, 2012				January 1, 2012			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Available-for-sale securities:								
Debt securities in government-sponsored entities	$ 314,638	$ 251	$ (16)	$ 314,873	$ 393,759	$ 428	$ (148)	$ 394,039
Corporate debt securities	471,989	1,059	(187)	472,861	432,550	1,293	(461)	433,382
U.S. treasury securities	128,256	233	—	128,489	58,955	214	—	59,169
Total available-for-sale securities	$ 914,883	$ 1,543	$ (203)	$ 916,223	$ 885,264	$ 1,935	$ (609)	$ 886,590

ILLUMINA, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Available-For-Sale Securities

As of December 30, 2012 the Company had 5 9 available-for-sale securities in a gross unrealized loss position, all of which had been in such position for less than twelve months. There were no impairments considered other-than-temporary as it is more likely than not the Company will hold the securities until maturity or a recovery of the cost basis. The following table shows the fair values and the gross unrealized losses of the Company's available-for- sale securities that were in an unrealized loss position as of December 30, 2012 and January 1, 2012 aggregated by investment category (in thousands):

	December 30, 2012		January 1, 2012	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Debt securities in government-sponsored entities	$ 28,176	$ (16)	$ 133,904	$ (148)
Corporate debt securities	130,224	(187)	138,326	(461)
Total	$ 158,400	$ (203)	$ 272,230	$ (609)

Realized gains and losses are determined based on the specific identification method and are reported in interest income in the consolidated statements of income. Gross realized gains on sales of available-for-sale securities for the years ended December 30, 2012, January 1, 2012, and January 2, 2011 were $1.6 million, $1.4 million, and $1.7 million, respectively. Gross realized losses on sales of available-for-sale securities for the years ended December 30, 2012, January 1, 2012, and January 2, 2011 were immaterial.

Contractual maturities of available-for-sale debt securities as of December 30, 2012 were as follows (in thousands):

	Estimated Fair Value
Due within one year	$ 328,991
After one but within five years	587,232
Total	$ 916,223

Cost-Method Investments

As of December 30, 2012 and January 1, 2012, the aggregate carrying amounts of the Company's cost-method investments in non-publicly traded companies were $56.3 million and $45.3 million, respectively. The Company's cost-method investments are assessed for impairment quarterly. The Company does not estimate the fair value of cost-method investments if there are no identified events or changes in circumstances that may have a significant adverse effect on the fair value of the investments. The Company includes cost-method investments in other long term assets in the consolidated balance sheets.

During the fourth quarter of 2012, the Company sold its minority ownership interest in deCODE Genetics, Inc., an Icelandic company that focuses on the genetic studies of human disease, to Amgen Inc., a biotechnology medicines company based in the U.S. Gross proceeds received were $50.8 million, resulting in a gain of $48.6 million. Also during the fourth quarter of 2012, the Company received $6.0 million from an investee in principal payment of a loan that was previously impaired, and recorded the recovered funds in interest income in the consolidated statements of income.

As a result of its impairment analysis performed in the fourth quarter of 2012, the Company determined that a cost-method investment was other-than-temporarily impaired and recorded an impairment loss of $2.7 million. This determination was based upon operational performance trends coupled with uncertainty regarding the entity's ability to obtain additional funding in a required timeframe for the entity to continue operations.

No impairment losses were recorded during the year ended January 1, 2012. In the year ended January 2, 2011, the Company determined that a $6.0 million cost-method investment and a related $6.8 million note receivable with interest receivable of $0.4 million were below carrying value and the impairment was other-than-temporary. As a result, the Company recorded an impairment charge of $13.2 million in cost-method investment gain (loss), net in the consolidated statements of income for the year ended January 2, 2011.

ILLUMINA, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Accounts Receivable

Accounts receivable consist of the following (in thousands):

	December 30, 2012	January 1, 2012
Accounts receivable from product and service sales	$ 217,369	$ 175,226
Other receivables	1,886	2,657
Total accounts receivable, gross	219,255	177,883
Allowance for doubtful accounts	(4,280)	(3,997)
Total accounts receivable, net	$ 214,975	$ 173,886

Inventory

Inventory consists of the following (in thousands):

	December 30, 2012	January 1, 2012
Raw materials	$ 61,665	$ 58,340
Work in process	75,675	53,412
Finished goods	21,378	17,029
Total inventory	$ 158,718	$ 128,781

Property and Equipment

Property and equipment, net consists of the following (in thousands):

	December 30, 2012	January 1, 2012
Leasehold improvements	$ 87,734	$ 63,406
Machinery and equipment	158,112	143,816
Computer hardware and software	58,313	54,826
Furniture and fixtures	8,022	8,095
Construction in progress	7,390	10,022
Total property and equipment, gross	319,571	280,165
Accumulated depreciation	(153,404)	(136,682)
Total property and equipment, net	$ 166,167	$ 143,483

Depreciation expense was $48.2 million, $55.6 million and $34.2 million for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively. Capital expenditures included accrued expenditures of $1.6 million, $5.9 million, and $1.8 million in the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively. These amounts have been excluded from the Consolidated Statements of Cash Flows for the respective periods.

Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	December 30, 2012	January 1, 2012
Accrued compensation expenses	$ 59,864	$ 52,035
Deferred revenue, current portion	55,817	52,573
Accrued taxes payable	23,021	19,339
Customer deposits	13,765	17,958
Reserve for product warranties	10,136	11,966
Acquisition related contingent consideration liability, current portion	9,490	2,335
Unsettled short-term investment purchase	9,154	—
Facility exit obligation, current portion	8,063	4,408
Accrued royalties	2,836	5,682
Other accrued expenses	9,731	10,819
Total accrued liabilities	$ 201,877	$ 177,115

3. Restructuring Activities

In late 2011, the Company implemented a cost reduction initiative that included workforce reductions and the consolidation of certain facilities. In total, the Company notified approximately 200 employees of their involuntary termination.

A summary of the pre-tax charges and estimated total costs associated with the initiative is as follows (in thousands):

	Employee Separation costs	Facilities Exit Costs	Other Costs	Total
Amount recorded in accrued liabilities as of January 1, 2012	$ 3,496	$ —	$ 30	$ 3,526
Additional expenses	2,780	221	521	3,522
Cash payments	(6,276)	(221)	(551)	(7,048)
Amount recorded in accrued liabilities as of December 30, 2012	$ —	$ —	$ —	$ —
Cumulative expense recorded since inception in restructuring expense	$ 10,463	$ 221	$ 974	$ 11,658
Estimated total restructuring costs to be incurred	$ 10,463	$ 221	$ 974	$ 11,658

4. Acquisitions

BlueGnome

On September 19, 2012, the Company announced the acquisition of BlueGnome Ltd. (BlueGnome), a provider of cytogenetics and in vitro fertilization screening products. Total consideration for the acquisition was $95.5 million, which included $88.0 million in initial cash payments and $7.5 million in fair value of contingent cash consideration of up to $20.0 million based on the achievement of certain revenue based milestones by December 28, 2014.

The Company estimated the fair value of contingent cash consideration using a probability weighted discounted cash flow approach, a Level 3 measurement based on unobservable inputs that are supported by little or no market activity and reflect the Company's own assumptions in measuring fair value. The Company used a discount rate of 30% in the assessment of the acquisition date fair value for the contingent cash consideration. Future changes in significant inputs such as the discount rate and estimated probabilities of milestone achievements could have a significant effect on the fair value of the contingent consideration.

In conjunction with the purchase transaction, the Company also agreed to pay up to $20.0 million to BlueGnome shareholders contingent upon the retention of certain key employees and certain other criteria. Such contingent payments are recognized as contingent compensation expense over the retention period through December 28, 2014.

The Company allocated approximately $11.2 million of the total consideration to tangible assets, net of liabilities, and $48.9 million to identified intangible assets, including additional developed technologies of $25.0 million, customer relationships of $16.8 million, and a trade name of $7.1 million with average useful lives of seven, five, and ten years, respectively. The Company also recorded a $12.1 million deferred tax liability to reflect the tax impact of certain identified intangible assets, the amortization expenses for which are not tax deductible. The Company recorded the excess consideration of approximately $47.5 million as goodwill.

Prior Acquisitions

On January 10, 2011, the Company acquired Epicentre Technologies Corporation (Epicentre), a provider of nucleic acid sample preparation reagents and specialty enzymes used in sequencing and microarray applications. Total consideration for the acquisition was $71.4 million, which included $59.4 million in net cash payments, $4.6 million in the fair value of contingent consideration settled in stock that is subject to forfeiture if certain non-revenue based milestones are not met, and $7.4 million in the fair value of contingent cash consideration of up to $15.0 million based on the achievement of certain revenue based milestones by January 10, 2013.

The Company estimated the fair value of contingent stock consideration based on the closing price of its common stock as of the acquisition date. Approximately 229,000 shares of common stock were issued to Epicentre shareholders in connection with the acquisition, which shares are subject to forfeiture if certain non-revenue-based milestones are not met. One third of these shares issued with an assessed fair value of $4.6 million were determined to be part of the purchase price. The remaining shares with an assessed fair value of $10.1 million were determined to be compensation for post-acquisition service, the cost of which will be recognized as contingent compensation expense over a period of two years in research and development expense and selling, general and administrative expense.

The Company estimated the fair value of contingent cash consideration using a probability weighted discounted cash flow approach, a Level 3 measurement based on unobservable inputs that are supported by little or no market activity and reflects the Company's own assumptions in measuring fair value. The Company used a discount rate of 21% in the assessment of the acquisition date fair value for the contingent cash consideration.

The Company allocated $0.9 million of the total consideration to tangible assets, net of liabilities, and $26.9 million to identified intangible assets, including additional developed technologies of $23.3 million, a trade name of $2.5 million, and customer relationships of $1.1 million, with weighted average useful lives of approximately nine, ten, and three years, respectively. The Company recorded the excess consideration of $43.6 million as goodwill.

On July 28, 2010, the Company completed an acquisition of another privately-held, development stage entity. Total consideration for the acquisition was $22.0 million. As a result of this transaction, the Company recorded an IPR&D asset of $21.4 million in intangible assets. In determining the fair value of the IPR&D, various factors were considered, such as future revenue contributions, additional research and development costs to be incurred, and contributory asset charges. The fair value of the IPR&D was calculated using an income approach, and the rate used to discount net future cash flows to their present values was based on a risk-adjusted rate of return of approximately 28%. Significant factors considered in the calculation of the rate of return include the weighted average cost of capital, the weighted average return on assets, the internal rate of return, as well as the risks inherent in the development process for development-stage entities of similar sizes.

On April 30, 2010, the Company completed the acquisition of Helixis, Inc. (Helixis), a company developing a high-performance, low-cost, real time PCR system used for nucleic acid analysis. Total consideration for the acquisition was $86.7 million, including $70.0 million in net cash payments and $14.1 million for the fair value of contingent consideration payments that could range from $0 to $35 million based on the achievement of certain revenue-based milestones by December 31, 2011. The Company allocated $2.3 million of the consideration to tangible assets, net of liabilities, and $28.0 million to identified intangible assets that will be amortized over a useful life of ten years. The Company also recorded a $10.7 million deferred tax liability to reflect the tax impact of the identified intangible assets, the amortization expenses for which are not tax deductible and an $8.7 million deferred tax asset which primarily relates to acquired net operating loss carryforwards. The Company recorded the excess consideration of $58.4 million as goodwill.

Prior to the acquisition, the Company had an equity interest in Helixis with a cost basis of $2.0 million that was accounted for under the cost-method of accounting. The Company recognized a gain of $2.9 million, which was included in other (expense) income, net, in its consolidated statement of income as a result of revaluing the Company's equity interest in Helixis on the acquisition date.

In addition, the Company agreed to pay the former shareholders of another development stage company acquired in 2008 a certain amount of contingent cash consideration based on the achievement of certain product-related and employment-related milestones. In accordance with the applicable accounting guidance effective at the time, such consideration was accounted for as additional elements of the cost of acquisition, resulting in additional IPR&D charges in the years ended January 1, 2012 and January 2, 2011 when the contingencies were resolved beyond a reasonable doubt and the considerations were issued or became issuable.

Summary of Contingent Compensation Expenses and IPR&D Charges

Contingent compensation expenses and IPR&D charges as a result of acquisitions consist of the following (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Contingent compensation expense, included in research and development expense	$ 3,419	$ 4,799	$ 3,675
Contingent compensation expense, included in selling, general and administrative expense	5,732	1,258	—
Total contingent compensation expense	$ 9,151	$ 6,057	$ 3,675
IPR&D, included in acquisition related expense (gain), net	$ —	$ 5,425	$ 1,325

5. Intangible Assets

The Company's intangible assets, excluding goodwill, include acquired core and licensed technologies, license agreements, trade name, and customer relationships. Amortization for the intangible assets that have finite useful lives is generally recorded on a straight-line basis over their useful lives.

The following is a summary of the Company's identifiable intangible assets as of the respective balance sheet dates (in thousands):

	December 30, 2012				January 1, 2012			
	Weighted Average Useful Life (years)	Gross Carrying Amount	Accumulated Amortization	Intangibles, Net	Weighted Average Useful Life (years)	Gross Carrying Amount	Accumulated Amortization	Intangibles, Net
Intangible assets with finite useful lives:								
Licensed technologies	6.6	$ 46,904	$ (25,271)	$ 21,633	8.0	$ 36,000	$ (20,000)	$ 16,000
Core technologies	8.8	99,800	(27,427)	72,373	9.7	74,800	(18,544)	56,256
Customer relationships	5.0	18,780	(2,214)	16,566	3.0	1,980	(1,253)	727
License agreements	7.8	14,829	(4,133)	10,696	8.9	12,404	(2,605)	9,799
Trade name	10.0	9,600	(672)	8,928	10.0	2,500	(245)	2,255
Indefinitely-lived Intangible Asset:								
In-process research & development		—	—	—		21,438	—	21,438
Total intangible assets, net		$ 189,913	$ (59,717)	$ 130,196		$ 149,122	$ (42,647)	$ 106,475

Additions to intangible assets in the current year are primarily due to the BlueGnome acquisition and technology license agreements entered into during the year. As discussed in note "1. Organization and Summary of Significant Accounting Policies," IPR&D was impaired during the year ended December 30, 2012. Amortization expense associated with intangible assets was $17.1 million for the year ended December 30, 2012, $15.5 million of which related to acquired intangible assets.

Amortization expense associated with intangible assets for the years ended January 1, 2012 and January 2, 2011 were $13.6 million and $7.8 million, respectively.

The estimated annual amortization of intangible assets for the next five years is shown in the following table (in thousands). Actual amortization expense to be reported in future periods could differ from these estimates as a result of acquisitions, divestitures, asset impairments, among other factors.

2013	$ 24,644
2014	23,860
2015	23,414
2016	18,715
2017	14,612
Thereafter	24,951
Total	$ 130,196

6. Fair Value Measurements

The following table presents the Company's fair value hierarchy for assets and liabilities measured at fair value on a recurring basis as of December 30, 2012 and January 1, 2012 respectively (in thousands):

	December 30, 2012				January 1, 2012			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets:								
Money market funds (cash equivalent)	$ 252,126	$ —	$ —	$ 252,126	$ 166,898	$ —	$ —	$ 166,898
Debt securities in government-sponsored entities	—	314,873	—	314,873	—	394,039	—	394,039
Corporate debt securities	—	472,861	—	472,861	—	433,382	—	433,382
U.S. Treasury securities	128,489	—	—	128,489	59,169	—	—	59,169
Deferred compensation plan assets	—	13,626	—	13,626	—	10,800	—	10,800
Total assets measured at fair value	$ 380,615	$ 801,360	$ —	$ 1,181,975	$ 226,067	$ 838,221	$ —	$ 1,064,288
Liabilities:								
Acquisition related contingent consideration liabilities	$ —	$ —	$ 12,519	$ 12,519	$ —	$ —	$ 6,638	$ 6,638
Deferred compensation liability	—	12,071	—	12,071	—	8,970	—	8,970
Total liabilities measured at fair value	$ —	$ 12,071	$ 12,519	$ 24,590	$ —	$ 8,970	$ 6,638	$ 15,608

The Company holds available-for-sale securities that consist of highly liquid, investment grade debt securities. The Company determines the fair value of its debt security holdings based on pricing from a service provider. The service provider values the securities based on "consensus pricing," using market prices from a variety of industry-standard independent data providers. Such market prices may be quoted prices in active markets for identical assets or liabilities (Level 1 inputs) or pricing determined using inputs that are observable either directly or indirectly (Level 2 inputs), such as quoted prices for similar assets or liabilities, yield curve, volatility factors, credit spreads, default rates, loss severity, current market and contractual prices for the underlying instruments or debt, broker and dealer quotes, as well as other relevant economic measures. The Company's deferred compensation plan assets consist primarily of mutual funds. See note "14. Employee Benefit Plans" for additional information about our deferred compensation plan. The Company performs certain procedures to corroborate the fair value of its holdings, including comparing prices obtained from service providers to prices obtained from other reliable sources.

The Company reassesses the fair value of contingent consideration to be settled in cash related to acquisitions on a quarterly basis using the income approach. This is a Level 3 measurement. Significant assumptions used in the measurement include probabilities of achieving the remaining milestones and the discount rates, which depend on the milestone risk profiles. Due to changes in the estimated payments and a shorter discounting period, the fair value of the contingent consideration

liabilities changed, resulting in a $2.0 million expense recorded in acquisition related expense (gain), net in the consolidated statements of income during the year ended December 30, 2012.

Changes in estimated fair value of contingent consideration liabilities from January 3, 2010 through December 30, 2012 are as follows (in thousands):

	Contingent Consideration Liability (Level 3 Measurement)
Balance as of January 3, 2010	$ —
Acquisition of Helixis	14,114
Gain recorded in acquisition related expense (gain), net	(10,376)
Balance as of January 2, 2011	$ 3,738
Acquisition of Epicentre	7,400
Gain recorded in acquisition related expense (gain), net	(4,500)
Balance as of January 1, 2012	$ 6,638
Acquisition of BlueGnome	7,500
Expense recorded in acquisition related expense (gain), net	1,975
Cash payments	(3,594)
Balance as of December 30, 2012	$ 12,519

7. Convertible Senior Notes

0.25% Convertible Senior Notes due 2016

In 2011, the Company issued $920.0 million aggregate principal amount of 0.25% convertible senior notes due 2016 (2016 Notes) in an offering conducted in accordance with Rule 144A under the Securities Act of 1933, as amended. The 2016 Notes were issued at 98.25% of par value. Debt issuance costs of approximately $0.4 million were primarily comprised of legal, accounting, and other professional fees, the majority of which were recorded in other noncurrent assets and are being amortized to interest expense over the five-year term of the 2016 Notes.

The 2016 Notes will be convertible into cash, shares of common stock, or a combination of cash and shares of common stock, at the Company's election, based on an initial conversion rate, subject to adjustment, of 11.9687 shares per $1,000 principal amount of the 2016 Notes (which represents an initial conversion price of approximately $83.55 per share), only in the following circumstances and to the following extent: (1) during the five business-day period after any 10 consecutive trading day period (the "measurement period") in which the trading price per 2016 Note for each day of such measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such day; (2) during any calendar quarter (and only during that quarter) after the calendar quarter ending March 31, 2011, if the last reported sale price of the Company's common stock for 20 or more trading days in the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the applicable conversion price in effect on the last trading day of the immediately preceding calendar quarter; (3) upon the occurrence of specified events described in the indenture for the 2016 Notes; and (4) at any time on or after December 15, 2015 through the second scheduled trading day immediately preceding the maturity date.

As noted in the indenture for the 2016 Notes, it is the Company's intent and policy to settle conversions through combination settlement, which essentially involves repayment of an amount of cash equal to the "principal portion" and delivery of the "share amount" in excess of the conversion value over the principal portion in shares of common stock. In general, for each $1,000 in principal, the "principal portion" of cash upon settlement is defined as the lesser of $1,000, and the conversion value during the 20-day observation period as described in the indenture for the 2016 Notes. The conversion value is the sum of the daily conversion value which is the product of the effective conversion rate divided by 20 days and the daily volume weighted average price ("VWAP") of the Company's common stock. The "share amount" is the cumulative "daily share amount" during the observation period, which is calculated by dividing the daily VWAP into the difference between the daily conversion value (i.e., conversion rate x daily VWAP) and $1,000.

The Company pays 0.25% interest per annum on the principal amount of the 2016 Notes semiannually in arrears in cash on March 15 and September 15 of each year. The Company paid $2.3 million in interest payments during the year ended December 30, 2012. The 2016 Notes mature on March 15, 2016. If a designated event, as defined in the indenture for the 2016 Notes, such as an acquisition, merger, or liquidation, occurs prior to the maturity date, subject to certain limitations, holders of the 2016 Notes may require the Company to repurchase all or a portion of their 2016 Notes for cash at a repurchase price equal to 100% of the principal amount of the 2016 Notes to be repurchased, plus any accrued and unpaid interest to, but excluding, the repurchase date.

The Company accounts separately for the liability and equity components of the 2016 Notes in accordance with authoritative guidance for convertible debt instruments that may be settled in cash upon conversion. The guidance requires the carrying amount of the liability component to be estimated by measuring the fair value of a similar liability that does not have an associated conversion feature. Because the Company has no outstanding non-convertible public debt, the Company determined that senior, unsecured corporate bonds traded on the market represent a similar liability to the convertible senior notes without the conversion option. Based on market data available for publicly traded, senior, unsecured corporate bonds issued by companies in the same industry and with similar maturity, the Company estimated the implied interest rate of its 2016 Notes to be 4.5%, assuming no conversion option. Assumptions used in the estimate represent what market participants would use in pricing the liability component, including market interest rates, credit standing, and yield curves, all of which are defined as Level 2 observable inputs. The estimated implied interest rate was applied to the 2016 Notes, which resulted in a fair value of the liability component of $748.5 million upon issuance, calculated as the present value of implied future payments based on the $920.0 million aggregate principal amount. The $155.4 million difference between the cash proceeds of $903.9 million and the estimated fair value of the liability component was recorded in additional paid-in capital as the 2016 Notes are not considered currently redeemable at the balance sheet date.

If the 2016 Notes were converted as of December 30, 2012, the if-converted value would not exceed the principal amount. As a policy election under applicable guidance related to the calculation of diluted net income per share, the Company elected the combination settlement method as its stated settlement policy and applied the treasury stock method. The 2016 Notes had an anti-dilutive effect for the years ended December 30, 2012 and January 1, 2012.

0.625% Convertible Senior Notes due 2014

In 2007, the Company issued $400.0 million principal amount of 0.625% convertible senior notes due 2014 (2014 Notes). The Company pays 0.625% interest per annum on the principal amount of the 2014 Notes, payable semi-annually in arrears in cash on February 15 and August 15 of each year. The 2014 Notes mature on February 15, 2014. The effective interest rate of the liability component was estimated to be 8.3%.

The Company entered into hedge transactions concurrently with the issuance of the 2014 Notes under which the Company is entitled to purchase up to approximately 18,322,000 shares of the Company's common stock at a strike price of approximately $21.83 per share, subject to adjustment. The convertible note hedge transactions had the effect of reducing dilution to the Company's stockholders upon conversion of the 2014 Notes. Also concurrently with the issuance of the 2014 Notes, the Company sold to the hedge counterparties warrants exercisable, on a cashless basis, for up to approximately 18,322,000 shares of the Company's common stock at a strike price of $31.435 per share, subject to adjustment. The proceeds from these warrants partially offset the cost to the Company of the convertible note hedge transactions.

The 2014 Notes became convertible into cash and shares of the Company's common stock in various prior periods and became convertible again from April 1, 2012 through, and including, December 30, 2012. There were no conversions of the 2014 Notes during the year ended December 30, 2012. During the year ended January 1, 2012, the principal amount of all 2014 Notes converted was repaid with cash and the excess of the conversion value over the principal amount was paid in shares of common stock. The equity dilution resulting from the issuance of common stock related to the conversion of the 2014 Notes was offset by repurchase of the same amount of shares under the convertible note hedge transactions, which were automatically exercised in accordance with their terms at the time of each such conversion. The balance of the convertible note hedge transactions with respect to approximately $40.1 million principal amount of the 2014 Notes (which are convertible into up to 1,838,000 shares of the Company's common stock) remained in place as of December 30, 2012. The warrants were not affected by the early conversions of the 2014 Notes and, as a result, warrants covering up to approximately 18,322,000 shares of common stock remained outstanding as of December 30, 2012.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

As a result of the conversions during the year ended January 1, 2012, the Company recorded losses on extinguishment of debt calculated as the difference between the estimated fair value of the debt and the carrying value of the notes as of the settlement dates. To measure the fair value of the converted notes as of the settlement dates, the applicable interest rates were estimated using Level 2 observable inputs and applied to the converted notes using the same methodology as in the issuance date valuation. If the 2014 Notes were converted as of December 30, 2012, the if-converted value would exceed the principal amount by $60.0 million.

The following table summarizes information about the equity and liability components of the 2014 and 2016 Notes (dollars in thousands). The fair values of the respective notes outstanding were measured based on quoted market prices.

	December 30, 2012		January 1, 2012	
	2016 Notes	2014 Notes	2016 Notes	2014 Notes
Principal amount of convertible notes outstanding	$ 920,000	$ 40,125	$ 920,000	$ 40,125
Unamortized discount of liability component	(114,594)	(3,158)	(147,034)	(5,722)
Net carrying amount of liability component	805,406	36,967	772,966	34,403
Less: current portion	—	(36,967)	—	—
Long-term debt	$ 805,406	$ —	$ 772,966	$ 34,403
Conversion option subject to cash settlement	$ —	$ 3,158	$ —	$ 5,722
Carrying value of equity component, net of issuance costs	$ 155,366	$ 111,470	$ 155,366	$ 114,035
Fair value of outstanding notes	$ 892,446	$ 101,470	$ 725,632	$ 60,122
Remaining amortization period of discount on the liability component	3.2 years	1.1 years	4.2 years	2.1 years

Contractual coupon interest expense and accretion of discount on the liability component recorded for the convertible senior notes were as follows (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Contractual coupon interest expense	$ 2,472	$ 2,285	$ 2,390
Accretion of discount on the liability component	$ 35,004	$ 32,173	$ 21,407

8. Commitments

Operating Leases

The Company leases office and manufacturing facilities under various noncancellable operating lease agreements. Facility leases generally provide for periodic rent increases, and many contain escalation clauses and renewal options. Certain leases require the Company to pay property taxes and routine maintenance. The Company is headquartered in San Diego, California and leases facilities in San Diego, California; Hayward, California; Fairfax, Virginia; Madison, Wisconsin; the United Kingdom; the Netherlands; Japan; Singapore; Australia; Brazil; Canada; and China.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Annual future minimum payments under these operating leases as of December 30, 2012 were as follows (in thousands):

2013	$	27,676
2014		23,970
2015		23,197
2016		23,416
2017		23,860
Thereafter		393,088
Total	$	515,207

Rent expenses were $21.4 million, $17.4 million, and $14.7 million for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively.

The Company recorded facility exit obligations upon vacating its former headquarters during the years ended December 30, 2012 and January 1, 2012. Changes in the facility exit obligation from January 1, 2012 through December 30, 2012 are as follows (in thousands):

Balance as of January 1, 2012:	$	25,049
Additional facility exit obligation recorded		24,878
Accretion of interest expense		2,129
Cash payments		(6,704)
Balance as of December 30, 2012	$	45,352

Warranties

Changes in the Company's reserve for product warranties from January 3, 2010 through December 30, 2012 are as follows (in thousands):

Balance as of January 3, 2010	$	10,215
Additions charged to cost of revenue		25,146
Repairs and replacements		(18,600)
Balance as of January 2, 2011		16,761
Additions charged to cost of revenue		17,913
Repairs and replacements		(22,708)
Balance as of January 1, 2012		11,966
Additions charged to cost of revenue		17,279
Repairs and replacements		(19,109)
Balance as of December 30, 2012	$	10,136

ILLUMINA, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

9. Share-based Compensation Expense

Total share-based compensation expense for all stock awards consists of the following (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Cost of product revenue	$ 7,575	$ 6,951	$ 5,378
Cost of service and other revenue	461	695	470
Research and development	30,879	32,105	25,428
Selling, general and administrative	55,409	52,341	40,369
Share-based compensation expense before taxes	94,324	92,092	71,645
Related income tax benefits	(30,759)	(32,168)	(25,231)
Share-based compensation expense, net of taxes	$ 63,565	$ 59,924	$ 46,414

The assumptions used for the specified reporting periods and the resulting estimates of weighted-average fair value per share of options granted and for stock purchased under the ESPP during those periods are as follows:

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Stock options granted:			
Risk-free interest rate	0.56 - 0.93%	0.85 - 2.23%	2.05 - 2.73%
Expected volatility	41 - 48%	41 - 53%	46 - 48%
Expected term	4.0 - 6.6 years	4.7 - 5.5 years	6.0 years
Expected dividends	—	—	—
Weighted average fair value per share	$ 15.47	$ 27.47	$ 18.82
Stock purchased under the ESPP:			
Risk-free interest rate	0.09 - 0.17%	0.16 - 0.30%	0.17 - 0.48%
Expected volatility	33 - 64%	43 - 48%	46 - 48%
Expected term	0.5 - 1.0 year	0.5 - 1.0 year	0.5 - 1.0 year
Expected dividends	—	—	—
Weighted average fair value per share	$ 16.45	$ 20.08	$ 11.10

As of December 30, 2012, approximately $177.8 million of total unrecognized compensation cost related to stock options, restricted stock units, and ESPP shares issued to date is expected to be recognized over a weighted-average period of approximately 2.3 years.

10. Stockholders' Equity

The Company's 2005 Stock and Incentive Plan (the 2005 Stock Plan), 2005 Solexa Equity Incentive Plan (the 2005 Solexa Equity Plan), and the New Hire Stock and Incentive Plan allow for the issuance of stock options, restricted stock units and awards, and performance stock units. As of December 30, 2012, approximately 3,065,000 shares remained available for future grants under the 2005 Stock Plan and the 2005 Solexa Equity Plan. There is no set number of shares reserved for issuance under the New Hire Stock and Incentive Plan.

Stock Options

Stock options granted at the time of hire primarily vest over a four or five-year period, with 20% or 25% of options vesting on the first anniversary of the grant date and the remaining options vesting monthly over the remaining vesting period. Stock options granted subsequent to hiring primarily vest monthly over a four or five-year period. Each grant of options has a

maximum term of ten years, measured from the applicable grant date, subject to earlier termination if the optionee's service ceases. Vesting in all cases is subject to the individual's continued service through the vesting date. The Company satisfies option exercises through the issuance of new shares.

The Company's stock option activity under all stock option plans from January 3, 2010 through December 30, 2012 is as follows:

	Options (in thousands)	Weighted-Average Exercise Price
Outstanding at January 3, 2010	16,089	$ 18.59
Granted	2,045	39.11
Exercised	(5,541)	16.65
Cancelled	(711)	21.76
Outstanding at January 2, 2011	11,882	22.83
Granted	1,399	64.98
Exercised	(2,784)	17.98
Cancelled	(119)	33.49
Outstanding at January 1, 2012	10,378	29.69
Granted	251	40.79
Exercised	(2,071)	20.34
Cancelled	(207)	39.18
Outstanding at December 30, 2012	8,351	$ 32.10

At December 30, 2012, outstanding options to purchase approximately 6,725,000 shares were exercisable with a weighted average per share exercise price of $28.49. The weighted average remaining life of options outstanding and exercisable is 5.5 years and 5.0 years, respectively, as of December 30, 2012.

The aggregate intrinsic value of options outstanding and options exercisable as of December 30, 2012 was $207.0 million and $185.9 million, respectively. Aggregate intrinsic value represents the product of the number of options outstanding multiplied by the difference between the Company's closing stock price per share on the last trading day of the fiscal period, which was $54.75 as of December 28, 2012, and the exercise price. Total intrinsic value of options exercised was $60.6 million, $136.5 million, and $156.9 million for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively. Total fair value of options vested was $31.9 million, $49.5 million, and $47.3 million for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively.

Restricted Stock

The Company issues restricted stock units (RSUs) and restricted stock awards (RSAs). The Company grants RSUs pursuant to its 2005 Stock and Incentive Plan. RSUs are share awards that, upon vesting, will deliver to the holder shares of the Company's common stock. For grants to new hires prior to July 2011 and for grants to existing employees, RSUs generally vest 15% on the first anniversary of the grant date, 20% on the second anniversary of the grant date, 30% on the third anniversary of the grant date, and 35% on the fourth anniversary of the grant date. For grants to new hires subsequent to July 2011, RSUs generally vest over a four-year period with equal vesting on anniversaries of the grant date. The Company satisfies RSU vesting through the issuance of new shares. The Company also issues RSAs that are released based on service related vesting conditions. RSAs may be issued from the Company's treasury stock or granted pursuant to the Company's 2005 Stock and Incentive Plan.

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A summary of the Company's restricted stock activity and related information from January 3, 2010 through December 30, 2012 is as follows:

	Restricted Stock (in thousands)	Weighted Average Grant-Date Fair Value per Share
Outstanding at January 3, 2010	2,509	$ 32.45
Awarded	1,353	50.74
Vested	(510)	32.10
Cancelled	(243)	33.36
Outstanding at January 2, 2011	3,109	40.39
Awarded	1,780	45.10
Vested	(827)	36.47
Cancelled	(356)	42.15
Outstanding at January 1, 2012	3,706	43.36
Awarded	1,952	48.42
Vested	(1,139)	40.33
Cancelled	(394)	45.05
Outstanding at December 30, 2012	4,125	$ 46.43

Based on the closing price per share of the Company's common stock of $54.75 and $30.48 on December 28, 2012 and December 30, 2011, respectively, the total pre-tax intrinsic value of all outstanding restricted stock as of December 30, 2012 and January 1, 2012 was $225.8 million and $112.9 million, respectively. Total fair value of restricted stock vested was $45.9 million, $30.2 million, and $16.4 million for the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively.

Performance Stock Units

In March 2012, the Company's Compensation Committee of the Company's Board of Directors approved changes to the Company's long-term equity incentive program for executive officers and approved the issuance of certain performance stock units at the end of a three-year performance period. The number of shares issuable will range from 50% and 150% of the shares approved in the award based on the Company's performance relative to specified earnings per share targets at the end of the three-year performance period. A total of 587,000 shares were outstanding as of December 30, 2012 with a weighted-average grant-date fair value of $49.64, which represents the fair market value of one share of the Company's common stock on the grant date.

Employee Stock Purchase Plan

A total of 15,467,000 shares of the Company's common stock have been reserved for issuance under its 2000 Employee Stock Purchase Plan, or ESPP. The ESPP permits eligible employees to purchase common stock at a discount, but only through payroll deductions, during defined offering periods. The price at which stock is purchased under the ESPP is equal to 85% of the fair market value of the common stock on the first or last day of the offering period, whichever is lower. The initial offering period commenced in July 2000.

The ESPP provides for annual increases of shares available for issuance by the lesser of 3% of the number of outstanding shares of the Company's common stock on the last day of the immediately preceding fiscal year, 3,000,000 shares, or such lesser amount as determined by the Company's board of directors. Shares totaling approximately 328,000, 328,000, and 373,000 were issued under the ESPP during the years ended December 30, 2012, January 1, 2012, and January 2, 2011, respectively. As of December 30, 2012 and January 1, 2012, there were approximately 15,406,000 shares and 15,734,000 shares available for issuance under the ESPP, respectively.

Warrants

As of December 30, 2012, warrants exercisable, on a cashless basis, for up to approximately 18,322,000 shares of common stock were outstanding with an exercise price of $31.435. These warrants were sold to counterparties to the Company's convertible note hedge transactions in connection with the offering of the Company's 2014 Notes, with the proceeds of such warrants used by the Company to partially offset the cost of such hedging transactions. All outstanding warrants expire in equal installments during the 40 consecutive scheduled trading days beginning on May 16, 2014.

During the year ended January 1, 2012, the remaining warrants assumed by the Company in a prior acquisition to purchase approximately 505,000 shares of the Company's common stock were exercised, resulting in cash proceeds to the Company of approximately $5.5 million.

Share Repurchases

On April 18, 2012, the Company's Board of Directors authorized a $250 million stock repurchase program to be effected via a combination of Rule 10b5-1 and discretionary share repurchase programs. During the year ended December 30, 2012, the Company repurchased approximately 1,860,000 shares for $82.5 million.

In August 2011, the Company's board of directors authorized a $100 million discretionary repurchase program. During the year ended January 1, 2012, the Company utilized the authorized amount in its entirety and repurchased approximately 1,894,000 shares under this program.

Concurrently with the issuance of the Company's 2016 Notes in 2011, approximately 4,891,000 shares were repurchased for $314.3 million.

In July 2010, the Company's board of directors authorized a $200 million stock repurchase program, with $100 million allocated to repurchasing Company common stock under a 10b5-1 plan over a twelve month period and $100 million allocated to repurchasing Company common stock at management's discretion during open trading windows. During the year ended January 1, 2012, the Company repurchased approximately 2,438,000 shares for $156.0 million. The authorized repurchase amount had been utilized completely as of January 1, 2012.

Stockholder Rights Plan

In connection with the unsolicited tender offer by Roche (refer to note "12. Unsolicited Tender Offer"), on January 25, 2012, the Company's Board of Directors declared a dividend of one preferred share purchase right (Right) for each outstanding share of the Company's common stock. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of the Company's Series A Junior Participating Preferred Stock, par value $0.01 per share (Preferred Shares), at a price of $275.00 per one thousandth of a Preferred Share, subject to adjustment. The Rights will not be exercisable until such time, if ever, that the Board of Directors determines to eliminate its deferral of the date on which separate Rights certificates are issued and the Rights trade separately from the Company's common stock (Distribution Date). If a person or group (triggering party) acquires 15% or more of the Company's outstanding common stock, each Right will entitle holders other than the triggering party to purchase, at the exercise price of the Right, a number of shares of common stock having a market value of two times the exercise price of the Right. If the Company is acquired in a merger or other business combination transaction after a person acquires 15% or more of the Company's common stock, each Right will entitle holders other than the triggering party to purchase, at the Right's then-current exercise price, a number of common shares of the acquiring company that at the time of such transaction have a market value of two times the exercise price of the Right. The Board of Directors will be entitled to redeem the Rights at a price of $0.001 per Right at any time before the Distribution Date. The Board of Directors will also be entitled to exchange the Rights at an exchange ratio per Right of one share of common stock after any person acquires beneficial ownership of 15% or more of the Company's outstanding common stock, and prior to the acquisition of 50% or more of the Company's outstanding common stock. The Rights will expire on January 26, 2017.

On May 3, 2001, the board of directors of the Company declared a dividend of one preferred share purchase right (Right) for each outstanding share of common stock of the Company. The dividend was payable on May 14, 2001 to the stockholders of record on that date. Each Right entitles the registered holder to purchase from the Company one unit consisting of one thousandth of a share of its Series A Junior Participating Preferred Stock at a price of $100 per unit. The Rights will be exercisable if a person or group hereafter acquires beneficial ownership of 15% or more of the outstanding common stock of the Company or announces an offer for 15% or more of the outstanding common stock. If a person or group acquires 15% or

more of the outstanding common stock of the Company, each Right will entitle its holder to purchase, at the exercise price of the Right, a number of shares of common stock having a market value of two times the exercise price of the Right. If the Company is acquired in a merger or other business combination transaction after a person acquires 15% or more of the Company's common stock, each Right will entitle its holder to purchase, at the Right's then-current exercise price, a number of common shares of the acquiring company which at the time of such transaction have a market value of two times the exercise price of the Right. The board of directors will be entitled to redeem the Rights at a price of $0.01 per Right at any time before any such person acquires beneficial ownership of 15% or more of the outstanding common stock. The Rights expired on May 14, 2011.

11. Legal Proceedings

The Company is involved in various lawsuits and claims arising in the ordinary course of business, including actions with respect to intellectual property, employment, and contractual matters. In connection with these matters, the Company assesses, on a regular basis, the probability and range of possible loss based on the developments in these matters. A liability is recorded in the financial statements if it is believed to be probable that a loss has been incurred and the amount of the loss can be reasonably estimated. During the year ended December 30, 2012, the Company recorded a legal contingency loss of $3.0 million in aggregate within cost of product revenue. Because litigation is inherently unpredictable and unfavorable resolutions could occur, assessing contingencies is highly subjective and requires judgments about future events. The Company regularly reviews its outstanding legal matters to determine the adequacy of the liabilities accrued and related disclosures. The amount of ultimate loss may differ from these estimates. Each matter presents its own unique circumstances, and prior litigation does not necessarily provide a reliable basis on which to predict the outcome, or range of outcomes, in any individual proceeding. Because of the uncertainties related to the occurrence, amount, and range of loss on any pending litigation or claim, management is currently unable to predict their ultimate outcome, and, with respect to any pending litigation or claim where no liability has been accrued, to make a meaningful estimate of the reasonably possible loss or range of loss that could result from an unfavorable outcome. In the event that opposing litigants in outstanding litigations or claims ultimately succeed at trial and any subsequent appeals on their claims, any potential loss or charges in excess of any established accruals, individually or in the aggregate, could have a material adverse effect on the Company's business, financial condition, results of operations, and/or cash flows in the period in which the unfavorable outcome occurs or becomes probable, and potentially in future periods.

On November 24, 2010, Syntrix Biosystems, Inc. filed suit against the Company in the United States District Court for the Western District of Washington at Tacoma (Case No. C10-5870-BHS) alleging that the Company willfully infringed U.S. Patent No. 6,951,682 by selling its BeadChip array products, and that the Company misappropriated Syntrix's trade secrets. Fact and expert discovery is complete in the case. In November and December 2012, the Company filed motions for summary judgment that the patent is not infringed and is invalid, and that Syntrix's trade secrets claims are barred by various statutes of limitation. Syntrix filed a motion for summary judgment that the patent is valid. On January 30, 2013, the court granted the Company's motion for summary judgment on Syntrix's trade secret claims, and dismissed those claims from the case. The court denied Syntrix's motion for summary judgment on validity, and denied the Company's motion for summary judgment for non-infringement and invalidity. A trial is scheduled to begin on February 26, 2013.

The Company has thoroughly investigated Syntrix's claims and believes the claims are without merit. While the Company believes there is no legal basis for its alleged liability, the Company cannot estimate the possible loss or range of possible loss as there are significant legal and factual issues to be resolved. For example, each party has filed motions seeking to exclude portions of the other party's expert testimony and to preclude the other party from introducing certain other evidence at trial. In addition to post-trial briefing, the parties would likely engage in appellate motion practice, the result of which is also unpredictable and could significantly affect the outcome of the case.

12. Unsolicited Tender Offer

On January 27, 2012, CKH Acquisition Corporation and Roche Holding Ltd. (together, "Roche") commenced an unsolicited tender offer (Offer) to purchase all outstanding shares of the Company's common stock for $44.50 per share. As more fully described in the Company's Solicitation/Recommendation on Schedule 14D-9 filed with the SEC on February 7, 2012 in response to the Offer, the Company's Board of Directors unanimously recommended that the Company's stockholders reject the Offer and not tender their shares to Roche for purchase.

On March 28, 2012, Roche revised the Offer to purchase all outstanding shares of the Company's common stock for $51.00 per share. As more fully described in the Amendment No. 11 to Solicitation/Recommendation on Schedule 14D-9 filed

with the SEC on April 2, 2012 in response to the revised Offer, the Company's Board of Directors unanimously recommended that the Company's stockholders reject the Roche offer and not tender their shares to Roche for purchase. The Offer expired, without being extended, on April 20, 2012.

During the year ended December 30, 2012, the Company recorded $23.1 million in expenses in relation to the Offer, such expenses consisting primarily of legal, advisory, proxy solicitation, and other professional services fees.

13. Income Taxes

The income (loss) before income taxes summarized by region is as follows (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
United States	$ 102,296	$ (7,100)	$ 109,068
Foreign	120,312	140,145	76,311
Total income before income taxes	$ 222,608	$ 133,045	$ 185,379

The provision for income taxes consists of the following (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Current:			
Federal	$ 57,285	$ 43,161	$ 39,476
State	10,121	3,958	8,607
Foreign	31,504	24,154	6,330
Total current provision	98,910	71,273	54,413
Deferred:			
Federal	(7,724)	(22,738)	6,557
State	(7,708)	(8,050)	(6,808)
Foreign	(12,124)	5,932	6,326
Total deferred (benefit) provision	(27,556)	(24,856)	6,075
Total tax provision	$ 71,354	$ 46,417	$ 60,488

The provision for income taxes reconciles to the amount computed by applying the federal statutory rate to income before taxes as follows (in thousands):

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	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
Tax at federal statutory rate	$ 77,913	$ 46,566	$ 64,881
State, net of federal benefit	4,056	(49)	6,231
Research and other credits	(2,766)	(6,774)	(5,859)
Acquired in-process research & development	137	1,989	517
Change in valuation allowance	(37)	(688)	(9,497)
Permanent differences	2,380	1,668	1,397
Change in fair value of contingent consideration	—	(1,311)	(3,632)
Impact of foreign operations	(10,644)	5,579	7,597
Other	315	(563)	(1,147)
Total tax provision	$ 71,354	$ 46,417	$ 60,488

Significant components of the Company's deferred tax assets and liabilities are as follows (in thousands):

	December 30, 2012	January 1, 2012
Deferred tax assets:		
Net operating losses	$ 2,564	$ 4,981
Tax credits	16,447	16,647
Other accruals and reserves	47,306	22,411
Stock compensation	39,175	33,811
Inventory adjustments	8,977	16,469
Impairment of cost-method investment	1,406	4,972
Other amortization	5,195	4,521
Other	13,469	8,861
Total gross deferred tax assets	134,539	112,673
Valuation allowance on deferred tax assets	(1,756)	(1,799)
Total deferred tax assets	132,783	110,874
Deferred tax liabilities:		
Purchased intangible amortization	(20,116)	(19,760)
Convertible debt	(38,910)	(49,404)
Property and equipment	(10,867)	(4,369)
Other	(6,682)	(7,953)
Total deferred tax liabilities	(76,575)	(81,486)
Net deferred tax assets	$ 56,208	$ 29,388

A valuation allowance is established when it is more likely than not the future realization of all or some of the deferred tax assets will not be achieved. The evaluation of the need for a valuation allowance is performed on a jurisdiction-by-jurisdiction basis, and includes a review of all available positive and negative evidence. Based on the available evidence as of December 30, 2012, the Company was not able to conclude it is more likely than not certain U.S. deferred tax assets will be realized. Therefore, the Company recorded a valuation allowance of $1.8 million against certain U.S. deferred tax assets.

As of December 30, 2012, the Company had net operating loss carryforwards for federal and state tax purposes of $16.8 million and $117.8 million, respectively, which will begin to expire in 2020 and 2015, respectively. In addition, the Company also had state research and development tax credit carryforwards of $39.7 million, which will begin to expire in 2019.

Pursuant to Section 382 and 383 of the Internal Revenue Code, utilization of the Company's net operating loss and credits may be subject to annual limitations in the event of any significant future changes in its ownership structure. These annual limitations may result in the expiration of net operating losses and credits prior to utilization. The deferred tax assets as of December 30, 2012 are net of any previous limitations due to Section 382 and 383.

The Company recognizes excess tax benefits associated with share-based compensation to stockholders' equity only when realized. When assessing whether excess tax benefits relating to share-based compensation have been realized, the Company follows the with-and-without approach excluding any indirect effects of the excess tax deductions. Under this approach, excess tax benefits related to share-based compensation are not deemed to be realized until after the utilization of all other tax benefits available to the Company. During the year ended December 30, 2012, the Company realized $17.0 million of such excess tax benefits, and accordingly recorded a corresponding credit to additional paid in capital. As of December 30, 2012, the Company has $9.8 million of unrealized excess tax benefits associated with share-based compensation. These tax benefits will be accounted for as a credit to additional paid-in capital, if and when realized, rather than a reduction of the provision for income taxes.

The Company's manufacturing operations in Singapore operate under various tax holidays and incentives that begin to expire in 2018. For the year ended December 30, 2012, these tax holidays and incentives resulted in an approximate $10.2 million decrease to the provision for income taxes and an increase to net income per diluted share of $0.08.

It is the Company's intention to indefinitely reinvest all current and future foreign earnings in order to ensure sufficient working capital and expand existing operations outside the United States. Accordingly, residual U.S. income taxes have not been provided on $185.6 million of undistributed earnings of foreign subsidiaries as of December 30, 2012. In the event the Company was required to repatriate funds from outside of the United States, such repatriation would be subject to local laws, customs, and tax consequences.

The following table summarizes the gross amount of the Company's uncertain tax positions (in thousands):

	December 30, 2012	January 1, 2012	January 2, 2011
Balance at beginning of year	$ 28,396	$ 22,729	$ 11,760
Increases related to prior year tax positions	2,573	875	5,066
Decreases related to prior year tax positions	(69)	(382)	—
Increases related to current year tax positions	6,685	5,174	5,903
Balance at end of year	$ 37,585	$ 28,396	$ 22,729

Included in the balance of uncertain tax positions as of December 30, 2012, and January 1, 2012 are $29.9 million and $23.4 million, respectively, of net unrecognized tax benefits that, if recognized, would reduce the Company's effective income tax rate in future periods.

The Company does not expect its uncertain tax positions to change significantly over the next 12 months. Any interest and penalties related to uncertain tax positions are reflected in the provision for income taxes. The Company recognized expenses of $0.8 million and $1.1 million related to potential interest and penalties on uncertain tax positions during the years ended December 30, 2012 and January 1, 2012, respectively. A minimal amount was recognized in 2010 for potential interest and penalties on uncertain tax positions. The Company recorded a liability for potential interest and penalties of $2.1 million and $1.2 million as of December 30, 2012 and January 1, 2012, respectively. Tax years 1997 to 2012 remain subject to future examination by the major tax jurisdictions in which the Company is subject to tax.

14. Employee Benefit Plans

Retirement Plan

The Company has a 401(k) savings plan covering substantially all of its employees in the United States. Company contributions to the plan are discretionary. During the years ended December 30, 2012, January 1, 2012, and January 2, 2011, the Company made matching contributions of $5.5 million, $5.3 million, and $4.2 million, respectively.

Deferred Compensation Plan

The Company adopted the Illumina, Inc. Deferred Compensation Plan (the Plan) that became effective January 1, 2008. Eligible participants, which include the Company's senior level employees and members of the board of directors, can contribute up to 80% of their base salary and 100% of all other forms of compensation into the Plan, including bonus, equity awards, commission, and director fees. The Company has agreed to credit the participants' contributions with earnings that reflect the performance of certain independent investment funds. On a discretionary basis, the Company may also make employer contributions to participant accounts in any amount determined by the Company. The vesting schedules of employer contributions are at the sole discretion of the Compensation Committee. However, all employer contributions shall become 100% vested upon the occurrence of the participant's disability, death or retirement or a change in control of the Company. The benefits under this plan are unsecured. Participants are generally eligible to receive payment of their vested benefit at the end of their elected deferral period or after termination of their employment with the Company for any reason or at a later date to comply with the restrictions of Section 409A. As of December 30, 2012, no employer contributions were made to the Plan.

In January 2008, the Company also established a rabbi trust for the benefit of the participants under the Plan. In accordance with authoritative guidance related to consolidation of variable interest entities and accounting for deferred compensation arrangements where amounts earned are held in a rabbi trust and invested, the Company has included the assets of the rabbi trust in its consolidated balance sheet since the trust's inception. As of December 30, 2012 and January 1, 2012, the assets of the trust were $13.6 million and $10.8 million, respectively, and liabilities of the Company were $12.1 million and $9.0 million, respectively. The assets and liabilities are classified as other assets and accrued liabilities, respectively, on the Company's consolidated balance sheets. Changes in the values of the assets held by the rabbi trust are recorded in other (expense) income, net in the consolidated statement of income, and changes in the values of the deferred compensation liabilities are recorded in cost of sales or operating expenses.

15. Segment Information, Geographic Data, and Significant Customers

The Company is organized in two operating segments: Life Sciences and Diagnostics. Life Sciences operating segment includes all products and services related to the research market, namely the product lines based on the Company's sequencing, BeadArray, and real-time PCR technologies. The Diagnostics operating segment focuses on the emerging opportunity in molecular diagnostics. During all periods presented, the Diagnostics operating segment had limited activity. Accordingly, the Company's operating results for both units were reported on an aggregate basis as one reportable segment. The Company will begin reporting in two segments once revenues, operating profit or loss, or assets of the Diagnostics operating segment exceeds 10% of the consolidated amounts.

The Company had revenue in the following regions for the years ended December 30, 2012, January 1, 2012, and January 2, 2011 (in thousands):

	Years Ended		
	December 30, 2012	January 1, 2012	January 2, 2011
United States	$ 568,443	$ 528,723	$ 498,981
United Kingdom	81,678	67,578	60,521
Other European countries	209,726	210,393	163,062
Asia-Pacific	232,498	197,005	143,441
Other markets	56,171	51,836	36,736
Total	$ 1,148,516	$ 1,055,535	$ 902,741

Net revenues are attributable to geographic areas based on the region of destination.

The majority of our product sales consist of consumables and instruments. For the years ended December 30, 2012, January 1, 2012, and January 2, 2011, consumable sales represented 64%, 56%, and 56%, respectively, of total revenues and instrument sales comprised 27%, 35%, and 36%, respectively, of total revenues. The Company's customers include leading genomic research centers, academic institutions, government laboratories, and clinical research organizations, as well as pharmaceutical, biotechnology, agrigenomics, and consumer genomics companies, and in vitro fertilization clinics. The

Company had no customers that provided more than 10% of total revenue in the years ended December 30, 2012, January 1, 2012, and January 2, 2011.

Net long-lived assets exclude goodwill and other intangible assets since they are not allocated on a geographic basis. The Company had net long-lived assets consisting of property and equipment in the following regions as of December 30, 2012 and January 1, 2012 (in thousands):

	December 30, 2012	January 1, 2012
United States	$ 126,749	$ 94,624
United Kingdom	21,740	22,642
Singapore	12,504	14,673
Other countries	5,174	11,544
Total	$ 166,167	$ 143,483

16. Quarterly Financial Information (unaudited)

The following financial information reflects all normal recurring adjustments, except as noted below, which are, in the opinion of management, necessary for a fair statement of the results and cash flows of interim periods. All quarters for fiscal years 2012 and 2011 ended December 30, 2012 and January 1, 2012 were 13 weeks. Summarized quarterly data for fiscal years 2012 and 2011 are as follows (in thousands except per share data):

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2012:				
Total revenue	$ 272,770	$ 280,607	$ 285,874	$ 309,265
Gross profit	181,011	192,997	195,873	203,647
Net income	26,202	23,401	29,748	71,903
Net income per share, basic	0.21	0.19	0.24	0.58
Net income per share, diluted	0.20	0.18	0.22	0.53
2011:				
Total revenue	$ 282,515	$ 287,450	$ 235,499	$ 250,071
Gross profit	188,041	193,356	157,115	170,586
Net income	24,137	30,620	20,151	11,720
Net income per share, basic	0.19	0.25	0.17	0.10
Net income per share, diluted	0.16	0.22	0.15	0.09

17. Subsequent Event

On January 6, 2013, the Company entered into a definitive agreement to acquire Verinata Health, Inc. (Verinata), a leading provider of non-invasive tests for the early identification of fetal chromosomal abnormalities, for consideration of $350 million in cash and up to $100 million in milestone payments through 2015. In connection with the intended acquisition, the Company also agreed to provide bridge financing to Verinata for up to an aggregate amount of $45 million in exchange for the issuance of subordinated convertible promissory notes from Verinata. Any subordinated notes outstanding as of the consummation of the acquisition, net of Verinata's cash on hand, will reduce the total cash payments to be made by the Company at closing.

ITEM 9. *Changes In and Disagreements with Accountants on Accounting and Financial Disclosure.*

None.

ITEM 9A. ***Controls and Procedures.***

We design our internal controls to provide reasonable assurance that (1) our transactions are properly authorized; (2) our assets are safeguarded against unauthorized or improper use; and (3) our transactions are properly recorded and reported in conformity with U.S. generally accepted accounting principles. We also maintain internal controls and procedures to ensure that we comply with applicable laws and our established financial policies.

Based on management's evaluation (under the supervision and with the participation of our chief executive officer (CEO) and chief financial officer (CFO)), as of the end of the period covered by this report, our CEO and CFO concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act)), are effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

During the fourth quarter of 2012, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that materially affected or are reasonably likely to materially affect internal control over financial reporting.

An evaluation was also performed under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, of any change in our internal control over financial reporting that occurred during the fourth quarter of 2012 and that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. The evaluation did not identify any such change.

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Because of its inherent limitations, internal control over financial reporting may not prevent or detect all misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

We conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in Internal Control — Integrated Framework, our management concluded that our internal control over financial reporting was effective as of December 30, 2012. The effectiveness of our internal control over financial reporting as of December 30, 2012 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included herein.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of
Illumina, Inc.

We have audited Illumina, Inc.'s internal control over financial reporting as of December 30, 2012, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Illumina, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Illumina, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 30, 2012, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the accompanying consolidated balance sheets of Illumina, Inc. as of December 30, 2012 and January 1, 2012, and the related consolidated statements of income, comprehensive income, stockholders' equity, and cash flows for each of the three fiscal years in the period ended December 30, 2012 of Illumina, Inc. and our report dated February 15, 2013 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Diego, California
February 15, 2013

ITEM 9B. ***Other Information.***

None.

PART III

ITEM 10. ***Directors, Executive Officers, and Corporate Governance.***

(a) Identification of Directors. Information concerning our directors is incorporated by reference from the section entitled "Proposal One: Election of Directors," "Information About Directors," "Director Compensation," and "Board of Directors and Corporate Governance" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

(b) Identification of Executive Officers. Information concerning our executive officers is incorporated by reference from the section entitled "Executive Officers" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

(c) Compliance with Section 16(a) of the Exchange Act. Information concerning compliance with Section 16(a) of the Securities Exchange Act of 1934 is incorporated by reference from the section entitled "Section 16(a) Beneficial Ownership Reporting Compliance" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

(d) Information concerning the audit committee financial expert as defined by the SEC rules adopted pursuant to the Sarbanes-Oxley Act of 2002 is incorporated by reference from the section entitled "Board of Directors and Corporate Governance" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

Code of Ethics

We have adopted a code of ethics for our directors, officers, and employees, which is available on our website at www.illumina.com in the Corporate Governance portal of the Investor Relations section under "Company." A copy of the Code of Ethics is available in print free of charge to any stockholder who requests a copy. Interested parties may address a written request for a printed copy of the Code of Ethics to: Corporate Secretary, Illumina, Inc., 5200 Illumina Way, San Diego, California 92122. We intend to satisfy the disclosure requirement regarding any amendment to, or a waiver from, a provision of the Code of Ethics for our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, by posting such information on our website. The information on, or that can be accessed from, our website is not incorporated by reference into this report.

ITEM 11. ***Executive Compensation.***

Information concerning executive compensation is incorporated by reference from the sections entitled "Compensation Discussion and Analysis," "Director Compensation," and "Executive Compensation" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

ITEM 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.***

Information concerning the security ownership of certain beneficial owners and management and information covering securities authorized for issuance under equity compensation plans is incorporated by reference from the sections entitled "Stock Ownership of Principal Stockholders and Management," "Executive Compensation," and "Equity Compensation Plan Information" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

ITEM 13. ***Certain Relationships and Related Transactions, and Director Independence.***

Information concerning certain relationships and related transactions, and director independence is incorporated by reference from the sections entitled "Proposal One: Election of Directors," "Information About Directors," "Director Compensation," "Executive Compensation," and "Certain Relationships and Related Party Transactions" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

ITEM 14. ***Principal Accountant Fees and Services.***

Information concerning principal accountant fees and services is incorporated by reference from the sections entitled "Proposal Two: Ratification of Appointment of Independent Registered Public Accounting Firm" and "Independent Registered Public Accountants" to be contained in our definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the SEC no later than April 29, 2013.

PART IV

ITEM 15. ***Exhibits, Financial Statement Schedules.***

1. *Financial Statements:* See "Index to Consolidated Financial Statements" in Part II, Item 8 of this Form 10-K.

2. *Financial Statement Schedule:* See "Schedule II — Valuation and Qualifying Accounts and Reserves" in this section of this Form 10-K.

3. *Exhibits:* The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Form 10-K.

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

	Balance at Beginning of Period	Additions Charged to Expense/ Revenue(1)	Deductions(2)	Balance at End of Period
		(In thousands)		
Year ended December 30, 2012				
Allowance for doubtful accounts	$ 3,997	2,191	(1,908)	$ 4,280
Year ended January 1, 2012				
Allowance for doubtful accounts	$ 1,686	4,201	(1,890)	$ 3,997
Year ended January 2, 2011				
Allowance for doubtful accounts	$ 1,398	341	(53)	$ 1,686

(1) Additions to the allowance for doubtful accounts are charged to selling, general and administrative expense.

(2) Deductions for allowance for doubtful accounts are for accounts receivable written off.

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File Number	Exhibit	Filing Date	
2.1	Agreement and Plan of Merger by and among Illumina, Inc., TP Corporation, Verinata Health, Inc. and Shareholder Representative Services LLC (as the Stockholder Representative), dated as of January 6, 2013					X
3.1	Amended and Restated Certificate of Incorporation	8-K	000-30361	3.1	9/23/2008	
3.2	Amended and Restated Bylaws	8-K	000-30361	3.2	4/27/2010	
3.3	Certificate of Designations of Series A Junior Participating Preferred Stock, as filed with the Secretary of State of the State of Delaware on January 26, 2012	8-K	000-30361	3.1	1/26/2012	
4.1	Specimen Common Stock Certificate	S-1/A	333-33922	4.1	7/3/2000	
4.2	Rights Agreement, dated as of January 26, 2012, between Illumina, Inc. and Computershare Trust Company, N.A., as Rights Agent	8-K	000-30361	4.1	1/26/2012	
4.3	Indenture related to the 0.625% Convertible Senior Notes due 2014, dated as of February 16, 2007, between Illumina and The Bank of New York, as trustee	8-K	000-30361	4.1	2/16/2007	
4.4	Indenture related to the 0.25% Convertible Senior Notes due 2016, dated as of March 18, 2011, between Illumina and The Bank of New York Mellon Trust Company, N.A., as trustee	10-Q	000-30361	4.1	5/4/2011	
+10.1	Form of Indemnification Agreement between Illumina and each of its directors and executive officers	10-Q	000-30361	10.55	7/25/2008	
+10.2	Amended and Restated Change in Control Severance Agreement between Illumina and Jay T Flatley, dated October 22, 2008	10-K	000-30361	10.33	2/26/2009	
+10.3	Form of Change in Control Severance Agreement between Illumina and each of its executive officers	10-K	000-30361	10.34	2/26/2009	
+10.4	2000 Employee Stock Purchase Plan, as amended and restated through February 2, 2012	10-K	000-30361	10.4	2/24/2012	
+10.5	2005 Stock and Incentive Plan, as amended and restated through April 22, 2010	S-8	333-168393	4.5	7/29/2010	
+10.6	Form of Restricted Stock Unit Agreement for Non-Employee Directors under 2005 Stock and Incentive Plan	10-K	000-30361	10.6	2/24/2012	
+10.7	Form of Stock Option Agreement for Non-Employee Directors under 2005 Stock and Incentive Plan	10-K	000-30361	10.7	2/24/2012	
+10.8	Form of Restricted Stock Unit Agreement for Employees under 2005 Stock and Incentive Plan	10-K	000-30361	10.8	2/24/2012	

INDEX TO EXHIBITS — (Continued)

+10.9	Form of Stock Option Agreement for Employees under 2005 Stock and Incentive Plan	10-K	000-30361	10.9	2/24/2012
+10.10	New Hire Stock and Incentive Plan, as amended and restated through October 28, 2009	10-K	000-30361	10.7	2/26/2010
10.11	License Agreement, effective as of May 6, 1998, between Tufts University and Illumina	10-Q	000-30361	10.5	5/3/2007
+10.12	The Solexa Unapproved Company Share Option Plan	8-K	000-30361	99.3	11/26/2007
+10.13	The Solexa Share Option Plan for Consultants	8-K	000-30361	99.4	11/26/2007
+10.14	Solexa Limited Enterprise Management Incentive Plan	8-K	000-30361	99.5	11/26/2007
+10.15	Amended and Restated Solexa 2005 Equity Incentive Plan	10-K	000-30361	10.25	2/26/2009
+10.16	Amended and Restated Solexa 1992 Stock Option Plan	10-K	000-30361	10.26	2/26/2009
10.17	License Agreement, dated June 24, 2002, between Dade Behring Marburg GmbH and Illumina (with certain confidential portions omitted)	S-3/A	333-111496	10.23	3/2/2004
10.18	Non-exclusive License Agreement, dated January 24, 2002, between Amersham Biosciences Corp. and Illumina (with certain confidential portions omitted)	S-3/A	333-111496	10.24	3/2/2004
10.19	Amended and Restated Lease between BMR-9885 Towne Centre Drive LLC and Illumina for the 9885 Towne Centre Drive property, dated January 26, 2007	10-Q	000-30361	10.41	5/3/2007
10.20	Settlement and Cross License Agreement dated August 18, 2004 between Applera Corporation and Illumina (with certain confidential portions omitted)	10-Q	000-30361	10.27	11/12/2004
10.21	Collaboration Agreement, dated December 17, 2004, between Invitrogen Corporation and Illumina (with certain confidential portions omitted)	10-K	000-30361	10.28	3/8/2005
10.22	Joint Development and Licensing Agreement, dated May 15, 2006, between deCODE genetics, ehf. and Illumina (with certain confidential portions omitted)	10-Q	000-30361	10.32	8/2/2006
10.23	Lease between BMR-9885 Towne Centre Drive LLC and Illumina for the 9865 Towne Centre Drive property, dated January 26, 2007	10-Q	000-30361	10.42	5/3/2007
10.24	Settlement and Release Agreement between Affymetrix, Inc. and Illumina, dated January 9, 2008	10-K	000-30361	10.44	2/26/2008
10.25	Confirmation of Convertible Bond Hedge Transaction, dated February 12, 2007, by and between Illumina and Goldman, Sachs & Co.	8-K	000-30361	10.1	2/16/2007
10.26	Confirmation of Convertible Bond Hedge Transaction, dated February 12, 2007, by and between Illumina and Deutsche Bank AG London	8-K	000-30361	10.2	2/16/2007

INDEX TO EXHIBITS — (Continued)

10.27	Confirmation Issuer Warrant Transaction, dated February 12, 2007, by and between Illumina and Goldman, Sachs & Co.	8-K	000-30361	10.3	2/16/2007	
10.28	Confirmation Issuer Warrant Transaction, dated February 12, 2007, by and between Illumina and Deutsche Bank AG London	8-K	000-30361	10.4	2/16/2007	
10.29	Amendment to the Confirmation of Issuer Warrant Transaction, dated February 13, 2007, by and between Illumina and Goldman, Sachs & Co.	8-K	000-30361	10.5	2/16/2007	
10.30	Amendment to the Confirmation of Issuer Warrant Transaction, dated February 13, 2007, by and between Illumina and Deutsche Bank AG London	8-K	000-30361	10.6	2/16/2007	
10.31	Amended and Restated Lease Agreement, dated March 27, 2012, between ARE-SD Region No. 32, LLC and Illumina	10-Q	000-30361	10.1	5/3/2012	
+10.32	Deferred Compensation Plan, effective December 1, 2007	14D-9	005-60457	99(e)(6)	2/7/2012	
21.1	Subsidiaries of Illumina					X
23.1	Consent of Independent Registered Public Accounting Firm					X
24.1	Power of Attorney (included on the signature page)					X
31.1	Certification of Jay T. Flatley pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Marc A. Stapley pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1	Certification of Jay T. Flatley pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.2	Certification of Marc A. Stapley pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase					X
101.LAB	XBRL Taxonomy Extension Label Linkbase					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase					X

+ Management contract or corporate plan or arrangement

Supplemental Information

No Annual Report to stockholders or proxy materials has been sent to stockholders as of the date of this report. The Annual Report to stockholders and proxy material will be furnished to our stockholders subsequent to the filing of this Annual Report on Form 10-K and we will furnish such material to the SEC at that time.

SIGNATURES

Pursuant to the requirements of the Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 15, 2013.

ILLUMINA, INC.

By /s/ JAY T. FLATLEY

Jay T. Flatley
President and Chief Executive Officer

February 15, 2013

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Jay T. Flatley and Marc A. Stapley, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their, his, or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ JAY T. FLATLEY Jay T. Flatley	President, Chief Executive Officer and Director (Principal Executive Officer)	February 15, 2013
/s/ MARC A. STAPLEY Marc A. Stapley	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	February 15, 2013
/s/ MICHEL BOUCHARD Michel Bouchard	Vice President and Chief Accounting Officer (Principal Accounting Officer)	February 15, 2013
/s/ WILLIAM H. RASTETTER William H. Rastetter	Chairman of the Board of Directors	February 15, 2013
/s/ A. BLAINE BOWMAN A. Blaine Bowman	Director	February 15, 2013
/s/ DANIEL M. BRADBURY Daniel M. Bradbury	Director	February 15, 2013
/s/ KARIN EASTHAM Karin Eastham	Director	February 15, 2013
/s/ ROBERT S. EPSTEIN Robert S. Epstein	Director	February 15, 2013
/s/ PAUL GRINT Paul Grint	Director	February 15, 2013
Gerald Möller	Director	
/s/ DAVID R. WALT David R. Walt	Director	February 15, 2013
/s/ ROY WHITFIELD Roy Whitfield	Director	February 15, 2013

AGREEMENT AND PLAN OF MERGER

by and among

ILLUMINA, INC.,

TP CORPORATION,

VERINATA HEALTH, INC.

and

SHAREHOLDER REPRESENTATIVE SERVICES LLC,

solely in its capacity as the Stockholder Representative

Dated as of January 6, 2013

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this " Agreement") is entered into as of January 6, 2013, by and among Illumina, Inc., a Delaware corporation ("Buyer"), TP Corporation, a Delaware corporation and a wholly owned Subsidiary of Buyer ("Merger Sub"), Verinata Health, Inc., a Delaware corporation (the "Company"), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the Stockholder Representative hereunder (the " Stockholder Representative").

WHEREAS it is proposed that, on the terms and subject to the conditions set forth in this Agreement, Merger Sub shall merge with and into the Company (the "Merger");

WHEREAS the Board of Directors of Merger Sub has approved and declared advisable, and the Board of Directors of Buyer has approved, this Agreement and the Merger on the terms and subject to the conditions set forth in this Agreement;

WHEREAS the Board of Directors of the Company (i) has determined that the Merger is advisable and in the best interest of the Company and its stockholders, (ii) has approved this Agreement and the Merger upon the terms and subject to the conditions set forth in this Agreement and (iii) is recommending that the Company's stockholders approve the Merger and adopt this Agreement;

WHEREAS, concurrently with the execution and delivery of this Agreement, each of the Principal Equityholders is entering into a Seller Release, in the form attached as Exhibit A hereto (the "Seller Release"), pursuant to which such Principal Equityholders shall release, effective as of the Closing, Buyer, Merger Sub, the Surviving Corporation, their Affiliates, and each of their Representatives, predecessors, successors and assigns, from all claims with respect to additional consideration for their shares as set forth therein;

WHEREAS, concurrently with the execution and delivery of this Agreement, each of the individuals set forth in Exhibit B-1 hereto is delivering to Buyer an offer letter with the Company or Buyer or an Affiliate of Buyer in the form attached hereto as Exhibit B-2 hereto;

WHEREAS, as an inducement to Buyer and Merger Sub to enter into this Agreement, each of the Company Equityholders identified on Exhibit C-1 hereto is concurrently entering into a Seller Non-Competition Agreement, copies of which are attached as Exhibit C-2 hereto, which shall become effective as of the Closing; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer, Merger Sub and the Company agree as follows:

Article I

THE MERGER

1.1 Effective Time of the Merger . Upon the terms and subject to the conditions of this Agreement, prior to the Closing, Buyer and the Company shall jointly prepare, and immediately following the Closing the Surviving Corporation shall cause the Certificate of Merger to be filed with the Secretary of State of the State of Delaware and shall make all other filings or recordings required under the DGCL in order to give effect to the Merger. The Merger shall become effective at the Effective Time.

1.2 Closing . The Closing shall take place at 10:00 a.m., Eastern Time, on the Closing Date at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (or via the electronic exchange of execution versions of the agreements and documents contemplated hereby and the signature pages thereto via facsimile or via email by .pdf), unless another date, place or time is agreed to in writing by Buyer and the Company.

1.3 Effects of the Merger . At the Effective Time (a) the separate existence of Merger Sub shall cease and Merger Sub shall be merged with and into the Company and (b) the certificate of incorporation of the Company as in effect on the date of this Agreement shall be amended and restated in its entirety to read, subject to Section 6.16(a), the same as the certificate of incorporation of Merger Sub as of immediately prior to the Effective Time, except that the name of the Surviving Corporation reflected therein shall be the name of the Company. In addition, Buyer shall cause the by-laws of the Surviving Corporation to be amended and restated in their entirety to read, immediately following the Effective Time and subject to Section 6.16(a), the same as the by-laws of Merger Sub as in effect immediately prior to the Effective Time, except that the name of Merger Sub reflected therein shall be the name of the Company. The Merger shall have the effects set forth in Section 259 of the DGCL.

1.4 Directors and Officers of the Surviving Corporation .

(a) As of the Effective Time, the directors of Merger Sub shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and by-laws of the Surviving Corporation.

(b) As of the Effective Time, the officers of Merger Sub shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and by-laws of the Surviving Corporation.

ARTICLE II

CONVERSION OF SECURITIES

2.1 Conversion of Capital Stock .

(a) Capital Stock of Merger Sub. At the Effective Time, and without any further action on the part of Buyer, Merger Sub or the Company, each share of the common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger, be converted into and become one (1) validly issued, fully paid and nonassessable share of common stock, $0.001 par value per share, of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Buyer-Owned Stock. At the Effective Time, and without any further action on the part of Buyer, Merger Sub or the Company, all shares of Company Stock that are owned by the Company as treasury stock and any shares of Company Stock owned by Buyer, Merger Sub or any other wholly owned Subsidiary of Buyer immediately prior to the Effective Time shall, by virtue of the Merger, be cancelled and shall cease to exist and no payment or consideration shall be delivered in exchange therefor.

(c) Conversion of Company Stock.

(i) Company Common Stock. At the Effective Time, and without any further action on the part of Buyer, Merger Sub, the Company, or any holder of Company Common Stock, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than (x) shares of Company Stock referenced in Section 2.1(b) or (y) Dissenting Shares) shall, by virtue of the Merger, be converted into the right of the holder to receive from Buyer, with respect to each share of Company Common Stock: (A) promptly following the Effective Time, an amount in cash equal to the Common Stock Per Share Closing Amount, and (B) when, as and if any of the following become payable pursuant to the terms of this Agreement: (1) an amount in cash equal to the Common Stock Per Share Adjustment Amount, (2) an amount in cash equal to the Common Stock Per Share Unused Escrow Amount, (3) an amount in cash equal to the Common Stock Per Share 1st Milestone Payment Amount, (4) an amount in cash equal to the Common Stock Per Share 2nd Milestone Payment Amount, (5) an amount in cash equal to the Common Stock Per Share 3rd Milestone Payment Amount, (6) an amount in cash equal to the Common Stock Per Share 4th Milestone Payment Amount and (7) an amount in cash equal to the Common Stock Per Share Stockholder Representative Surplus Amount, in each case when, as and if payable pursuant to the terms of this Agreement.

(ii) Series A Preferred Stock. At the Effective Time, and without any further action on the part of Buyer, Merger Sub, the Company, or any holder of Company Series A Preferred Stock, each share of Company Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (other than (x) shares of Company Stock referenced in Section 2.1(b) or (y) Dissenting Shares) shall, by virtue of the Merger, be converted into the right of the holder to receive from Buyer, with respect to each share of Company Series A Preferred Stock: (A) promptly following the Effective Time, an amount in cash equal to the Series A Per Share Closing Amount, and (B) when, as and if any of the following become payable pursuant to the terms of this Agreement: (1) an amount in cash equal to the Series A Per Share Adjustment Amount, (2) an amount in cash equal to the Series A Per Share Unused Escrow Amount, (3) an amount in cash equal to the Series A Per Share 1st Milestone Payment Amount, (4) an amount in cash equal to the Series A Per Share 2nd Milestone Payment Amount, (5) an amount in cash equal to the Series A Per Share 3rd Milestone Payment Amount, (6) an amount in cash equal to

the Series A Per Share 4th Milestone Payment Amount and (7) an amount in cash equal to the Series A Per Share Stockholder Representative Surplus Amount, in each case when, as and if payable pursuant to the terms of this Agreement.

(iii) Series B Preferred Stock. At the Effective Time, and without any further action on the part of Buyer, Merger Sub, the Company, or any holder of Company Series B Preferred Stock, each share of Company Series B Preferred Stock issued and outstanding immediately prior to the Effective Time (other than (x) shares of Company Stock referenced in Section 2.1(b) or (y) Dissenting Shares) shall, by virtue of the Merger, be converted into the right of the holder to receive from Buyer, with respect to each share of Company Series B Preferred Stock: (A) promptly following the Effective Time, an amount in cash equal to the Series B Per Share Closing Amount, and (B) when, as and if any of the following become payable pursuant to the terms of this Agreement: (1) an amount in cash equal to the Series B Per Share Adjustment Amount, (2) an amount in cash equal to the Series B Per Share Unused Escrow Amount, (3) an amount in cash equal to the Series B Per Share 1st Milestone Payment Amount, (4) an amount in cash equal to the Series B Per Share 2nd Milestone Payment Amount, (5) an amount in cash equal to the Series B Per Share 3rd Milestone Payment Amount, (6) an amount in cash equal to the Series B Per Share 4th Milestone Payment Amount and (7) an amount in cash equal to the Series B Per Share Stockholder Representative Surplus Amount, in each case when, as and if payable pursuant to the terms of this Agreement.

(iv) Series C Preferred Stock. At the Effective Time, and without any further action on the part of Buyer, Merger Sub, the Company, or any holder of Company Series C Preferred Stock, each share of Company Series C Preferred Stock issued and outstanding immediately prior to the Effective Time (other than (x) shares of Company Stock referenced in Section 2.1(b) or (y) Dissenting Shares) shall, by virtue of the Merger, be converted into the right of the holder to receive from Buyer, with respect to each share of Company Series C Preferred Stock: (A) promptly following the Effective Time, an amount in cash equal to the Series C Per Share Closing Amount, and (B) when, as and if any of the following become payable pursuant to the terms of this Agreement: (1) an amount in cash equal to the Series C Per Share Adjustment Amount, (2) an amount in cash equal to the Series C Per Share Unused Escrow Amount, (3) an amount in cash equal to the Series C Per Share 1st Milestone Payment Amount, (4) an amount in cash equal to the Series C Per Share 2nd Milestone Payment Amount, (5) an amount in cash equal to the Series C Per Share 3rd Milestone Payment Amount, (6) an amount in cash equal to the Series C Per Share 4th Milestone Payment Amount and (7) an amount in cash equal to the Series C Per Share Stockholder Representative Surplus Amount, in each case when, as and if payable pursuant to the terms of this Agreement.

(v) Series C-1 Preferred Stock. At the Effective Time, and without any further action on the part of Buyer, Merger Sub, the Company, or any holder of Company Series C-1 Preferred Stock, each share of Company Series C-1 Preferred Stock issued and outstanding immediately prior to the Effective Time (other than (x) shares of Company Stock referenced in Section 2.1(b) or (y) Dissenting Shares) shall, by virtue of the Merger, be converted into the right of the holder to receive from Buyer, with respect to each share of Company Series C-1 Preferred Stock: (A) promptly following the Effective Time, an amount in cash equal to the

Series C-1 Per Share Closing Amount, and (B) when, as and if any of the following become payable pursuant to the terms of this Agreement: (1) an amount in cash equal to the Series C-1 Per Share Adjustment Amount, (2) an amount in cash equal to the Series C-1 Per Share Unused Escrow Amount, (3) an amount in cash equal to the Series C-1 Per Share 1st Milestone Payment Amount, (4) an amount in cash equal to the Series C-1 Per Share 2nd Milestone Payment Amount, (5) an amount in cash equal to the Series C-1 Per Share 3rd Milestone Payment Amount, (6) an amount in cash equal to the Series C-1 Per Share 4th Milestone Payment Amount and (7) an amount in cash equal to the Series C-1 Per Share Stockholder Representative Surplus Amount, in each case when, as and if payable pursuant to the terms of this Agreement.

(d) Treatment of Company Options.

(i) Buyer and the Surviving Corporation shall not assume any Vested Company Options or substitute new options therefor in connection with the transactions contemplated by this Agreement. At the Effective Time, and without any further action on the part of Buyer, Merger Sub or the Company, each outstanding Vested Company Option shall terminate and be cancelled in exchange for the consideration, if any, contemplated by this Section 2.1(d). Prior to the Effective Time, the Company shall use commercially reasonable efforts to cause each holder of:

(A) an In-the-Money Vested Company Option that is outstanding and unexercised immediately prior to the Effective Time to receive: (I) a cash payment in an amount equal to the product of (1) the amount, if any, by which (x) the Common Stock Per Share Closing Amount exceeds (y) the per share exercise price of such In-the-Money Vested Company Option multiplied by (2) the number of shares of Company Common Stock subject to such In-the-Money Vested Company Option immediately prior to the Effective Time; and (II) with respect to each share of Company Common Stock subject to such In-the-Money Vested Company Option, when, as and if any of the following become payable pursuant to the terms of this Agreement: (1) an amount in cash equal to the Common Stock Per Share Adjustment Amount, (2) an amount in cash equal to the Common Stock Per Share Unused Escrow Amount, (3) an amount in cash equal to the Common Stock Per Share 1st Milestone Payment Amount, (4) an amount in cash equal to the Common Stock Per Share 2nd Milestone Payment Amount, (5) an amount in cash equal to the Common Stock Per Share 3rd Milestone Payment Amount, (6) an amount in cash equal to the Common Stock Per Share 4th Milestone Payment Amount and (7) an amount in cash equal to the Common Stock Per Share Stockholder Representative Surplus Amount, in each case when, as and if payable pursuant to the terms of this Agreement;

(B) a Partially In-the-Money Vested Company Option that is outstanding and unexercised immediately prior to the Effective Time: (I) to have such Partially In-the-Money Vested Company Option converted into a number of shares of Company Common Stock equal to the quotient of (1) the excess of (x) the Per Share Estimated Fair Market Value over (y) the exercise price per share of such

Partially In-the-Money Vested Company Option divided by (2) the Per Share Estimated Fair Market Value and (II) to receive, with respect to each such share of Company Common Stock (of the number of shares calculated pursuant to clause (I)), the consideration to be received in respect of each share of Company Common Stock pursuant to Section 2.1(c)(i) when, as and if paid in accordance with this Agreement; and

The Company agrees that the Board of Directors of the Company (or, if appropriate, any committee administering the Company Options) shall adopt such resolutions or take such other actions as may be required (including obtaining any required consents) to effect the transactions described in this Section 2.1(d)(i) as of the Effective Time.

(ii) At the Effective Time, each then outstanding Unvested Company Option shall cease to represent a right to acquire Company Common Stock, shall be converted automatically into an option to purchase shares of Buyer common stock, and Buyer shall assume each such option subject to this Section 2.1(d)(ii). At the Effective Time, each Unvested Company Option shall continue to have, and be subject to, the same terms and conditions set forth in the applicable Company Stock Plan and the agreement evidencing the grant thereof immediately prior to the Effective Time, including provisions with respect to vesting, except that: (i) such option will be exercisable for that number of whole shares of Buyer common stock equal to the product (rounded down to the nearest whole share) of (A) the number of shares of Company Common Stock that were issuable upon exercise of such Unvested Company Option immediately prior to the Effective Time multiplied by (B) the Exchange Ratio; and (ii) the per share exercise price of each such Unvested Company Option shall be adjusted by dividing (x) the per share exercise price of each such Unvested Company Option immediately prior to the Effective Time by (y) the Exchange Ratio, and rounding up to the nearest cent. The terms of each Unvested Company Option shall, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, stock dividend, recapitalization, or other similar transaction with respect to Buyer common stock after the Effective Time. The Company agrees that the Board of Directors of the Company (or, if appropriate, any committee administering the Company Options) shall adopt such resolutions or take such other actions as may be required (including obtaining any required consents) to effect the transactions described in this Section 2.1(d)(ii) as of the Effective Time.

(iii) At the Effective Time, each then outstanding Underwater Company Option shall terminate and be cancelled without any consideration being payable in respect thereof.

(e) Treatment of Company Warrants.

(i) At the Effective Time, and without any further action on the part of Buyer, Merger Sub or the Company, each outstanding Company Warrant shall terminate and be cancelled, and the holder thereof shall not be entitled to receive any consideration other than cash consideration (if any). For the avoidance of doubt, no Company Warrants shall be assumed by Buyer pursuant to the Merger.

(ii) Prior to the Effective Time, the Company shall use commercially reasonable efforts to effect that at the Effective Time, and without any further action on the part of Buyer or Merger Sub, holders of outstanding Company Warrants that were not exercised (or deemed to automatically be exercised on a Net Basis) prior to the Effective Time shall receive no consideration in respect of such Company Warrants pursuant to this Agreement.

(iii) Prior to the Effective Time, the Company shall use commercially reasonable efforts to cause, at the Effective Time, and without any further action on the part of Buyer, Merger Sub or the Company, each holder of:

(A) an outstanding Company Common Stock Warrant (other than an Underwater Company Warrant) (I) to have such Company Common Stock Warrant converted into a number of shares of Company Common Stock equal to the quotient of (1) the excess of (x) the Per Share Estimated Fair Market Value over (y) the exercise price per share of such Company Common Stock Warrant divided by (2) the Per Share Estimated Fair Market Value and (II) to receive, with respect to each such share of Company Common Stock (of the number of shares calculated pursuant to clause (I)), the consideration to be received in respect of each share of Company Common Stock pursuant to Section 2.1(c)(i) when, as and if paid in accordance with this Agreement;

(B) an outstanding Series A Warrant (other than an Underwater Company Warrant) (I) to have such Series A Warrant converted into a number of shares of Company Series A Preferred Stock equal to the quotient of (1) the excess of (x) the product of the Per Share Estimated Fair Market Value and 6.641 over (y) the exercise price per share of such Series A Warrant divided by (2) the product of the Per Share Estimated Fair Market Value and 6.641 and (II) to receive, with respect to each such share of Company Series A Preferred Stock (of the number of shares calculated pursuant to clause (I)), the consideration to be received in respect of each share of Company Series A Preferred Stock pursuant to Section 2.1(c)(ii) when, as and if paid in accordance with this Agreement;

(C) (I) an outstanding Series B Warrant whose exercise price is less than or equal to the Series B Per Share Closing Amount, to receive, with respect to each share of Company Series B Preferred Stock subject to such Series B Warrant, the consideration to be received in respect of each share of Company Series B Preferred Stock pursuant to Section 2.1(c)(iii) when, as and if paid in accordance with this Agreement minus, with respect to the payment to be made promptly following the Effective Time, the per share exercise price of such Series B Warrant (for the avoidance of doubt, with respect to each such share of Company Series B Preferred Stock) and (II) an outstanding Series B Warrant (other than an Underwater Company Warrant) whose exercise price per share is greater than the Series B Per Share Closing Amount (xx) to have such Series B Warrant converted into a number of shares of Company Series B Preferred Stock equal to the quotient of (1) the excess of (x) the product of the Per Share Estimated Fair

Market Value and 7.87 over (y) the exercise price per share of such Series B Warrant divided by (2) the product of the Per Share Estimated Fair Market Value and 7.87 and (yy) to receive, with respect to each such share of Company Series B Preferred Stock (of the number of shares calculated pursuant to clause (xx)), the consideration to be received in respect of each share of Company Series B Preferred Stock pursuant to Section 2.1(c)(iii) when, as and if paid in accordance with this Agreement; and

(D) (I) an outstanding Series C Warrant whose exercise price is less than or equal to the Series C Per Share Closing Amount, to receive, with respect to each share of Company Series C Preferred Stock subject to such Series C Warrant, the consideration to be received in respect of each share of Company Series C Preferred Stock pursuant to Section 2.1(c)(iv) when, as and if paid in accordance with this Agreement minus, with respect to the payment to be made promptly following the Effective Time, the per share exercise price of such Series C Warrant (for the avoidance of doubt, with respect to each such share of Company Series C Preferred Stock) and (II) an outstanding Series C Warrant (other than an Underwater Company Warrant) whose exercise price per share is greater than the Series C Per Share Closing Amount (xx) to have such Series C Warrant converted into a number of shares of Company Series C Preferred Stock equal to the quotient of (1) the excess of (x) the Per Share Estimated Fair Market Value over (y) the exercise price per share of such Series C Warrant divided by (2) the Per Share Estimated Fair Market Value and (yy) to receive, with respect to each such share of Company Series C Preferred Stock (of the number of shares calculated pursuant to clause (xx)), the consideration to be received in respect of each share of Company Series C Preferred Stock pursuant to Section 2.1(c)(iv) when, as and if paid in accordance with this Agreement.

(f) At the Effective Time, the holder of each then outstanding Underwater Company Warrant shall not be entitled to any consideration in respect thereof.

(g) In calculating the consideration payable under this Article II, Buyer shall be entitled to rely on the representations and warranties contained in Section 3.22 and the Closing Date Allocation Schedule. Notwithstanding the forgoing, in no event shall Buyer be required to fund an amount in excess of (i) the sum of (w) the Final Closing Cash Consideration, (x) the Type 1 Milestone Payment if achieved, (y) the Type 2 Milestone Payment if achieved and (z) the Financial Metric Milestone Payments to the extent achieved reduced by (ii) any indemnity amount set off against any Milestone Payment in accordance with the terms of this Agreement.

(h) An illustrative schedule of the allocation of the Merger consideration, at Closing and upon the payment of the Milestone Payments, is attached as Schedule 2.1(h). Such schedule is attached for illustrative purposes only and makes various simplifying assumptions, including the maximum achievement of all Milestone Events and the absence of any indemnification claims.

2.2 Payment Fund . The procedures for exchanging outstanding shares of Company Stock for the consideration to be paid to the holders of such Company Stock in connection with the Merger are as follows:

(a) Paying Agent. At or prior to the Effective Time, Buyer shall deposit the Payment Fund with the Paying Agent, for the benefit of the Company Equityholders (other than Dissenting Shares) in accordance with this Section 2.2.

(b) Exchange Procedures. Promptly (and in any event within three (3) Business Days) after the Effective Time, Buyer shall cause the Paying Agent to mail to each holder of record of a Share Certificate or Book Entry (i) a letter of transmittal in substance and form reasonably satisfactory to Buyer ("Letter of Transmittal") and (ii) instructions for effecting the surrender of the Share Certificates and shares of Company Stock represented by Book Entries in exchange for the applicable consideration payable with respect thereto; provided, that Buyer shall assist the Company in developing arrangements for the delivery of such materials to the Principal Equityholders to facilitate the payment of the consideration specified in Sections 2.1(c) immediately following the Effective Time. Upon surrender of a Share Certificate for cancellation to the Paying Agent or shares of Company Stock represented by a Book Entry, in either case, together with a duly executed Letter of Transmittal, the holder of such Share Certificate or shares of Company Stock represented by such Book Entry shall be paid the consideration specified in Section 2.1(c), as applicable, in exchange therefor. In the case of any shares of Company Stock represented by a Share Certificate, if any consideration in respect of shares of Company Stock is to be paid under this Section 2.2 to a Person other than the Person in whose name the Share Certificate surrendered in exchange therefor is registered, it shall be a condition to such exchange that the Person requesting such exchange shall pay to the Surviving Corporation any Transfer Taxes or other Taxes required by reason of the payment of such consideration to a Person other than the registered holder of the Share Certificate so surrendered, or such Person shall establish to the reasonable satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. Until surrendered as contemplated by this Section 2.2, each Share Certificate and each share of Company Stock represented by a Book Entry shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the amount and type of consideration into which such shares of Company Stock have been converted pursuant to this Agreement. No interest will be paid or will accrue on any such amounts.

(c) Allocation Schedules. The "Initial Allocation Schedule" attached hereto as Exhibit D sets forth, as of the date hereof, the following information with respect to each Company Equityholder: (i) the name and the mailing address of such Company Equityholder as reflected on the stock transfer or other corporate records of the Company; (ii) (A) with respect to each Share Certificate representing shares of Company Stock or Book Entry Shares held by such Company Equityholder, (x) the number and class or series of Company Common Stock, Company Series A Preferred Stock, Company Series B Preferred Stock, Company Series C Preferred Stock, Company Series C-1 Preferred Stock and Company Series D Preferred Stock represented by such Share Certificate or applicable Book Entry and (y) the number of shares of Company Common Stock into which such Company Preferred Stock is convertible, (B) with

respect to each Company Option held by such Company Equityholder, the number of shares of Company Common Stock underlying such Option and the per share exercise price thereof, (C) with respect to each Company Common Stock Warrant held by such Company Equityholder, the number of shares of Company Common Stock underlying such Company Common Stock Warrants and the per share exercise price thereof, (D) with respect to each Company Preferred Stock Warrant held by such Company Equityholder, (x) the number of shares and type of Company Preferred Stock underlying such Company Preferred Stock Warrants and the per share exercise price thereof and (y) the number of shares of Company Common Stock into which such shares of Company Preferred Stock would be convertible; and (E) the aggregate number of shares of Company Common Stock held by such Company Equityholder, assuming the conversion of the Company Preferred Stock, the exercise of the Company Options, the exercise of the Company Common Stock Warrants, and the exercise and subsequent conversion to Company Common Stock of the Company Preferred Stock Warrants, in each case, held by such Company Equityholder, (iii) the Number of Fully Diluted Shares, the Number of Fully Diluted Vested Shares and the Number of Fully Diluted Unvested Shares. The Company shall deliver to Buyer and the Paying Agent, at least three (3) Business Days prior to Closing, an update to the Initial Allocation Schedule (as so updated, the " Closing Date Allocation Schedule"), which (I) shall contain, in addition to the information described in clauses (i), (ii) and (iii) the previous sentence, the consideration due to each such Company Equityholder pursuant to Sections 2.1(c), 2.1(d) and 2.1(e) at Closing, on the Escrow Release Date (assuming the full disbursement of the Escrow Amount), upon the payment of the maximum amount (as applicable) of each Milestone Payment and upon the distribution of the Stockholder Representative Amount Surplus (assuming such amount equals the Stockholder Representative Expense Amount), in each case, assuming the payment of such amounts to the Paying Agent in accordance with the terms of this Agreement and (II) shall be consistent with the terms of this Agreement.

(d) No Further Ownership Rights in Company Stock . All Merger consideration paid or payable upon the surrender for exchange of Share Certificates or Book Entries evidencing shares of Company Stock (including, in each case, any Milestone Payments payable with respect thereto) in accordance with the terms hereof shall be deemed to have been paid in satisfaction of all rights pertaining to such shares of Company Stock. From and after the Effective Time the stock transfer books of the Company shall be closed and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Stock which were outstanding immediately prior to the Effective Time. At the Effective Time, all shares of Company Stock issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate or Book Entry representing any such shares of Company Stock shall cease to have any rights with respect thereto, except, in the case of any such shares of Company Stock other than Dissenting Shares, for the right to receive the amount and type of consideration as set forth in this Article II.

(e) Termination of Payment Fund. Any portion of the Payment Fund which remains undistributed to the holders of Company Stock for six (6) months after the Effective Time and any earnings on the Payment Fund shall be delivered to Buyer (subject to abandoned property, escheat or similar Law), upon demand, and any holder of Company Stock who has not

previously complied with this Section 2.2 shall look only to Buyer and the Surviving Corporation (subject to abandoned property, escheat or similar Law) for the consideration that such holder has the right to receive pursuant to the provisions of this Article II.

(f) No Liability. To the extent permitted by applicable Law, none of Buyer, Merger Sub, the Company, the Surviving Corporation, the Paying Agent, their Affiliates, or their respective directors, officers, employees or agents shall be liable to any holder of shares of Company Stock delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(g) Withholding Rights. Each of the Paying Agent, Buyer and the Surviving Corporation (and its payroll agent) shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to the Company Equityholders such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any other applicable state, local or foreign Tax Law. To the extent that amounts are so deducted or withheld by the Paying Agent, Buyer or the Surviving Corporation (or its payroll agent), as the case may be, such withheld amounts shall be (i) remitted by the Paying Agent, Buyer or the Surviving Corporation, as the case may be, to the applicable Governmental Entity, and (ii) deducted and treated for all purposes of this Agreement as having been paid to such Company Equityholder in respect of which such deduction and withholding was made by the Paying Agent, Buyer or the Surviving Corporation, as the case may be.

(h) Transfer Taxes. All Transfer Taxes, arising out of, or in connection with, the transactions effected pursuant to this Agreement shall be borne equally by Buyer on the one hand, and the Company Equityholders, on the other hand. The party required to file any Tax Return related to Transfer Taxes shall file such Tax Return and pay any Transfer Taxes and the other party or parties shall reimburse the paying party for its share of Transfer Taxes within ten (10) days of written request. Buyer shall have the right to claim from the Escrow Fund any Transfer Taxes to be borne by the Company Equityholders.

(i) Lost Certificates. If any Share Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit, and if requested by Buyer, the delivery of an indemnification agreement or bond in a form reasonably acceptable to Buyer, of that fact by the Person claiming such Share Certificate to be lost, stolen or destroyed, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Share Certificate the applicable consideration specified in Section 2.1 with respect to the shares of Company Stock evidenced by such Share Certificates.

2.3 Closing Estimates; Payments and Deliveries at Closing .

(c) No later than three (3) Business Days prior to the Closing Date, the Company shall prepare and deliver to Buyer a statement (the "Preliminary Closing Statement"), certified on behalf of the Company by the Chief Financial Officer of the Company, setting forth in reasonable detail the Company's good faith estimates of: (i) the Closing Cash (such estimate, the " Estimated Closing Cash"), (ii) the Company Transaction Expenses (such estimate, the " Estimated Company Transaction Expenses") and (iii) the Closing Indebtedness (such estimate,

the "Estimated Closing Indebtedness"). If Buyer reasonably objects to the estimates provided by the Company, the amount in dispute is in excess of $500,000 and Buyer provides supporting detail for such objection, then fifty percent (50%) of the disputed amount in excess of $500,000 shall be deposited with the Escrow Agent to be held in accordance with the Escrow Agreement and shall be distributed within two (2) Business Days following the Determination Date in a manner consistent with Section 2.5 of this Agreement.

(d) At the Closing, Buyer shall:

(i) deposit, or cause the Surviving Corporation to deposit, with the Payment Agent the Payment Fund in accordance with Section 2.2(a) and the Paying Agent Agreement;

(ii) deposit, or cause the Surviving Corporation to deposit, with the Escrow Agent an amount in cash equal to the Escrow Amount in accordance with the Escrow Agreement;

(iii) pay, or cause the Surviving Corporation to pay, the Stockholder Representative Expense Amount to the Stockholder Representative Fund, to the account designated by the Stockholder Representative in writing to Buyer no later than three (3) Business Days prior to the Closing Date, to be held and disbursed in accordance with Section 2.7;

(iv) pay, or cause the Surviving Corporation to pay, on behalf of the Company, to the account or accounts designated by the Pay-Off Letters obtained in accordance with Section 6.10, an amount in the aggregate equal to the Closing Indebtedness as set forth in the Preliminary Closing Statement; and

(v) pay, or cause the Surviving Corporation to pay, on behalf of the Company, an amount in the aggregate equal to the Estimated Company Transaction Expenses, as set forth in the Preliminary Closing Statement.

(e) All payments to be made from the Payment Fund (i) pursuant to Section 2.2 to the former holders of Company Stock for which a Share Certificate has been properly surrendered or Book Entry Stock properly surrendered (in each case, other than Dissenting Shares) and (ii) pursuant to Section 2.8(a) to the holders of the Company Preferred Stock Warrants shall be made by the Payment Agent by check, or at the option and expense of the applicable holder in the case of any payment of $500,000 or more, by wire transfer of immediately available funds to the account set forth in the applicable Letter of Transmittal promptly following the proper surrender thereof to the Payment Agent.

2.4 Closing Adjustment Amount .

(a) Within sixty (60) days after the Closing Date, Buyer shall cause to be prepared and delivered to the Stockholder Representative a statement (the "Final Closing Statement") setting forth Buyer's determination of (i) the Closing Cash, (ii) the Company

Transaction Expenses and (iii) the Closing Indebtedness, in each case, along with supporting detail to evidence the calculations of such amounts.

(b) After the delivery of the Final Closing Statement, at the Stockholder Representative's request, Buyer shall cause the Surviving Corporation and its Subsidiaries, including their respective Representatives, to reasonably assist the Stockholders Representative in its review of the Final Closing Statement and shall provide to the Stockholder Representative and its Representatives reasonable access to such information relating to the Final Closing Statement they may reasonably request for such purpose.

(c) Unless the Stockholder Representative notifies Buyer in writing within 30 days after Buyer's delivery of the Final Closing Statement of any objection to Buyer's calculations of the Closing Cash, the Company Transaction Expenses or the Closing Indebtedness (such written notice, a "Notice of Objection"), the Final Closing Statement shall be final and binding for all purposes hereunder (it being understood that an objection to one or more of the foregoing amounts shall not prevent any other amount from becoming final and binding for all purposes hereunder). Any Notice of Objection shall specify in reasonable detail the basis for the objections set forth therein and shall include the Stockholder Representative's calculation of any amounts that are disputed by such Notice of Objection (the "Disputed Amounts") to the extent that such amounts may be determined. If the Stockholder Representative provides such Notice of Objection to Buyer within such 30-day period, Buyer and the Stockholder Representative shall, during the 30-day period following the Stockholder Representative's delivery of such Notice of Objection to Buyer, attempt in good faith to resolve any Disputed Amounts. If Buyer and the Stockholder Representative are unable to resolve all such Disputed Amounts within such period, the matters remaining in dispute shall be submitted to a nationally recognized public accounting firm mutually agreed upon by Buyer and the Stockholder Representative (such accounting firm being referred to herein as the " Independent Accountant"). Buyer and the Stockholder Representative shall instruct the Independent Accountant to render its decision within sixty (60) days of its selection. The Surviving Corporation and the Stockholder Representative shall each furnish to the Independent Accountant such work papers and other documents and information relating to the Disputed Amounts as the Independent Accountant may request. The resolution of the Disputed Amounts by the Independent Accountant shall be final and binding, and the determination of the Independent Accountant shall constitute an arbitral award that is final, binding and unappealable and upon which a judgment may be entered by a court having jurisdiction thereover.

(d) The date on which the Company Transaction Expenses, the Closing Indebtedness and the Closing Cash are finally determined in accordance with Section 2.4(c) is hereinafter referred as to the " Determination Date." Buyer and the Stockholder Representative (solely on behalf of the Company Equityholders and in its capacity as the Stockholder Representative, not in its individual capacity) shall each pay their own costs and expenses incurred in connection with the resolution of the Disputed Amounts; provided, that the fees and expenses of the Independent Accountant shall be allocated between Buyer and the Stockholder Representative in the same proportion that the total amount of the Disputed Amounts submitted to the Independent Accountant that is unsuccessfully disputed by each such party (as finally

determined by the Independent Accountant) bears to the total amount of the Disputed Amounts so submitted by each such party.

(e) Within two (2) Business Days following the Determination Date, (i) if the Final Closing Cash Consideration exceeds the Estimated Closing Cash Consideration (the amount of such excess, the " Closing Adjustment Amount ," which amount, if less than $25,000, shall be deemed to be zero), then Buyer shall pay to the Paying Agent for distribution to the former holders of Company Stock, Vested Company Options and Company Warrants, the portion of the Closing Adjustment Amount to which such holders are entitled pursuant to Section 2.1(c), 2.1(d) or 2.1(e), respectively, and (ii) if the Estimated Closing Cash Consideration exceeds the Final Closing Cash Consideration (the amount of such excess, the " Downward Closing Adjustment Amount ," which amount, if less than $25,000, shall be deemed to be zero), then Buyer shall be entitled to receive promptly a payment in cash out of the Escrow Fund in an amount equal to the Downward Closing Adjustment Amount.

2.5 Release of Escrow Amount .

(a) On the date that is eighteen (18) months after the Closing Date (the " Escrow Release Date"), the Escrow Fund shall be disbursed in accordance with this Section 2.5 and the Escrow Agreement.

(b) The amount necessary to satisfy any claim pending and set forth in a claim for indemnification as of the Escrow Release Date shall be retained by the Escrow Agent and held pursuant to the Escrow Agreement until the resolution of such claim (any such retained amount, a "Holdback Amount") and the balance of the Escrow Fund (less any amount that the Stockholder Representative may determine in its sole discretion should be held in the Escrow Fund in order to pay any expenses that may be incurred by the Stockholder Representative in connection with the resolution of any such claim pending as of the Escrow Release Date or otherwise in connection with its acting as the Stockholder Representative) shall be paid to the Paying Agent for distribution to the Company Equityholders promptly following the Escrow Release Date in accordance with Section 2.5(c). Promptly following the resolution of any claim in respect of which a Holdback Amount was retained in the Escrow Fund, the portion thereof that is not disbursed to Buyer as a result of the resolution of such claim or disbursed to the Stockholder Representative or continued to be retained in the Escrow Fund in respect of the Stockholder Representative's expenses pursuant to the Escrow Agreement shall be distributed to Company Equityholders promptly following such resolution in accordance with Section 2.5(c).

(c) Any amounts released from the Escrow Fund for distribution to the Company Equityholders (other than in respect of Stockholder Representative's expenses) at any time (including on the Escrow Release Date), and from time to time, pursuant to Section 2.5 are referred to, individually and collectively, as the " Unused Escrow Payment ." The Escrow Agent shall pay the Unused Escrow Payment to the Paying Agent for distribution to the former holders of Company Stock, Vested Company Options and Company Warrants, the portion of the Unused Escrow Payment to which such holders are entitled pursuant to Section 2.1(c), 2.1(d) or 2.1(e), respectively.

2.6 Dissenting Shares .

(a) Notwithstanding anything to the contrary contained in this Agreement, Dissenting Shares shall not be converted into or represent the right to receive the Merger consideration in accordance with Section 2.1, but shall be entitled only to such rights as are granted by the DGCL or Chapter 13 of the California Corporations Code (the " CCC"), as applicable, to a holder of Dissenting Shares.

(b) If any Dissenting Shares shall lose their status as such (through failure to perfect statutory appraisal rights or otherwise), then, as of the later of the Effective Time or the date of loss of such status, such shares shall automatically be converted into and shall represent only the right to receive the applicable consideration specified in Section 2.1 with respect to such shares, without interest thereon, upon proper surrender of the Share Certificate or Book Entry representing such shares, as applicable, in the manner specified in Section 6.2.

(c) The Company shall give Buyer: (i) prompt written notice of any written demand for appraisal received by the Company prior to the Effective Time pursuant to the DGCL or CCC, any notice of withdrawal of any such demand and any other demand, notice or instrument delivered to the Company prior to the Effective Time pursuant to the DGCL or CCC that relate to such demand and (ii) the opportunity to participate in all negotiations and proceedings with respect to any such demand, notice or instrument. The Company shall not make any payment or settlement offer prior to the Effective Time with respect to any such demand, notice or instrument unless Buyer shall have given its written consent to such payment or settlement offer.

2.7 Stockholder Representative .

(a) By their approval of the Merger and adoption of this Agreement and/or their acceptance of any consideration pursuant to this Agreement, each Company Equityholder individually appoints the Stockholder Representative as its representative, attorney-in-fact and agent in connection with the transactions contemplated by this Agreement. In connection therewith, the Stockholder Representative is authorized to do or refrain from doing all further acts and things, and to execute all such documents as the Stockholder Representative shall deem necessary or appropriate, and shall have the power and authority to:

(i) act for the Company Equityholders with regard to all matters relating to this Agreement and any Ancillary Document (including the Escrow Agreement);

(ii) act for the Company Equityholders in connection with any dispute or litigation involving this Agreement or the transactions contemplated hereby;

(iii) execute and deliver all amendments, waivers, ancillary agreements, certificates and documents that the Stockholder Representative deems necessary or appropriate in connection with the consummation of the transactions contemplated by this Agreement;

(iv) facilitate the disbursement of funds to the Company Equityholders and, with respect to the Stockholder Representative Fund, receive funds, make payments of funds, and give receipts for funds;

(v) do or refrain from doing any further act or deed on behalf of the Company Equityholders that the Stockholder Representative deems necessary or appropriate in its discretion relating to the subject matter of this Agreement as fully and completely as the Company Equityholders could do if personally present;

(vi) give and receive all notices required to be given or received by the Company Equityholders under this Agreement; and

(vii) receive service of process in connection with any claims under this Agreement.

(b) All decisions and actions by the Stockholder Representative shall be binding upon all Company Equityholders, and no Company Equityholder shall have the right to object, dissent, protest or otherwise contest the same.

(c) At the Effective Time, Buyer shall pay the Stockholder Representative Expense Amount to the Stockholder Representative, which Stockholder Representative Expense Amount shall be maintained by the Stockholder Representative in a segregated account. The Stockholder Representative shall be reimbursed for reasonable out-of-pocket expenses incurred in the performance of its duties (including the reasonable fees and expenses of counsel) under this Agreement from the Stockholder Representative Fund and, if such fund is insufficient to pay such expenses, from the first proceeds from Milestone Payments otherwise available for distribution to the Company Equityholders. Upon the determination of the Stockholder Representative that the Stockholder Representative Fund is no longer necessary in connection with any dispute regarding Milestone Payments, the remaining amount, if any, in the Stockholder Representative Fund (the "Stockholder Representative Account Surplus") shall be paid to the Paying Agent for distribution to the former holders of Company Stock, Vested Company Options and Company Warrants the portion of the Stockholder Representative Account Surplus to which such holders are entitled pursuant to Section 2.1(c), 2.1(d) or 2.1(e), respectively. The Company Equityholders will not receive any interest or earnings on the Stockholder Representative Fund and irrevocably transfer and assign to the Stockholder Representative any ownership right that they may otherwise have had in any such interest or earnings. The Stockholder Representative will not be liable for any loss of principal of the Stockholder Representative Fund other than as a result of its gross negligence or willful misconduct. The Stockholder Representative Fund shall not be used for any other purpose and shall not be available to Buyer to satisfy any claims hereunder.

(d) The Stockholder Representative shall act for the Company Equityholders on all of the matters set forth in this Agreement in the manner the Stockholder Representative believes to be in the best interest of the Company Equityholders. The Stockholder Representative is authorized to act on behalf of the Company Equityholders notwithstanding any dispute or disagreement among the Company Equityholders. In taking any actions as

Stockholder Representative, the Stockholder Representative may rely conclusively, without any further inquiry or investigation, upon any certification or confirmation, oral or written, given by any Person the Stockholder Representative reasonably believes to be authorized thereunto. The Stockholder Representative may, in all questions arising hereunder, rely on the advice of counsel, and the Stockholder Representative shall not be liable to any of the parties hereto or to any Company Equityholder for anything done, omitted or suffered in good faith by the Stockholder Representative based on such advice. The Stockholder Representative undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Stockholder Representative. The Stockholder Representative shall not have any liability to any of the parties hereto or the Company Equityholders for any act done or omitted hereunder as Stockholder Representative while acting in good faith. The Stockholder Representative shall be indemnified by the Company Equityholders from and against any loss, liability or expense and arising out of or in connection with the acceptance or administration of its duties hereunder, in each case as such loss, liability or expense is suffered or incurred; provided, that in the event that any such loss, liability or expense is finally adjudicated to have been primarily caused by the bad faith of the Stockholder Representative, the Stockholder Representative will reimburse the Company Equityholders the amount of such indemnified loss, liability or expense attributable to such bad faith. Any such claim for indemnification shall be satisfied first from the Stockholder Representative Fund and, if such fund is insufficient to satisfy any such loss, liability or expense, from the first proceeds from Milestone Payments otherwise available for distribution to the Company Equityholders or by a claim against the Company Equityholders (with each Company Equityholder liable for its pro rata share of any such claim, calculated on the basis of the share of any Stockholder Representative Account Surplus to which such Company Equityholder would be entitled).

(e) The Company and Buyer shall provide the Stockholder Representative with (i) reasonable access to relevant information of the Company and Buyer and (ii) reasonable assistance from the Company's and Buyer's employees for purposes of evaluating the information provided, and performing its duties and exercising its rights, pursuant to Section 2.7(d); provided, that the Stockholder Representative shall treat confidentially and not disclose any nonpublic information from or about the Company to anyone except (i) in connection with any disputes arising out of or in connection with this Agreement or (ii) where reasonably determined by the Stockholder Representative to be necessary or appropriate for the performance of the Stockholder Representative's functions pursuant to this Agreement, to individuals that agree to treat such information confidentially.

(f) In the event the Stockholder Representative becomes unable to perform its responsibilities hereunder or resigns from such position, the Company Equityholders (acting by a written instrument signed by the Required Stockholders) shall select another representative to fill the vacancy of the Stockholder Representative, and such substituted representative shall be deemed to be the Stockholder Representative for all purposes of this Agreement. The Stockholder Representative may only be removed upon delivery of written notice to Buyer signed by the Required Stockholders.

(g) For all purposes of this Agreement:

(i) Buyer shall be entitled to rely conclusively on the instructions and decisions of the Stockholder Representative as to the settlement of any disputes or claims under this Agreement or any other actions required or permitted to be taken by the Stockholder Representative hereunder, and no party hereunder shall have any cause of action against Buyer for any action taken by Buyer in reliance upon the instructions, decisions of or actions of the Stockholder Representative;

(ii) the provisions of this Section 2.7 are independent and severable, are irrevocable and coupled with an interest and shall be enforceable notwithstanding any rights or remedies that any Company Equityholder may have in connection with the transactions contemplated by this Agreement; and

(iii) the provisions of this Section 2.7 shall be binding upon the executors, heirs, legal representatives, personal representatives, successor trustees and successors of each Company Equityholder, and any references in this Agreement to a Company Equityholder shall mean and include the successors to the rights of each applicable Company Equityholder hereunder, whether pursuant to testamentary disposition, the Laws of descent and distribution or otherwise.

2.8 Treatment of Company Options and Company Warrants .

(a) As soon as practicable following the execution of this Agreement and subject to Buyer's approval, which will not be unreasonably withheld, the Company shall mail to each holder of a Company Option a letter describing the treatment of such Company Option, pursuant to Section 2.1(d). As promptly as practicable following the Effective Time (but in no event later than five (5) Business Days after the Effective Time), Buyer shall pay to each holder of In-the-Money Vested Company Options the applicable consideration described in Section 2.1(d)(i)(A)(I). Buyer shall pay to each former holder of In-the-Money Vested Company Options each additional payment of the consideration described in Section 2.1(d)(i)(A)(II) concurrently with the payment of such consideration to the former holders of Company Stock. Buyer shall make payments to each former holder of Partially In-the-Money Vested Company Options in accordance with Section 2.1(d)(i)(B).

(b) As soon as practicable following the execution of this Agreement and subject to Buyer's approval, which will not be unreasonably withheld, the Company shall mail to each holder of a Company Warrant a letter describing the treatment of such Company Warrant, pursuant to this Agreement and the transactions contemplated hereby. As promptly as practicable (but in no event later than five (5) Business Days) following the Effective Time, Buyer shall cause the Paying Agent to pay to each holder of a Company Warrant the applicable consideration described in Section 2.1(e)(iii), with respect to payments to be made in connection with the Closing for the applicable series of Company Preferred Stock. Buyer shall pay to each former holder of Company Warrants each additional payment of the consideration described in Section 2.1(e)(iii) concurrently with the payment of such consideration to the former holders of Company Preferred Stock.

2.9 Contingent Consideration.

(a) Milestones; Notice of Achievement. Buyer shall provide written notice to the Stockholder Representative of the achievement by or on behalf of Buyer or its Affiliates of each of the "Milestone Events" set forth in Schedule 2.9(a) (each a "Milestone") as promptly as reasonably practicable after the achievement thereof, and shall pay the corresponding payment (none of which payments shall be paid more than one time) in accordance with the terms of Schedule 2.9(a).

(b) Diligence. Following the Closing, Buyer shall, or shall cause one or more of its Affiliates to use Commercially Reasonable Efforts to achieve the Milestone Events described in Schedule 2.9(a).

(c) Recordkeeping. Until such time as no further contingent consideration payments may be payable pursuant to this Section 2.9 (the "Audit Period"), and thereafter as needed for any audit requested during the Audit Period, Buyer shall, and shall direct each of its applicable Affiliates to, keep complete and accurate books and records to the extent necessary to ascertain properly and to verify the payments owed hereunder.

(d) Information Rights; Duty to Notify.

(i) Buyer shall provide those information rights to the Stockholder Representative as set forth in Schedule 2.9(d).

(ii) In the event that Buyer determines that a Milestone will not be achieved, Buyer shall promptly notify the Stockholder Representative in writing of such determination and, if the Stockholder Representative so requests in writing, shall provide the Stockholder Representative and its advisors with reasonable access to the appropriate representatives of Buyer to discuss such determination. If the Stockholder representative requests in writing, Buyer shall provide reasonable access to further information that is reasonably requested by the Stockholder Representative.

(e) Payments.

(iv) Following the achievement of a Milestone, the applicable Milestone Payment shall be paid in accordance with Schedule 2.9(e).

(v) The parties understand and agree that (A) the Company Equityholders have no rights as a security holder of the Surviving Corporation or Buyer as a result of their right to receive the consideration payments contemplated by this Section 2.9 and (B) no interest is payable as additional consideration with respect to any of the contingent consideration contemplated by this Section 2.9. For the avoidance of doubt, more than one Milestone Payment may become payable at any time. By way of example, if multiple Milestones are achieved in the same period, each respective Milestone Payment shall become due and payable in accordance with the provisions of this Agreement.

(f) Assignment of Obligations. In the event the Surviving Corporation or its successor or assign (a) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (b) transfers all or substantially all of its properties and assets to any Person, then, and in each case, proper provision shall be made so that the successor and assign of the Surviving Corporation shall honor the obligations set forth with respect to the surviving corporation and Buyer in this Section 2.9.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer and Merger Sub that the statements contained in this Article III are true and correct as of the date hereof and as of the Closing Date, except as set forth in the Company Disclosure Letter.

3.1 Organization, Standing and Power . The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted and is duly licensed or qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so licensed or qualified that, individually or in the aggregate, would not reasonably be expected to result in a Company Material Adverse Effect. A list of the jurisdictions in which the Company is so qualified is set forth in Section 3.1 of the Company Disclosure Letter. The Company has made available to Buyer prior to the date hereof copies of its certificate of incorporation and by-laws (the "Constituent Documents") as in effect on the date of this Agreement including all amendments thereto, all of which are accurate and complete. The Constituent Documents of the Company are in full force and effect, and the Company is not in violation of any of the provisions of its Constituent Documents. The minute books of the Company for the period on and after January 1, 2009 to the date of this Agreement (which have been made available to Buyer prior to the date hereof) are accurate and complete in all material respects.

3.2 Capitalization .

(f) The authorized capital stock of the Company, as of the date of this Agreement, consists of 174,934,521 shares of Company Common Stock and 132,057,436 shares of Company Preferred Stock, of which 501,546 shares of Company Preferred Stock are designated as Company Series A Preferred Stock, 931,271 shares of Company Preferred Stock are designated as Company Series B Preferred Stock, 98,200,000 shares of Company Preferred Stock are designated as Company Series C Preferred Stock, 2,490,098 shares of Company Preferred Stock are designated as Series C-1 Preferred Stock and 29,934,521 shares of Company Preferred Stock are designated as Company Series D Preferred Stock. As of the date of this Agreement, there are issued and outstanding 1,753,073 shares of Company Common Stock, 365,274 shares of Company Series A Preferred Stock, 924,040 shares of Company Series B Preferred Stock, 91,741,984 shares of Company Series C Preferred Stock, 2,490,098 shares of

Company Series C-1 Preferred Stock and 0 shares of Company Series D Preferred Stock. Each class of the Company's capital stock is entitled to the rights and privileges set forth in the Company's certificate of incorporation. As of the date of this Agreement, the Company has reserved 69,813 shares of Company Common Stock for issuance pursuant to the 2002 Company Stock Plan, of which none have been issued pursuant to restricted stock agreements, 64,013 have been issued upon exercise of Company Options granted under the 2002 Company Stock Plan, Company Options to purchase 5,800 shares of Company Common Stock have been granted and are our outstanding, and no shares of Company Common Stock remain available for issuance pursuant to the 2002 Company Stock Plan. As of the date of this Agreement, the Company has reserved 26,242,842 shares of Company Common Stock for issuance pursuant to the 2008 Company Stock Plan, of which none have been issued pursuant to restricted stock agreements, 447,629 have been issued upon exercise of Company Options granted under the 2008 Company Stock Plan, Company Options to purchase 23,109,483 shares of Company Common Stock have been granted and are our outstanding, and 2,685,730 shares of Company Common Stock remain available for issuance pursuant to the 2008 Company Stock Plan. There are 11,115 shares of Company Common Stock reserved for issuance upon exercise of Company Common Stock Warrants, 750 shares of Series A Preferred Stock reserved for issuance upon exercise of the Series A Warrants, 7,231 shares of Series B Preferred Stock reserved for issuance upon exercise of the Series B Warrants, 6,390,134 shares of Series C Preferred Stock reserved for issuance upon exercise of the Series C Warrants and 29,934,521 shares of Series D Preferred Stock reserved for issuance upon conversion of the Series D Convertible Note. As of the date hereof, no shares of Company Common Stock are held by the Company as treasury stock.

(g) Section 3.2(a)(i) of the Company Disclosure Letter sets forth a complete and accurate list, as of the date of this Agreement, of all outstanding Company Options, indicating with respect to each such Company Option the name of the holder thereof, the number of shares of Company Common Stock subject to such Company Option, the date of grant, the exercise price and the vesting schedule thereof. The Company has made available to Buyer a complete and accurate copy of the Company Stock Plan. Section 3.2(b)(ii) of the Company Disclosure Letter sets forth a complete and accurate list, as of the date of this Agreement, of all outstanding Company Warrants, indicating with respect to each such Company Warrant the name of the holder thereof, the number of shares of Company Common Stock or Company Preferred Stock (and the Company Common Stock into which such Company Preferred Stock is convertible) subject to such Company Warrant, the date of issuance of such Company Warrant and the exercise price thereof. There are no outstanding shares of Company Common Stock subject to vesting or other forfeiture restrictions or to a right of repurchase by the Company.

(h) Except (i) as set forth in Section 3.2(a) or Sections 3.2(a)(i) or 3.2(a)(ii) or 3.2(a)(iii) of the Company Disclosure Letter or with respect to the Series D Convertible Note, (ii) as reserved for future grants under the Company Stock Plans and (iii) for the conversion provisions set forth in the Company's certificate of incorporation, (A) there are no equity securities of any class of the Company, or any security exchangeable into or exercisable for such equity securities, issued, reserved for issuance or outstanding and (B) there are no subscriptions, options, warrants, equity securities, calls, rights, convertible or exchangeable securities, commitments, stock-based performance units or agreements, arrangements or undertakings of

any kind to which the Company is a party or by which the Company is bound obligating the Company (x) to issue, exchange, transfer, deliver or sell, or cause to be issued, exchanged, transferred, delivered or sold, additional shares of capital stock or other equity or voting interests of the Company or any security or rights convertible into or exchangeable or exercisable for any such shares or other equity or voting interests, or (y) to issue, grant, extend, otherwise modify or amend or enter into any such subscription, option, warrant, equity security, call, right, commitment, stock-based performance unit or agreement, arrangement or undertaking. Except with respect to the Series D Convertible Note, there are no bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which holders of the Company's voting securities or interests may vote. The Company does not have any outstanding stock appreciation rights, phantom stock rights, restricted stock units, performance shares or similar equity rights or obligations. Except for the Company's certificate of incorporation or the agreements set forth in Section 3.3(c) of the Company Disclosure Letter (accurate and complete copies of which have been made available to Buyer prior to the date hereof), the Company is not a party to or bound by any agreements with respect to the voting (including voting trusts and proxies) or sale or transfer of any shares of capital stock or other equity interests of the Company.

(i) All outstanding shares of Company Stock are, and all shares of Company Stock subject to issuance as specified in Sections 3.2(a) above, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be, duly authorized, validly issued, and fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right or subscription right under any provision of the DGCL, the Company's certificate of incorporation or by-laws or any agreement to which the Company is a party or is otherwise bound.

(j) Except as set forth in the Company's certificate of incorporation, there are no obligations, contingent or otherwise, of the Company to repurchase, redeem or otherwise acquire any shares of Company Stock or the capital stock of the Company.

(k) Each Company Stock Option and Company Warrant may, by its terms, be treated at the Effective Time as set forth in Sections 2.1(d) and 2.1(e). Pursuant to the Merger, each share of Company Preferred Stock has the right to receive from the Surviving Corporation the consideration specified in Section 2.1(c), in each case when, as and if payable pursuant to the terms of this Agreement.

3.3 Subsidiaries . The Company does not have any Subsidiaries. The Company does not directly or indirectly own any equity securities in any other Person except for Approved Investments held by the Company.

3.4 Authority; No Conflict; Required Filings and Consents .

(d) The Company has all requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements to which the Company is or will be a party and, subject to receipt of the Company Stockholder Approval, to consummate the transactions contemplated hereby and thereby, including the Merger. The board of directors of the Company

has (at a meeting duly called and held, and at which all of the directors of the Company were present) duly and unanimously adopted resolutions (i) deeming the Merger advisable and in the best interests of the Company and its stockholders, (ii) approving this Agreement and the Merger in accordance with the DGCL and CCC upon the terms and subject to the conditions set forth herein and (iii) recommending the adoption of this Agreement by the stockholders of the Company. The execution and delivery of this Agreement and the Ancillary Agreements to which the Company is or will be a party and the consummation of the transactions contemplated hereby and thereby by the Company have been duly authorized by the board of directors of the Company and subject only to the required receipt of the Company Stockholder Approval, no further corporate or stockholder authorization will be required to authorize the execution, delivery and performance by the Company of this Agreement and such Ancillary Agreements and the consummation by the Company of the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements to which the Company is or will be a party have been or, when executed, will be duly and validly executed and delivered by the Company and constitute or will constitute (as applicable) the valid and binding obligation, of the Company, enforceable against the Company in accordance with their terms, subject to the Bankruptcy and Equity Exception.

(e) The execution and delivery of this Agreement and the Ancillary Agreements to which the Company is or will be a party by the Company do not or will not (as applicable), and the consummation by the Company of the transactions contemplated hereby or thereby will not, with or without the giving of notice or the lapse of time or both, (i) conflict with, or result in any violation or breach of, any provision of the certificate of incorporation or by-laws of the Company, (ii) conflict with, or result in any violation or breach of, or constitute a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, require the payment of a penalty under or result in the imposition of any Liens on the Company's properties, rights or assets under, any of the terms, conditions or provisions of any Contract, or (iii) subject to obtaining the Company Stockholder Approval and compliance with the requirements specified in clauses (i) through (iii) of Section 3.4(c), conflict with or violate in any material respect any permit, concession, franchise, license, judgment, injunction, Order, decree, statute, Law, ordinance, rule or regulation applicable to the Company or any of its or their respective properties, rights or assets, except in the case of clauses (ii) and (iii) of this Section 4.2(b) for any such conflicts, violations, breaches, defaults, terminations, cancellations, accelerations, losses, penalties or Liens, and for any consents or waivers not obtained, that, individually or in the aggregate, would not reasonably be expected to be material to the Company.

(f) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Entity is required by or with respect to the Company in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated by this Agreement except for (i) the pre-merger notification requirements under the HSR Act and (ii) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate corresponding documents with the appropriate authorities of other states in which the Company is qualified as a foreign corporation to transact business.

(g) The affirmative vote of holders of (i) a majority of the issued and outstanding shares of Company Common Stock and Company Preferred Stock, on an as-converted to Company Common Stock basis, voting together as a single class, (ii) a majority of the issued and outstanding shares of Company Common Stock , and (iii) at least 60% of the issued and outstanding shares of Company Series A Preferred Stock, Company Series B Preferred Stock, Company Series C Preferred Stock and Company Series D Preferred Stock, voting together as a single class and on an as-converted to Company Common Stock basis (the " Company Stockholder Approval") are the only votes of the holders of any class or series of capital stock of the Company necessary to adopt this Agreement and approve the transactions contemplated hereby.

3.5 Financial Statements . The Company has made available to Buyer the Company Financial Statements, a copy of each of which is set forth in Section 3.5 of the Company Disclosure Letter. The Company Financial Statements were prepared in accordance with GAAP and fairly present, in all material respects, the financial condition of the Company at the dates therein indicated and the results of operations, changes in stockholders' deficit and cash flows of the Company for the periods therein specified in accordance with GAAP consistently applied, except that the Company Financial Statements described in clause (b) of the definition of "Company Financial Statements" do not contain footnotes and are subject to normal, recurring year-end adjustments. The Company has established and maintained a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the consolidated financial statements of the Company in conformity with GAAP and to maintain accountability for assets, (iii) access to the Company's assets are permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.6 Absence of Certain Changes .

(h) Except as expressly contemplated by this Agreement, since the date of the Company Balance Sheet, there has not been any Company Material Adverse Effect or any material damage, destruction or other loss with respect to any material asset or property, including material Company Intellectual Property, owned, leased, licensed or otherwise used by the Company, whether or not covered by insurance.

(i) Since November 30, 2012, the Company has not taken any other action that would have required the consent of Buyer pursuant to Section 5.1(e), 5.1(f), 5.1(g), 5.1(h), 5.1(i), 5.1(j), 5.1(k), 5.1(m) or 5.1(q) had such action or event occurred after the date of this Agreement.

(j) Since the date of the Company Balance Sheet, the Company has not taken any other action that would have required the consent of Buyer pursuant to Section 5.1(a), 5.1(b), 5.1(c), 5.1(d), 5.1(l), 5.1(n), 5.1(o), 5.1(p) or 5.1(q) (but only with respect to the aforementioned subsections) had such action or event occurred after the date of this Agreement.

3.7 No Undisclosed Liabilities . Other than (a) as may be specifically disclosed or reserved against in the Company Balance Sheet (b) liabilities incurred in the ordinary course of business after the date of the Company Balance Sheet, (c) liabilities under the executory portion of any Company Material Contract (other than obligations due to breaches or non-performance under such Contracts, none of which would, individually or in the aggregate, reasonably be expected to be material to the Company) (d) liabilities that constitute Company Transaction Expenses or (e) liabilities that individually would not be material to the Company, the Company does not have any liabilities or obligations accrued, contingent or otherwise of any nature.

3.8 Taxes .

(g) The Company has timely filed all Tax Returns that it was required to file, and all such Tax Returns were correct and complete in all material respects. The Company has paid on a timely basis all Taxes that are shown to be due on any such Tax Returns. All material Taxes that the Company was required by Law to withhold or collect have been duly withheld or collected and, to the extent required, have been properly paid to the appropriate Governmental Entity.

(h) The Company has made available to Buyer complete and accurate copies of all U.S. federal and state income Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by the Company since January 1, 2009. No examination or audit of any Tax Return of the Company by any Governmental Entity is in progress or has been threatened in writing as of the date of this Agreement. As of the date of this Agreement, the Company has not been informed in writing by any jurisdiction that the jurisdiction believes that the Company was required to file any Tax Return that was not filed. The Company has not (i) waived any statute of limitations with respect to Taxes or agreed to extend the period for assessment or collection of any Taxes, which waiver or extension is still in effect, (ii) requested any extension of time within which to file any Tax Return, which Tax Return has not yet been filed, or (iii) executed or filed any power of attorney with any taxing authority, which is still in effect.

(i) The Company (i) is not, nor has it ever been, a member of a group of corporations with which it has filed (or been required to file) consolidated, combined or unitary Tax Returns and (ii) is not a party to or bound by any Tax indemnity, Tax sharing or Tax allocation agreement.

(j) The Company does not have any actual or potential liability for any Taxes of any Person (other than the Company) under Treasury Regulation Section 1.1502-6 (or any similar provision of Law in any jurisdiction), or as a transferee or successor, by Contract or otherwise.

(k) There are no adjustments under Section 481 of the Code (or any similar adjustments under any provision of the Code or the corresponding foreign, state or local Tax Laws) that are required to be taken into account by the Company in any period ending after the Closing Date by reason of a change in method of accounting in any taxable period ending on or before the Closing Date. The Company does not have any material income or gain reportable

that is attributable to a transaction (e.g., an installment sale or open transaction disposition) which resulted in a deferred reporting of income or gain from such transaction.

(l) No income has to be included under 108(i) of the Code (or any similar provision of the Tax Laws of any jurisdiction) in respect of any cancellation of indebtedness income.

(m) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(l)(A)(ii) of the Code.

(n) The Company has not engaged in any "reportable transaction" as defined in Treasury Regulation Section 1.6011-4(b).

(o) The Company has not distributed to its shareholders or security holders stock or securities of a controlled corporation, nor has stock or securities of the Company been distributed, in a transaction to which Section 355 of the Code applies (i) in the two (2) years prior to the date of this Agreement or (ii) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) that includes the transactions contemplated by this Agreement.

(p) There are no Liens with respect to Taxes upon any of the assets or properties of the Company, other than with respect to Taxes not yet due and payable or being contested in good faith by appropriate proceedings.

3.9 Properties .

(a) The Company does not own any real property.

(b) Section 3.9(b) of the Company Disclosure Letter sets forth a complete and accurate list of all of the Company Leased Real Property, including as applicable, the name and address of the landlord of such Company Leased Real Property, and each Contract relating to the use and/or occupancy of such Company Leased Real Property, including all leases, subleases, agreements to lease, lease guarantees, tenant estoppels, subordinations, non-disturbance and attorney agreements, including all amendments thereto.

(c) With respect to each Company Leased Real Property, the Company has a good and valid leasehold interest in such Company Leased Real Property, free and clear of all Liens, other than Permitted Liens. The Company does not lease or sublease any real property to any Person. The Company has made available to Buyer a complete and accurate copy of each Company Lease in effect . Each Company Lease is in full force and effect with respect to the Company and, to the Company's Knowledge, with respect to each other party thereto, except to the extent it has previously terminated in accordance with its terms. Neither the Company nor, to the Company's Knowledge, any other party to any Company Lease is in material violation of or in material default under any Company Lease.

(d) All equipment used in the research, development, manufacture, storage, import, distribution and transport of Company Products and Collection Devices and the research, development, use and performance of the Company LDTs is in good operating condition and repair, subject to ordinary wear and tear.

3.10 Intellectual Property .

(a) All Company Intellectual Property is either (i) owned by, or subject to an obligation of assignment to, the Company, free and clear of all Liens (other than Permitted Liens) or other exceptions to title that restrict use or transfer by the Company of the Company Intellectual Property in any way or require the Company to make any payment or give anything of value as a condition to use in any way the Company Intellectual Property, or (ii) licensed to the Company free and clear of all Liens (other than Permitted Liens) and, except in the case of software licenses for Standard Software, pursuant to a valid and enforceable written agreement listed in Section 3.10(b) of the Company Disclosure Letter. The Company Intellectual Property constitutes all Intellectual Property used in or, except as listed in Section 3.10(a) of the Company Disclosure Letter, to the Company's Knowledge, required to carry on the business of the Company as it is presently being conducted without Infringing the Intellectual Property of any third party, and each item of Company Intellectual Property will, immediately subsequent to the Closing, continue to be owned or licensed for use by the Company on the same terms with which the Company, immediately prior to the Closing, owns or has the license to use such item.

(b) (i) Section 3.10(b)(i) of the Company Disclosure Letter sets forth a true and accurate list of all agreements, arrangements and understandings relating to any right or interest in, to or under any Company Intellectual Property (including all licenses, options, settlement agreements, coexistence agreements, covenants not to sue, non-assertion protections, immunities from suit, consent agreements, assignments, and security interests) that have been granted (A) to the Company (other than (x) software licenses for Standard Software, (y) standard and customary individual employment agreements, consulting agreements, services agreements, and confidentiality agreements, in each case, executed in the ordinary course of business, and (z) assignments recorded at the United States Patent and Trademark Office ("USPTO") or its foreign equivalent for Company-Owned Intellectual Property evidencing the Company's exclusive or joint ownership thereof, collectively ((x), (y), and (z)), " Ordinary Course IP Agreements "), or (B) by the Company to any other Person (other than customary confidentiality agreements and customary powers of attorney granted to the Company's patent prosecution counsel solely for purposes of representing the Company before the USPTO or its foreign equivalent). Complete and correct copies of all agreements, arrangements and understandings listed on Section 3.10(b) of the Company Disclosure Letter and copies of each standard form of Ordinary Course IP Agreement used by the Company have been made available to Buyer.

(iii) Except as set out in Section 3.10(b)(ii) of the Company Disclosure Letter, the Company is not a party to, or is not otherwise obligated under, any agreement, arrangement, or understanding, to make payments or provide other consideration (in any form, including royalties, milestones, and other contingent payments) for use of or to have rights to any of the Company Intellectual Property, and to the Knowledge of the Company, all money

currently due and payable in connection with such agreements, arrangements and understandings have been satisfied in a timely manner.

(iv) The Company is in material compliance with the terms of all agreements set forth in Section 3.10(b) of the Company Disclosure Letter . Except as set forth in Section 3.10(b)(iii) of the Company Disclosure Letter, the Company has not entered into any Contract (A) granting any Person the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any of the Company Intellectual Property, (B) agreeing to discharge or otherwise take responsibility for, any existing or potential liability of another Person for Infringement of any Intellectual Property, or (C) granting any Person the right to control the prosecution of any Company Intellectual Property owned by the Company.

(c) (i) Section 3.10(c) of the Company Disclosure Letter sets forth a complete and accurate list of all Company Intellectual Property (other than Standard Software) that has been or is registered, filed, certified, granted, or issued, or that has been or is subject to an application for registration, filing, certification, grant or issuance and that is either owned by the Company (" Registered Company-Owned IP") or licensed to the Company ("Registered In-Licensed IP", and together with the Registered Company-Owned IP, the "Registered Company IP"), indicating for each item (as applicable): (1) the actual and recorded assignees and owners; (2) all registration numbers, issuance numbers, grant numbers, serial numbers and application numbers and the status (e.g., pending, issued, abandoned, expired) of each Registered Company IP; (3) all filing, registration, issuance, and grant dates; (4) all jurisdictions in which such Registered Company IP has been or is filed, registered, granted, issued or in which registrations, grants or issuances have been applied for (and in the case of Internet domain names, the registrar and registrant of such Internet domain names); and (5) all filing, maintenance and other deadlines occurring within 120 days of the date hereof. The foregoing information (items (1) through (5)) is provided to the Company's Knowledge with respect to Registered Company IP for which the Company does not have the responsibility to file, prosecute and maintain.

(vi) (A) All issued Patents included within the Registered Company IP are subsisting in all applicable jurisdictions where such Patents have been filed, and to the Company's Knowledge, are valid and are enforceable, (B) (x) all pending Patents included within the Registered Company IP for which the Company has the right (excluding unexercised step-in rights) or responsibility to file, prosecute and maintain (the " Company-Controlled Patents") are, and to the Company's Knowledge, all pending Patents included within the Registered Company IP that are not Company-Controlled Patents are subsisting in all applicable jurisdictions, (C) except as set forth in Section 3.10(a) of the Company Disclosure Letter with respect to status of a particular Patent, and to the Company's Knowledge, none of such Registered Company IP has expired, lapsed, been disclaimed, cancelled, forfeited or abandoned, in whole or in part, specifically excluding (for the avoidance of doubt) the cancellation of claims in the ordinary course of prosecution before the USPTO and analogous and/or supranational patent offices in jurisdictions outside the United States, and (D) the Company has not taken any action or failed to take any action that could reasonably be expected to result in the abandonment, cancellation, forfeiture, relinquishment, invalidation or unenforceability of any of the Registered Company IP, specifically excluding (for the avoidance of doubt) actions taken in

the ordinary course of prosecution before the USPTO and analogous and/or supranational patent offices in jurisdictions outside the United States.

(vii) To the Company's Knowledge, all documents, certificates, and other material have been, for purposes of maintaining the Registered Company IP filed in a timely manner with the relevant Governmental Entities (taking into account any extensions). All filing, issuance, maintenance, extension, renewal, and other material fees have been timely paid with respect to the Registered Company IP. The Company has, and to the Company's Knowledge, its licensors have, properly filed, prosecuted and maintained all Registered Company IP.

(viii) To the Company's Knowledge, each of the patents and patent applications included in the Registered Company IP that are owned solely by the Company or co-owned by the Company or licensed by the Company properly identifies all inventors who should have been named as inventors in accordance with the Laws of the jurisdiction in which such patent is issued or such patent application is pending, and each such inventor has executed a valid and enforceable written agreement assigning all of such inventor's rights, title, and interests in and to such Patent (and the inventions claimed or otherwise disclosed therein) to the Company or applicable co-owner or licensor of the Company, and all such assignments have been timely and properly filed with the USPTO, and to the extent applicable and required by applicable Laws, its foreign equivalents. To the extent any Patent included in the Registered Company IP has been assigned to the Company by any Person who is not an inventor of such Patent, any and all such third party assignors of such Patents have each executed a valid and enforceable written agreement assigning all of such third party's rights, title, and interests in and to such Patents (and the inventions claimed or otherwise disclosed therein) to the Company, and all such assignments have been timely and properly filed with the USPTO, and to the extent applicable and required by applicable Laws, its foreign equivalents.

(d) The Company has taken reasonable measures to maintain, protect, and preserve the security, confidentiality, value and ownership of all confidential Know-How, trade secrets, and confidential information included in the Company Intellectual Property, including by requiring officers, employees, independent contractors, and consultants, and any other Person with access to such confidential Know-How, trade secrets, and confidential information to execute and deliver to the Company a reasonably customary confidentiality agreement. To the Company's Knowledge, no current or former officers, employees, independent contractors, or consultants, and no other Person is in violation in any material respect of any such confidentiality agreements.

(e) Except as set forth in Section 3.10(e) of the Company Disclosure Letter, to the Company's Knowledge, no Person has in the past five (5) years Infringed, or is currently Infringing, in any respect material to the business, any Company Intellectual Property , and no complaints, claims, actions, suits or proceedings (including in the form of cease-and-desist letters or written offers or invitations to obtain a license) have been threatened or made by or on behalf of the Company (or to the Company's Knowledge, by or on behalf of a licensor to the Company)

against any Person of any actual or suspected Infringement of Company Intellectual Property within the past five (5) years.

(f) Except as set forth in Section 3.10(f) of the Company Disclosure Letter:

(i) to the Company's Knowledge, the conduct of the business of the Company as it has been and is currently being conducted (including, for the avoidance of doubt and not by way of limitation, the development, testing, manufacture, use, sale, offer for sale, import and other disposition of the Company Products, Company LDTs or Collection Devices, as applicable) has not Infringed and does not Infringe any Intellectual Property of any other Person;

(ii) there are no concluded, pending, or to the Company's Knowledge, material threatened or reasonably anticipated complaints, claims, actions, suits or proceedings, or demands or notices alleging any Infringement identified in the preceding subparagraph (i) (including in the form of a cease-and-desist letter or written offer or invitation to obtain a license); and

(iii) to the Company's Knowledge, there are no Patents of any third party known to be dominating or interfering with the Company Intellectual Property, or that are necessary to conduct the business of the Company as it is currently conducted.

(g) To the Company's Knowledge, except as set out in Section 3.10(g) of the Company Disclosure Letter, none of the Company Intellectual Property has been or is subject to any pending, or threatened, Litigation, interference, reissue, reexamination, opposition, concurrent use, cancellation, invalidity, or other similar proceeding challenging the scope, validity, priority, duration, inventorship, ownership, registrability, effectiveness, use or right to use any of the Company Intellectual Property, and the Company is not aware of any facts or circumstances rendering any of the foregoing likely. None of the Company Intellectual Property has been or is subject to any pending or outstanding injunction, directive, order, judgment, or other disposition of dispute that adversely restricts the use, transfer, registration or licensing of any such Intellectual Property by the Company, or otherwise adversely affects the scope, validity, use, registrability, or enforceability of any Company Intellectual Property. For each Patent listed in Section 3.10(c) of the Company Disclosure Letter that is owned by the Company or for which the Company has the right (excluding unexercised step-in rights) or responsibility to file, prosecute and maintain the Company has, and to the Company's Knowledge, each of its attorneys, agents and relevant employees and representatives have, met the duty of candor and good faith required under 37 C.F.R. § 1.56, which includes a duty to disclose all information known to that individual to be "material to patentability," as such is defined in 37 C.F.R. § 1.56, and complied with analogous Laws outside the United States.

(h) The Company has complied with any obligations applicable to it pursuant to the Patent and Trademark Law Amendments Act, 35 U.S.C. §200 et seq., and the regulations promulgated thereunder, as well as any foreign equivalents thereto, including with respect to any Patents that are part of the Company Intellectual Property.

(i) The Company has taken reasonable measures to protect its rights, title and interests in and to all Company Intellectual Property and to maintain, protect, and preserve the security, confidentiality, value and ownership of all non-public Company Intellectual Property, including by implementing commercially reasonable security measures. The Company has (i) received an executed, valid written agreement from each of its current and former employees and other Persons performing consulting or other contract services for the Company that assigns to the Company, or otherwise includes provisions sufficient to ensure that the Company becomes the exclusive owner of, any and all Intellectual Property created or developed by such employees within the scope of or resulting from his or her employment or, in the case of a Person other than an employee, from the services such Person performs for the Company, (ii) caused all employees and other Persons with access to any of the non-public Company Intellectual Property to execute a binding confidentiality agreement that includes customary confidentiality and restricted use terms, (iii) used commercially reasonable efforts to prevent disclosure and impermissible use of any other non-public Company Intellectual Property by any Person who has not executed a confidentiality agreement. Copies of the forms of agreements referred to in the foregoing clauses (i) and (ii) have been made available to Buyer prior to the date hereof, and to the Knowledge of the Company, no material breach of any such agreement by the other party thereto has occurred or been threatened.

(j) Except as set forth in Section 3.10(j) of the Company Disclosure Letter , none of the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, or the performance by the Company of its or their obligations hereunder, conflict or will conflict with, alter or impair, any of the Company's rights in or to any Company Intellectual Property or the validity, enforceability, use, right to use, ownership, priority, duration, scope or effectiveness of any such Company Intellectual Property or otherwise trigger any additional payment obligations with respect to any Company Intellectual Property.

(k) To the Company's Knowledge, all or substantially all of the samples from the MELISSA trial are available for use by the Company as part of a clinical study to support a Premarket Approval ("PMA") of an Invitro Diagnostic ("IVD") kit based on the Verifi Prenatal Test. To the Company's Knowledge, the samples have not been used for any research and development or validation work subsequent to the MELISSA trial and have been stored properly to allow future use. The Company has not been informed by the FDA and has no reason to believe that a retrospective study utilizing the MELISSA cohort is inconsistent with a PMA IVD application.

3.11 Contracts .

(a) Section 3.11(a) of the Company Disclosure Letter sets forth a complete and accurate list of the following Contracts (excluding Contracts that are disclosed on Section 3.14(a) of the Company Disclosure Letter) to which the Company is a party or by which the Company is bound:

(v) each Contract or series of related Contracts that (A) involved or involves payment by the Company of consideration of more than $100,000 (including pursuant to any contingent obligation) in the aggregate over the term of such Contract and cannot be

cancelled by the Company without penalty or further payment on ninety (90) days' or less notice (other than payments for services rendered to date), (B) provides for any payment to the other party of any new, additional or increased amounts as a result of or in connection with the transactions contemplated by this Agreement, (C) gives the other party or parties thereto any rights to cancel, terminate, amend, not renew or change the scope of such Contract as a result of the transactions contemplated by this Agreement or requires a modification to, or gives the other party or parties the right to modify, the material terms of such Contract or consent to the transactions contemplated by this Agreement, or (D) has material continuing obligations or interests involving the payment of milestones, royalties or other amounts payable upon the achievement of specified events or results or calculated based upon the revenues or income of the Company or any product or product candidates of the Company or any income or revenues connected therewith;

(vi) each Contract or series of related Contracts pursuant to which the Company, or any other party thereto has continuing obligations, rights or interests relating to the research, development, clinical trial, distribution, supply, service, material transfer, manufacture, marketing or co-promotion of, or collaboration with respect to, any Company Product, Company LDT or Collection Device;

(vii) each Contract requiring payments to the Company in excess of $100,000 per year;

(viii) each Contract with any Governmental Entity;

(ix) each non-competition or other Contract that expressly limits in any material respect either the type of business in which the Company (or, after giving effect to the transactions contemplated by this Agreement, Buyer or any of the Company's or Buyer's respective Affiliates) may engage, including the development and commercialization of the Company Products, Company LDTs and Collection Devices, or the manner or locations in which any of them may so engage in any business;

(x) each Contract requiring payments by or to the Company in excess of $100,000 individually between or among the Company and any director, officer, Affiliate or noteholder of the Company or any Affiliate of such Person;

(xi) any license, sublicense or other agreement which grants a license, a covenant not to sue or assert, or transfers any rights in, to or under any Company Intellectual Property other than Standard Software;

(xii) each Company Lease and any agreement (or group of related agreements) for the lease of personal property from or to third parties providing for lease payments in excess of $100,000 per year;

(xiii) each Contract (or group of related Contracts) for the purchase of raw materials, or finished goods or for the receipt of services under which the Company expects to receive or pay more than the sum of $100,000 during any calendar year;

(xiv) each Contract for capital expenditures or the acquisition or construction of fixed assets which requires aggregate future payments in excess of $100,000;

(xv) each Contract providing for the establishment or operation of a partnership, joint venture or limited liability company;

(xvi) (A) each loan or credit agreement, indenture, mortgage, note or other Contract evidencing Indebtedness, (B) each Contract pursuant to which any such Indebtedness is guaranteed by the Company and (C) each other Contract (or group of related Contracts) under which the Company has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) Indebtedness (including capitalized lease obligations), other than routine advances to employees of the Company for travel expenses in the ordinary course of business consistent with past practice;

(xvii) each Contract for the acquisition, sale or disposition of any material assets or any material business line of the Company;

(xviii) each Contract for the acquisition of any business or any corporation, partnership, joint venture, limited liability company, association or other business line, organization or division thereof, except purchases of inventory, supplies and raw materials in the ordinary course of business;

(xix) each employment or consulting Contract with any employee of the Company (other than at will offer letters that do not provide for severance or similar termination benefits);

(xx) each Contract (contingent or otherwise) to issue, sell or otherwise distribute or to repurchase or otherwise acquire or retire any shares of the Company's capital stock or any of its other equity securities;

(xxi) each joint venture agreement, collaboration agreement, international distribution agreement or similar such Contract relating to products or inventions of the Company pursuant to which the Company has current or potential future liabilities or obligations (other than at will offer letters that do not provide for severance or similar termination benefits and proprietary information and invention assignment agreements);

(xxii) each Contract pursuant to which a third party manages or provides services in connection with clinical trials relating to any of the Company's development programs;

(xxiii) each sales representative or distribution Contract related to a Company Product, Company LDT or Collection Device;

(xxiv) each Contract (A) in which the Company has granted development rights, "most favored nation" pricing provisions or marketing or distribution rights relating to any product or product candidate or (B) in which the Company has agreed to purchase a

minimum quantity of goods relating to any product or product candidate or has agreed to purchase goods relating to any product or product candidate exclusively from a certain party; and

(xxv) each Contract involving a standstill or similar obligation of the Company to a third party or of a third party to the Company.

(b) The Company has made available to Buyer a complete and accurate copy of each Company Material Contract including any amendments thereto. Each Company Material Contract is a valid and binding agreement of the Company and is in full force and effect with respect to the Company and, to the Company's Knowledge, with respect to each other party thereto. The Company has performed in all material respects all obligations required to be performed by them under the Company Material Contracts and, to the Company's Knowledge, each other party to a Company Material Contract has performed in all material respects all obligations required to be performed by it under such Company Material Contract. Neither the Company nor, to the Company's Knowledge, any other party to any Company Material Contract is in breach or violation of or in default under (nor does the Company have Knowledge of any condition or event that has occurred that, upon the passage of time or the giving of notice or both, would cause or be reasonably be expected to cause such a breach or violation of or default under) any Company Material Contract in any material respect. The Company has not received any claim of breach or violation of or default under any Company Material Contract.

(c) Except as set forth in Section 3.11(c) of the Company Disclosure Letter, the Company has no material outstanding obligations or any contingent payment obligations (including without limitation royalties or any other payments linked to the exploitation of Company Intellectual Property or other assets) in connection with any collaboration agreement, cooperation agreement and/or research agreement into which the Company has entered with any hospitals, health care centers, other institutions of a similar nature, physicians, or research groups (whether in respect of a research project or otherwise). None of the transactions contemplated by this Agreement will constitute the sale of a research project under any of the aforesaid agreements or cause or result in any actual or contingent payment obligations (including without limitation royalties or any other payments linked to the future exploitation of Company Intellectual Property or other assets) arising under such agreements.

3.12 Litigation . There is no action, suit, proceeding, claim, arbitration, hearing, inquiry, investigation (each, a " Litigation") or request for documents (whether or not pursuant to a subpoena) pending against the Company or, to the Company's Knowledge, threatened against the Company. There are no judgments, orders or decrees outstanding against the Company. There is no Litigation pending by the Company or which the Company intends to initiate against any other Person.

3.13 Environmental Matters .

(a) The Company at all times has been in compliance in all material respects with, and is not in violation in any material respect of, does not have any material liability under and, has not received any notice alleging any violation by the Company with respect to, any applicable Environmental Laws. The Company holds, and at all times has been in compliance in

all material respects with, all Company Permits required under any applicable Environmental Laws.

(b) To the Company's Knowledge, the properties operated by the Company (including soils, groundwater, surface water, buildings or other structures) are not contaminated with any Hazardous Substances in an amount or concentration that would give rise to an obligation to act on or disclose that condition under any Environmental Law.

(c) The Company has not caused a release of any Hazardous Substance into the environment and, to the Company's Knowledge, no Release of any Hazardous Substance has occurred at any Company Leased Real Property (collectively, " Real Property")

(d) There have been no environmental assessments (e.g., Phase 1 or Phase 2 reports), investigations, studies, audit, tests, reviews, or other analyses conducted by, or which are in the possession or control of, the Company relating to any Real Property or any property or facility previously owned, leased, or operated by the Company (or its predecessors) that have not been delivered to Buyer prior to the execution of this Agreement.

3.14 Employee Benefits .

(a) Section 3.14(a) of the Company Disclosure Letter sets forth a complete and accurate list of all material Company Employee Plans.

(b) With respect to each Company Employee Plan, the Company has made available to Buyer a complete and accurate copy of (i) such Company Employee Plan, as amended through the date of this Agreement, or a written summary of any unwritten Company Employee Plan, (ii) the three most recent annual reports (Form 5500) filed with the IRS (if a Form 5500 is required), (iii) each trust agreement, group annuity contract or other material contract and summary plan description (including any summaries of material modifications), if any, relating to each Company Employee Plan, as applicable, (iv) the most recent opinion letter, determination letter or advisory letter (as applicable) for any Company Employee Plan intended to be qualified under Section 401(a) of the Code, and (v) any correspondence with the Department of Labor, IRS, or any other Governmental Entity regarding any Company Employee Plan.

(c) Each Company Employee Plan is being and has been at all times administered in all material respects in accordance with its terms and in accordance with ERISA, the Code, and all other applicable Laws and the regulations.

(d) With respect to the Company Employee Plans, all contributions have been made or the corresponding benefit obligation has been properly accrued to the extent required by GAAP.

(e) Each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code has received and may currently rely on an up-to-date favorable determination, advisory, or opinion letter from the IRS to the effect that such Company

Employee Plan is qualified and the plans and trusts related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, or has time remaining to seek a determination, advisory, or opinion letter from the IRS. No such determination, advisory, or opinion letter has been revoked and revocation has not been threatened. No act or omission has occurred with respect to any such Company Employee Plan that would reasonably be expected to adversely affect its qualification or materially increase its cost.

(f) No Company Employee Plan is subject to Section 412 of the Code or Title IV of ERISA nor is any Company Employee Plan a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA). Neither the Company nor any of its ERISA Affiliates has ever maintained a plan that was subject to Section 412 of the Code or Title IV of ERISA or had any obligation or liability in connection with such a plan or been obligated to contribute to or otherwise had any obligation or liability in connection with a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(g) None of the Company Employee Plans promises or provides, and the Company has no liability or obligation to provide, life, health or medical benefits, or other post-termination welfare benefits, to any individual or the family members of any individual for any period extending beyond the termination of such person's employment with the Company, except as required by state or federal benefits continuation Laws.

(h) Each Company Employee Plan that constitutes a nonqualified deferred compensation plan subject to Section 409A of the Code has been written, executed, and operated in compliance (good faith compliance when allowed under the relevant regulations) with Section 409A of the Code and the regulations and other applicable guidance thereunder.

(i) The Company has no obligation, in connection with the consummation of the transaction contemplated by this Agreement or otherwise, to gross-up or otherwise reimburse any Person for any tax incurred by such Person pursuant to Section 409A or Section 280G of the Code.

(j) Each Company Option was granted in compliance with the terms of the Company Stock Plan and applicable Law in all material respects. Each Company Option intended to qualify as an incentive stock option under Section 422 of the Code so qualifies. The Company does not have in effect any equity compensation plan other than the Company Stock Plan, and there are no outstanding Company equity awards other than Company Options. Each Company Option has an exercise price equal to or above the fair market value on the date of grant (within the meaning of Section 409A of the Code) and is otherwise exempt from Section 409A of the Code. The treatment of the Company Options under this Agreement shall not violate the terms of the Company Stock Plan or any agreement governing the terms of such Company Options.

(k) No Litigation with respect to any Company Employee Plan is pending, or, to the Company's Knowledge, threatened, and there are no facts that reasonably would be expected to give rise to any such actions, suits or claims against any Company Employee Plan,

any fiduciary with respect to a Company Employee Plan or the assets of a Company Employee Plan (other than routine claims for benefits).

(l) All assets of any Company Employee Plan consist of cash or actively traded securities. No Company Employee Plan's assets include Company securities.

(m) The Company may terminate or amend any Company Employee Plan, at any time in its sole discretion, without incurring any material liability other than with respect to benefits that have already accrued under a retirement plan.

(n) Neither the Company, any Company employee, or any committee of which any Company employee is a member has breached his or her fiduciary duty with respect to a Company Employee Plan in connection with any acts taken (or failed to be taken) with respect to the administration or investment of the assets of any Company Employee Plan. To the Knowledge of the Company, no fiduciary, within the meaning of Section 3(21) of ERISA, who is not the Company or any Company employee, has breached his or her fiduciary duty with respect to a Company Employee Plan or otherwise has any liability in connection with any acts taken (or failed to be taken) with respect to the administration or investment of the assets of any Company Employee Plan that would reasonably be expected to result in any liability or excise Tax under ERISA or the Code being imposed on the Company.

(o) The Company has not engaged in a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code, and to the Company's Knowledge, no "prohibited transaction," within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Company Employee Plan that would result in material liability to the Company under Section 406 of ERISA or Section 4975 of the Code.

(p) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, alone or in conjunction with any other event, will not result in any "excess parachute payment" (within the meaning of Section 280G(b)(1) of the Code), or other payment to any employee or director of the Company, will not materially increase the benefits payable under any Company Employee Plan and will not result in any acceleration of the time of payment or vesting of any material benefits under any Company Employee Plan.

(q) Except as required by applicable Law, the Company has no legally binding obligation to any individual to create any additional benefit plans, programs, policies or arrangements or modify or change any existing Company Employee Plan that would affect any current or former employee, director, consultant, or independent contractor, of the Company, or any beneficiary or alternate payee of such an individual.

3.15 Labor Matters .

(a) Section 3.15(a) of the Company Disclosure Letter separately sets forth all of the Company employees as of the date of this Agreement, including for each such employee: name, job title, Fair Labor Standards Act designation, work location, current compensation paid

or payable, all salary or hourly wage, bonus eligibility, and other compensation and/or benefit arrangements other than standard benefit arrangements with all Company employees, accrued paid time off, and hire date as of the date thereof.

(b) To the Company's Knowledge, each employee of the Company is authorized to work in the United States either specifically for the Company or for any United States employer. The Company has completed a Form I-9 (Employment Eligibility Verification) for each employee of the Company, and is in material compliance with federal law with regards to I-9 forms.

(c) The Company has, or will have no later than the Closing Date, paid all accrued salaries, bonuses, commissions, wages, severance and accrued vacation pay of the employees of the Company due to be paid through the Closing Date.

(d) The Company is not a party to, nor does the Company have any obligations under, any collective bargaining agreement or any other labor-related agreement with any labor union, labor organization or works council. No labor union, labor organization or works council has made a demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending nor have any such proceedings occurred in the past or, to the Company's Knowledge, threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority. To the Company's Knowledge, there are no labor union organizing activities with respect to any employees of the Company.

(e) The Company is not the subject of any proceeding asserting that the Company has committed an unfair labor practice. There are currently no wage and hour claims pending against the Company. To the Company's Knowledge, no wage and hour claims are currently threatened in writing by any employee of the Company.

(f) The Company is in compliance in all material respects with all applicable Laws relating to the hiring, employment, and termination of employees and the withholding of Taxes, including but not limited to all such Laws relating to wages, hours, affirmative action, collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of withholding and/or Social Security Taxes and similar Taxes.

(g) The Company has no material liability with respect to the misclassification of any individual as an independent contractor rather than an employee, with respect to the classification of any employee as exempt versus non-exempt, or with respect to any employee leased from another employer. The Company has properly classified, pursuant to the Code and any other applicable Law, all independent contractors used by the Company. The Company has not used the services of individuals who have provided services while classified as independent contractors under circumstances that would entitle them to be eligible to participate in any Company Employee Plan.

(h) The Company's relationships with all individuals who act on their own as contractors or as other service providers can be terminated at any time for any reason without

any amounts being owed to such individuals, other than with respect to compensation or payments accrued before the notice of termination. The Company has complied, in all material respects, with all Laws governing the employment of personnel by U.S. companies and the employment of non-U.S. nationals in the United States, including those relating to wages, hours, benefits, labor and the Immigration and Nationality Act 8 U.S.C. Sections 1101 et seq. and its implementing regulations.

(i) The Company has not used the services of temporary employees or "leased employees" (as that term is defined in Section 414(n) of the Code). All employees of the Company who are employed in the United States, and all of the terms and conditions of their employment are governed exclusively by United States Law and not the Law of any other jurisdiction.

(j) No employee of the Company has provided written notice to the Company of his or her intent to terminate his or her employment with the Company and to the Company's Knowledge, no Key Employee has stated his or her intentions to terminate his or her employment with the Company.

(k) The Company has delivered or otherwise made available to Buyer or its counsel a current, accurate and complete copy its personal policies manual.

3.16 Compliance With Laws; Permits .

(a) The business of the Company has been, and currently is, being conducted in material compliance with all applicable U.S. federal, state, local or foreign laws, statutes, ordinances, rules, regulations, judgments, orders, injunctions, decrees, arbitration awards and licenses of any Governmental Entity (collectively, "Laws").

(i) Company LDTs were researched, developed, designed, and validated solely by Company in material compliance with all applicable Laws, including the FDCA, CLIA, Privacy Laws and state laws, and have been and continue to be performed, marketed, and conducted in material compliance with all applicable Laws, including the FDCA, the Federal Trade Commission Act (FTC Act), CLIA, Privacy Laws and state laws, including the laws of New York.

(ii) The Company's distribution of any Collection Device complies in all material respects with all applicable Laws, including the FDCA.

(iii) The Company Products have been and are being researched in material compliance with all applicable Laws. To the extent necessary by applicable Law, Company has obtained all necessary authorizations, including an Investigational Device Exemption (IDE) consistent with 21 CFR Part 812, for the conduct of any clinical investigations conducted by or on behalf of the Company.

(b) To the Company's Knowledge, no investigation by any Governmental Entity with respect to the Company is pending or threatened. The Company has not received any

written communication from any Person (including any Governmental Entity) of any material noncompliance with any Laws or any written communication from any Governmental Entity or accrediting organization of any material issues, problems, or concerns regarding the quality or performance of the Company Products, Company LDTs or Collection Devices.

(c) The Company has all licenses, permits, approvals, clearances, registrations, and other authorizations of all Governmental Entities, including all authorizations under the FDCA, CLIA, and state laws, necessary for (i) commercialization of the Company LDTs, (ii) research and development of the Company LDTs and Company Products, and (iii) operation and leasing of its properties or other Assets and to carry on its business (the "Company Permits"), and all such Company Permits are valid, and in full force and effect. The Company is in material compliance with all terms and conditions of such Company Permits. The Company has not received any written notice that any Company Permits have been or are being revoked, withdrawn, suspended or challenged.

(d) The Company has made available to Buyer all applications, registrations, licenses, authorizations and approvals, and material correspondence submitted to or received from FDA, CMS, or other Governmental Entity (including minutes and official contact reports relating to any material communications with any Governmental Entity) and all supporting documents (" Regulatory Documentation") in the Company's possession or control. All Regulatory Documentation submitted to the FDA or any other Governmental Entity were true, complete and correct in all material respects as of the applicable date of submission.

(e) No right of the Company to receive reimbursements pursuant to any government program or private program has ever been terminated or otherwise adversely affected as a result of any investigation or enforcement action, whether by any Governmental Entity or other third party, and the Company has not been the subject of any inspection, investigation, , or audit, by any Governmental Entity for the purpose of any alleged improper activity.

(f) There is no arrangement relating to the Company providing for any rebates, kickbacks or other forms of compensation that are unlawful to be paid to any person or entity in return for the referral of business or for the arrangement for recommendation of such referrals. All billings by the Company for its services have been true and correct in all material respects and, to the Company's Knowledge, are in material compliance with all applicable Laws, including the Federal False Claim Act or any applicable state false claim or fraud Law.

(g) Neither the Company nor, to the Company's Knowledge, any individual who is an officer, director, manager, Key Employee, stockholder, agent or managing agent of the Company has been convicted of, charged with or, to the Company's Knowledge, investigated for any federal or state health program-related offense or any other offense related to healthcare or been excluded or suspended from participation in any such program; or, to the Company's Knowledge, within the past five (5) years, has been convicted of, charged with or, to the Company's Knowledge, investigated for a violation of Laws related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances, or has been subject to any judgment, stipulation, order or

decree of, or criminal or civil fine or penalty imposed by, any Governmental Entity related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances. Neither the Company nor, to the Company's Knowledge, any individual who is an officer, director, Key Employee, stockholder, agent or managing agent of the Company has been convicted of any crime or engaged in any conduct that has resulted or would reasonably be expected to result in a debarment or exclusion (i) under 21 U.S.C. Section 335a, or (ii) any similar applicable Law. No debarment proceedings or investigations in respect of the business of the Company are pending or, to the Company's Knowledge, threatened against the Company or any individual who is an officer, director, manager, employee, stockholder, agent or managing agent of the Company.

(h) To the Company's Knowledge, none of the clinical investigators in any clinical trial conducted by or on behalf of the Company has been or is disqualified or otherwise sanctioned by the FDA, the Department of Health and Human Services, or any Governmental Entity and, to the Company's Knowledge, no such disqualification, or other sanction of any such clinical investigator is pending or threatened. The Company has not received any written communication of the Company business from the FDA or any other Governmental Entity requiring or threatening the termination or suspension of any clinical trials conducted by, or on behalf of, the Company.

3.17 Data Protection .

(a) The Company has been, and currently is in material compliance with all applicable Data Protection Laws.

(b) The Company has not received, and the Company has no Knowledge of any facts that would reasonably be expected to give rise to, any notice, court order, warrant, regulatory opinion, audit result, or allegation, from a Governmental Entity: (A) alleging or confirming non-compliance with an applicable Data Protection Law; (B) requiring or requesting the Company to amend, rectify, cease processing, de-combine, permanently anonymize, block, or delete any Personal Data, or to cease using, de-combine, return or dispose of any human biological samples, or to decommission or materially alter the exploitation or operation of the Company's or its Subsidiaries' operations, (C) prohibiting or threatening to prohibit the transfer of Personal Data to any place. The Company has not been involved in a dispute in respect of any infringement or alleged infringement of applicable Data Protection Laws.

(c) The Company has not received any written notice from a data subject or another person claiming a right to compensation from the Company under an applicable Data Protection Law.

(d) The Company holds all permits and licenses required under applicable Data Protection Laws to process Personal Data, and to store and utilize human biological samples. The Company has no Knowledge or reasonable belief that the transactions contemplated by this Agreement will cause any such permit or license to be invalidated, or be required under applicable Data Protection Laws to be amended.

(e) The Company has established, and maintains, reasonable technical, physical and administrative procedures, and a security system, in material compliance with all applicable Data Protection Laws The Company has taken steps to ensure the reliability of its employees that have access to Personal Data, to train such employees on all applicable aspects of applicable Data Protection Laws, and to ensure that all employees with the right to access such data are under obligations of confidentiality with respect to such data.

(f) The Company has not suffered a breach in any material respect of security resulting in the unauthorized disclosure of Personal Data to any person or recipient outside the Company, and to the Company's Knowledge, no facts in which applicable Data Protection Laws would require the Company to notify a Governmental Entity, any of its employees, customers or any other Person of a security breach.

3.18 Insurance . Section 3.18 of the Company Disclosure Letter sets forth a list of all casualty, general liability and other insurance policies maintained by the Company (the policies required to be set forth thereon, the " Insurance Policies"). Each of the Insurance Policies is in full force and effect. The Company has paid when due all premiums due and payable under all such Insurance Policies. The Company has complied in all material respects with the provisions of each Insurance Policy under which it is the insured party. No insurance carrier has provided written notice to the Company that it has cancelled or generally disclaimed coverage or liability under any Insurance Policy or indicated any intent to do so or not to renew any such policy. There are no pending claims against the Insurance Policies by the Company as to which the insurers have denied liability. The Company has not received written notice of a default under, or a termination or cancellation of, or an increase in premium with respect to, any of the Insurance Policies. The Company has made available to Buyer complete and accurate copies of each Insurance Policy. The Insurance Polices include fire and casualty insurance policies, with extended coverage, sufficient in amount (subject to reasonable deductibles), to allow it to replace any of its properties that might be damaged or destroyed.

3.19 Product Liability . (a) No product liability claims, malpractice claims, professional negligence claims or other claims asserting a breach of a duty have been received by the Company and (b) to the Company' Knowledge, no such claims have been threatened against the Company relating to any of the Company Products or Company LDTs formerly or currently being developed, tested or manufactured by or on behalf of the Company or Collection Devices used by the Company. There is no Order outstanding against the Company relating to such claims.

3.20 Affiliate Transactions . Other than in his or her capacity as a stockholder, director, officer or employee of the Company, no (a) present officer or director of the Company, individual who served as officer or director of the Company within the past five (5) years or immediate family members of any such officer or director, (b) holder of Company Stock, (c) employee of the Company, (d) Affiliate of the foregoing Persons described in clauses (a), (b) or (c), or (d) Affiliate of the Company, (each, a " Company Related Person") (i) owns any property or right, tangible or intangible, which is used in the business of the Company, (ii) to the Company's Knowledge, has any claim or cause of action against the Company,(iii) owes any money to, or is owed any money by, the Company, other than for advances made to directors or

officers of the Company in the ordinary course of business to meet reimbursable business expenses reasonably anticipated to be incurred by such individuals, or (iv) is involved in any material business arrangement or relationship or is party to any Contract, transaction or series of transactions with the Company, other than (A) employment Contracts or indemnity agreements set forth in Section 3.20 of the Company Disclosure Letter by and between the Company and any Company Related Person, (B) salaries or fees for services rendered, (C) reimbursable business expenses in the ordinary course of business or (D) benefits under the Company Employee Plans.

3.21 Brokers . No agent, broker, investment banker, financial advisor or other Person has been, is or shall be entitled, as a result of any action, agreement or commitment of the Company, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement.

3.22 Closing Date Allocation Schedule . The Closing Date Allocation Schedule required as a condition to Closing to be delivered by the Company not less than three (3) Business Days prior to the Closing Date pursuant to Section 2.2(c) will, when delivered, set forth each item specified in Section 2.2(c) as of the Closing Date, and the calculations performed to compute such information are, and will be (as applicable) accurate and in accordance with the terms of this Agreement, the Company's Constituent Documents and all other agreements and instruments among the Company and the Company Equityholders.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Buyer and Merger Sub represent and warrant to the Company that the statements contained in this Article IV are true and correct as of the date hereof and as of the Closing Date.

4.1 Organization, Standing and Power . Each of Buyer and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted, and is duly licensed or qualified to do business and, where applicable as a legal concept, is in good standing as a foreign corporation in each jurisdiction in which the character of the properties it owns, operates or leases or the nature of its activities makes such qualification necessary, except for such failures to be so licensed or qualified that, individually or in the aggregate, would not reasonably be expected to have a Buyer Material Adverse Effect.

4.2 Authority; No Conflict; Required Filings and Consents .

(f) Each of Buyer and Merger Sub has all requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements to which Buyer or Merger Sub (as applicable) is or will be a party and, subject to the adoption of this Agreement by Buyer as sole stockholder of Merger Sub (which shall occur immediately after the execution and delivery of this Agreement), to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Buyer or Merger Sub (as applicable) is or will be a party and the consummation of the transactions

contemplated by this Agreement by Buyer and Merger Sub have been duly authorized by their respective boards of directors. Upon the approval of the Merger and the adoption of this Agreement by Buyer as sole stockholder of Merger Sub (which shall occur immediately after the execution and delivery of this Agreement), no further corporate or stockholder authorization will be required to authorize the execution, delivery and performance by Buyer or Merger Sub of this Agreement and such Ancillary Agreements and the consummation by Buyer and Merger Sub of the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements to which Buyer or Merger Sub (as applicable) is or will be a party have been or, when executed, will be duly and validly executed and delivered by each of Buyer and Merger Sub and constitute or will constitute (as applicable) the valid and binding obligations of each of Buyer and Merger Sub (as applicable), enforceable against each of them in accordance with their terms, subject to the Bankruptcy and Equity Exception.

(g) The execution and delivery of this Agreement and the Ancillary Agreements to which Buyer or Merger Sub (as applicable) is or will be a party by each of Buyer and Merger Sub (as applicable) do not or will not (as applicable), and the consummation by Buyer and Merger Sub of the transactions contemplated by this Agreement will not, with or without the giving of notice or the lapse of time or both, (i) conflict with, or result in any violation or breach of, any provision of the certificate of incorporation or by-laws of Buyer or Merger Sub, (ii) conflict with, or result in any violation or breach of, or constitute a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, constitute a change in control under, require the payment of a penalty under or result in the imposition of any Lien on Buyer's or Merger Sub's properties, rights or assets under, any of the terms, conditions or provisions of any lease, license, Contract to which Buyer or Merger Sub is a party or by which any of them or any of their properties or assets may be bound, or (iii) subject to the adoption of this Agreement by Buyer as sole stockholder of Merger Sub (which shall occur immediately after the execution and delivery of this Agreement) and subject to compliance with the requirements specified in clauses (i) and (ii) of Section 4.2(c), conflict with or violate any permit, concession, franchise, license, judgment, injunction, Order, decree, statute, Law, ordinance, rule or regulation applicable to Buyer or Merger Sub or any of its or their respective rights, properties or assets, except in the case of clauses (ii) and (iii) of this Section 4.2(b) for any such conflicts, violations, breaches, defaults, terminations, cancellations, accelerations, losses, penalties or Liens, and for any consents or waivers not obtained, that, individually or in the aggregate, would not reasonably be expected to have a Buyer Material Adverse Effect.

(h) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Entity or any stock market or stock exchange on which shares of Buyer common stock are listed for trading is required by or with respect to Buyer or Merger Sub in connection with the execution and delivery of this Agreement with or without the giving of notice or the lapse of time or both, by Buyer or Merger Sub or the consummation by Buyer or Merger Sub of the transactions contemplated hereby or thereby, except for (i) the pre-merger notification requirements under the HSR Act and applicable foreign Antitrust Laws and (ii) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate corresponding documents with the appropriate

authorities of other states in which the Company is qualified as a foreign corporation to transact business.

(i) No vote of the holders of any class or series of Buyer's capital stock or other securities is necessary for the consummation by Buyer of the transactions contemplated by this Agreement.

4.3 Litigation . There is no Litigation pending or, to the knowledge of Buyer or Merger Sub, threatened against Buyer or Merger Sub, and neither Buyer nor Merger Sub is subject to any Order or decree of any Governmental Entity that, in either case, individually or in the aggregate, would reasonably be expected to have a Buyer Material Adverse Effect.

4.4 Operations of Merger Sub . Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement.

4.5 Financing . Buyer and Merger Sub have sufficient funds to perform all of their respective obligations under this Agreement and to consummate the Merger.

ARTICLE V

CONDUCT OF BUSINESS

5.1 Covenants of the Company . Except (a) as set forth in Section 5.1 of the Company Disclosure Letter or (b) as consented to in writing by Buyer, which consent will not be unreasonably withheld, conditioned or delayed (the foregoing permitted exceptions in clauses (a) and (b), the "Permitted Exceptions"), during the Pre-Closing Period, the Company shall (i) to conduct and operate its business in the ordinary course, (ii) use commercially reasonable efforts to maintain and preserve its business organization, assets and properties in all material respects in the manner in which its business is currently conducted and (iii) use commercially reasonable efforts to preserve its relationships and business with customers, suppliers, and distributors. Without limiting the generality of the foregoing, except as contemplated by one of the Permitted Exceptions, during the Pre-Closing Period, the Company shall not do any of the following:

(j) other than the issuance of shares of capital stock in connection with the exercise of Company Warrants or Company Options outstanding on the date of this Agreement, (i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, securities or other property) in respect of, any of its capital stock, (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or any of its other securities or (iii) purchase, redeem or otherwise acquire any shares of its capital stock or any other of its securities or any rights, warrants or options to acquire any such shares or other securities;

(k) issue, deliver, sell, grant, pledge or otherwise dispose of or encumber any shares of its capital stock, any other voting or equity securities or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such shares, equity or voting securities or convertible or exchangeable securities (other than the (x) issuance of shares

of capital stock in connection with (i) the conversion of Company Preferred Stock or (ii) the exercise of Company Warrants or Company Options outstanding on the date of this Agreement and (y) equity securities issued to newly hired employees in the ordinary course consistent in values with past practices, with respect to an aggregate number of shares of Company Common Stock not to exceed 1,379,471 (as adjusted for stock splits, dividends, recapitalizations and the like and net of any expired or terminated equity awards pursuant to the terms of any option plan, restricted stock purchase agreement or similar arrangement occurring after the date hereof) ;

(l) amend its Constituent Documents;

(m) acquire (i) by merging or consolidating with, or by purchasing all or a substantial portion of the assets or any stock of, or by any other manner, any business or any Person or division thereof or (ii) any assets that are material, in the aggregate, to the Company, except purchases of inventory, supplies and raw materials in the ordinary course of business;

(n) (i) sell, lease, license, pledge, divest or otherwise dispose of or encumber any of the Company's rights with respect to any of the Company Products, Company LDTs or Collection Devices, (ii) sell, lease, license, pledge, divest or otherwise dispose of or encumber any properties, rights or Assets of the Company other than in the ordinary course of business consistent with past practice, or (iii) voluntarily place any Lien on its assets other than Permitted Liens;

(o) (i) incur any Indebtedness for borrowed money or guarantee any such Indebtedness of another Person (other than letters of credit or similar arrangements issued to or for the benefit of suppliers and manufacturers in the ordinary course of business consistent with past practice) or (ii) make any loans, advances (other than routine advances to employees of the Company in the ordinary course of business consistent with past practice) or capital contributions to, or investment in, any other Person, other than Approved Investments;

(p) terminate, enter into, amend, cancel, renew or modify, or consent to the termination of, any Contract that is, or, if applicable, would constitute a Company Material Contract if in effect on the date hereof, or waive, release or assign any rights or claims under a Company Material Contract or consent to the termination of the Company's rights thereunder (other than the entry into Contracts for the sale or reimbursement of Company Products or Company LDTs, Contracts for reagents and materials for the production of Company Products or Company LDTs, and clinical trial agreements, in each case, in the ordinary course of business);

(q) with respect to Intellectual Property, (A) sell, assign, license, sublicense, encumber, fail to maintain, transfer or otherwise dispose of any right, title or interest of the Company in any Company Intellectual Property or any Third Party Intellectual Property, except in the ordinary course of patent prosecution, consistent with past practice (which exception shall not include, for the avoidance of doubt, interferences, protests, inter partes reviews, post-grant reviews, oppositions, reissue and reexamination proceedings), (B) grant, extend, amend, or waive, cancel or modify any rights in or to the Company Intellectual Property or Third Party Intellectual Property (which exception shall not include, for the avoidance of doubt, interferences, protests, inter partes reviews, post-grant reviews, oppositions, reissue and

reexamination proceedings), (C) amend, assign, terminate or fail to exercise any right of renewal or extension under any Contract covering Company Intellectual Property or Third Party Intellectual Property, or (D) fail to prosecute and maintain the Company's Patents, except in the ordinary course of patent prosecution, consistent with past practice (which exception shall not include, for the avoidance of doubt, interferences, protests, inter partes reviews, post-grant reviews, oppositions, reissue and reexamination proceedings);

(r) make any capital expenditure or other expenditure with respect to property, plant or equipment in excess of $1,500,000 in the aggregate for the Company;

(s) Except in the ordinary course of business, consistent with past practice, (i) terminate or amend any pension, profit sharing, bonus, incentive compensation, deferred compensation, stock purchase, stock option, stock appreciation rights, severance or other Company Employee Plan, (ii) adopt, enter into, or establish a plan, policy, program, or arrangement that would be considered a Company Employee Plan were such plan, policy, program, or arrangement in effect on the date of this Agreement, (iii) increase the compensation or fringe benefits of, grant, pay, or agree to grant or pay, any severance arrangements or any unusual or extraordinary bonus, benefit or other form of direct or indirect compensation to, any director or executive officer, or materially increase the compensation or fringe benefits of, grant, pay, or agree to grant or pay, any severance arrangements or any unusual or extraordinary bonus, benefit or other form of direct or indirect compensation to, any other employee or any consultant, provided in each case that payments may be made under any such contracts existing as of the date of this Agreement or in connection with year-end bonuses in the ordinary course of business, (iv) accelerate the payment, right to payment or vesting of any compensation or benefits, including any outstanding options or restricted stock awards, other than as contemplated by this Agreement, (v) grant any stock options, stock appreciation rights, stock based or stock related awards, performance units or restricted stock (other than equity securities issued to newly hired employees in accordance with Section 5.1(b)(y)) or (vi) take any action other than in the ordinary course of business to fund or in any other way secure the payment of compensation or benefits under any Company Employee Plan;

(t) (i) terminate, enter into, amend, cancel, renew or modify, or consent to the termination of, any employment agreement with any executive officer or Key Employee or (ii) terminate, enter into, amend, cancel, renew or modify, or consent to the termination of, any employment or consulting agreement that provides for compensation or payments to such employee or independent contractor in excess of $100,000 in any twelve-month period, unless, in the case of this clause (ii), such employment agreement or consulting agreement is terminable by the Company within thirty (30)-days' notice without any payment or other material continuing obligations of the Company following such termination;

(u) change any material accounting methods, principles or practices other than as required by GAAP;

(v) (i) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any amendment to a material Tax Return, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation

period applicable to any material claim or assessment in respect of Taxes or (ii) make any material change in the Company's cash management practices, including with respect to collection of receivables or payment of payables;

(w) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

(x) create any Subsidiary of the Company;

(y) settle or compromise any Litigation, whether civil, criminal, administrative or arbitral, whether at law or in equity; or

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

5.2 Confidentiality . The parties acknowledge that Buyer and the Company have previously executed the Confidentiality Agreement, which Confidentiality Agreement shall continue in full force and effect in accordance with its terms, except as expressly modified herein.

ARTICLE VI

ADDITIONAL AGREEMENTS

6.1 No Solicitation . During the Pre-Closing Period, the Company shall not, and the Company shall not authorize or permit its directors, officers or employees or any investment banker, financial advisor, attorney, accountant or other advisor, agent or representative to, directly or indirectly, (a) solicit, initiate or knowingly encourage any Acquisition Proposal or (b) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person any non‑public information for the purpose of encouraging or facilitating, any Acquisition Proposal. The Company shall promptly inform Buyer of the identity of any Person making an Acquisition Proposal during the Pre-Closing Period as well as the nature and material terms of any such Acquisition Proposal and shall furnish to Buyer a copy of any such Acquisition Proposal. Notwithstanding anything to the contrary in this Section 6.1, if, prior to the date the Company obtains the Written Consent, the Company receives an unsolicited, bona fide written Acquisition Proposal from a third party that its Board of Directors, after consultation with the Company's financial advisor and outside counsel, has in good faith concluded is, or is reasonably likely to lead to, a Superior Offer, the Company may (i) furnish nonpublic information to the third party making such Acquisition Proposal and (ii) engage in negotiations with the third party with respect to the Acquisition Proposal, in each case, to the extent the Company's Board of Directors determines in good faith that the failure to do so would violate its obligations under applicable Law.

6.2 Stockholder Consent or Approval .

(d) The Company shall use its reasonable best efforts in compliance with applicable Law to obtain the written consent of the holders of the requisite number of shares of capital stock of the Company required to secure the Company Stockholder Approval within four

(4) hours following the time of execution of this Agreement (the "Written Consent"). Promptly following receipt of the Written Consent, the Company shall cause its corporate Secretary to deliver a copy of such Written Consent to Buyer, together with a certificate executed on behalf of the Company by its corporate Secretary certifying that such Written Consent constitutes the Company Stockholder Approval. Nothing contained in this Section 6.2 shall be deemed to prohibit the Company from making any required disclosure to the Company's stockholders if, in the good faith judgment of the Company's Board of Directors, failure to so disclose would violate its obligations under applicable Law.

(e) As soon as practicable after the delivery of the Written Consent (but in no event later than ten (10) Business Days after the date of this Agreement), the Company shall mail to each holder of record of Company Stock on the applicable record date that has not executed the Written Consent an information statement (the "Information Statement") which shall include: (i) the notice required in connection with the Written Consent pursuant to Section 228(e) of the DGCL, (ii) the notice to stockholders of their appraisal rights under Section 262 of the DGCL and Section 13 of the CCC and a form of waiver of such appraisal and dissenters rights in a form reasonable satisfactory to Buyer, and (iii) a description of the Merger and this Agreement. Buyer and its counsel shall be given a reasonable opportunity to review and comment on the Information Statement and the Company shall give reasonable and good faith consideration to any comments made by Buyer and its counsel. The Company covenants that the Information Statement shall not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in such Information Statement, in light of the circumstances under which they were made, not misleading.

6.3 Buyer Approval . Immediately following the execution of this Agreement, Buyer shall execute and deliver, in accordance with Section 228 of the DGCL and in its capacity as the sole stockholder of Merger Sub, a written consent adopting this Agreement.

6.4 Access to Information . During the Pre-Closing Period, the Company shall (and shall cause its officers, employees and Representatives to) afford to Buyer's officers, employees, accountants, counsel and other Representatives, reasonable access, upon reasonable notice, during normal business hours and in a manner that does not disrupt or interfere with business operations, to all of its properties, books, contracts, commitments, personnel and records as Buyer shall reasonably request, and, during such period, the Company shall furnish promptly to Buyer the information concerning its business, properties, assets and personnel as Buyer may reasonably request. Any access provided to Buyer or information provided by the Company shall not constitute any expansion of or additional representations or warranties of the Company beyond those specifically set forth in this Agreement. Buyer will hold any such information which is nonpublic in confidence in accordance with the Confidentiality Agreement.

6.5 Legal Conditions to the Merger .

(q) Subject to the terms hereof, including Section 6.5(b), the Company and Buyer shall each:

(i) use its reasonable best efforts to take, or cause to be taken, all actions, and do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby as promptly as practicable;

(ii) as promptly as practicable and in any event within ten (10) Business Days after the date of this Agreement, make all necessary filings with Governmental Entities in order to facilitate prompt consummation of the transactions contemplated hereby, (including, within ten (10) Business Days after the date of this Agreement, making all necessary filings under the HSR Act), and thereafter make any other required submissions, with respect to this Agreement and the Merger required under any Antitrust Law;

(iii) use its reasonable best efforts to make, as promptly as practicable, all necessary applications and filings, and thereafter make any other required submissions, with respect to this Agreement and the Merger required under any other applicable Law;

(iv) use its reasonable best efforts to obtain, as promptly as practicable, from any Governmental Entity or any other third party any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by the Company or Buyer or Merger Sub in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby; and

(v) execute or deliver any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

The Company and Buyer shall cooperate with each other in connection with the making of any applications, filings and submissions contemplated above, including providing copies of all applicable documents to the non-filing or non-submitting party and its advisors prior to filing or submitting and, if requested, accepting reasonable additions, deletions or changes suggested in connection therewith. The Company and Buyer shall furnish to each other all information required for any application, filing or other required submission to be made pursuant to the rules and regulations of any applicable Law in connection with the transactions contemplated by this Agreement. For the avoidance of doubt, Buyer and the Company agree that nothing contained in this Section 6.5(a) shall modify or affect their respective rights and responsibilities under Section 6.5(b) and this Section 6.5(a) shall be subject to Section 6.5(c).

(r) Subject to Section 6.5(c), Buyer and the Company agree to take, and Buyer shall cause each of its Subsidiaries to take, reasonable best efforts necessary to avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible. Each party shall promptly notify the other party of any communication to that party from any Governmental Entity and permit the other party to review in advance any proposed communication to any Governmental Entity. Each party shall not agree to participate in any meeting with any Governmental Entity in respect of any filings, investigation or other inquiry unless it consults with the other party in advance and, to the extent permitted by such

Governmental Entity, gives the other party the opportunity to attend and participate thereat. Each of the Company and Buyer will coordinate and cooperate fully with the other in exchanging such information and providing such assistance as the other may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods under the HSR Act or in connection with other any other authorizations, consents, orders or approvals required pursuant to any Antitrust Law in connection with the transactions contemplated hereby. Each of the Company and Buyer agrees to respond promptly to and comply fully with any request for additional information or documents under the HSR Act. The Company will provide Buyer, and Buyer will provide the Company, with copies of all correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or any of its Representatives, on the one hand, and any Governmental Entity or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated hereby.

(s) Each of Buyer and the Company shall use its respective reasonable best efforts to take (or cause to be taken) all actions and do (or cause to be done) all things necessary, proper or advisable to obtain all clearances, consents and approvals necessary to satisfy the condition set forth in Section 7.1(b) and otherwise consummate the Merger in compliance with applicable Antitrust Laws. Notwithstanding the foregoing or any other provision in this Agreement, in no event shall Buyer or any of its Affiliates be required to propose, negotiate, offer to commit or effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of such assets or businesses of Buyer or its Subsidiaries or the Company, nor shall Buyer nor any of its Affiliates be required to take any other action or refrain from taking any action which would materially and adversely diminish the value of the Company to Buyer or materially and adversely diminish Buyer's ability to conduct its current business.

(t) Subject to Sections 5.1 and 6.5(c), each of the Company and Buyer shall give (and Buyer shall cause its Subsidiaries to give) any notices to third parties, and use, and, in the case of Buyer, cause its Subsidiaries to use, their reasonable best efforts to obtain any third party consents required in connection with the Merger that are (i) necessary to consummate the transactions contemplated hereby, (ii) disclosed or required to be disclosed in the Company Disclosure Letter or (iii) required to prevent the occurrence of an event that would reasonably be expected to have a Company Material Adverse Effect or a Buyer Material Adverse Effect prior to or after the Effective Time.

(u) For the avoidance of doubt, any information provided by the Company pursuant to this Section 6.5 shall be subject to the terms of the Confidentiality Agreement.

(v) If any information otherwise required to be furnished by any party hereto pursuant to this Section 6.5 (such party, the "Furnishing Party") constitutes information (i) relating to trade secrets, (ii) that is commercially sensitive or (iii) the provision of which would violate any Law or the terms of any Contract or would cause any applicable attorney-client privilege to be lost, the Furnishing Party shall advise the applicable other party that such information is not being furnished, and the Furnishing Party shall use its commercially reasonable efforts (A) to obtain the required consent of any third party to provide such access or

disclosure or (B) to develop an alternative to providing such information so as to address such matters that is reasonably acceptable to Buyer and the Company.

6.6 Public Disclosure . Except as may be required by Law, without the consent of Buyer (which consent shall not be unreasonably withheld) the Company shall not issue any press release or otherwise make any public statement (including announcements to the employees of the Company) with respect to the Merger or this Agreement.

6.7 Notification of Certain Matters . During the Pre-Closing Period, Buyer shall give prompt written notice to the Company, and the Company shall give prompt written notice to Buyer, of (a) the occurrence, or failure to occur, of any event, which occurrence or failure to occur would cause or constitute, or be reasonably expected to cause or constitute, a breach of any representation or warranty in the Agreement that would reasonably be expected to cause the conditions to Closing set forth in Section 7.2(a) or 7.3(a), as the case may be, not to be satisfied or (b) any failure of Buyer and Merger Sub or the Company, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement, which failure would cause or constitute, or be reasonably expected to cause or constitute, a breach of any covenant or obligation in the Agreement that would reasonably be expected to cause the conditions to Closing set forth in Section 7.2(b) or 7.3(b), as the case may be, not to be satisfied. Notwithstanding the above, the delivery of any notice pursuant to this Section 6.7 will not limit or otherwise affect the remedies available hereunder to the party receiving such notice or the conditions to such party's obligation to consummate the Merger. Failure of the Company to comply with this Section 6.7 shall not give rise to a remedy for the Company's failure to comply with this Section 6.7, unless such failure was willful and intentional.

6.8 Employee Matters . Following the Closing, Buyer shall comply, and shall cause the Surviving Corporation to comply, with the obligations of the Company under each employment agreement with each employee of the Company as in effect immediately prior to the Closing Date and will give each Continuing Employee full credit for prior service with the Company (and its predecessors) for purposes of (i) eligibility under any Buyer Employee Plans and (ii) determination of benefit levels under any Buyer Employee Plan or policy relating to vacation or paid time off, in each case for which the Continuing Employee is otherwise eligible and in which the Continuing Employee is offered participation, but not where such credit would result in a duplication of benefits. In addition, Buyer shall waive, or cause to be waived, any limitations on benefits relating to pre-existing conditions to the same extent such limitations are waived or do not apply under any comparable plan of the Company and recognize for purposes of annual deductible and out-of-pocket limits under its medical and dental plans, deductible and out-of-pocket expenses paid by Continuing Employees in the calendar year in which the Effective Time occurs. Nothing in this Agreement will prohibit Buyer from amending or terminating any benefit plan or arrangement covering any Continuing Employee on or after the Closing Date. Nothing in this Agreement will prohibit Buyer from terminating a Continuing Employee at any time and this Agreement shall not guarantee employment for a Continuing Employee for any period of time.

6.9 280G Matters . To the extent any payments made with respect to, or which arise as a result of, this Agreement, could be characterized as an "excess parachute payment" within the meaning of Section 280G(b)(1) of the Code, the Company shall (i) as promptly as practicable (but in no event later than thirty (30) days) following the date of this Agreement, disclose its calculations with respect to the excess parachute payments to Buyer, along with the assumptions used to make the calculations and the data necessary for Buyer to confirm the accuracy of the calculations, and (ii) to the extent not already obtained, use its commercially reasonable efforts to obtain the consent of the recipient of any such payment that would otherwise be due and owing that such payment shall not be due and owing, paid or retained, absent 280G Stockholder Approval (as defined below). Prior to the Effective Time, the Company shall submit to a stockholder vote the right of any "disqualified individual" (as defined in Section 280G(c) of the Code) listed in Section 6.9 of the Company Disclosure Letter to receive any and all payments (or other benefits) contingent on the consummation of the transactions contemplated by this Agreement (within the meaning of Section 280G(b)(2)(A)(i) of the Code) to the extent necessary and in a manner reasonably satisfactory to Buyer, so that, if such vote is adopted by the Company stockholders in a manner that satisfies the stockholder approval requirements under Section 280G(b)(5)(B) of the Code and regulations promulgated thereunder, no payment received by such "disqualified individual" would be a "parachute payment" under Section 280G(b) of the Code (determined without regard to Section 280G(b)(4) of the Code) ("280G Stockholder Approval"). Such vote shall establish the "disqualified individual's" right to receive or retain the payment or other compensation. In addition, the Company shall provide adequate disclosure to Company stockholders entitled to vote under Section 280G(b)(5)(B) of all material facts concerning all payments that, but for such vote, could be deemed "parachute payments" to any such "disqualified individual" under Section 280G of the Code in a manner that satisfies Section 280G(b)(5)(B)(ii) of the Code and regulations promulgated thereunder, and Buyer shall have the right to review and approve any disclosure so required before such disclosure is made, which approval shall not be unreasonably withheld.

6.10 Pay-Off Letters . The Company shall obtain, no later than two (2) Business Days prior to the Closing Date, payoff letters (the "Pay-Off Letters") in form reasonably satisfactory to Buyer from the holders (or the agents for such holders) of the Closing Indebtedness set forth in the Preliminary Closing Statement, and all documents related thereto, including any credit agreements, pledge agreements, security agreements, notes and guarantees, and all Liens securing such Indebtedness, shall be released or terminated upon the repayment of the Closing Indebtedness set forth in the Preliminary Closing Statement in accordance with the terms of such Pay-Off Letters.

6.11 Company Option and Company Warrant Notices . The Company shall give notice to the holders of Company Options and the Company Warrants of the transactions contemplated by this Agreement and treatment the Company Options and the Company Warrants, in each case, in accordance with the terms thereof.

6.12 Payment of Estimated Company Transaction Expenses . On the Closing Date, Buyer shall pay, or shall cause the Surviving Corporation to pay, all Estimated Company Transaction Expenses in the amounts set forth on the invoices delivered by the Company to Buyer not less than two (2) Business Days prior to Closing, as contemplated by Section 2.3(b)

(v).

6.13 FIRPTA Certificate . Prior to the Closing, the Company shall deliver or cause to be delivered, to Buyer a certification that the shares of Company Stock are not United States real property interests as defined in Section 897(c) of the Code, together with a notice to the IRS, in accordance with the Treasury Regulations under Section 897 and 1445 of the Code. If the Company has not provided such certification and notice to Buyer on or before the Closing Date, Buyer shall be permitted to withhold from the payments to be made pursuant to this Agreement any required withholding Tax under Section 1445 of the Code.

6.14 Termination of Contracts with Company Related Persons . The Company shall take all actions necessary so that, at or prior to the Effective Time, each Contract or arrangement between the Company and a Company Related Person set forth in Section 6.14 of the Company Disclosure Letter shall be terminated without further liability to or obligation of the Company.

6.15 Tax Matters .

(a) Filing of Tax Returns After the Closing Date. Buyer will prepare all Tax Returns that relate to a Tax period that ends on or before the Closing Date but is filed after the Closing Date in accordance with past practice of the Company.

(b) Cooperation on Tax Matters. Buyer, the Company and the Stockholder Representative shall cooperate fully, as and to the extent reasonably requested by the other parties, in connection with the filing of Tax Returns, the filing of any amended Tax Return for a period prior to (or including) the Closing Date, any Tax audits, Tax proceedings or other Tax- related claims.

6.16 D&O Indemnity and Insurance .

(a) The certificate of incorporation and the by-laws of the Surviving Corporation shall contain provisions relating to the exculpation or indemnification of former officers and directors that provide the officers and directors of the Company prior to the Closing with rights that that are no less favorable than the rights afforded to such individuals in the Company's certificate of incorporation and by-laws immediately prior the Effective Time. For a period of six (6) years after the Effective Time, Buyer shall not, and shall not permit the Surviving Corporation to, amend, repeal or modify any provision in the Surviving Corporation's certificate of incorporation or by-laws relating to the exculpation or indemnification of former officers and directors (unless required by applicable law) in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of the Company, unless such amendment, modification or repeal is required by applicable law after the Effective Time, it being the intent of the parties hereto that the officers and directors of the Company prior to the Closing shall continue to be entitled to such exculpation and indemnification to the fullest extent permitted under applicable law. For a period of six (6) years following the Effective Time, Buyer shall cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company pursuant to any indemnification agreements in effect as of the date hereof between the Company and the

Company's former officers and directors with respect to acts and omissions occurring at or prior to the Closing, subject to applicable law. For the avoidance of doubt, nothing this Section 6.16 shall prevent the Surviving Corporation from combining with any other entity (including Buyer), or the taking of any other action by Buyer or the Surviving Corporation that may result in the amendment, repeal or modification of the Surviving Corporation's certificate of incorporation or by-laws, or any provision thereof relating to the exculpation or indemnification of former officers and directors, as long as Buyer causes the Surviving Corporation to provide the officers and directors of the Company prior to the Closing with rights that in the good faith judgment of Buyer are no less favorable than the rights afforded to such individuals in the Surviving Corporation's certificate of incorporation or by-laws.

(b) Prior to the Closing, the Company shall purchase and fully pay for, at its expense a six-year "tail" insurance policy with respect to directors' and officers' liability insurance with respect to matters existing or occurring at or prior to the Effective Time.

(c) This Section 6.16 is intended to be for the benefit of, and shall be enforceable by the former directors and officers of the Company and their heirs and personal representatives and shall be binding on the Surviving Corporation and its successors and assigns. In the event the Surviving Corporation or its successor or assign (a) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (b) transfers all or substantially all of its properties and assets to any Person, then, and in each case, proper provision shall be made so that the successor and assign of the Surviving Corporation shall honor the obligations set forth with respect to the surviving corporation and Buyer in this Section 6.16.

6.17 Form S-8; NASDAQ Listing . Buyer shall file a Registration Statement on Form S-8 with the Securities and Exchange Commission covering the shares of Buyer common stock issuable with respect to Unvested Company Options as promptly as practicable after the Effective Time and will use commercially reasonable efforts to maintain the effectiveness of such registration statement thereafter for so long as any of such Unvested Company Options remain outstanding. Buyer shall use commercially reasonable efforts to cause the shares of Buyer common stock reserved for issuance upon exercise of Unvested Company Options to be approved for listing on the NASDAQ Global Select Market, subject to official notice of issuance, prior to the Effective Time.

6.18 Certain Actions. Prior the Effective Time, the Company (a) shall take all action necessary to terminate the employment of the individual set forth in Section 6.18 of the Company Disclosure Letter in accordance with the terms of such individual's employment agreement and to provide that the Company has no obligations with respect to such individual following the Effective Time and (b) shall use reasonable best efforts to cause such individual to release the Buyer Indemnified Parties (including the Company) from all liability with respect to such termination.

ARTICLE VII

CONDITIONS TO MERGER

7.1 Conditions to Each Party's Obligation To Effect the Merger . The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

(f) Stockholder Approval. The Company shall have obtained the Company Stockholder Approval.

(g) HSR Act. The waiting period (and any extensions thereof) applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated.

(h) No Injunctions. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any order, executive order, stay, decree, judgment or injunction (preliminary or permanent) or statute, rule or regulation which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger.

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

(k) Representations and Warranties. (i) The representations and warranties of the Company set forth in this Agreement (other than as set forth in Sections 3.2 (Capitalization), 3.4(a) and 3.4(d) (Authority), and 3.22 (Allocation Schedules) shall be true and correct (without regard to any materiality or Company Material Adverse Effect qualifications contained therein) as of the Closing Date as though made on and as of the date of this Agreement and as of the Closing Date, except as would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect (provided that representations and warranties that are made as of a particular date shall be true and correct (without regard to any materiality or Company Material Adverse Effect qualifications contained therein) as of such date as though made on such date, except as would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect) and (ii) the representations and warranties of the Company set forth in Sections 3.2 (Capitalization), 3.4(a) and 3.4(d) (Authority), and 3.22 (Allocation Schedules) of this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (provided that representations and warranties that are made as of a particular date shall be true and correct in all material respects as of such date) and (iii) Buyer shall have received a certificate dated as of the Closing Date signed on behalf of the Company by an executive officer of the Company certifying as to the fulfillment of the foregoing conditions set forth in this Section 7.2(a).

(l) Performance of Obligations of the Company . The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Closing Date; and Buyer shall have received a certificate dated as of the Closing Date, signed on behalf of the Company by an executive officer of the Company certifying as to the fulfillment of the foregoing condition.

(m) Company Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Company Material Adverse Effect.

(n) Dissenting Shares. The period during which any holders of any class or series of Company Stock can exercise their statutory appraisal rights under Section 262 of the DGCL or Section 13 of the CCC with respect to the Merger shall have expired, and the holders of Company Stock representing not more than five percent (5%) of the votes entitled to be cast by holders of Company Stock entitled to exercise such statutory appraisal rights or dissenter rights shall have exercised (and not subsequently withdrawn or waived) such statutory appraisal or dissenter rights.

(o) Escrow Agreement. The Stockholder Representative and the Escrow Agent shall have executed and delivered the Escrow Agreement.

(p) Payoff Letters. The Company shall have delivered to Buyer the Pay-Off Letters.

(q) Preliminary Closing Statement and Closing Allocations Schedule. No later than three (3) Business Days prior to the Closing Date, the Company shall have delivered to Buyer (i) the Preliminary Closing Statement and (ii) the Closing Date Allocation Schedule.

(r) Ancillary Agreements. The Company shall have executed and delivered each of the other Ancillary Agreements to which it is a party.

7.3 Additional Conditions to Obligations of the Company. The obligation of the Company to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, either of which may be waived, in writing, exclusively by the Company:

(c) Representations and Warranties. (i) The representations and warranties of Buyer and Merger Sub set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except (i) to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date, and (ii) where the failure to be true and correct (without regard to any materiality or Buyer Material Adverse Effect qualifications contained therein), individually or in the aggregate, has not had a Buyer Material Adverse Effect), and (ii) the Company shall have received a certificate dated as of the Closing Date signed on behalf of Buyer by an executive officer of Buyer certifying as to the fulfillment of the foregoing condition.

(d) Performance of Obligations of Buyer and Merger Sub. Buyer and Merger Sub shall have performed in all material respects all obligations required to be performed by them under this Agreement on or prior to the Closing Date; and the Company shall have received a certificate dated as of the Closing Date signed on behalf of Buyer by an executive officer of Buyer certifying as to the fulfillment of the foregoing condition.

(e) Escrow Agreement. Buyer and the Escrow Agent shall have executed and delivered the Escrow Agreement.

(f) Ancillary Agreements. Buyer and Merger Sub shall have executed and delivered each of the other Ancillary Agreements to which each is proposed to be a party or which is proposed to be executed and delivered by either of them.

7.4 Effect of Investigation . The conditions set forth in this Article VII shall not be affected by any investigation conducted by or on behalf of the party seeking to invoke such condition or any knowledge acquired (or capable of being acquired) by such party, whether before or after the date of this Agreement.

ARTICLE VIII

TERMINATION AND AMENDMENT

8.1 Termination . This Agreement may be terminated at any time prior to the Effective Time (with respect to Sections 8.1(b) through 8.1(f), by written notice by the terminating party to the other party), whether before or, subject to the terms hereof, after receipt of the Company Stockholder Approval:

(s) by mutual written consent of Buyer, Merger Sub and the Company; or

(t) by either Buyer or the Company if the Merger shall not have been consummated by the Outside Date); *provided, however*, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose action or failure to act has been a proximate cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement; or

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

(v) by Buyer, if at any time prior to the Effective Time there has been a breach of any representation or warranty, covenant or agreement of the Company in this Agreement such that the conditions set forth in Section 7.2(a) or (b) would not be satisfied and such breach has not been cured within thirty (30) calendar days after written notice thereof to the Company; *provided, however*, that the right to terminate this Agreement pursuant to this Section 8.1(d) shall not be available to Buyer if Buyer is in material breach of this Agreement; or

(w) by the Company, if at any time prior to the Effective Time there has been a breach of any representation or warranty, covenant or agreement of Buyer in this Agreement such that the conditions set forth in Section 7.2(a) or (b) would not be satisfied and such breach has not been cured within thirty (30) calendar days after written notice thereof to Buyer; *provided, however*, that the right to terminate this Agreement pursuant to this Section 8.1(e) shall not be available to the Company if the Company is in material breach of this Agreement; or

(x) by Buyer, if the Company Stockholder Approval shall not have been obtained within four (4) hours following the time of execution of this Agreement,

8.2 Effect of Termination . In the event of the termination of this Agreement as provided in Section 8.1, this Agreement shall immediately become void and there shall be no liability or obligation on the part of Buyer, the Company, Merger Sub or their respective officers, directors, stockholders or Affiliates; provided that (a) any such termination shall not relieve any party from liability for damages for fraud or any intentional misrepresentation or willful and material breach hereof by Buyer, Merger Sub or the Company, as the case may be and (b) the provisions of Section 5.2 (Confidentiality) and 8.3 (Fees and Expenses), this Section 8.2 (Effect of Termination) and Article XI (Miscellaneous) of this Agreement and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement. For purposes of this Section 8.2, a "willful and material breach" shall mean a material breach of this Agreement that is a consequence of an act undertaken or a failure to act by the breaching party with the knowledge that the taking of such act or a failure to take such act would result in a material breach of this Agreement.

8.3 Fees and Expenses . Except as set forth in Section 6.12 and this Section 8.3, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees and expenses, whether or not the Merger is consummated. Buyer shall pay all fees and expenses relating to the Paying Agent. Buyer shall pay fifty percent (50%) of all filing fees required under the HSR Act, and the remainder of such filing fees shall constitute "Company Transaction Expenses," as set forth in the definition of such term in Section 10.1. Buyer and the Company shall each pay fifty percent (50%) of the legal fees of the Company in connection with any second request under the HSR Act (and related investigation and process leading to clearances from Governmental Entities) up to an aggregate of $500,000 in such Company legal fees, and Buyer shall pay any and all such Company legal fees in excess of $500,000.

8.4 Amendment . This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors, at any time before or after receipt of the Company Stockholder Approval, but, after receipt of the Company Stockholder Approval no amendment shall be made that by Law or the Company's certificate of incorporation requires further approval by the Company's stockholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.5 Extension; Waiver . At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or arising from any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. Such extension or waiver shall not be deemed to apply to any time for performance, inaccuracy in any representation or warranty, or noncompliance with any

agreement or condition, as the case may be, other than that which is specified in the extension or waiver. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE IX

SURVIVAL; INDEMNIFICATION

9.1 Survival . The representations and warranties and pre-closing covenants contained herein shall survive the Closing as follows: (i) the Specified Representations shall survive until the expiration of the applicable statute of limitations and shall thereupon expire and (ii) all representations and warranties other than the Specified Representations shall survive until 5:00 p.m., Eastern Time, on the date that is eighteen (18) months after the Closing Date and shall thereupon expire; provided, that, to the extent that, prior to such expiration, any Buyer Indemnified Party shall have delivered a notice of claim for breach to the Stockholder Representative, the representation or warranty or pre-closing covenant alleged in such notice to have been breached, together with any associated right to indemnification, shall survive, to the extent of any claims asserted in such notice, until such claims are fully and finally resolved. The Buyer Indemnified Parties may not make an indemnification claim with respect to Losses pursuant to Section 9.2(a)(iii) or 9.2(a)(v) (other than indemnification claims based on facts resulting from the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement or the performance of obligations under this Agreement) after 5:00 p.m., Eastern Time, on the date that is eighteen (18) months after the Closing Date. The covenants and agreements contained herein to be performed or complied with after the Closing shall survive the Closing, along with all rights and remedies with respect to any breach thereof, until the expiration of the applicable statute of limitations.

9.2 Indemnification .

(w) From and after the Closing, each of Buyer, its Affiliates (including after the Closing, the Surviving Corporation and its subsidiaries) and each of their respective officers, directors, managers, employees, successors, assigns, Subsidiaries and Affiliates (the "Buyer Indemnified Parties") shall be indemnified and held harmless by the Company Equityholders, out of the Escrow Fund and Buyer's right to setoff in accordance with Section 9.2(c), from and against any and all debts, obligations, losses, liabilities, damages, costs, deficiencies, assessments, fines, judgments (including all reasonable attorneys' fees and disbursements, court costs and other expenses of investigation) (collectively, "Losses") that are incurred or suffered by any of the Buyer Indemnified Parties arising from or as a result of:

(i) any inaccuracy or breach of any representation or warranty of the Company herein, as of the date hereof or as of the Closing Date (as if such representation or warranty was made as of the Closing Date), or, in the case of a representation or warranty made as of a particular date, as of such date, in each case, as such representation or warranty would read if all qualifications as to materiality or Company Material Adverse Effect were deleted therefrom, except for materiality qualifiers in the form of dollar thresholds;

(ii) any breach of failure to perform any covenant or agreement of the Company contained in this Agreement;

(iii) any inaccuracy or breach of Section 3.15(c);

(iv) any claim in respect of any Dissenting Shares and any payments to any Person that was a holder of Company Stock immediately prior to the Effective Time in respect of such Person's Dissenting Shares, to the extent that such payments exceed the amount to which such Person would have been entitled based on the Closing Date Allocation Schedule;

(v) any claim by any current or former director, officer or other Person having any right to indemnification by the Company or the Surviving Corporations (including arising under Section 6.16), for indemnification with respect to any claim asserted against such Person arising out of any act or omission of such Person occurring at or prior to the Closing;

(vi) any settlement of or judgment (assuming there is a settlement or judgment, including all related reasonable attorneys' fees and disbursements, court costs and other expenses of investigation, whenever incurred) arising from any Litigation (which Litigation must be contested in good faith by Buyer, unless assumed by Stockholder Representative pursuant to Section 9.3(b)) asserting or based upon any claim that the Merger consideration required to be paid pursuant to Article II is not in accordance with the terms of the Company's Constituent Documents and all other agreements and instruments among the Company and the Company Equityholders; and

(vii) any settlement of or judgment (assuming there is a settlement or judgment, including all related reasonable attorneys' fees and disbursements, court costs and other expenses of investigation, whenever incurred) arising from any Litigation relating to the termination of any officer of the Company on or after January 1, 2012 and on or prior to the Closing Date.

(x) Any recovery by any of the Buyer Indemnified Parties for indemnification under this Section 9.2 shall be subject to the following:

(i) the Buyer Indemnified Parties shall not be entitled to recover any amount for indemnification claims under Section 9.2(a)(i) (other than with respect to the Specified Representations) unless and until (x) with respect to any individual claim or series of related claims based on a similar set of operative facts, the aggregate amount (without duplication) of Losses of the Buyer Indemnified Parties relating such claim or claims is greater than $150,000 (the " De Minimis Amount"), in which case the Buyer Indemnified Parties shall, subject to the other provisions of this Article IX, be entitled to recover for all such Losses under such claim or series of related claims, and (y) with respect to all claims brought by the Buyer Indemnified Parties, the aggregate amount (without duplication) of Losses of the Buyer Indemnified Parties relating such claims exceed, in the aggregate, $2,000,000 (the " Threshold"), in which event (subject to clauses (ii), (iii), (iv) and (v) of this Section 9.2(b)) the Buyer Indemnified Parties shall be entitled to be indemnified for the aggregate of all Losses for which

the Buyer Indemnified Parties are entitled to indemnification without regard to the Threshold (i.e., from the first dollar of Losses);

(ii) except in the event of fraud, intentional misrepresentation or willful and material breach and with respect to the Specified Representations (as to which this Section 9.2(b)(ii) does not apply), the maximum amount recoverable by the Buyer Indemnified Parties for indemnification claims under Section 9.2(a)(i), 9.2(a)(iii), 9.2(a)(v) and 9.2(a)(vii) shall, in the aggregate, be equal to first, any amounts then remaining in the Escrow Fund and thereafter, up to $15,000,000 set off against any Milestone Payments pursuant to Section 9.2(c) (the "Indemnification Cap");

(iii) to the extent that the Buyer Indemnified Parties make any indemnification claims for Losses against the Company Equityholders pursuant to this Article IX for which recovery is permitted beyond the Indemnification Cap and that will not be satisfied solely by reimbursement from first, the Escrow Fund and thereafter, set-offs against the Milestone Payments pursuant to Section 9.2(c), the Company Equityholders shall thereafter be severally (on the basis of each Company Equityholder's proportionate share of the aggregate cash consideration, if any, received by all Company Equityholders as of the date of such claim) but not jointly liable for any such payments; and

(iv) except in the event of fraud, intentional misrepresentation or willful and material breach (as to which this Section 9.2(b)(v) does not apply), the maximum liability of any particular Company Equityholder under this Article IX (other than as may be satisfied first, by the Escrow Fund and thereafter, set off against any Milestone Payment) shall be the amounts actually received by such Company Equityholder pursuant to Article II of this Agreement (the "Maximum Liability Cap").

For purposes of determining whether the Threshold, the Indemnification Cap, the De Minimis Amount or the Maximum Liability Cap has been reached, all of the Buyer Indemnified Parties shall be considered as one claimant.

(y) Notwithstanding any provision of this Agreement to the contrary, the parties hereby acknowledge and agree that, in addition to any other right hereunder:

(i) Buyer and its Affiliates shall have the right, but not the obligation, from time to time to set off any Losses for which the Buyer Indemnified Parties are entitled to indemnification hereunder against any Milestone Payment; provided, that such right of set off with respect to indemnification claims made under Section 9.2(a)(i) (except in the event of fraud, intentional misrepresentation or willful and material breach and with respect to the Specified Representations, as to which this proviso shall not apply) shall in no event exceed $15,000,000, and may only be set off after the Escrow Fund has been reduced to zero or if the Buyer Indemnified Parties have pending indemnification claims against the Escrow Fund equal to or in excess of the remaining balance thereof.

(ii) If at the time any Milestone Payment is due and payable there shall be any outstanding claim for indemnification (subject to the proviso set forth in Section 9.2(c)

(i)), the amount of Losses with respect to which shall not have been finally determined, then the amount of such Milestone Payment shall be reduced by the amount of Losses the Buyer Indemnified Party reasonably estimates to be subject to such indemnification claim. If the final amount of Losses for such indemnification claim is less than the amount by which such Milestone Payment was reduced for such claim, then Buyer shall promptly deliver the difference to the Paying Agent for distribution to the Company Equityholders pro rata (on the basis of each Company Equityholder's proportionate share of the applicable Milestone Payments such Company Equityholders would have received but for the set off of such amount). If the final amount of Losses for such indemnification claim exceeds the amount by which such Milestone Payment was reduced for such claim, then, subject to Section 9.2(b), Buyer shall continue to be entitled to indemnification for the amount of such excess pursuant to the terms and conditions of this Article IX.

(z) If the transactions contemplated hereby are consummated, the rights to indemnification set forth in this Article IX shall not be affected by any investigation conducted by or on behalf of the Buyer Indemnified Parties or any knowledge acquired (or capable of being acquired) by the Buyer Indemnified Parties, whether before or after the date of this Agreement, with respect to the inaccuracy or noncompliance with any representation, warranty, covenant or obligation which is the subject of indemnification hereunder.

(aa) The amount of Losses recoverable by any Buyer Indemnified Party under this Article IX with respect to an indemnity claim shall be reduced by (i) the amount of any payment actually received by such Buyer Indemnified Party from any insurance policy net of any deductibles or other amounts payable with respect thereto and (ii) the amount of any net Tax benefits realized by the Buyer Indemnified Party from the incurrence or payment of such Losses. For purposes of Section 9.2(e)(ii), a Tax benefit will be considered realized by a Buyer Indemnified Party at the time of the receipt of a Tax refund (or credit in lieu of a Tax refund) or upon the actual reduction in Tax paid by such Buyer Indemnified Party or the actual use by such Buyer Indemnified Party of a Tax overpayment as a credit or other Tax offset (and, in the case of such a reduction, credit, offset or use, only at the time the Tax so reduced, credited or offset would otherwise have been due and payable); provided, that in determining whether a specified Tax benefit is realized and the amount thereof, the Buyer Indemnified Party receiving a Tax benefit shall be considered to utilize all tax benefits, losses, deductions, offsets, credits, and other Tax attributes, other than Tax items associated with the Loss at issue, prior to utilization of such Tax items.

(bb) Notwithstanding anything in this Agreement to the contrary, nothing related to or arising from (i) the value, condition or diminution of any net operating loss carry forward, tax credit carry forward or any other Tax attribute of the Company, or (ii) the ability of Buyer or any of its Affiliates to utilize any such Tax asset, shall constitute Losses under this Article IX.

(cc) Except to the extent damages in connection with a Third Party Claim are awarded to a third party, the Buyer Indemnified Parties shall not be entitled to recover pursuant to the indemnification provisions of this Article IX any punitive or exemplary damages.

(dd) Each of the parties agrees to treat any indemnification payment made pursuant to this Article IX as an adjustment to the Final Closing Cash Consideration for all income tax purposes.

9.3 Procedures for Third Party Claims.

(e) In order for a Buyer Indemnified Party to be entitled to indemnification pursuant to this Article IX in respect of, arising out of or involving a third-party suit, proceeding, claim or demand (a " Third Party Claim"), such Buyer Indemnified Party shall promptly (and in any event within thirty (30) days following receipt of written notice of such Third Party Claim) notify the Stockholder Representative in writing of such Third Party Claim (such notice, a " Third Party Claim Notice"), describing in reasonable detail the facts and circumstances with respect to the subject matter of such Third Party Claim; provided, that the failure to promptly provide such notice shall not waive any rights of the Buyer Indemnified Party under this Article IX except to the extent the rights of the Company Equityholders are actually and materially prejudiced thereby (it being understood that the failure to have released the remainder of the Escrow Fund at the end of its expected period due to an inability to ascertain the amount of Loss owed to a Buyer Indemnified Party at such time shall not constitute such prejudice).

(f) The Stockholder Representative shall have the right to assume control of the defense of such Third Party Claim with counsel reasonably satisfactory to the Buyer Indemnified Party; provided, that (i) the Stockholder Representative may only assume control of such defense on behalf of the Company Equityholders if (A) it acknowledges in writing to the Buyer Indemnified Parties on behalf of all of the Company Equityholders that any damages, fines, costs or other liabilities that may be assessed against the Buyer Indemnified Party in connection with such Third Party Claim constitute Losses for which the Buyer Indemnified Parties shall be indemnified pursuant to this Article IX and (B) the damages claimed or sought in such Third Party Claim, taken together with the reasonably estimated costs of defense thereof and the claimed amount with respect to any unresolved claims for indemnification then pending, is less than or equal to the current balance held by the Escrow Agent under the Escrow Agreement, and (ii) the Stockholder Representative may not assume control of the defense of any Third Party Claim (X) involving any allegation of criminal liability or misappropriation or infringement of any Intellectual Property, (Y) in which equitable relief is sought against the Buyer Indemnified Party or any of its Affiliates or (Z) involving any allegation by any Governmental Entity of non-compliance with applicable Law. Prior to the time the Buyer Indemnified Party is notified by the Stockholder Representative as to whether the Stockholder Representative will assume the defense of such Third Party Claim, the Buyer Indemnified Party shall use its commercially reasonable efforts to take all actions reasonably necessary to timely preserve the collective rights of the parties with respect to such Third Party Claim, including responding timely to legal process. In the event the Stockholder Representative has assumed the defense of such Third Party Claim in accordance herewith, the Buyer Indemnified Party shall have the right to participate in the defense thereof (it being understood that the Stockholder Representative shall control such defense) and to employ its own counsel, all at its own expense. If the Stockholder Representative shall decline to assume the defense of such Third Party Claim (or shall fail to notify the Buyer Indemnified Party of its election to defend such Third Party

Claim) within thirty (30) days after the giving by the Buyer Indemnified Party to the Stockholder Representative of a Third Party Claim Notice with respect to such Third Party Claim, the Buyer Indemnified Party shall control the defense against such Third Party Claim. The Buyer Indemnified Party shall be entitled to be reimbursed for all reasonable fees and expenses incurred by the Buyer Indemnified Party in the defense of such Third Party Claim (including all such reasonable fees and expenses incurred by the Buyer Indemnified Party prior to the assumption of such Third Party Claim by the Stockholder Representative in accordance with this Section 9.3(b)), including the reasonable fees and expenses of outside counsel employed by the Buyer Indemnified Party, if and to the extent that the Buyer Indemnified Party shall be entitled to indemnification for such Third Party Claim, and subject to the applicable limitations of Section 9.2(b). Regardless of which party assumes the defense of such Third Party Claim, if the Stockholder Representative, on behalf of all of the Company Equityholders, has acknowledged in writing responsibility for such claim, the Buyer Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the Stockholder Representative's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(g) The Stockholder Representative shall not consent to a settlement of, or the entry of any judgment arising from, any such Third Party Claim without the Buyer Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) unless such settlement or judgment (A) relates solely to monetary damages for which the Buyer Indemnified Party is entitled to indemnification in full and sufficient funds remain in the Escrow Fund to fund any related payments and (B) includes as an unconditional term thereof the release of the Buyer Indemnified Party from all liability with respect to such Third Party Claim.

(h) Regardless of which party assumes the defense of a Third Party Claim, the parties agree to cooperate with one another in connection therewith. Such cooperation shall include providing records and information that are relevant to the Third Party Claim, and making employees and officers available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to act as a witness or respond to legal process.

9.4 Exclusive Remedy. Except in the case of fraud or with respect to seeking injunctive relief pursuant to Section 11.9, from and after the Closing, the sole and exclusive monetary remedy for any Buyer Indemnified Party for Losses or other monetary damages arising from a breach of this Agreement shall be the indemnification provided under this Article IX.

ARTICLE X
DEFINITIONS

10.1 Definitions . For purposes of this Agreement, each of the following terms shall have the meaning set forth below. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in Schedule 2.9 hereto.

"1st Milestone Cumulative Consideration Target" means, (a) prior to the payment of the first Milestone Payment in accordance with Schedule 2.9(e), zero, and (b) upon the payment of the first Milestone Payment in accordance with Schedule 2.9(e), the sum of (i) the Final Closing Cash Consideration and (ii) $25,000,000.

"1st Milestone Discount Factor" means the quotient of (a) 25,000,000, net of any set off for Losses of the Buyer Indemnified Parties in accordance with Section 9.2(c) divided by (b) 25,000,000.

"1st Milestone Per Share Cumulative Target" means the quotient of (a) 1st Milestone Cumulative Consideration Target divided by (b) the Number of Fully Diluted Vested Shares.

"2nd Milestone Payment Amount" has the meaning set forth in Schedule 2.9(e), when, as and if paid in accordance with Schedule 2.9(e), and net of any set off for Losses of the Buyer Indemnified Parties in accordance with Section 9.2(c).

"3rd Milestone Payment Amount" has the meaning set forth in Schedule 2.9(e), when, as and if paid in accordance with Schedule 2.9(e), and net of any set off for Losses of the Buyer Indemnified Parties in accordance with Section 9.2(c).

"4th Milestone Payment Amount" has the meaning set forth in Schedule 2.9(e), when, as and if paid in accordance with Schedule 2.9(e), and net of any set for Losses of the Buyer Indemnified Parties in accordance with Section 9.2(c).

"280G Stockholder Approval" has the meaning set forth in Section 6.9.

"Acquisition Proposal" means (a) any proposal or offer for a merger, consolidation, dissolution, sale of substantial assets outside the ordinary course of business, stock purchase, recapitalization, share exchange or other business combination involving the Company, (b) any proposal for the issuance by the Company of over fifteen percent (15%) of its equity securities then outstanding or (c) any proposal or offer to acquire in any manner, directly or indirectly, over fifteen percent (15%) of the equity securities then outstanding or total assets of the Company, in each case, other than the transactions contemplated by this Agreement.

"Affiliate" means any Person who is an "affiliate" of that party within the meaning of Rule 405 promulgated under the Securities Act of 1933; provided, however, that in each case where a stockholder of the Company is a venture capital fund or a director of the Company is an employee or partner of a venture capital fund, no portfolio company of such venture capital fund shall be considered an Affiliate of the Company solely on the basis of such relationship.

"Aggregate Company Warrant Exercise Price" means the aggregate exercise price of all Company Warrants outstanding immediately prior to the Effective Time, other than (a) Underwater Company Warrants and (b) such Company Warrants that are either exercised on a Net Basis or are canceled for no consideration, in each case, in connection with the transactions contemplated hereby .

"Aggregate Option Exercise Price" means the aggregate exercise price of all Company Options outstanding immediately prior to the Effective Time, other than (a) Underwater Company Options and (b) such Company Options that are exercised on a Net Basis in connection with the transactions contemplated hereby.

"Agreement" has the meaning set forth in the Preamble.

"Ancillary Agreement" means any agreement or certificate executed at or prior to the Closing pursuant to this Agreement, including the Escrow Agreement.

"Antitrust Laws" means the HSR Act, the Sherman Act, the Clayton Act, the Federal Trade Commission Act and any other applicable federal, state or foreign antitrust, competition or trade regulation Law, regulation or decree.

"Approved Investments" means marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition.

"Assets" means all assets, both tangible and intangible, of every kind, nature and description.

"Audit Period" has the meaning set forth in Section 2.9(c).

"Bankruptcy and Equity Exception" means the effects of bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

"Base Amount" means $350,000,000.

"Book Entry" means, for any shares of Company Stock that are not certificated as of the Effective Time, the corresponding book entry in the Company's share register representing such uncertificated shares of Company Stock.

"Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York, New York are permitted or required by Law, executive order or governmental decree to remain closed.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Employee Plan" means any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and any other written or oral plan, agreement or arrangement, including insurance coverage, severance benefits, disability benefits, deferred compensation, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation and all unexpired severance agreements, for the benefit of, or relating to, any current or former employee of Buyer or any of its Subsidiaries.

"Buyer Indemnified Parties" has the meaning set forth in Section 9.2(a).

"Buyer Material Adverse Effect" means any Change that has a material adverse effect on the ability of Buyer or Merger Sub to consummate the transactions contemplated by this Agreement.

"CCC" has the meaning set forth in Section 2.6(a).

"Certificate of Merger" means the certificate of merger or other appropriate documents prepared and executed in accordance with Section 251(c) of the DGCL.

"Change" means any change, event, circumstance, condition, state of affairs or development.

"Clayton Act" means the Clayton Antitrust Act of 1914, as amended.

"CLIA" means the Clinical Laboratory Improvement Amendments of 1988, as amended together with any rule, regulation, interpretation, guidance document, policy, judgment lawfully issued or promulgated thereunder by the Center for Medicare and Medicaid (or any predecessor entity).

"Closing" means the closing of the Merger.

"Closing Adjustment Amount" has the meaning set forth in Section 2.4(e).

"Closing Cash" means all cash and cash equivalents (including Approved Investments) held by the Company on hand or in bank or other accounts, as of 11:59 p.m., Eastern Time on the day immediately preceding the Closing Date, determined using the same accounting principles, policies, methods and procedures, consistently applied, as those used in preparing the Company Balance Sheet; provided, that Closing Cash shall be calculated net of issued but uncleared checks and drafts and shall not include restricted cash.

"Closing Date" means a date to be specified by Buyer and the Company, which shall be no later than the second (2nd) Business Day after satisfaction or waiver of the conditions set forth in Article VII (other than (i) delivery of items to be delivered at the Closing and (ii) satisfaction of those conditions that by their nature are to be satisfied at the Closing, it being understood that the occurrence of the Closing shall remain subject to the performance of such covenant, delivery of such items and the satisfaction or waiver of such conditions at the Closing).

"Closing Date Allocation Schedule" has the meaning set forth in Section 2.2(c).

"Closing Indebtedness" means all Indebtedness of the Company as of the close of business on the day immediately prior to the Closing Date.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collection Device" means any specimen collection kit or device used or distributed by Company for purposes of collecting specimens to be tested using any Company LDT.

"Common Stock Aggregate Escrow Release Amount" means the product of (a) the Unused Escrow Payment and (b) the Common Stock Aggregate Final Amount Proportion.

"Common Stock Aggregate Final Amount (Pre-Escrow)" means the product of (a) the Common Stock Per Share Final Amount (Pre-Escrow) and (b) the Common Stock Outstanding Number.

"Common Stock Aggregate Final Amount Proportion" means the quotient of (i) the Common Stock Aggregate Final Amount (Pre-Escrow) divided by (ii) the Final Closing Cash Consideration.

"Common Stock Outstanding Number" means the number of outstanding shares of Company Common Stock as of the Effective Time, assuming (i) the exercise of all Vested Company Options other than Underwater Company Options (and the issuance of all shares of Company Common Stock issuable upon such exercise) and (ii) the exercise of all Company Common Warrants other than Underwater Company Warrants (and the issuance of all shares of Company Common Stock issuable upon such exercise); provided that, with respect to any Company Options or Company Common Warrants to be exercised on a Net Basis as of the Effective Time in accordance with this Agreement, the calculation set forth in this definition shall only reflect the "net" number of shares of Company Common Stock issuable in connection therewith.

"Common Stock Per Share Adjustment Amount" means the excess of (a) the Common Stock Per Share Final Amount over (b) the Common Stock Per Share Closing Amount.

"Common Stock Per Share Closing Amount" means the product of (a) Common Stock Per Share Closing Amount (Pre-Escrow) and (b) the Escrow Amount Closing Discount Factor.

"Common Stock Per Share Closing Amount (Pre-Escrow)" means the Residual Per Share Closing Cash Amount; provided, such amount shall be increased, as appropriate, to the extent that the final clauses of the defined terms, "Series B Per Share Closing Amount (Pre-Escrow)" or "Series C Per Share Closing Amount (Pre-Escrow)", limit such amounts.

"Common Stock Per Share Final Amount" means the product of (a) Common Stock Per Share Final Amount (Pre-Escrow) and (b) the Escrow Amount Final Discount Factor.

"Common Stock Per Share Final Amount (Pre-Escrow)" means the Residual Per Share Final Cash Amount; provided, such amount shall be increased, as appropriate, to the extent that the final clauses of the defined terms, "Series B Per Share Final Amount (Pre-Escrow)" or "Series C Per Share Final Amount (Pre-Escrow)", limit such amounts.

"Common Stock Per Share 1st Milestone Payment Amount" means the product of (a) the Common Stock Per Share 1st Milestone Target and (b) the 1st Milestone Discount Factor.

"Common Stock Per Share 1st Milestone Target" means the excess of the 1st Milestone Per Share Cumulative Target over the Common Stock Per Share Final Amount (Pre-Escrow).

"Common Stock Per Share 2nd Milestone Payment Amount" means the Per Share 2nd Milestone Payment Amount.

"Common Stock Per Share 3rd Milestone Payment Amount" means the Per Share 3rd Milestone Payment Amount.

"Common Stock Per Share 4th Milestone Payment Amount" means the Per Share 4th Milestone Payment Amount.

"Common Stock Per Share Stockholder Representative Surplus Amount" means the quotient of (a) the product of (i) the Stockholder Representative Account Surplus and (ii) the Common Stock Aggregate Final Amount Proportion divided by (b) the Common Stock Outstanding Number.

"Common Stock Per Share Unused Escrow Amount" means the quotient of (a) the Common Stock Aggregate Escrow Release Amount divided by (b) the Common Stock Outstanding Number.

"Company" has the meaning set forth in the Preamble.

"Company 2002 Stock Plan" means the Living Microsystems, Inc. 2002 Stock Plan.

"Company 2007 Stock Plan" means the Artemis Health, Inc. 2008 Stock Plan.

"Company Balance Sheet" means the Company's audited balance sheet as of December 31, 2011.

"Company Common Stock" means the common stock, par value $0.002 per share, of the Company.

"Company Common Stock Warrants" means the Warrant to Purchase Shares, Warrant No. CS-13, dated July 18, 2007, by and between Living Microsystems, Inc. and Gencline LLC, and the Warrant to Purchase Shares, Warrant No. CS-12, dated January 17, 2007, by and between Living Microsystems, Inc. and GHC Technologies, Inc.

"Company Disclosure Letter" means the disclosure letter delivered by the Company to Buyer and Merger Sub and dated as of the date of this Agreement.

"Company Employee Plans" means any plan, program, policy, practice, agreement or arrangement providing current or future benefits in any form to any current or former employee, officer, director, individual independent contractor or individual consultant of the Company (or any ERISA Affiliate of the Company) or any beneficiary or dependent thereof (including any "employee benefit plan" as defined in Section 3(3) of ERISA), whether written or unwritten, formal or informal, including any other pension, profit-sharing, bonus, incentive compensation,

deferred compensation, vacation, sick pay, stock purchase, stock option, phantom equity, severance, employment, consulting, independent contractor, unemployment, hospitalization or other medical, dental, vision, life, or other insurance, long- or short-term disability, change of control, material fringe benefit or cafeteria plan, program, policy, practice, agreement or arrangement.

"Company Equityholder" means any holder of Company Stock, Company Warrants or Company Options as of immediately prior to the Effective Time.

"Company Financial Statements" means (a) the Company's audited balance sheets as of December 31, 2010 and December 31, 2011 and the related audited statements of operations, convertible preferred stock and stockholders' equity (deficit), and cash flows (and related notes to financial statements) for the years then ended and (b) the Company's unaudited balance sheet as of November 30, 2012 and the related unaudited statements of income and cash flows of the Company for the eleven (11) months ended November 30, 2012.

"Company Intellectual Property" means any and all Intellectual Property that is owned, licensed, or otherwise used or held for by the Company.

"Company LDTs" means the laboratory-developed tests and associated services developed, designed, validated, marketed, and performed by the Company, including the Verifi Prenatal Test.

"Company Leased Real Property" means any real property being leased, subleased, licensed, occupied or used by the Company on the date hereof.

"Company Material Adverse Effect" means any Change that individually, or in the aggregate, has a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Company; provided, however, that none of the following shall constitute, or shall be considered in determining whether there has occurred, a Company Material Adverse Effect:

(a) Changes in Law, rules or regulations or generally accepted accounting principles or the interpretation or method of enforcement thereof (provided, that this clause (a) shall not apply with respect to any representation or warranty the purpose of which is to address the compliance with Law);

(b) Changes in the medical diagnostic industry generally;

(c) Changes in general economic or political conditions or the financing or capital markets in general in the United States or any country or region in the world, or changes in currency exchange rates;

(d) acts of terrorism or war, earthquakes, fires or other force majeure events;

(e) the continued incurrence of losses by the Company (provided, that a change in the factors giving rise to such losses may be considered in determining whether

a Company Material Adverse Effect has occurred or would reasonably be expected to occur);

(f) any failure by the Company to meet internal projections or forecasts (provided, that a change in the factors giving rise to any such failure may be considered in determining whether a Company Material Adverse Effect has occurred or would reasonably be expected to occur); or

(g) Changes resulting from the announcement or pendency of the transaction contemplated by this Agreement (provided, that this clause (g) shall not apply with respect to (i) any representation or warranty the purpose of which is to address the consequences resulting from the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement or the performance of obligations under this Agreement or (ii) any Litigation resulting from the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement or the performance of obligations under this Agreement).

provided, that any effect resulting from a Change referred to in clause (a), (b) (c) or (d) above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company operates.

"Company Material Contracts" means each Contract required to be listed in Section 3.11(a) of the Company Disclosure Letter, together with each Contract entered into after the date hereof that would have been required to be listed in Section 3.11(a) of the Company Disclosure Letter if it had been entered into as of the date hereof.

"Company Option" means an option to purchase Company Common Stock issued by the Company pursuant to the Company Stock Plans.

"Company-Owned Intellectual Property" means the Company Intellectual Property that is owned, in whole or in part, by the Company

"Company Permits" has the meaning set forth in Section 3.16(c).

"Company Preferred Stock" means the Company Series A Preferred Stock, Company Series B Preferred Stock, the Company Series C Preferred Stock, the Company Series C-1 Preferred Stock and the Company Series D Preferred Stock.

"Company Preferred Stock Warrants" means any of the Series A Warrants, the Series B Warrants, or the Series C Warrants.

"Company Products" means the in vitro diagnostic kits and any other medical device or accessory that has been under active development by or for the Company or is scheduled to be commercialized within the next 18 months (excluding any Collection Device).

"Company Related Person" has the meaning set forth in Section 3.20.

"Company Series A Preferred Stock" means the Series A Preferred Stock, par value $0.002 per share, of the Company.

"Company Series B Preferred Stock" means the Series B Preferred Stock, par value $0.002 per share, of the Company.

"Company Series C Preferred Stock" means the Series C Preferred Stock, par value $0.002 per share, of the Company.

"Company Series C-1 Preferred Stock" means the Series C-1 Preferred Stock, par value $0.001 per share, of the Company.

"Company Series D Preferred Stock" means the Series D Preferred Stock, par value $0.002 per share, of the Company.

"Company Stock" means the Company Common Stock and the Company Preferred Stock.

"Company Stock Plans" means the Company 2002 Stock Plan and the Company 2007 Stock Plan.

"Company Stockholder Approval" has the meaning set forth in Section 3.4(d).

"Company Transaction Expenses" means, to the extent not paid prior to the Effective Time, (a) the fees and expenses payable by or on behalf of the Company in connection with the preparation, negotiation and execution of this Agreement and any Ancillary Document and the consummation of the transactions contemplated hereby, including to its financial advisors, accountants and counsel, including relating to printing of the Information Statement, and any other filings required by applicable Law in connection with this Agreement, any Ancillary Document and the transactions contemplated hereby, including the Stockholder Representative Expense Amount and any fees payable to Wilson Sonsini Goodrich & Rosati P.C., in each case which have not been paid in full as of the Closing Date and costs with respect to the "tail" insurance policy contemplated by Section 6.16(b), but excluding fifty percent (50%) of any filing fees required pursuant to the HSR Act and all Company legal fees in connection with a second request under the HSR Act in excess of those specified in Section 8.3 hereof, (b) any accrued severance pay as of the Effective Date and (c) those amounts set forth in Schedule 5.1(j) of the Company Disclosure Letter.

"Company Warrant" means any of the Company Common Stock Warrants or the Company Preferred Stock Warrants.

"Company's Knowledge," "Knowledge of the Company" and words of similar effect means the knowledge of any of the individuals identified in Section 10.1(a) of the Company Disclosure Letter. Such individuals will be deemed to have knowledge of a particular fact, circumstance, event or other matter if (a) such individual has actual knowledge of such fact,

circumstance, event or other matter or (b) such fact, circumstance, event or other matter would be known to such individual had he or she made reasonable inquiry of (i) such individual's and the Company's books and records for information relating to the matter in question or (ii) appropriate Company employees having primary responsibility for the matter in question.

"Confidentiality Agreement" means the Confidentiality Agreement, dated as of September 19, 2012, by and between the Company and Buyer.

"Constituent Documents" has the meaning set forth in Section 3.1.

"Continuing Employees" means each of the employees of Buyer or the Surviving Corporation who shall have been an employee of the Company immediately prior to the Effective Time.

"Control" shall mean ownership or possession (including through control of an Affiliate or through an agreement with an Affiliate or third party) of the right or ability to grant a license or sublicense of (or, as applicable, to transfer) specified Intellectual Property (or other applicable data or materials) without violating the terms of any Contract, agreement or other arrangement with any third party.

"Contract" means any agreement, contract, instrument, note, mortgage, indenture, lease or license, whether written or oral.

"Data Protection Law" means each Law applicable to the protection or processing or both of Personal Data.

"De Minimis Amount" has the meaning set forth in Section 9.2(b)(i).

"Determination Date" has the meaning set forth in Section 2.4(d).

"DGCL" means the Delaware General Corporation Law.

"Disputed Amounts" has the meaning set forth in Section 2.4(c).

"Dissenting Shares" means shares of Company Stock held as of the Effective Time by a Company stockholder who has not voted such shares of Company Stock in favor of, or consented in writing to, the adoption of this Agreement and with respect to which appraisal shall have been duly demanded and perfected in accordance with Section 262 of the DGCL and not effectively withdrawn or forfeited.

"Downward Closing Adjustment Amount" has the meaning set forth in Section 2.4(e).

"Effective Time" means the time at which the Surviving Corporation files the Certificate of Merger with the Secretary of State of the State of Delaware or such later time as is established by Buyer and the Company and set forth in the Certificate of Merger.

"Environmental Law" means any federal, state or local Law, statute, rule or regulation relating to the environment or human (including occupational) health and safety, including any statute, regulation, administrative decision or order pertaining to (a) treatment, storage, disposal, generation or transportation of industrial, toxic, infectious, biological, radioactive or hazardous materials or substances or solid, medical, mixed or hazardous waste; (b) air, water or noise pollution; (c) groundwater or soil contamination; (d) the Release or threatened Release into the environment of Hazardous Substances, including industrial, toxic, infectious, biological, radioactive or hazardous materials or substances, or solid, medical, mixed or hazardous waste; (e) the protection of wild life, marine life and wetlands, including all endangered and threatened species; (f) storage tanks, vessels, containers, abandoned or discarded barrels and other closed receptacles; (g) health and safety of employees and other persons; or (h) manufacturing, processing, using, distributing, treating, storing, disposing, transporting or handling of materials regulated under any Law as pollutants, contaminants, toxic, infectious, biological, radioactive or hazardous materials or substances or oil or petroleum products or solid, medical, mixed or hazardous waste.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity which is a member of (a) a controlled group of corporations (as defined in Section 414(b) of the Code), (b) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), or (c) a member of any affiliated service group (within the meaning of Section 414(m) of the Code), any of which includes the Company.

"Escrow Agent" means U.S. Bank National Association, a national association.

"Escrow Agreement" means the escrow agreement among Buyer, the Stockholder Representative and the Escrow Agent, in substantially the form attached as Exhibit E hereto, as may be modified by agreement of the parties thereto.

"Escrow Amount" means $30,000,000.

"Escrow Amount Closing Discount Factor" means the quotient of (a) the excess of the Estimated Closing Cash Consideration over the sum of (i) the Escrow Amount and (ii) the Stockholder Representative Expense Amount divided by (b) the Estimated Closing Cash Consideration.

"Escrow Amount Final Discount Factor" means the quotient of (a) the excess of the Final Closing Cash Consideration over the sum of (i) the Escrow Amount and (ii) the Stockholder Representative Expense Amount divided by (b) the Final Closing Cash Consideration.

"Escrow Fund" means the escrow fund plus or minus gains or losses from investments, and minus amounts disbursed therefrom, in each case pursuant to the terms of the Escrow Agreement.

"Escrow Release Date" has the meaning set forth in Section 2.5(a).

"Estimated Closing Cash" has the meaning set forth in Section 2.3(a).

"Estimated Closing Indebtedness" has the meaning set forth in Section 2.3(a).

"Estimated Company Transaction Expenses" has the meaning set forth in Section 2.3(a).

"Estimated Closing Cash Consideration" means (a) the Base Amount, plus (b) the Aggregate Option Exercise Price, plus (c) the Aggregate Company Warrant Exercise Price, minus (d) Estimated Closing Indebtedness, plus (e) Estimated Closing Cash, minus (f) the Estimated Company Transaction Expenses, minus (g) the Unvested Company Option Expense Amount.

"Exchange Ratio" means the quotient of (a) the Per Share Estimated Fair Market Value divided by (b) the average of the closing prices on the NASDAQ Global Select Market of a share of Buyer common stock during the ten (10) trading days ending on the date that is two (2) trading days prior to the Closing Date.

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

"FDCA" means the Federal Food, Drug and Cosmetic Act, as amended, together with any rule, regulation, interpretation, guidance document, policy, judgment lawfully issued or promulgated by the FDA.

"Final Closing Cash Consideration" means (a) the Base Amount, plus (b) the Aggregate Option Exercise Price, plus (c) the Aggregate Company Warrant Exercise Price, minus (d) Closing Indebtedness, plus (e) Closing Cash, minus (f) the Company Transaction Expenses, minus (g) the Unvested Company Option Expense Amount.

"Final Closing Statement" has the meaning set forth in Section 2.4(a).

"Financial Metric Milestone Payment (Initial)" has the meaning set forth in Schedule 2.9(a).

"Financial Metric Milestone Payment (Additional)" has the meaning set forth in Schedule 2.9(a).

"Financial Metric Milestone Payments" has the meaning set forth in Schedule 2.9(e).

"Furnishing Party" has the meaning set forth in Section 6.5(f).

"GAAP" means United States generally accepted accounting principles, consistently applied across applicable periods.

"Governmental Entity" means any Federal, state, local or foreign government, any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority, agency or instrumentality, or any non-governmental self-regulatory agency, commission or authority.

"Hazardous Substance" means any wastes, substances or materials that are regulated, defined, or listed under any Environmental Law as hazardous, toxic, pollutants or contaminants, including but not limited to (a) substances defined as "hazardous wastes," "hazardous substances," or "toxic substances" under any Environmental Law and (b) polychlorinated biphenyls, asbestos and asbestos-containing material, petroleum and petroleum products, and urea formaldehyde insulation.

"HIPAA" has the meaning set forth in Section 10.1 in the definition of "Privacy Laws."

"Holdback Amount" has the meaning set forth in Section 2.5(b).

"HSR Act" means the Hart Scott Rodino Antitrust Improvements Act of 1976.

"In-the-Money Vested Company Option" means, as of immediately prior to the Effective Time, each outstanding and unexercised Vested Company Option with a per share exercise price less than Common Stock Per Share Closing Amount.

"Indebtedness" of a Person means the sum, without duplication, of all (i) outstanding principal and accrued and unpaid interest with respect to all indebtedness for borrowed money of such Person, plus any premium, fee or penalty paid or payable in connection with the prepayment, repurchase or defeasance of such indebtedness (including, for the avoidance of doubt, any amounts described in this clause (i) with respect to the Series D Promissory Notes, unless, as of the applicable date of determination, the Series D Promissory Notes have been converted into Company Series D Preferred Stock), (ii) amounts owing as deferred purchase price for property or services, (iii) amounts outstanding and owed in respect of commitments or obligations by which such Person assures a creditor against Loss (including contingent reimbursement obligations with respect to letters of credit, bank guarantees or bankers' acceptances, in each case except to the extent secured by cash collateral), (iv) obligations or commitments to repay deposits or other amounts advanced by and owing to Third Parties, or (v) amounts outstanding and owed in respect of guarantees or other contingent liabilities with respect to any indebtedness, obligation, claim or liability of any other Person of a type described in clauses (i) through (iv) above.

"Indemnification Cap" has the meaning set forth in Section 9.2(b).

"Independent Accountant" has the meaning set forth in Section 2.4(c).

"Information Statement" has the meaning set forth in Section 6.2(b).

"Infringe" shall mean infringe, misappropriate, dilute, or otherwise violate, conflict with, or use in any unauthorized manner, any Intellectual Property, and such term includes the conjugated forms of each of the foregoing, as applicable.

"Initial Allocation Schedule" has the meaning set forth in Section 2.2(c).

"Insurance Policies" has the meaning set forth in Section 3.18.

"Intellectual Property" means all intellectual property and proprietary rights of any nature or kind, including the following, whether protected, created or arising under any applicable Law, and all worldwide common law, statutory and other rights in, arising out of, or associated therewith: (a) Patents; (b) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, taglines slogans, Internet domain names, web addresses, corporate names and other indicia of origin, together with the goodwill associated with any of the foregoing, and all applications, registrations, extensions and renewals thereof; (c) all works of authorship, mask works and any and all other copyrights and copyrightable works, and all applications, registrations, extensions, and renewals thereof; (d) all inventions (whether patentable or not), discoveries, ideas, and improvements; (e) trade secrets, Know-How, tangible or intangible proprietary or confidential information, processes, techniques, formulae, methods, schematics, technology, and all documentation relating to any of the foregoing and rights to limit the use or disclosure thereof by any person; (f) all databases, data collections and all rights therein; (g) computer software, including all source code, object code, firmware, development tools, files, records and data, and all media on which any of the foregoing is recorded; (h) the right to sue for past, present and future infringement, misappropriation, dilution or violation of any of the foregoing or for any injury to goodwill and to recover all proceeds relating to any of the foregoing, including licenses, royalties, income, payments, claims, damages (including without limitation attorneys' fees and expert fees) and proceeds of suit.

"IRS" means the Internal Revenue Service.

"IVD" has the meaning set forth in Section 3.10(j).

"Key Employee" means each of those individuals identified in Section 10.1(b) of the Company Disclosure Letter.

"Know-How" shall mean information related to the manufacture, preparation, development, or commercialization of a product, product specifications and formulations, chemical, pharmacological, toxicological, pharmaceutical, physical, analytical, stability, safety, quality assurance, quality control and clinical information, technical information and research information.

"Law" or "Laws" has the meaning set forth in Section 3.16(a)

"Letter of Transmittal" has the meaning set forth in Section 2.2(b).

"Liens" means any mortgage, security interest, pledge, lien, restriction on transfer option, claim, charge or other similar encumbrance.

"Litigation" has the meaning set forth in Section 3.12.

"Losses" has the meaning set forth in Section 9.2(a).

"Maximum Liability Cap" has the meaning set forth in Section 9.2(b)(iv).

"Merger" has the meaning set forth in the Recitals.

"Merger Sub" has the meaning set forth in the Preamble.

"Milestone" has the meaning set forth in Section 2.9(a).

"Milestone Events" means the events associated with the Milestones, as set forth in Schedule 2.9(a).

"Milestone Payments" means the payments associated with the Milestones, as set forth in Schedule 2.9(a).

"Net Basis" means, with respect to the exercise of an option or warrant, in lieu of the payment of the applicable per share exercise price in cash, the conversion of such option or warrant into a number of shares of the stock subject to such option or warrant equal to:
S * (V-X)/V, where S is the number of shares of stock subject to such option or warrant, V is the fair market value of each such share, and X is the applicable per share exercise price.

"Notice of Objection" has the meaning set forth in Section 2.4(c).

"Number of Fully Diluted Shares" means a number equal to the number of shares of Company Common Stock outstanding immediately prior to the Effective Time, assuming (i) the conversion into Company Common Stock of all Company Preferred Stock, (ii) the exercise (and the issuance of all shares of Company Common Stock issuable upon such exercise) of all Company Options (for the avoidance of doubt, including Vested Company Options and Unvested Company Options) other than Underwater Company Options and terminated Company Options that are not entitled to any consideration at, in connection with or after the Closing , (iii) the exercise (and the conversion into Company Common Stock of all shares of Company Preferred Stock issuable upon such exercise) of all Company Warrants other than Underwater Company Warrants and terminated Company Warrants that are not entitled to any consideration at, in connection with or after the Closing, in each case, outstanding immediately prior to the Effective Time and as set forth in the Closing Date Allocation Schedule; provided that, with respect to any Company Options or Company Warrants to be exercised on a Net Basis as of the Effective Time in accordance with this Agreement, the calculation set forth in this definition shall only reflect the "net" number of shares of Company Common Stock or Company Preferred Stock issuable in connection therewith. For the avoidance of doubt, the calculation of the "Number of Fully Diluted Shares" shall not assume the conversion of the Series D Promissory Note into Company Series D Preferred Stock so long as such conversion has not occurred prior to the applicable date of determination.

"Number of Fully Diluted Unvested Shares" means a number equal to the number of shares of Company Common Stock issuable upon the exercise of the Unvested Company Options immediately prior to the Effective Time.

"Number of Fully Diluted Vested Shares" means a number equal to the Number of Fully Diluted Shares minus the Number of Fully Diluted Unvested Shares.

"Order" means any decision, judgment, writ, temporary restraining order, decree, injunction, order, ruling, verdict or award of any Governmental Entity.

"Ordinary Course IP Agreements" has the meaning set forth in Section 3.10(b).

"Outside Date" means the date one hundred and twenty (120) days after the date of this Agreement; provided, however, if the Merger is not consummated by such date and all closing conditions other than (a) conditions that by their nature are only to be satisfied as of the Closing and (y) the condition set forth in Section 7.1(b), have been satisfied or waived in writing then at the election of either the Company or Buyer, the Outside Date shall be extended to the date two hundred and seventy (270) days after the date of this Agreement.

"Partially In-the-Money Vested Company Option" means, as of immediately prior to the Effective Time, each outstanding and unexercised Vested Company Option that is neither an In-the-Money Vested Company Option nor an Underwater Company Option.

"Patents" means all patents and applications therefor, in any jurisdiction, including all applications and filings made pursuant to the Patent Cooperation Treaty (PCTs), provisionals, non-provisionals, requests for continuing examination, continuations, divisionals, continuations-in-part, substitutions, reexaminations and reissues, all rights in respect of utility models and certificates of invention, and all rights and priorities and all extensions and renewals thereof.

"Paying Agent" means a nationally-recognized bank or trust company mutually acceptable to Buyer and the Company.

"Paying Agent Agreement" means the agreement, by and between Buyer and the Paying Agent, pursuant to which Buyer engage the Paying Agent as its paying agent in connection with the transactions hereby.

"Payment Fund" means cash in an amount equal to the applicable portion of the Estimated Closing Cash Consideration payable to the holders of Company Stock and Company Warrants.

"Pay-Off Letters" has the meaning set forth in Section 6.10.

"Per Share 2nd Milestone Payment Amount" means the quotient of (a) the 2nd Milestone Payment Amount divided by (b) the Number of Fully Diluted Vested Shares.

"Per Share 3rd Milestone Payment Amount" means the quotient of (a) the 3rd Milestone Payment Amount divided by (b) the Number of Fully Diluted Vested Shares.

"Per Share 4th Milestone Payment Amount" means the quotient of (a) the 4th Milestone Payment Amount divided by (b) the Number of Fully Diluted Vested Shares.

"Per Share Estimated Fair Market Value" means the quotient of (a) the Base Amount plus the Aggregate Option Exercise Price plus the Aggregate Company Warrant Exercise Price minus Estimated Closing Indebtedness plus Estimated Closing Cash minus Estimated Company

Transaction Expenses plus the Risk-Adjusted Total Milestone Value divided by (b) the Number of Fully Diluted Shares.

"Permitted Exceptions" has the meaning set forth in Section 5.1.

"Permitted Lien" means (a) statutory Liens of landlords, (b) Liens of carriers, warehousepersons, mechanics and material persons incurred in the ordinary course of business for sums (i) not yet due and payable, or (ii) being contested in good faith, if, in either such case, an adequate and specific reserve, shall have been made therefor in such Person's financial statements, (c) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other similar types of social security programs or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations, in each case in the ordinary course of business, consistent with past practice, (d) Liens securing Taxes, assessments and governmental charges (i) not yet due and payable, or (ii) being contested in good faith, if, in either such case, an adequate and specific reserve shall have been made therefor in the Company's financial statements, (e) Liens on the landlord's interest in the real property leased by the Company, (f) Liens on financed or leased equipment and (g) non-exclusive end user terms and non-disclosure agreements entered into in the ordinary course of business.

"Person" means any natural person, firm, limited liability company, general or limited partnership, association, corporation, unincorporated organization, company, joint venture, trust, Governmental Entity or other entity.

"Personal Data" means any personal data, including (i) genetic data, (ii) any information relating to individuals that are combined with social security numbers (whether or not encrypted) and (iii) and any additional data defined as personal data in a Data Protection Law.

"PMA" has the meaning set forth in Section 3.10(j).

"Pre-Closing Period" means the period commencing on the date of this Agreement and ending at the Effective Time or such earlier date as this Agreement is terminated in accordance with its terms.

"Preliminary Closing Statement" has the meaning set forth in Section 2.3(a).

"Principal Equityholders" means each of those individuals identified in Section 10.1(c) of the Company Disclosure Letter.

"Privacy Laws" means all applicable security and privacy standards regarding protected health information under (i) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, including the regulations promulgated thereunder (collectively " HIPAA") and (ii) any applicable state privacy Laws.

"Real Property" has the meaning set forth in Section 3.13(c).

"Registered Company IP" has the meaning set forth in Section 3.10(c)(i).

"Registered Company-Owned IP" has the meaning set forth in Section 3.10(c)(i).

"Registered In-Licensed IP" has the meaning set forth in 3.10(c)(i).

"Registrations" means any investigational new drug applications, new drug applications, or similar regulatory applications of the Company that have been submitted to or approved by the FDA or any applicable Governmental Entity.

"Regulatory Documentation" has the meaning set forth in Section 3.16(d).

"Required Stockholders" means holders of (i) a majority of the issued and outstanding shares of Company Common Stock and Company Preferred Stock, on an as-converted to Company Common Stock basis, voting together as a single class, (ii) a majority of the issued and outstanding shares of Company Common Stock , and (iii) at least 60% of the issued and outstanding shares of Company Series A Preferred Stock, Company Series B Preferred Stock, Company Series C Preferred Stock and Company Series D Preferred Stock, voting together as a single class and on an as-converted to Company Common Stock basis.

"Release" means spilling, leaking, pumping, pouring, emitting, emptying, injecting, depositing, disposing, discharging, dispersal, escaping, dumping, leaching or migrating into or through the environment, including surface water, soil or groundwater (including the abandonment or discarding of barrels, containers and other receptacles containing Hazardous Substance) or as otherwise defined under Environmental Laws.

"Representatives" means directors, officers, employees, agents, attorneys, accountants and other advisors.

"Residual Closing Cash Amount" means (a) the Estimated Closing Cash Consideration, minus (b) the Series B Preference Amount minus (c) the Series C Preference Amount.

"Residual Final Cash Amount" means (a) the Final Closing Cash Consideration, minus (b) the Series B Preference Amount minus (c) the Series C Preference Amount.

"Residual Per Share Closing Cash Amount" means the quotient obtained by dividing (a) the Residual Closing Cash Amount, by (b) the Number of Fully Diluted Vested Shares.

"Residual Per Share Final Cash Amount" means the quotient obtained by dividing (a) the Residual Final Cash Amount, by (b) the Number of Fully Diluted Vested Shares.

"Seller Non-Compete Agreements" has the meaning set forth in the Recitals.

"Seller Release" has the meaning set forth in the Recitals.

"Series A Aggregate Escrow Release Amount" means the product of (a) the Unused Escrow Payment and (b) the Series A Aggregate Final Amount Proportion.

"Series A Aggregate Final Amount (Pre-Escrow)" means the product of (a) the Series A Per Share Final Amount (Pre-Escrow) and (b) the Series A Outstanding Number.

"Series A Aggregate Final Amount Proportion" means the quotient of (i) the Series A Aggregate Final Amount (Pre-Escrow) divided by (ii) the Final Closing Cash Consideration.

"Series A Outstanding Number" means the number of outstanding shares of Company Series A Preferred Stock as of the Effective Time, taking into account the exercise of all Series A Warrants at the Effective Time; provided that, with respect to any Series A Warrants to be exercised on a Net Basis as of the Effective Time in accordance with this Agreement, the calculation set forth in this definition shall only reflect the "net" number of shares of Company Series A Preferred Stock issuable in connection therewith.

"Series A Per Share Adjustment Amount" means the excess of (a) the Series A Per Share Final Amount over (b) the Series A Per Share Closing Amount.

"Series A Per Share Closing Amount" means the product of (a) Series A Per Share Closing Amount (Pre-Escrow) and (b) the Escrow Amount Closing Discount Factor.

"Series A Per Share Closing Amount (Pre-Escrow)" means the product of (a) the Residual Per Share Closing Cash Amount, and (b) 6.641; provided, such amount shall be increased, as appropriate, to the extent that the final clauses of the defined terms, "Series B Per Share Closing Amount (Pre-Escrow)" or "Series C Per Share Closing Amount (Pre-Escrow)", limit such amounts.

"Series A Per Share Final Amount" means the product of (a) Series A Per Share Final Amount (Pre-Escrow) and (b) the Escrow Amount Final Discount Factor.

"Series A Per Share Final Amount (Pre-Escrow)" means the product of (a) the Residual Per Share Final Cash Amount, and (b) 6.641; provided, such amount shall be increased, as appropriate, to the extent that the final clauses of the defined terms, "Series B Per Share Final Amount (Pre-Escrow)" or "Series C Per Share Final Amount (Pre-Escrow)", limit such amounts.

"Series A Per Share 1st Milestone Payment Amount" means the product of (a) the Series A Per Share 1st Milestone Target and (b) the 1st Milestone Discount Factor.

"Series A Per Share 1st Milestone Target" means the excess of (a) the product of (i) the 1st Milestone Per Share Cumulative Target and (ii) 6.641 over (b) the Series A Per Share Final Amount (Pre-Escrow).

"Series A Per Share 2nd Milestone Payment Amount" means the product of (a) the Per Share 2nd Milestone Payment Amount and (b) 6.641.

"Series A Per Share 3rd Milestone Payment Amount" means the product of (a) the Per Share 3rd Milestone Payment Amount and (b) 6.641.

"Series A Per Share 4th Milestone Payment Amount" means the product of (a) the Per Share 4th Milestone Payment Amount and (b) 6.641.

"Series A Per Share Stockholder Representative Surplus Amount" means the quotient of (a) the product of (i) the Stockholder Representative Account Surplus and (ii) the Series A Aggregate Final Amount Proportion divided by (b) the Series A Outstanding Number.

"Series A Per Share Unused Escrow Amount" means the quotient of (a) the Series A Aggregate Escrow Release Amount divided by (b) the Series A Outstanding Number.

"Series A Warrants" means all warrants exercisable for Company Series A Preferred Stock.

"Series B Aggregate Escrow Release Amount" means the product of (a) the Unused Escrow Payment and (b) the Series B Aggregate Final Amount Proportion.

"Series B Aggregate Final Amount (Pre-Escrow)" means the product of (a) the Series B Per Share Final Amount (Pre-Escrow) and (b) the Series B Outstanding Number.

"Series B Aggregate Final Amount Proportion" means the quotient of (i) the Series B Aggregate Final Amount (Pre-Escrow) divided by (ii) the Final Closing Cash Consideration.

"Series B Outstanding Number" means the number of outstanding shares of Company Series B Preferred Stock as of the Effective Time, taking into account the exercise of all Series B Warrants at the Effective Time; provided that, with respect to any Series B Warrants to be exercised on a Net Basis as of the Effective Time in accordance with this Agreement, the calculation set forth in this definition shall only reflect the "net" number of shares of Company Series B Preferred Stock issuable in connection therewith.

"Series B Per Share Adjustment Amount" means the excess of (a) the Series B Per Share Final Amount over (b) the Series B Per Share Closing Amount.

"Series B Per Share Closing Amount" means the product of (a) Series B Per Share Closing Amount (Pre-Escrow) and (b) the Escrow Amount Closing Discount Factor.

"Series B Per Share Closing Amount (Pre-Escrow)" means the sum of (a) the Series B Per Share Preference, plus (b) the product of (1) the Residual Per Share Closing Cash Amount, and (2) 7.87, the sum of which shall in no event exceed $21.771.

"Series B Per Share Final Amount" means the product of (a) Series B Per Share Final Amount (Pre-Escrow) and (b) the Escrow Amount Final Discount Factor.

"Series B Per Share Final Amount (Pre-Escrow)" means the sum of (a) the Series B Per Share Preference, plus (b) the product of (1) the Residual Per Share Final Cash Amount, and (2) 7.87, the sum of which shall in no event exceed $21.771.

"Series B Per Share 1st Milestone Payment Amount" means the product of (a) the Series B Per Share 1st Milestone Target and (b) the 1st Milestone Discount Factor.

"Series B Per Share 1st Milestone Target" means the excess of (a) the product of (i) the 1st Milestone Per Share Cumulative Target and (ii) 7.87 over (b) the Series B Per Share Final Amount (Pre-Escrow).

"Series B Per Share 2nd Milestone Payment Amount" means the product of (a) the Per Share 2nd Milestone Payment Amount and (b) 7.87.

"Series B Per Share 3rd Milestone Payment Amount" means the product of (a) the Per Share 3rd Milestone Payment Amount and (b) 7.87.

"Series B Per Share 4th Milestone Payment Amount" means the product of (a) the Per Share 4th Milestone Payment Amount and (b) 7.87.

"Series B Per Share Preference" means $7.257.

"Series B Per Share Stockholder Representative Surplus Amount" means the quotient of (a) the product of (i) the Stockholder Representative Account Surplus and (ii) the Series B Aggregate Final Amount Proportion divided by (b) the Series B Outstanding Number.

"Series B Per Share Unused Escrow Amount" means the quotient of (a) the Series B Aggregate Escrow Release Amount divided by (b) the Series B Outstanding Number.

"Series B Preference Amount" means an amount equal to the product of (a) the Series B Outstanding Number, and (b) the Series B Per Share Preference.

"Series B Warrants" means all warrants exercisable for Company Series B Preferred Stock.

"Series C Aggregate Escrow Release Amount" means the product of (a) the Unused Escrow Payment and (b) the Series C Aggregate Final Amount Proportion.

"Series C Aggregate Final Amount (Pre-Escrow)" means the product of (a) the Series C Per Share Final Amount (Pre-Escrow) and (b) the Series C Outstanding Number.

"Series C Aggregate Final Amount Proportion" means the quotient of (i) the Series C Aggregate Final Amount (Pre-Escrow) divided by (ii) the Final Closing Cash Consideration.

"Series C Outstanding Number" means the number of outstanding shares of Company Series C Preferred Stock as of the Effective Time, taking into account the exercise of all Series C Warrants at the Effective Time; provided that, with respect to any Series C Warrants to be exercised on a Net Basis as of the Effective Time in accordance with this Agreement, the calculation set forth in this definition shall only reflect the "net" number of shares of Company Series C Preferred Stock issuable in connection therewith.

"Series C Per Share Adjustment Amount" means the excess of (a) the Series C Per Share Final Amount over (b) the Series C Per Share Closing Amount.

"Series C Per Share Closing Amount" means the product of (a) Series C Per Share Closing Amount (Pre-Escrow) and (b) the Escrow Amount Closing Discount Factor.

"Series C Per Share Closing Amount (Pre-Escrow)" means the sum of (a) the Series C Per Share Preference, plus (b) the Residual Per Share Closing Cash Amount, the sum of which shall in no event exceed $2.805.

"Series C Per Share Final Amount" means the product of (a) Series C Per Share Final Amount (Pre-Escrow) and (b) the Escrow Amount Final Discount Factor.

"Series C Per Share Final Amount (Pre-Escrow)" means the sum of (a) the Series C Per Share Preference, plus (b) the Residual Per Share Final Cash Amount, the sum of which shall in no event exceed $2.805.

"Series C Per Share 1st Milestone Payment Amount" means the product of (a) the Series C Per Share 1st Milestone Target and (b) the 1st Milestone Discount Factor.

"Series C Per Share 1st Milestone Target" means the excess of the 1st Milestone Per Share Cumulative Target over the Series C Per Share Final Amount (Pre-Escrow).

"Series C Per Share 2nd Milestone Payment Amount" means the Per Share 2nd Milestone Payment Amount.

"Series C Per Share 3rd Milestone Payment Amount" means the Per Share 3rd Milestone Payment Amount.

"Series C Per Share 4th Milestone Payment Amount" means the Per Share 4th Milestone Payment Amount.

"Series C Per Share Preference" means $0.935.

"Series C Per Share Stockholder Representative Surplus Amount" means the quotient of (a) the product of (i) the Stockholder Representative Account Surplus and (ii) the Series C Aggregate Final Amount Proportion divided by (b) the Series C Outstanding Number.

"Series C Per Share Unused Escrow Amount" means the quotient of (a) the Series C Aggregate Escrow Release Amount divided by (b) the Series C Outstanding Number.

"Series C Preference Amount" means an amount equal to the product of (a) the Series C Outstanding Number, and (b) the Series C Per Share Preference.

"Series C Warrants" means all warrants exercisable for Company Series B Preferred Stock.

"Series C-1 Aggregate Escrow Release Amount" means the product of (a) the Unused Escrow Payment and (b) the Series C-1 Aggregate Final Amount Proportion.

"Series C-1 Aggregate Final Amount (Pre-Escrow)" means the product of (a) the Series C-1 Per Share Final Amount (Pre-Escrow) and (b) the Series C-1 Outstanding Number.

"Series C-1 Aggregate Final Amount Proportion" means the quotient of (i) the Series C-1 Aggregate Final Amount (Pre-Escrow) divided by (ii) the Final Closing Cash Consideration.

"Series C-1 Outstanding Number" means the number of outstanding shares of Company Series C-1 Preferred Stock as of the Effective Time.

"Series C-1 Per Share Adjustment Amount" means the excess of (a) the Series C-1 Per Share Final Amount over (b) the Series C-1 Per Share Closing Amount.

"Series C-1 Per Share Closing Amount" means the product of (a) Series C-1 Per Share Closing Amount (Pre-Escrow) and (b) the Escrow Amount Closing Discount Factor.

"Series C-1 Per Share Closing Amount (Pre-Escrow)" means the Residual Per Share Closing Cash Amount; provided, such amount shall be increased, as appropriate, to the extent that the final clauses of the defined terms, "Series B Per Share Closing Amount (Pre-Escrow)" or "Series C Per Share Closing Amount (Pre-Escrow)", limit such amounts.

"Series C-1 Per Share Final Amount" means the product of (a) Series C-1 Per Share Final Amount (Pre-Escrow) and (b) the Escrow Amount Final Discount Factor.

"Series C-1 Per Share Final Amount (Pre-Escrow)" means the Residual Per Share Final Cash Amount; provided, such amount shall be increased, as appropriate, to the extent that the final clauses of the defined terms, "Series B Per Share Closing Amount (Pre-Escrow)" or "Series C Per Share Closing Amount (Pre-Escrow)", limit such amounts.

"Series C-1 Per Share 1st Milestone Payment Amount" means the product of (a) the Series C-1 Per Share 1st Milestone Target and (b) the 1st Milestone Discount Factor.

"Series C-1 Per Share 1st Milestone Target" means the excess of the 1st Milestone Per Share Cumulative Target over the Series C-1 Per Share Final Amount (Pre-Escrow).

"Series C-1 Per Share 2nd Milestone Payment Amount" means the Per Share 2nd Milestone Payment Amount.

"Series C-1 Per Share 3rd Milestone Payment Amount" means the Per Share 3rd Milestone Payment Amount.

"Series C-1 Per Share 4th Milestone Payment Amount" means the Per Share 4th Milestone Payment Amount.

"Series C-1 Per Share Stockholder Representative Surplus Amount" means the quotient of (a) the product of (i) the Stockholder Representative Account Surplus and (ii) the Series C-1 Aggregate Final Amount Proportion divided by (b) the Series C-1 Outstanding Number.

"Series C-1 Per Share Unused Escrow Amount" means the quotient of (a) the Series C-1 Aggregate Escrow Release Amount divided by (b) the Series C-1 Outstanding Number.

"Share Certificate" means a certificate which immediately prior to the Effective Time represented outstanding shares of Company Stock.

"Specified Representations" means the representations or warranties of the Company contained in Section 3.1 (Organization, Standing and Power), Section 3.2 (Capitalization), Section 3.3 (Subsidiaries), Section 3.4(a) and 3.4(d) (Authority), Section 3.8 (Taxes), Section 3.14(p), Section 3.21 (Brokers) and Section 3.22 (Allocation Schedules).

"Standard Software" means software that is generally commercially available to the public and is licensed pursuant to a click-wrap or shrink-wrap agreement other standard, non-negotiated and non-exclusive license terms for aggregate fees of less than $10,000.

"Stockholder Representative" has the meaning set forth in the Preamble.

"Stockholder Representative Account Surplus" has the meaning set forth in Section 2.7(c).

"Stockholder Representative Expense Amount" means $250,000.

"Stockholder Representative Fund" means a segregated account containing the Stockholder Representative Expense Amount.

"Subsidiary" means, with respect to any party, any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which such party (or another Subsidiary of such party) holds (a) stock or other ownership interests representing more than 50% of the voting power of all outstanding stock or ownership interests of such entity, (b) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such entity or (c) the right to appoint more than 50% of the board of directors or comparable governing body, or the general partner, managing member or other governing Person.

"Superior Offer" means an unsolicited, bona fide, written Acquisition Proposal that the Company's Board of Directors, after consultation with its financial advisor and outside legal counsel, has in good faith concluded would result in a transaction that is reasonably likely to be consummated and is more favorable, from a financial point of view, to the Company's stockholders than the Merger; provided, that, for purposes of this definition, the references to "15%" in the definition of "Acquisition Proposal" shall instead be deemed to refer to "50%."

"Surviving Corporation" means the Company, as the surviving corporation in the Merger.

"Tax Returns" means all reports, returns, declarations, statements or other information required to be supplied to a taxing authority in connection with Taxes.

"Taxes" means all taxes, charges, fees, levies or other similar assessments or liabilities in the nature of a tax, including income, gross receipts, ad valorem, premium, value-added, excise, real property, personal property, sales, use, services, transfer, withholding, employment, payroll and franchise taxes imposed by any Governmental Entity, and any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax or any contest or dispute thereof (including, for the avoidance of doubt, Transfer Taxes).

"Third Party" means Persons other than Buyer, the Company and their respective Affiliates.

"Third Party Claim" has the meaning set forth in Section 9.3(a).

"Third Party Claim Notice" has the meaning set forth in Section 9.3(a).

"Third Party Intellectual Property" means the Company Intellectual Property, other than the Company-Owned Intellectual Property and Standard Software.

"Threshold" has the meaning set forth in Section 9.2(b).

"Transfer Taxes" means sales, use, transfer, documentary, recording, gains, stock transfer and similar Taxes and fees, and any deficiency, interest or penalty asserted with respect thereto.

"Type 1 Milestone Payment" has the meaning set forth in Schedule 2.9(a) .

"Type 2 Milestone Payment" has the meaning set forth in Schedule 2.9(a) .

"Underwater Company Option" means, as of the Effective Time, each unexercised Company Option with a per share exercise price greater than the Per Share Estimated Fair Market Value.

"Underwater Company Warrant" means, as of the Effective Time, each unexercised Company Warrant with an exercise price (per share of Company Common Stock into which any applicable Company Preferred Stock is convertible) greater than the Per Share Estimated Fair Market Value.

"Unused Escrow Payment" has the meaning set forth in Section 2.5(c).

"Unvested Company Option" means, as of the Effective Time, each unvested Company Option.

"Unvested Company Option Expense Amount" means the product of (a) the Per Share Estimated Fair Market Value and (b) the Number of Fully Diluted Unvested Shares.

"USPTO" has the meaning set forth in Section 3.10(b).

"Verifi Prenatal Test" means the laboratory-developed test designed to detect multiple fetal chromosomal aneuploidies using a maternal blood draw and marketed by the Company as of the Effective Date under the "Verifi prenatal test" brand name, as such test may be modified or updated from time to time prior to or following the Closing.

"Vested Company Option" means, as of the Effective Time, each outstanding, unexercised and vested Company Option (inclusive of any Company Options that accelerate as to vesting due to the occurrence of the Merger).

"Written Consent" has the meaning set forth in Section 6.2.

ARTICLE XI
MISCELLANEOUS

11.1 Notices . All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) four (4) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (ii) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service or (iii) on the date of confirmation of receipt (or, the first Business Day following such receipt if the date of such receipt is not a Business Day) of transmission by facsimile, in each case to the intended recipient as set forth below:

(i) if to Buyer or Merger Sub, to

Illumina, Inc.
5200 Illumina Way
San Diego, California 92122
Attention: General Counsel
Facsimile: (858) 202-4599

with a copy to:

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, New York10018
Attention: Frederick W. Kanner
Jack S. Bodner
Facsimile No.: (646) 441-9079

(j) if to the Company, to

Verinata Health, Inc.
800 Saginaw Drive
Redwood City, CA 94063

Attention: Chief Executive Officer
Facsimile No.: (650) 362-2367

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Attention: Donna M. Petkanics
Robert T. Ishii
Facsimile No.: (650) 493-6811

(k) if to the Stockholder Representative, to

Shareholder Representative Services LLC
1614 15th Street, Suite 200
Denver, CO 80202
Attention: Managing Director
Facsimile No.: (303) 623-0294

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Attention: Donna M. Petkanics
Robert T. Ishii
Facsimile No.: (650) 493-6811

Any party to this Agreement may give any notice or other communication hereunder using any other means (including personal delivery, messenger service, ordinary mail or electronic mail), but no such notice or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any party to this Agreement may change the address to which notices and other communications hereunder are to be delivered by giving the other parties to this Agreement notice in the manner herein set forth.

11.2 Entire Agreement . This Agreement (including the Company Disclosure Letter and the Exhibits and other Schedules hereto and the documents and instruments referred to herein that are to be delivered at the Closing) constitutes the entire agreement among the parties to this Agreement and supersedes any prior understandings, agreements or representations by or among the parties hereto, or any of them, written or oral, with respect to the subject matter hereof; provided that the Confidentiality Agreement shall remain in effect in accordance with its terms.

11.3 No Third Party Beneficiaries . This Agreement is not intended to, and shall not, confer upon any other Person or entity any rights or remedies hereunder, except from and after the Effective Time, the rights of Company Equityholders to receive the consideration set forth in Article II, except with regard to Section 6.16.

11.4 Assignment . Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of Law or otherwise by any of the parties hereto without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void, except that Buyer or Merger Sub may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to one or more of their Subsidiaries; provided that such transfer or assignment shall not relieve Buyer or Merger Sub of its primary liability for its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to Buyer or Merger Sub. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

11.5 Severability . Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. The parties hereto agree to use reasonable efforts to attempt to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

11.6 Counterparts and Signature . This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile or .pdf transmission.

11.7 Interpretation . Except where expressly stated otherwise in this Agreement, the following rules of interpretation apply to this Agreement: (a) “either” and “or” are not exclusive and “include,” “includes” and “including” are not limiting; (b) “hereof,” “hereto,” “hereby,” “herein” and “hereunder” and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (c) “date hereof” refers to the date set forth in the initial caption of this Agreement; (d) “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”; (e) descriptive headings, the table of defined terms and the table of contents are inserted for convenience only and do not affect in any way the meaning or interpretation of this Agreement; (f) definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms; (g) references to a Person or entity are also to its permitted successors and assigns; (h) references to an “Article,” “Section,” “Exhibit” or “Schedule” refer to an Article or Section of, or an Exhibit or Schedule to, this Agreement; (i) references to “$” or otherwise to dollar amounts refer to the lawful currency of the United States; (j) references to a

federal, state, local or foreign statute or Law include any rules, regulations and delegated legislation issued thereunder; (k) references to any agreement, instrument or statute defined or referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession or comparable successor statutes and shall be deemed to include reference to all attachments thereto and instruments incorporated therein; and (l) references to a communication by a regulatory agency include a communication by the staff of such regulatory agency. When reference is made in this Agreement to information that has been "made available" to Buyer, that shall include information that was (i) contained in the Company's electronic data room no later than 5:00 p.m., Eastern Time, on the day prior to the date of this Agreement, or (ii) delivered to Buyer or its counsel. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party hereto.

11.8 Governing Law . This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdictions other than those of the State of Delaware.

11.9 Remedies . Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one (1) remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, and each party to this Agreement hereby agrees to waive the defense in any such suit that the other parties to this Agreement have an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of injunction or specific performance as a remedy, and hereby agrees to waive any requirement to post any bond in connection with obtaining such relief. The equitable remedies described in this Section 11.9 shall be in addition to, and not in lieu of, any other remedies at law or in equity that the parties to this Agreement may elect to pursue.

11.10 Submission to Jurisdiction . Each of the parties to this Agreement (a) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, the United Stated District Court for the District of Delaware, in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the

maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party hereto may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 11.1. Nothing in this Section 11.10, however, shall affect the right of any party to serve legal process in any other manner permitted by Law.

11.11 Company Disclosure Letter . The Company Disclosure Letter shall be arranged in Sections corresponding to the numbered sections contained in Article III, and the disclosure in any section of the Company Disclosure Letter shall qualify (a) the corresponding Section in Article III and (b) the other Sections in Article III, in each case, to the extent that it is readily apparent from a reading of such disclosure that it qualifies or applies to the representations and warranties contained in such Sections. The inclusion of any information in the Company Disclosure Letter, or in any update thereto, shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would reasonably be expected to result in a Company Material Adverse Effect, or is outside the ordinary course of business.

11.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

[remainder of page intentionally blank]

11.13

IN WITNESS WHEREOF, Buyer, Merger Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

ILLUMINA, INC.

By:_____
Name:
Title:

TP CORPORATION

By:_____
Name:
Title:

VERINATA HEALTH, INC.

By:_____
Name:
Title:

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as the Stockholder Representative

By:_____
Name:
Title: Managing Director

SUBSIDIARIES OF THE COMPANY

Name of Subsidiary	Jurisdiction	Doing Business As
BlueGnome, Ltd.	United Kingdom	BlueGnome, Ltd.
Epicentre Technologies Corporation	Wisconsin	Epicentre Biotechnologies
Illumina Australia Pty. Ltd.	Australia	Illumina Australia Pty. Ltd.
Illumina Brasil Produtos de Biotecnologia Ltda.	Brazil	Illumina Brazil
Illumina Cambridge, Ltd.	United Kingdom	Illumina Cambridge, Ltd.
Illumina Canada, Inc.	New Brunswick, Canada	Illumina Canada, Inc.
Illumina France Holding Sarl	France	Illumina France Holding Sarl
Illumina France Sarl	France	Illumina France Sarl
Illumina GmbH	Germany	Illumina GmbH
Illumina Hong Kong Limited	Hong Kong	Illumina Hong Kong Limited
Illumina Iceland ehf	Iceland	Illumina Iceland ehf
Illumina Italy S.r.l.	Italy	Illumina Italy S.r.l.
Illumina K.K. Japan	Japan	Illumina K.K. Japan
Illumina Netherlands B.V.	Netherlands	Illumina Netherlands B.V.
Illumina New Zealand Limited	New Zealand	Illumina New Zealand Limited
Illumina Singapore Pte. Ltd.	Singapore	Illumina Singapore Pte. Ltd
Illumina Trading (Shanghai) Co., Ltd.	China	Illumina Trading (Shanghai) Co., Ltd.
Illumina UK, Ltd.	United Kingdom	Illumina UK, Ltd.
Illumina Switzerland GmbH	Switzerland	Illumina Switzerland GmbH
Illumina Europe Limited	United Kingdom	Illumina Europe Limited
Illumina Denmark ApS	Denmark	Illumina Denmark ApS
Illumina Productos de Espana, S.L.U.	Spain	Illumina Productos de Espana, S.L.U.
Illumina AB	Sweden	Illumina AB
Moleculo, Inc.	Delaware	Moleculo, Inc.

**All listed subsidiaries are wholly-owned, direct or indirect, subsidiaries of Illumina, Inc.

**As permitted under Rule 601 of Regulation S-K, we have omitted the names of subsidiaries, which if considered in the aggregate as a single subsidiary, would not constitute a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X) as of the end of the year covered by this report

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

(1) Registration Statements (Form S-3 Nos. 333-111496, 333-134012, 333-144953 and 333-168395) of Illumina, Inc.,

(2) Registration Statement (Form S-4 No. 333-139111) of Illumina, Inc., and

(3) Registration Statements (Form S-8 Nos. 333-42866, 333-69058, 333-88808, 333-104190, 333-114633, 333-124074, 333-125133, 333-129611, 333-134399, 333-140416, 333-147389, 333-151625, 333-159662 and 333-168393) of Illumina, Inc.;

of our reports dated February 15, 2013, with respect to the consolidated financial statements and schedule of Illumina, Inc., and the effectiveness of internal control over financial reporting of Illumina, Inc., included in this Annual Report (Form 10-K) for the fiscal year ended December 30, 2012.

/s/ Ernst & Young LLP

San Diego, California
February 15, 2013

Exhibit 31.1

CERTIFICATION OF JAY T. FLATLEY PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jay T. Flatley, certify that:

1 I have reviewed this Annual Report on Form 10-K of Illumina, Inc.;

2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4 The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 15, 2013

By: /s/ JAY T. FLATLEY

Jay T. Flatley
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF MARC A. STAPLEY PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Marc Stapley, certify that:

1 I have reviewed this Annual Report on Form 10-K of Illumina, Inc.;

2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4 The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 15, 2013

By: /s/ MARC A. STAPLEY

Marc A. Stapley
Senior Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION OF JAY T. FLATLEY PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Illumina, Inc. (the "Company") on Form 10-K for the year ended December 30, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jay T. Flatley, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 15, 2013

By: /s/ JAY T. FLATLEY

Jay T. Flatley
President and Chief Executive Officer

This certification accompanying the Report is not deemed filed with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities such Section, and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before, on or after the date of the Report), irrespective of any general incorporation language contained in such filing.

Exhibit 32.2

CERTIFICATION OF MARC A. STAPLEY PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Illumina, Inc. (the "Company") on Form 10-K for the year ended December 30, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Marc A. Stapley, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 15, 2013

By: /s/ MARC A. STAPLEY

Marc A. Stapley
Senior Vice President and Chief Financial Officer

This certification accompanying the Report is not deemed filed with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities such Section, and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before, on or after the date of the Report), irrespective of any general incorporation language contained in such filing.