ASPIRA WOMEN'S HEALTH INC.

FORM 10-K405

(Annual Report (Regulation S-K, item 405))

Filed 04/01/02 for the Period Ending 12/31/01

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Symbol	AWH
SIC Code	2835 - In Vitro and In Vivo Diagnostic Substances
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Sector	Healthcare
Fiscal Year	12/31

CIPHERGEN BIOSYSTEMS INC

FORM 10-K405
(Annual Report (Regulation S-K, item 405))

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Address	6611 DUMBARTON CIRCLE
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Sector	Technology
Fiscal Year	12/31

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

FORM 10-K
ANNUAL REPORT UNDER SECTION 13 or 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 2001**

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number: 000-31617

CIPHERGEN BIOSYSTEMS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**33-059-5156**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)

Ciphergen Biosystems, Inc.
6611 Dumbarton Circle
Fremont, CA 94555
(510) 505-2100
(Address, including zip code, of registrant's principal executive offices and telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: none

Securities registered pursuant to Section 12(g) of the Act: Common Stock, $0.001 par value

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 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. ☒

The aggregate market value of voting stock held by non-affiliates of the Registrant was approximately $94.9 million as of March 15,

2002, based upon the closing price on the Nasdaq National Market reported for such date. This calculation does not reflect a determination that certain persons are affiliates of the Registrant for any other purpose. The number of shares outstanding of the Registrant's common stock on March 15, 2002 was 27,059,738 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Proxy Statement for its 2002 Annual Meeting of Stockholders (the "Proxy Statement"), to be filed with the Securities and Exchange Commission, are incorporated by reference to Part III of this Form 10-K Report.

CIPHERGEN BIOSYSTEMS, INC.
FORM 10-K
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PART I

We have made statements under the captions "Factors That May Affect Our Results," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and in other sections of this Form 10-K that are forward-looking statements. You can identify these statements by forward-looking words such as "may," "will," "expect," "intend," "anticipate," "believe," "estimate," "plan," "could," "should" and "continue" or similar words. These forward-looking statements may also use different phrases. We have based these forward-looking statements on our current expectations and projections about future events. Examples of forward-looking statements include statements about: projections of our future results of operations or of our financial condition; deployment, capabilities and uses of our products; product development and product innovations; the importance of proteomics as a major focus of biology research; the ability of our products to enable proteomics research; the rapidly growing market for protein purification products; the expansion of our product portfolio; increasing the size of our sales and marketing organization; collaborations and partnerships; establishment of Biomarker Centers™; securing commercial rights to biomarkers discovered at our Biomarker Centers; expansion of our intellectual property portfolio; anticipated trends in our business; revenue growth; future sales volumes for consumables; increasing costs, including sales and marketing, research and development, and general and administrative costs; anticipated future losses; expected levels of capital expenditures; expansion of our business using the recently-acquired BioSepra business; increased manufacturing efficiencies and a corresponding decline in cost of revenue as a percentage of revenue; the development of improved products; the outcome of legal proceedings; the period of time for which our existing financial resources and interest income will be sufficient to enable us to maintain current and planned operations; and the market risk of our investments. These statements are subject to risks and uncertainties that could cause actual results to differ materially, including the risks set forth under the caption "Factors That May Affect Our Results" in this Form 10-K and the risks outlined in our other filings with the SEC. We believe it is important to communicate our expectations to our investors. However, there may be events in the future that we are not able to accurately predict or that we do not fully control that could cause actual results to differ materially from those expressed or implied in our forward-looking statements.

ITEM 1. BUSINESS

Overview

We develop, manufacture and market our ProteinChip® Systems, which use patented Surface Enhanced Laser Desorption/Ionization ("SELDI") technology. The ProteinChip Systems enable protein discovery, characterization and assay development to provide researchers with a better understanding of biological functions at the protein level. Protein characterization is the determination of the detailed identity of a protein, including its sequence as predicted by the corresponding gene and any chemical modifications introduced after the protein is produced. Assay development is the simplification and optimization of a set of procedures to develop a method for detecting and quantifying a specific protein. Our ProteinChip Systems are novel, enabling tools in the emerging field of protein-based biology research, known as proteomics. While recent technological advances in DNA tools have substantially changed the field of genomics, the absence of enabling protein analysis tools has limited progress in proteomics research. Proteomics provides a direct approach to understanding the role of proteins in the biology of disease, monitoring disease progression and the therapeutic effects of drugs. We believe proteomics will be a major focus of biological research by enhancing the researcher's understanding of gene function and the molecular basis of disease. In May 1999, we commercially launched the ProteinChip Biology System. We currently market and sell the ProteinChip System family of proteomics research equipment, including: (i) the ProteinChip Biology System, a versatile system for protein analysis; (ii) the ProteinChip Biomarker System, a system including Biomarker Patterns™ Software for advanced protein expression profiling; (iii) the ProteinChip Tandem MS Interface for advanced identification work using tandem mass spectrometry; (iv) automation accessories such as the

Biomek® 2000 Workstation to facilitate sample handling and increase throughput; and (v) associated accessories. We also provide associated SELDI technology contract research services through our Biomarker Centers™ to foster further adoption of our products and technology as an industry standard and to generate revenue by obtaining some combination of fees and commercial rights related to biomarkers discovered in our Biomarker Centers in consideration for research services.

With the acquisition of the BioSepra process chromatography business from Invitrogen Corporation on July 31, 2001, Ciphergen has also entered the protein purification market. Located near Paris, France, BioSepra develops, manufactures and sells chromatography sorbents for large-scale purification of proteins. Ciphergen and BioSepra have been integrating their respective sales and marketing organizations, and have initiated a joint development program for a line of products to address process proteomics, an emerging market driven by pharmaceutical company demand to produce proteins for research, development and therapeutic manufacturing purposes. Ciphergen believes BioSepra's protein chromatography products, combined with Ciphergen's ProteinChip System, will create a novel approach to protein purification and address a significant bottleneck in the field of proteomics.

Ciphergen Biosystems, Inc. was originally incorporated in California on December 9, 1993 under the name Abiotic Systems. In March 1995, we changed our corporate name to Ciphergen Biosystems and in June 2000, we reincorporated in Delaware.

Industry Background

Genes are the hereditary coding system of living organisms. Genes encode proteins that are responsible for cellular functions. The study of genes and their functions has led to the discovery of new targets for drug development. The majority of drug targets are proteins, such as receptors, hormones and enzymes. Although genomics allows researchers to identify drug targets, it does not provide complete information on how these targets function within an organism. Industry sources estimate that within the human genome there are approximately 30,000 genes. The initial structure of a protein is determined by a single gene. The final structure of a protein is frequently altered by interactions with additional genes or proteins. These subsequent modifications result in hundreds of thousands of different proteins. In addition, proteins may interact with one another to form complex structures that are ultimately responsible for cellular functions.

Genomics allows researchers to establish the relationship between gene activity and disease. However, many diseases are manifested not at the genetic level, but at the protein level. The complete structure of modified proteins cannot be determined by reference to the encoding gene alone. Thus, while genomics provides some information about diseases, it does not provide a full understanding of disease processes.

The Relationship Between Proteins and Diseases

The entire genetic content of any organism, known as its genome, is encoded in strands of deoxyribonucleic acid, or DNA. Cells perform their normal biological functions through the genetic instructions encoded in their DNA, which results in the production of proteins. The process of producing proteins from DNA is known as gene expression or protein expression. Differences in living organisms result from variability in their genomes, which can affect the levels of gene expression. Each cell of the organism expresses only approximately 10% to 20% of the genome. The type of cell determines which genes are expressed and the amount of a particular protein produced. For example, liver cells produce different proteins from those produced by cells found in the heart, lungs, skin, etc. Proteins play a crucial role in virtually all biological processes, including transportation and storage of energy, immune protection, generation and transmission of nerve impulses and control of growth.

Diseases may be caused by a mutation of a gene that alters a protein directly or indirectly, or alters the gene's level of protein expression. These alterations interrupt the normal balance of proteins

and create disease symptoms. A protein biomarker is a protein that is present in a greater or lesser amount in a disease state versus a normal condition. By studying changes in protein biomarkers, researchers may identify diseases prior to the appearance of physical symptoms. Researchers identify proteins by their molecular weight. In addition, researchers can utilize protein biomarkers to identify new disease pathways to be used as drug targets. Disease pathways are groups of interacting proteins that lead to disease if any one or more of the proteins is altered. Historically, researchers discovered protein biomarkers as a byproduct of basic biological disease research. This has resulted in the validation by researchers of approximately 200 protein biomarkers that are being used in commercially available clinical diagnostic products. The development of new diagnostic products has been limited by the complexity of disease states, which may be caused or characterized by several or many interacting proteins. Diagnostic products that are limited to the detection of a single protein may lack the ability to detect more complex diseases, and thus produce results that are unacceptable for practical use. In recent years, the National Institutes of Health, or NIH, has recognized the importance of protein biomarkers in overcoming this problem and their usefulness in the development of new diagnostic and therapeutic products. The NIH has established a grant program (The Early Detection Research Network) to fund the discovery and clinical validation of new protein biomarkers.

Limitations of Available Technologies for Proteomics Research and Protein Purification

Efforts to understand biology and to improve the diagnosis, monitoring and treatment of diseases have been dramatically enhanced through advancements in modern genomic technologies. These new technologies have formed the basis for the development of new analytical tools, which are primarily directed at DNA and genomic analysis, but are not applicable to protein research or proteomics. These new tools have accelerated the ability to sequence and analyze the human genome. Historically, researchers used gel electrophoresis as a primary tool for sequencing DNA. Gel electrophoresis measures how far a DNA fragment migrates through the pores of gels in response to an applied electric field over a fixed time interval. Electrophoresis is a time-consuming, manual process that requires large amounts of pure DNA to be useful. The development of polymerase chain reaction, or PCR, allowed researchers to amplify, or produce multiple copies of a fragment of DNA. Researchers could then enhance the signal of trace amounts of DNA from an unprocessed biological sample, such as tissue or blood, to a level where measurement was possible. Successive advances in technologies have produced faster, automated sequencing machines and new, biochip-based technologies. These new technologies have dramatically improved the throughput and accuracy of DNA analysis. In addition, these new technologies have reduced costs by increasing automation and reducing necessary labor.

Although recent technological advances have benefited genomics, there have been fewer significant advances in proteomics. While DNA has been relatively simple to study because of its ease of detection and linear structure, protein analysis has been a far more difficult challenge. The goal of proteomics is to determine the structure and function of proteins. Researchers use techniques such as tagging, amplification and sequencing to analyze DNA, but researchers cannot use these techniques effectively to study proteins. These techniques can change the structure of proteins and may change their characteristics or function, which would limit researchers' ability to identify and analyze samples. In addition, these techniques do not allow researchers to monitor or study how proteins interact, or to identify which proteins interact together, to perform biological functions.

Currently, researchers perform proteomics research using gel electrophoresis and other protein purification and analysis products. These tools require substantial, labor-intensive sample preparation processes to enable researchers to produce enough purified proteins before identification and analysis can occur. In addition, these tools must be operated by researchers with substantial technical expertise. As a result, proteomics research has not advanced at a rate comparable to that of genomics. New tools are needed that are specifically designed to allow researchers to analyze proteins to enable protein biomarker discovery, to fully understand biological pathways and function, and ultimately to accelerate the discovery of new drugs and clinical diagnostics. Moreover, there is a bottleneck in the rapid

purification of proteins from either native biological sources or from "gene to protein," biologically-manufactured proteins. Scientists must obtain proteins of interest from such sources in large quantities for basic research studies, drug discovery and development. In addition, the increasing number of biological therapeutics and monoclonal antibodies in clinical trials and in pre-clinical development is creating a major shortage in production capacity for such products and an increased need to improve large scale purification methods. Thus, there is a rapidly growing market for protein purification products extending from benchtop research to large-scale manufacturing.

The Ciphergen Solution

We develop, manufacture and market our ProteinChip Systems using patented SELDI technology. The ProteinChip Systems enable protein biomarker discovery, characterization and assay development. Our ProteinChip Systems integrate the key steps of proteomics research on a single, miniaturized biochip. Our ProteinChip Systems incorporate patented Surface-Enhanced Laser Desorption/Ionization, or SELDI,

technology on the surface of a consumable biochip, which allows researchers to capture and analyze proteins directly. Our ProteinChip Systems enable rapid, reproducible, on-chip protein expression and protein analysis from complex biological samples, such as whole blood, tissue or saliva, without separation, tagging and amplification processes and with minimal prior purification. SELDI enables protein detection and quantification by reducing signals from unwanted biomolecules that would otherwise obscure the measurement results.

We believe our ProteinChip Systems enable researchers to identify and quantify proteins by direct molecular weight detection and measurement. Researchers can add chemicals or enzymes at any step during the process to greatly enhance the detailed knowledge gained from a set of experiments. We believe the integration of these processes enables a researcher to rapidly discover, characterize and assay proteins directly from biological samples, providing a novel technique for protein discovery and analysis compared to currently available methods. We believe our ProteinChip Systems can enable protein research in the following areas:

- *Differential Protein Expression.* Our ProteinChip Systems are designed to enable biology researchers to rapidly conduct studies in differential protein expression. Differential protein expression is the comparison of proteins expressed in different, usually related, biological samples, such as blood serum from a diseased individual and blood serum from an individual without that disease. The differences include both differences in the identities of the collection of proteins present in the samples, and differences in the amounts of a particular protein present in both samples. Proteins that are either present in one sample and absent in the other, or present at different relative levels in both samples, are potential protein biomarkers of the disease. Further research may validate the use of potential protein biomarkers for the diagnosis of the disease or as targets for the discovery of drugs to treat the disease. In addition, the information derived from our ProteinChip Systems enables scientists to compare genetic message information derived from DNA biochips, or miniaturized biochips containing DNA, to protein information, in order to better define protein function. Expression studies and protein discovery that previously were impossible to conduct or took months or years can be performed on our ProteinChip Systems in days or even hours. By quickly analyzing statistically significant numbers of samples, biomarker candidates can be validated. Researchers can use quantitative assays of proteins developed from differential protein expression to diagnose and monitor disease.

- *Protein Characterization.* Once a potential protein biomarker is identified, a usual next step is the characterization of the protein. Protein characterization is the process of determining the identity of the protein and/or characterizing aspects of its physical structure. Using our ProteinChip Systems, biology researchers can purify a rare protein from a crude biological sample in hours, a process that required days or weeks with traditional methods. Researchers can then determine the identity of the protein. This process can involve, for example,

determining a fragment pattern for the protein (produced, for example, by treatment with enzymes) with our ProteinChip Systems, and comparing this pattern with fragment patterns of proteins identified in publicly available protein and genomic databases. Based on this comparison, the researcher may be able to identify the protein in the database that corresponds to the experimental protein. Identifying a protein can provide the researcher with information useful in understanding the biology of the sample being studied. Identifying the gene from which the protein originates can provide useful structural or processing information. Also, researchers can characterize aspects of the physical structure of a protein using our ProteinChip Systems to perform enzymatic-, chemical- or antibody-based tests or assays. Such assays may reveal, for example, whether the protein has been modified after production. Protein modification can indicate changes in protein function, which may be important to the particular disease under study.

- *Quantitative Assay of Proteins and Protein Interactions.* Once a protein biomarker has been identified and characterized, the researcher may want to develop assays based on the protein. One such assay is the routine detection of the protein and determination of its amount in a sample. This is a quantitative assay. It is useful, for example, in diagnostic assays for the severity or stage of a disease. Another assay is a test of protein interactions between the biomarker and other proteins. This assay is useful in tests of the biological function of the protein that may be important for its role in disease. This assay is also useful in drug discovery to identify drug candidates that interfere with protein interaction. Our ProteinChip Systems enable the researcher to perform quantitative and protein interaction assays by selecting a limited number of chemical or biochemical surfaces and optimizing the conditions for a particular type of assay. We believe assay simplification will speed functional validation of discovered biomarkers for both diagnostic and drug discovery applications. Currently, researchers take many weeks or months to accomplish this process using conventional technologies. We believe our ProteinChip technology can reduce this process to days or even hours.

- *Novel, High-Speed Protein Purification and Production.* Researchers seek rapid purification of proteins from either native biological sources or from "gene to protein," biologically manufactured proteins in order to conduct basic research. Drug developers need to obtain large quantities of proteins of interest for target discovery, validation and large-scale production of therapeutics. Ciphergen's ProteinChip Systems, through the application of gradient wash conditions to the chromatographic surfaces of these arrays which produces a step-wise elution of retained compounds, may allow "on-chip" optimization and purification of proteins in hours or days versus weeks or months using existing methodologies. The "on-chip" optimization method is akin to that accomplished while utilizing columns for liquid chromatography (LC) separations but the method allows for purification using only microliters of biological sample versus milliliters of biological sample, and it is thus particularly useful as "predictive protein chromatography" in large scale production. Ciphergen's new method of purity analysis is called

ProteinChip Retentate Chromatography—Mass Spectrometry (RC-MS). Moreover, with the acquisition of BioSepra, Ciphergen can also now offer BioSepra® sorbents and chromatography products and services in the application of "predictive protein chromatography" or scaling up of the "on-chip" optimization and purification process achieved using RC-MS.

Our Market Opportunity

There are several types of laboratories that perform proteomics research and development. We believe our ProteinChip System and BioSepra chromatography products can enable proteomics research in the following markets:

- *Basic Biology Research.* Basic biology research laboratories focus on the study of general biological processes and the understanding of the molecular basis of disease. There are over

320,000 scientists from academic and government research institutions pursuing this research worldwide. Most of the techniques used by researchers in basic biology research to study proteins are labor intensive or have limited analytical capabilities. We believe that the ease of use and problem-solving versatility of our ProteinChip Systems may enable biologists to perform proteomics research at their workstations in the laboratory.

- *Clinical Research and Diagnostics.* Clinical research is focused on associating clinical disease symptoms to changes in certain proteins in the disease state versus in the normal state. In doing so, researchers seek to identify biomarkers, many of which are proteins, that can be used to diagnose diseases early, assess treatment response and monitor treatment progress. Currently, physicians pursuing clinical research lack a flexible, integrated, standardized tool to perform protein biomarker discovery. We believe that our ProteinChip Systems may enable researchers to rapidly discover protein biomarkers and to develop these biomarkers into clinical diagnostic tests.

- *Pharmaceutical Drug Research and Development.* A current bottleneck in drug research is secondary screening, during which drug lead candidates are validated by researchers using complex biological assays in which markers are used to assess biological responses to varying compounds, dose levels and conditions. Current assay systems often have poor specificity, are usually labor intensive and require substantial development time. In addition, over 50% of drug development failures now occur in toxicology, or the study of the negative or harmful effects of a drug, in which the availability of useful data is hampered by similar issues. We believe a lack of protein biomarkers currently limits the ability of researchers to adequately evaluate drug target function, cell pathway analysis and toxicological and therapeutic effects throughout the drug development process. We believe our ProteinChip Systems can substantially improve preclinical development and clinical trial effectiveness by greatly expanding the use of protein biomarkers.

- *Pharmaceutical Production Process .* Another current bottleneck appears in drug development and production. The most popular current method for preparative separation of proteins is liquid chromatography (LC). In LC, solid sorbents, which have complementary physicochemical properties to proteins of interest, are employed for selective adsorption. To design an LC protein separation process is not a trivial operation, however, but rather a relatively long and systematic task built essentially on a trial and error approach. The application of our ProteinChip System—the RC-MS method—is a rapid alternative method that consumes minimal sample yet predicts optimal separation conditions for large scale LC purification of proteins from complex biological matrices. Furthermore, we can offer our BioSepra process development chromatography products and services in the actual large scale application of the preparative protein separation conditions as determined using our ProteinChip Systems.

Business Strategy

We intend to establish our ProteinChip Systems as the enabling technology platform for protein biomarker discovery and proteomics research in the basic biological research, clinical research and diagnostics, and pharmaceutical drug discovery and development process markets. Key elements of our strategy are to:

- *Accelerate Awareness and Acceptance of Our ProteinChip Systems.* We intend to focus on expanding the installed base of our ProteinChip Systems with leading academic, government, pharmaceutical and clinical research laboratories to promote awareness and acceptance of our technology. In addition, we will support the use of our ProteinChip Systems through customer education and training as well as customer collaborations to increase the applications and use of our ProteinChip Arrays. Further, we intend to pursue commercialization of our products through

our own sales and marketing organizations in North America, Europe and China, and through distributors in other parts of the

world, including through our joint venture with Sumitomo Corporation in Japan and through sales representatives covering Australia, Israel, Korea, Malaysia, New Zealand and Singapore.

- *Expand Product Development and Innovation.* We intend to expand the scope of our product portfolio by continuously developing new products and applications based on our ProteinChip technology. We believe that by expanding the applications of our technology and products and increasing their functionality, we will promote the use and acceptance of our ProteinChip Systems by biology researchers. The ProteinChip products we are currently attempting to develop include next generation products to further automate and increase the throughput capacity of the protein analysis process, high performance proteomics systems and more compact versions of our proteomics systems that can be used by researchers in the laboratory.

- *Establish and Operate Biomarker Centers™.* Both directly and through partnerships, we intend to continue establishing and operating our Biomarker Centers, which provide SELDI technology-based research services. By performing contracted research projects and engaging in research collaborations, we intend not only to foster further adoption of our products and technology as an industry standard, but also to generate revenue by obtaining some combination of fees and commercial rights related to biomarkers discovered in our Biomarker Centers in consideration for research services. We believe that these biomarker discoveries, which may have diagnostic and/or therapeutic utility, could be our way of directly participating in predictive medicine. We believe that our Biomarker Centers may accelerate biomarker discovery and validation in both pharmaceutical drug discovery, toxicology and clinical trials, and in clinical research laboratories. We plan to deploy the prototypes of our next-generation ProteinChip Systems to maintain a technological advantage in our Biomarker Centers.

- *Expand into the Process Proteomics Market .* We intend to leverage the use of RC-MS and ProteinChip Systems to promote BioSepra's business of chromatography sorbents for large scale purification of proteins. Ciphergen and BioSepra have been integrating sales and marketing, and have initiated a joint development program for a line of products to address process proteomics, an emerging market driven by pharmaceutical company demand to produce proteins for research, development and therapeutic manufacturing purposes.

- *Expand Our Intellectual Property Portfolio.* We include many issued, allowed and pending patents on the SELDI technology, the ProteinChip Systems and BioSepra sorbents in our current patent portfolio and intend to expand this portfolio in several areas of technology related to our business, including applications of SELDI technology, biomarker discoveries and sorbent technology. We intend to continue to develop our proprietary technologies and proprietary infrastructure in support of our existing SELDI technology, ProteinChip Systems and BioSepra sorbents. For example, we intend to develop new surface chemistries for our ProteinChip Arrays, enhancements to our ProteinChip Readers and advances in our analysis and database ProteinChip Software, in order to broaden the range of applications and opportunities that researchers can address. We intend to continue to license and acquire technologies from others that complement our core capabilities and protect our proprietary technologies with patents and trade secrets.

Our ProteinChip Technology

Our ProteinChip technology is based on SELDI, which combines laser-based molecular weight detection with the use of a chemically or biochemically active biochip array surface constructed from proprietary-treated metal. Our ProteinChip technology enables researchers to apply a crude biological sample, such as whole blood or tissue, directly to the surface of a ProteinChip Array. These ProteinChip Arrays are designed to select desired proteins from the sample through affinity capture, which employs chemical processes or biochemical targets such as receptors, antibodies or DNA probes. Researchers then wash away the remainder of the unused sample with a variety of solutions with varying stringency conditions, depending on the type of test performed. This enhances the signal of the proteins of interest on the biochip by reducing signals from unwanted biomolecules that would otherwise obscure the measurement results. The purified sample proteins remain evenly distributed on the surface of the ProteinChip Array. This even distribution allows the researcher to accurately measure and quantify the proteins.

The researcher then places the ProteinChip Array in a specially developed laser-based, molecular weight detection analyzer, or ProteinChip Reader. The ProteinChip Reader uses a laser beam to release the retained proteins from the ProteinChip Array surface. The ProteinChip Reader accelerates the retained proteins and guides them through a flight tube under vacuum to a detector. The time of this flight is directly related to the exact molecular weight of each protein. This process allows the molecular weight of a sample protein to be determined by the researcher.

The researcher generates protein expression profiles by examining the samples collected with different affinity-based ProteinChip Arrays or different stringency washes, and collecting the information under the different conditions. Using our ProteinChip Systems, researchers can compare protein expression profiles from different samples, such as disease versus normal states and display differences in the proteins expressed. Proteins that are differently expressed in the disease versus normal state may be new, potentially relevant protein biomarkers. Researchers can then process proteins of interest on-chip to:

- obtain sequence identification;

- detect secondary modifications of proteins;
- identify protein interactions; and
- quantitatively measure protein concentrations.

Our ProteinChip Systems

In May 1999, we commercially launched the ProteinChip System, Series PBS II, which we now refer to as the ProteinChip Biology System. It consists of consumable ProteinChip Arrays containing chemical or biochemical binding sites on a biochip, a ProteinChip Reader to read the ProteinChip Arrays, and our proprietary ProteinChip Software to analyze and manage protein-based information.

In December 2001, we announced the introduction of the new ProteinChip Biomarker System which incorporates Biomarker Patterns™ Software and ready-to-use profiling kits. The system is designed for advanced protein expression profiling and serves as a versatile clinical proteomics platform for scientists in clinical disease and toxicological research, pharmaceutical research and development, and clinical diagnostics.

Each of the ProteinChip Biology System and the ProteinChip Biomarker System is comprised of some combination of the following components: ProteinChip Arrays, a ProteinChip Reader, ProteinChip Software and Biomarker Patterns Software.

Our *ProteinChip Arrays* are typically used by researchers for protein expression profiling, characterization and quantitative protein interaction applications. Our ProteinChip Arrays consist of a metal surface with multiple sample spots. We treat these spots with our proprietary coatings that are designed to capture certain families of proteins. We can apply single coatings to several spots or we can simply apply multiple types of coatings to spots on one ProteinChip Array to create a variety of selectivity conditions. We offer two standard types of ProteinChip Arrays. One type has ready-to-use chemical surfaces. This type is particularly useful in performing differential protein expression. The other type has pre-activated surfaces that customers use to make their own customized biochemical surfaces. This type is particularly useful in protein interaction studies. We are not required to customize our ProteinChip Arrays to meet client specifications. Researchers use both types of ProteinChip Arrays to perform protein identification and characterization.

Our *ProteinChip Reader* is a laser-based, molecular weight detection system designed for use with our ProteinChip Arrays. We designed our ProteinChip Reader to be used in the laboratory by basic biology researchers. Our ProteinChip Reader consists of a nitrogen laser, high-speed digital electronics, a vacuum system and a standard personal computer with our proprietary ProteinChip Software for system control and data analysis.

Our *ProteinChip Software* is designed to facilitate system operation by biology researchers with no experience in molecular detection systems and minimal experience in protein analysis. The software allows fully automated operation of the ProteinChip Systems with graphic data presentation and analysis readouts in familiar formats for the biologist, such as those displayed by gel electrophoresis systems. Our ProteinChip Software enables differential protein expression analysis by automatically comparing protein profiles and highlighting differences in protein expression. Our ProteinChip Software provides researchers with Internet access for rapid database searches, which facilitates protein identification. Furthermore, our ProteinChip Software allows researchers to perform quantitative protein interaction assays.

Our *Biomarker Patterns Software* is designed to automate pattern recognition-based statistical analysis methods to correlate protein expression patterns from clinical samples with disease phenotypes. This multivariate data analysis software solution addresses a key component of the biomarker discovery process. A major benefit of the ProteinChip platform is in the discovery and correlation of multiple biomarkers in a population of samples to rapidly validate clinical, toxicological and cell pathway pathology. As was the case in the development of DNA array technology, the flood of data produced by the instrument makes informatics tools critical to interpreting the results. The new software package combined with an updated "Biomarker Wizard" module in the core ProteinChip Software package automatically identifies multiple protein peaks that correlate with phenotype differences between samples.

Our *ProteinChip Tandem MS Interface* was introduced in May 2001. The ProteinChip Tandem MS Interface can be affixed to a tandem mass spectrometer (either a QSTAR™ mass spectrometer or a Q-Tof™ mass spectrometer) and thereby allow a researcher to gather data regarding a biological sample using both ProteinChip Arrays and tandem mass spectrometry. The ProteinChip Tandem MS Interface allows for biochip-based identification studies, epitope and phosphorylation mapping and protein interaction analyses with a tandem mass spectrometer.

Available exclusively through Ciphergen, we began to sell a customized version of Beckman Coulter's Biomek 2000 Workstation in late 2001. The Biomek 2000 is a device that automates liquid handling when used in combination with Ciphergen's 96- and 192-well ProteinChip Array processors. Sample throughput can be increased by five-fold or more while improving reproducibility using this robotic accessory. In addition, the Biomek 2000 can be used to perform sample fractionation procedures prior to chip binding, thus increasing the number of proteins detected from each sample.

Finally, we offer a number of related accessories, such as bioprocessors, reagents, spin columns and assorted kits designed for proteomics research.

Biomarker Centers

Our Biomarker Centers, which provide SELDI technology-based research services, and which we are operating directly and through partnerships and client relationships, foster further adoption of our products and technology as an industry standard and generate revenue by obtaining some combination of fees and commercial rights related to biomarkers discovered in our Biomarker Centers in consideration for research services. We intend to discover and characterize new protein biomarkers and patterns of biomarkers from biological samples provided by our future collaborators. We believe that our Biomarker Centers may accelerate biomarker and biomarker pattern discovery and validation in pharmaceutical drug discovery, toxicology and clinical trials, and in clinical research laboratories. We intend to deploy the prototypes of each next-generation ProteinChip System and other specialized equipment and software to maintain a technological advantage in our Biomarker Centers. In addition, we intend to obtain commercial rights related to biomarkers discovered in our Biomarker Centers.

We believe that biomarkers and their use in diagnostics are patentable. The Biomarker Centers have established revenue and license generating project contracts with the MD Anderson Cancer Center, the Prostate Cancer Center at Eastern Virginia Medical School, The Johns Hopkins Medical School, five other academic and government institutions, four commercial biotechnology companies and five pharmaceutical companies. These project contracts specify the types of samples that will be analyzed, outline the work to be done and specify a fee and license rights for the project. The centers are also performing discovery and validation work in a number of collaborations aimed at diagnostic and therapeutic products. We have commercialization rights under all of these collaborations.

Our Biomarker Centers perform agreed-upon analyses on customer samples in order to either discover biomarkers and biomarker patterns for a variety of differential classification and predictive purposes, or sequence particular proteins to obtain a probability of match between known and unknown proteins (positive identification), or a determination that the protein has not been previously identified. The terms of a project contract include our quotation of a fee for a specified analysis plan on a defined sample set. We cannot currently estimate the commercial significance of rights to biomarkers that we may acquire. Their value depends on the significance of the discovery made. We intend to be the primary licensee for medical uses of biomarkers discovered under our project contracts. We expect that our Biomarker Centers will extend the analysis capabilities of our customers, thereby increasing awareness of the range of our technologies and thereby increasing sales of our ProteinChip Systems.

While most of our Biomarker Center contracts are fee-for-services arrangements, we also have a funded research and development agreement with the Israel-U.S. Binational Industrial Research and Development Foundation ("BIRD"), which is funding research we are undertaking with Mindsense Biosystems, Ltd., using our SELDI technology to discover potential biomarkers for the diagnosis and monitoring of major depression. Revenue from the BIRD grant is expected to total $450,000 over three years, beginning December 1, 2000. Through December 31, 2001, we had recognized $129,000 of revenue related to the BIRD grant.

We have leased facilities for our Biomarker Centers in Copenhagen, Denmark, in Malvern, Pennsylvania, and as part of our headquarters facility in Fremont, California. We have hired managerial and scientific staff for these facilities and will evaluate the establishment of additional Biomarker Centers in the future.

In communications with us, Molecular Analytical Systems ("MAS") has asserted that the sublicense agreements to the SELDI technology do not extend to our providing services in proteomics

to customers as we currently do, which is part of our Biomarker Center strategy. (See "Legal Proceedings.") We believe that the sublicense agreements do grant us the right to provide services in this manner, and we plan to continue pursuing our Biomarker Center strategy as we attempt to resolve our dispute with MAS. However, if, as a result of litigation, it should be determined that these activities at our Biomarker Centers are beyond the scope of the sublicense agreements, we may be required to cease operation of the Biomarker Centers or significantly alter their activities.

BioSepra and Process Proteomics Business

Ciphergen's BioSepra Process Division has core technical competencies in the area of composite (organic and inorganic) material and biological separation sciences. For over 25 years, they have focused this expertise on the development and use of chromatographic sorbents for large scale manufacturing of natural and recombinant proteins, vaccines and antibodies. BioSepra's composite chromatography sorbents combine very rigid and stable base materials with high binding efficiency hydrogels to yield products that are physically strong and chemically stable with high binding capacity and excellent separation properties. These unique composite sorbents enable biopharmaceutical

manufacturers to produce biological drugs fast, reduce operational costs and improve product quality. The broad technology base on which these sorbents are based also allows functionalization for a wide variety of applications.

Among the most recent and promising technologies within the BioSepra Process Division product offering are industrial sorbents based on the use of dual-mode and mixed-mode interactions and "affinity" ligands. The application of these technologies makes it possible to develop unique separation mechanisms which can give customers highly efficient alternatives to traditional methods. Promising new technologies for antibody purification and expanded bed chromatography for the capture of target molecules from unclarified feed streams are also being developed.

Ciphergen's BioSepra Process Division has a wide range of products suitable for biopharmaceutical production. Many of BioSepra's sorbent brands such as SPHEROSIL ®, SPHERODEX ®, TRISACRYL ®, ULTROGEL ®, HYPERD ® and HYPERCEL ® are currently used in the clinical production of biopharmaceuticals, including full scale manufacturing of FDA-registered products in both North America and Europe.

With the acquisition of BioSepra, Ciphergen has also been able to combine chromatography development expertise with SELDI-based ProteinChip technology to begin a new approach to protein purification called "Process Proteomics". This new approach combines the previously separate operations of purification optimization and protein analysis. This single-step, on-chip approach offers the potential to dramatically accelerate and simplify purification development and analysis.

Sales and Marketing

We have developed a direct sales force worldwide. Our sales process involves on-site applications problem-solving, scientific publications, product demonstrations, seminars, exhibits, conventions and meetings, word of mouth, direct mail, advertising and the Internet. We have designed our sales process to increase market awareness of our ProteinChip Systems and promote acceptance of our technology as an industry standard.

Our sales force includes program managers, who all have sales experience, and field research scientists, most of whom have Ph.D. degrees in biology or biochemistry. Generally each program manager works with a team of two to four field scientists. The primary responsibility of the program manager is to manage sales efforts. The primary responsibility of the field research scientist is to provide solutions to biological problems for our customers and sales prospects through applications development, scientific seminars, joint scientific publications with customers and product

demonstrations. In addition, the field research scientists serve as our primary field representatives for after-sales customer service and technical support. We have 16 program managers, including two employed by our joint venture in Japan. We also have 46 field research scientists, including five employed by our joint venture in Japan.

We formed Ciphergen Biosystems, K.K. in Japan in January 1999, as a joint venture with Sumitomo Corporation to distribute our products in Japan. Sumitomo has a majority ownership in the joint venture, with transfer of majority ownership to us to be accomplished, at our option, on a pre-determined formula basis as early as 2002. It is our current intention to exercise our option at this first opportunity, increasing our ownership from 30% to 70% at a cost of approximately $380,000. The joint venture currently has nine employees, consisting of five field research scientists, two program managers and two administrative and support personnel. The joint venture agreement is for ten years from January 1999. We originally invested $315,000 for 30% of Ciphergen Biosystems, K.K. In March 1999, we signed a distribution and marketing agreement granting Ciphergen Biosystems, K.K. the exclusive right to distribute our products in Japan for ten years, and we were paid $315,000 by Ciphergen Biosystems, K.K.

We have also established relationships with sales representatives who cover Australia, Israel, Korea, Malaysia, New Zealand and Singapore.

Our sales and marketing organization as of December 31, 2001, including Ciphergen Biosystems, K.K., consisted of 94 employees, 52 of whom have Ph.D. or M.D. degrees. We intend to continue increasing the size of our sales and marketing organization in North America, Europe, China and Japan over the next 12 months.

Existing Customers

The following is a partial list of our customers, several of which have multiple ProteinChip Systems.

Pharmaceutical and Biotechnology	Academic and Government
Abbott Laboratories	Aaron Diamond AIDS Research Center
Abgenix	Beth Israel Deaconess Hospital
Amgen	Brigham and Women's Hospital
AstraZeneca	British Columbia Cancer Agency
Aventis	Burnham Institute
BASF	Carnegie Institute of Washington
Bayer	Chiba University
Biogen	Cornell Medical School
Bristol-Myers Squibb	Dana Farber Cancer Center
Boehringer Ingelheim	Duke Medical School
Cantab Pharmaceuticals	Emory University
Centocor	Harvard School of Public Health
Cephalon	Imperial Cancer Research Foundation
Creative Biomolecules	Imperial College Prion Unit
DSM Biologics	International Medical Center-Japan
Eli Lilly	Johns Hopkins Medical School
Genentech	Keio University
Genetics Institute	Lawrence Livermore National Laboratories
GlaxoSmithKline	Massachusetts General Hospital
Hisamitsu Pharmaceuticals	Massachusetts Institute of Technology
Human Genome Sciences	MD Anderson Cancer Center
Janssen Pharmaceutica	Medical Research Council (Cambridge)
Matritech	Mount Sinai Medical School
MediGene	Nagoya University
Merck	National Cancer Center-Japan
Monsanto	National Cancer Institute, National Institutes of Health
Neurogenetics	National Institute of Allergy and Infectious Diseases
Novartis	Osaka University
Novo Nordisk	Pasteur Institute
Orion Pharmaceuticals	Riken Brain Science Institute
Pfizer	Rockefeller University
Pharmacia	Royal Free Hospital School of Medicine
Procter & Gamble	St. Mary's Hospital Medical School
Purdue Pharmaceuticals	Stanford University
Quest Diagnostics	Tufts University
Roche	Tulane University Medical Center
Schering-Plough	University of Arizona
Sumitomo Pharmaceuticals	University of California, Los Angeles
Syn-X Pharma	University of Durham
Takeda Chemical	University of Maryland
Tanabe Pharmaceuticals	University of Massachusetts
Wyeth Ayerst	University of Notre Dame
Yamanouchi Pharmaceuticals	University of Southern California
Zeneca Agrochemicals	Virginia Prostate Center
	Wright State University

Chiba University, Takeda Chemical, Sumitomo Pharmaceuticals, Hisamitsu Pharmaceuticals, International Medical Center-Japan, Keio University, Nagoya University, National Cancer Center-Japan, Osaka University, Riken Brain Science Institute, Tanabe Pharmaceuticals and Yamanouchi Pharmaceuticals are customers of our Japanese distributor, Ciphergen Biosystems, K.K. This distributor

accounted for 11% and 5% of our revenue in 2000 and 2001, respectively. No other customer accounted for more than 10% of our revenue in 2000 or 2001.

Research and Development

Our ProteinChip System is a single technology platform, which we believe can be easily optimized for use in multiple markets. This flexibility allows us to rapidly introduce new applications and products from one field to other fields. We have ongoing technology development programs for our ProteinChip Arrays, materials, surface chemistries, high-density biochip formats and manufacturing processes. In applied research, we are developing new applications in differential protein expression, quantitative protein interaction assays and protein characterization. Our research and development efforts related to our ProteinChip Readers includes research in the automation of sample

introduction, high-sensitivity detection, improvement in system resolution and quantitation. In addition, we are developing new SELDI-based accessories for high resolution, tandem mass spectrometry, whose capabilities will further enhance our ProteinChip Systems. We have also worked on improvements to the ProteinChip Tandem MS Interface to increase sensitivity significantly when compared to other laser desorption/ionization ("LDI") Qq-TOF devices. Also, we have introduced new matrices for LDI Qq-TOF analysis to extend the utility of this approach.

The acquisition of Biosepra and its related technologies have further allowed us to pursue new chemistry developments. Our research and development efforts have included demonstrations that proteins obtained on our ProteinChip Arrays with certain coatings and biochip surfaces resemble the ones isolated using beads. We seek to promote and improve the prediction of ion exchange separation chromatography conditions using our ProteinChip Systems. We are also working on new developments associating beads and biochips, not only for prefractionation, by also for initiation of protein-protein interaction applications.

In addition to pursuing research and development related to our research tools business, through our Biomarker Centers we are attempting to discover and validate protein biomarkers that may have diagnostic and/or therapeutic utility. These activities are more fully discussed in "Biomarker Centers" above.

Manufacturing

We manufacture our ProteinChip Readers and Arrays in our Fremont, California facility. We rely upon suppliers for certain components of our ProteinChip Systems, including Stanford Research Systems, which also performs specified design services for certain components of our ProteinChip Readers. We perform final assembly and quality control on our ProteinChip Readers at our facility. We purchase extruded aluminum for our ProteinChip Arrays from a third-party supplier. External vendors etch and base coat our ProteinChip Arrays. We apply all chemistries to the ProteinChip Arrays and perform final quality control at our facility. We outsource the manufacture of ProteinChip Tandem MS Interfaces to a contract manufacturer in Reno, Nevada. We develop software for our ProteinChip Systems in-house, and provide multivariate data analysis software through an OEM arrangement with Salford Systems. We supply a robotic accessory for sample processing through an OEM arrangement with Beckman Coulter. We intend to continue and may expand the subcontracting portions of our manufacturing processes when we think it best leverages the suppliers' manufacturing expertise, reduces costs or improves our ability to meet customer demand.

Through our wholly-owned subsidiary BioSepra, we manufacture chromatography sorbents at our facility just outside Paris, France which was built in 1999 and specifically designed for the development and manufacture of sorbents. We procure raw materials from well-established chemical suppliers and from subcontractors for some unique materials. The production is performed according to an ISO 9001-certified quality system following the spirit of cGMP §820 standards that we continuously improve

in response to our customers' recommendations. Manufacturing and quality control are performed according to verified and approved standard operating procedures and the release of each lot is done after a quality assurance review. Plant audits are routinely provided to the QA/QC groups of the world's largest pharmaceutical manufacturers. We intend to continually work toward increasing the volume manufactured and better absorbing our overhead costs.

Intellectual Property

Ciphergen's intellectual property includes a portfolio of owned, co-owned or licensed patents and patent applications. This portfolio increased significantly with Ciphergen's acquisition of BioSepra in July 2001. As of December 31, 2001, our patent portfolio included 27 issued United States patents, 49 pending United States patent applications and numerous pending patent applications and issued patents outside the United States. These patents and patent applications are directed to several areas of technology important to Ciphergen's business including our core SELDI technology and its applications, protein biochips, sorbents, instrumentation, software and biomarkers.

We derive our rights to the core SELDI technology through royalty-bearing sublicenses that Molecular Analytical Systems, Inc. ("MAS") granted to our wholly owned subsidiaries, IllumeSys Pacific, Inc. and Ciphergen Technologies, Inc., and through agreements for the purchase by Ciphergen of IllumeSys Pacific and Ciphergen Technologies stock. MAS holds an exclusive license to certain patents from the owner, Baylor College of Medicine. The MAS sublicenses provide Ciphergen with the exclusive right to practice the Baylor patents and to use all or any part of the Baylor Patents and certain technology developed by Baylor and by MAS to make, use, sell, offer for sale, and import any instrumentation, device or non-drug consumable, including any information product or any service resulting from such use, for use by customers in the life science, drug discovery and clinical diagnostics laboratory markets worldwide, for laboratory-based products or services for the consumer market, and for purely internal use to develop, make and sell any drug or drug related information. We are obligated to pay MAS a royalty equal to 2% of net revenues that we generate related to each sublicense for four years from the date of first commercial sale, with an annual maximum royalty payment of $500,000 per sublicense. The date of first commercial sale under the sublicense to IllumeSys Pacific was April 1997 and we completed our royalty obligations under that agreement in April 2001. We have the exclusive right to any improvements we make to the SELDI technology and we have filed patent applications on several such improvements.

We are presently engaged in litigation with MAS, LumiCyte, Inc., and T. William Hutchens over the scope of our rights under the MAS sublicenses. In June 2000, MAS claimed that the operation of our Biomarker Centers and use of certain software constituted a material breach of the terms of the MAS sublicenses. MAS also threatened to terminate the sublicenses if the alleged breaches were not cured. We believe that we have not committed any material breach of the sublicense agreements. In July 2000, we filed suit against MAS asking the court, among other things, for a declaration of our exclusive rights to use the licensed technology. The specific facts and the status of this dispute with MAS are more fully described in the Factors That May Affect Our Results and Legal Proceedings sections hereof.

We also hold licenses or options to license biomarkers developed using SELDI technology, the use of these biomarkers and related intellectual property. The institutions and companies from which we hold such licenses or options to license include, among others, Eastern Virginia Medical School, The Johns Hopkins University, The National Institute for Allergies and Infectious Diseases, Pfizer Inc., Aaron Diamond AIDS Research Center and Mindsense Biosystems LTD. Ciphergen's intellectual property portfolio also includes copyrights on our ProteinChip Software. We have a license to improve and sell Biomarker Patterns Software from Salford Systems. Ciphergen's intellectual property portfolio also includes registered U.S. trademarks for, among other things, the name "Ciphergen," the dragonfly logo and the ProteinChip mark.

Competition

Although we believe that we are currently the only company selling and delivering products with an integrated separations and molecular weight detection biochip platform for proteomics research, we expect to encounter intense competition from a number of companies that offer competing products using alternative technologies. We anticipate that competition will come primarily from companies providing products that incorporate established technologies, such as gel electrophoresis, liquid chromatography and mass spectrometry.

In order to compete effectively, we will need to demonstrate the advantages of our ProteinChip Systems over alternative technologies and products. We will also need to demonstrate the potential economic value of our ProteinChip products relative to these alternative technologies and products. Some of the companies that provide these products include the Applied Biosystems division of Applera, the Micromass division of Waters Corporation, Amersham Biosciences, Bio-Rad Laboratories, Bruker Daltonics, Perkin-Elmer, ThermoQuest Corporation and several smaller reagent and equipment companies. Our future success will depend in large part on our ability to establish and maintain a competitive position with respect to these and future technologies.

We offer proteomics services through our Biomarker Centers. Our Biomarker Centers may compete with companies in the proteomics services area. We expect an increasing number of companies to provide proteomics services in the future.

Our BioSepra chromatography business faces competition from established suppliers, most notably Amersham Biosciences but also including Bio-Rad Laboratories, Merck, Millipore, Tosoh and others. Amersham Biosciences is the market leader with a large market share and presence in the production of all U.S. Food and Drug Administration (FDA) recombinant drugs approved to date. Amersham Biosciences has a wide selection of products, manufacturing economics of scale and a highly trained sales force. Our future success will depend on winning over suppliers with superior or specialized process proteomics methods and products.

In many instances, our competitors 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. Moreover, competitors may have greater name recognition than we do, and may offer discounts as a competitive tactic. Our competitors may succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products, or that would render our technologies and products obsolete. Also, we may not have the financial resources, technical expertise or marketing, distribution or support capabilities to compete successfully in the future.

Environmental Matters and Laser Regulations

International, federal, state and local requirements relating to the discharge of substances into the environment, the disposal of hazardous wastes, and the sale and use of lasers as part of our ProteinChip Readers may have an impact on our manufacturing operations and sales. We believe that we are in material compliance with applicable environmental and laser and radiological health laws and regulations. To date, compliance with regulatory requirements concerning environmental matters and lasers has been accomplished without material effect on our liquidity or capital resources.

Employees

As of December 31, 2001, we had 229 full-time employees worldwide, including 87 in sales and marketing, 70 in research and development, 40 in manufacturing and 32 in administration. Forty-nine of these employees are employed at BioSepra. Ninety one of our employees have M.D. degrees or Ph.D. degrees in chemistry, biology or biochemistry, and many are experts in software and engineering.

We have also engaged an additional 20 individuals as independent contractors. Ciphergen Biosystems, K.K. in Japan employs nine people. Additionally, they engage three individuals as independent contractors. None of our U.S. employees are covered by a collective bargaining agreement, though many of our European employees are covered under national labor agreements. We believe that our relations with our employees are good. Ciphergen's success will depend in large part on our ability to attract and retain skilled and experienced employees.

ITEM 2. PROPERTIES

We currently lease a 61,000 square foot facility in Fremont, California. The lease for this facility expires in July 2008. Approximately 8,000 square feet of the facility is being subleased by us to an unrelated company for a 12-month term which expires in March 2003, under a sublease which can be cancelled by either party upon 90 days notice. Our subsidiary, BioSepra S.A., leases a 44,000 square foot facility in Cergy-St. Christophe, near Paris, France. The lease expires in May 2011. In addition, we lease a sales office and Biomarker Center in Copenhagen, Denmark; that lease expires in March 2003. We also lease a Biomarker Center facility in Malvern, Pennsylvania; that lease expires in September, 2005. We also lease sales offices in Beijing, China and Goettingen, Germany which expire in November 2002 and January 2005, respectively, and have a month to month lease for a sales office near London.

ITEM 3. LEGAL PROCEEDINGS

We are currently party to three legal proceedings.

(1) *Ciphergen Biosystems, Inc., Ciphergen Technologies, Inc. and IllumeSys Pacific, Inc. v. Molecular Analytical Systems, Inc., LumiCyte, Inc. and T. William Hutchens.* On July 12, 2000, we filed a lawsuit in the Superior Court of the State of California against Molecular Analytical Systems, Inc. ("MAS") and LumiCyte, Inc. ("LumiCyte") requesting a declaration of our rights, including that Ciphergen has the right to sell information and service products, and requesting a preliminary injunction preventing MAS from terminating the sublicense agreements. In October 2000, we made additional claims against MAS and LumiCyte, and added T. William Hutchens as an individual defendant. Hutchens is the Chief Executive Officer of both MAS and LumiCyte, as well as a former officer and director of Ciphergen. He is presently the beneficial owner of less than 10% of Ciphergen's outstanding common stock. Ciphergen's action seeks, among other things, damages and injunctive relief against defendants for unfair competition, misappropriation of trade secrets, and breach of contract, as well as an injunction precluding defendants from operating in Ciphergen's licensed markets. In October 2000, MAS and LumiCyte filed a cross-complaint against Ciphergen, Ciphergen Technologies, Inc. and IllumeSys Pacific, Inc., the three plaintiffs which filed the underlying lawsuit against MAS and LumiCyte described above. The cross-complaint alleges claims for breach of contract, intentional interference with prospective economic advantage, unfair competition, misappropriation of trade secrets and declaratory relief regarding the rights of the parties under the two technology transfer sublicense agreements between MAS and Ciphergen. The cross-complaint also seeks to terminate the sublicense agreements, to obtain injunctive relief, to prevent use of alleged trade secrets of MAS, and damages. Ciphergen and MAS have entered into an agreement that provides that MAS' license termination notices are suspended pending the conclusion of this lawsuit. In May, 2001, we amended our complaint and brought additional claims against MAS, LumiCyte and Hutchens.

(2) *Molecular Analytical Systems, Inc. v. Ciphergen Biosystems.* The proceeding was filed December 9, 1999 in the United States Trademark and Appeal Board. We applied for registration of the term "SELDI" as a trademark. MAS has opposed registration of the trademark and is seeking to have the trademark registered in its name instead. The Trademark and Appeal Board has suspended the proceeding until resolution of the lawsuit described above.

(3) On July 27, 2001, we served a demand for arbitration on T. William Hutchens under the July 28, 1998 Stock Exchange Agreement among Ciphergen, Ciphergen Technologies, Inc., Hutchens and others. The demand for arbitration asserts that Hutchens, who was a selling shareholder of Ciphergen Technologies, made representations and warranties to Ciphergen about the conduct of Ciphergen Technologies' business and its ownership of assets that are contrary to certain claims asserted in the cross-complaint filed by MAS and LumiCyte and, therefore, that he must pay Ciphergen's attorneys fees and indemnify Ciphergen for any losses it might incur resulting from filing of the cross-claims, regardless of their merit. The parties have agreed to stay the arbitration until the earlier of August 1, 2002, or the resolution of any of several of plaintiffs' and cross-complainants' causes of action.

Although the ultimate outcome of these matters is not presently determinable, management believes that the resolution of all such pending matters will not have a material adverse effect on our consolidated financial position, results of operations or cash flows. However, should the outcome of these matters be unfavorable to us, the impact could be material to our consolidated financial position, results of operations or cash flows.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

There were no matters submitted to a vote of the security holders during the fourth quarter of 2001.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock has been quoted on the Nasdaq National Market under the symbol "CIPH" since the effective date of our initial public offering ("IPO") on September 28, 2000. Prior to this time, there was no public market for our stock. The closing price for our common stock on March 15, 2002 was $6.80 per share. The following table sets forth the high and low sales prices per share of our common stock as reported on the Nasdaq National Market for the periods indicated.

	Sale Price	
	High	Low
Fiscal 2000:		
Fourth Quarter	$ 39.44	$ 9.50
Fiscal 2001:		
First Quarter	13.50	3.75
Second Quarter	8.00	4.15
Third Quarter	6.66	2.06
Fourth Quarter	8.05	2.66

We currently expect to retain future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. As of March 15, 2002, there were approximately 2,871 holders of our common stock.

Recent Sales of Unregistered Securities

During 2001, a total of 51,600 common shares were issued pursuant to a joint development agreement with Stanford Research Systems. The issuance of these securities were deemed to be exempt from registration, in reliance upon Section 4(2) of the Securities Act of 1933, as a transaction by an issuer not involving a public offering. Appropriate legends were affixed to the securities issued.

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following tables reflect selected summary consolidated financial data for each of the last five fiscal years. This data should be read in conjunction with the consolidated financial statements and notes thereto, and with Item 7, "Management's Discussion and Analysis of Results of Operations and Financial Condition" in this Form 10-K.

	Years Ended December 31,				
	2001	2000	1999	1998	1997
	(in thousands, except per share data)				
Statement of Operations Data:					
Revenue:					
Products	$ 15,742	$ 7,358	$ 3,963	$ 2,300	$ 1,136
Product revenue from related parties	1,192	1,064	882	625	—
Services	2,115	513	165	8	147
Total revenue	19,049	8,935	5,010	2,933	1,283
Cost of revenue:					
Products	5,516	2,774	1,354	843	1,002
Product revenue from related parties	434	587	306	225	—

Services	664	119	48	—	—
Total cost of revenue	6,614	3,480	1,708	1,068	1,002
Gross profit	12,435	5,455	3,302	1,865	281
Operating expenses:					
Research and development	12,895	7,475	3,139	4,733	3,249
Sales and marketing	14,301	9,001	4,989	2,662	1,315
General and administrative	13,020	11,322	2,799	2,100	1,332
Amortization of intangible assets	650	318	365	279	164
Write-off of acquired in-process technology	1,000	—	—	—	—
Total operating expenses	41,866	28,116	11,292	9,774	6,060
Loss from operations	(29,431)	(22,661)	(7,990)	(7,909)	(5,779)
Interest and other income (expense), net	3,762	2,357	(56)	(143)	(226)
Loss before provision for income taxes	(25,669)	(20,304)	(8,046)	(8,052)	(6,005)
Provision for income taxes	143	—	—	—	—
Net loss	(25,812)	(20,304)	(8,046)	(8,052)	(6,005)
Dividend related to beneficial conversion feature of preferred stock	—	(27,228)	—	—	—
Net loss attributable to common stockholders	$ (25,812)	$ (47,532)	$ (8,046)	$ (8,052)	$ (6,005)
Basic and diluted net loss per share attributable to common stockholders (1)	$ (0.97)	$ (4.09)	$ (1.26)	$ (1.62)	$ (2.07)
Weighted average shares used in computing basic and diluted net loss per share attributable to common stockholders (1)	26,512	11,635	6,397	4,970	2,903

	As of December 31,				
	2001	2000	1999	1998	1997
			(in thousands)		
Balance Sheet Data:					
Cash, cash equivalents and investments in securities	$ 77,124	$ 107,633	$ 2,799	$ 7,002	$ 416
Working capital	70,890	108,020	1,533	6,616	(1,958
Total assets	106,816	118,948	6,844	11,144	2,869
Long-term debt and capital lease obligations, including current portion	2,610	840	970	862	2,417
Convertible preferred stock and warrants	—	—	25,694	24,619	10,425
Total stockholders' equity (deficit)	93,229	113,152	(22,938)	(16,275)	(11,375

(1) The share and per share data shown above have been restated to reflect Ciphergen's 0.43-for-one reverse stock split, effective September 28, 2000.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We develop, manufacture and sell our ProteinChip® Systems, which use patented Surface Enhanced Laser Desorption/Ionization ("SELDI") technology. The ProteinChip Systems consist of consumable ProteinChip Arrays, a ProteinChip Reader and ProteinChip Software. We market and sell our products primarily to research biologists in pharmaceutical and biotechnology companies, and academic and government research laboratories. As part of our early product design effort, in February 1995 we signed an agreement with Stanford Research Systems, a California-based manufacturer of electronic test equipment to assist us. In April 1997, we acquired IllumeSys Pacific, Inc., which holds specific rights to the SELDI technology for the life science research market. Our first designed and manufactured system, the ProteinChip System, Series PBS I, was available for shipment in the third quarter of 1997, and we discontinued selling an earlier prototype system supplied by a U.K. manufacturer. In July 1998, we acquired Ciphergen Technologies, Inc., which holds specific rights to the SELDI technology in other life science markets. During 1999, we initiated an expanded marketing program and in May began shipping the ProteinChip System, Series PBS II, the current version of which is now referred to as the ProteinChip Biology System.

In 1999, we invested $315,000 for 30% ownership of Ciphergen Biosystems, K.K., a joint venture we established with Sumitomo Corporation to distribute our products in Japan. We have the right to purchase an additional 40% ownership based on a predetermined formula as early as 2002. It is our current intention to exercise our option at this first opportunity at a cost of approximately $380,000. Until we exercise this right, Sumitomo Corporation has agreed to arrange all working capital for Ciphergen Biosystems, K.K. and receives payments from Ciphergen Biosystems, K.K. equal to 20% of the list price of our products sold by Ciphergen Biosystems, K.K. in exchange for providing support services to Ciphergen Biosystems, K.K.

During 2000, we began offering research services and established Biomarker Centers™ in Fremont, California; Copenhagen, Denmark; and Malvern, Pennsylvania.

In 2001 we introduced the ProteinChip Biomarker System which utilizes sophisticated third party software which automates pattern recognition-based statistical analysis methods to correlate protein expression patterns from clinical samples with disease phenotypes. We also began selling the Biomek 2000 workstation, a robotic accessory which is manufactured by Beckman Coulter and which has been optimized for use with our ProteinChip Biomarker System to increase sample throughput and reproducibility. In addition, we expanded our product offering with a SELDI ProteinChip interface to high-end tandem mass spectrometers, which we developed and which is manufactured for us by a third party manufacturing company in Reno, Nevada.

On July 31, 2001, Ciphergen acquired the BioSepra process chromatography business from Invitrogen Corporation for $12.0 million in cash and the assumption of approximately $2.2 million in debt. BioSepra S.A., headquartered near Paris, France, has 49 employees who develop, manufacture and market products for the large scale process chromatography market. We have been integrating the BioSepra business into our sales and marketing organization, and have initiated a joint development program for a line of products to address process proteomics, an emerging market driven by pharmaceutical company demand to produce proteins for research, development and therapeutic manufacturing purposes.

Since 1997, we have used our resources primarily to develop and expand our proprietary ProteinChip Systems and establish a marketing and sales organization for commercialization of our products. In addition, we have used our resources to establish Biomarker Centers to provide research services to our clients and to foster further adoption of our products and technology. We also acquired

the BioSepra process chromatography business from which we plan to develop a chromatography-based protein purification business which expands our current proteomics products business. Since our inception we have incurred significant losses and as of December 31, 2001, we had an accumulated deficit of $74.7 million.

Our sales are currently driven by the need for better tools to perform protein discovery, characterization, purification, identification and assay development. Revenue from the sale of our ProteinChip Systems, consumable ProteinChip Arrays, and chromatography sorbents is recognized at the time of shipment, provided no significant obligations remain and collections of the receivables are deemed probable. We generally offer our customers a one-year warranty on ProteinChip Systems. We recognize revenue from ongoing maintenance contracts ratably over the period of the contracts, which is generally 12 months. Currently, most of the units of our ProteinChip System placed in the field generate a recurring revenue stream from the sale of consumables. We expect the volume of consumables purchased to increase over time as customers become increasingly familiar with the technology and adopt our ProteinChip Systems for a broader range of proteomics research programs. Revenue from Biomarker Center research contracts generally is recognized based upon the achievement of milestones.

Our expenses, excluding stock-based compensation, have consisted primarily of costs incurred in manufacturing our ProteinChip Systems, including materials, labor and overhead costs, marketing and sales activities, research and development programs, and general and administrative costs associated with our operations. We expect our cost of revenue to increase in the future as we sell additional units of our ProteinChip System, Arrays and chromatography sorbents, but to decrease as a percent of total revenue as we gain efficiencies from spreading our fixed costs over a greater number of units. We expect our selling expenses to increase as we continue to commercialize our products and expand our sales force. We expect our research and development expenses to increase in the future as we continue to develop and improve products, and as we fund efforts at our Biomarker Centers to discover, validate and patent biomarkers that may have diagnostic and/or therapeutic utility. Expansion of our facilities and the addition of new facilities will also add to our expenses. As a result, we expect to incur losses for the foreseeable future. Our current products do not provide sufficient revenue for us to become profitable. To become profitable, we

will need to increase unit sales of our ProteinChip Systems, consumable ProteinChip Arrays and sorbents.

In July 2000, we began an eight-year lease of a 30,000 square foot facility in Fremont, California. The lease was subsequently amended to add another 31,000 square feet, of which we currently sublease 8,000 square feet to an unrelated company. The building houses most of our California-based employees, as well as a Biomarker Center. We expect to incur facilities costs of approximately $3.2 million per year in connection with this building. This includes approximately 5% of the Fremont space which is used for a Biomarker Center, for which we expect to incur approximately $160,000 in facilities costs per year. In the first quarter of 2000, we also established our Scandinavian headquarters for sales and service and a Biomarker Center in Copenhagen, Denmark, with annual facilities costs of approximately $80,000. In the fourth quarter of 2000, we leased a Biomarker Center facility near Philadelphia, Pennsylvania, with annual facilities costs of approximately $70,000. In the fourth quarter of 2001, we leased a sales office in Beijing, China, with annual facilities costs of approximately $20,000. In the first quarter of 2002, we leased a sales office in Goettingen, Germany, with annual facilities costs of less than $10,000. We also have a sales office in Surrey, United Kingdom, with annual facilities costs of approximately $100,000. Our new BioSepra Process Division is housed in a leased facility located in Cergy-St. Christophe, just north of Paris, France. The facility is approximately 44,000 square feet and was custom designed for development and manufacturing of chromatography sorbents. The capitalized lease expires in 2011, at which time the property can be acquired for a nominal amount. Annual lease payments are approximately $200,000.

We have a limited history of operations and we anticipate that our quarterly results of operations will fluctuate for the foreseeable future due to several factors, including market acceptance of current and new products, the length of the sales cycle and timing of significant orders, the timing and results of our research and development efforts, the introduction of new products by our competitors and possible patent or license issues. Our limited operating history makes accurate prediction of future results of operations difficult or impossible.

Deferred stock compensation for options granted to employees is the difference between the fair value of our common stock on the date such options were granted and their exercise price. Deferred stock compensation for options granted to consultants has been determined in accordance with Statement of Financial Accounting Standards No. 123 as the fair value of the equity instruments issued. Deferred stock compensation for options granted to consultants is periodically remeasured as the underlying options vest in accordance with Emerging Issues Task Force Bulletin No. 96-18.

Critical Accounting Policies and Estimates

Ciphergen's discussion and analysis of its financial condition and results of operations are based upon Ciphergen's consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires Ciphergen to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, Ciphergen evaluates its estimates, including those related to bad debts, inventories, investments, intangible assets, income taxes, warranty obligations, contingencies and litigation. Ciphergen bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Ciphergen believes the following critical accounting policies affect its more significant judgments and estimates used in the preparation of its consolidated financial statements. (See Note 1 of the Notes of Consolidated Financial Statements.)

Revenue Recognition

We derive our revenue from primarily two sources: (i) product revenue, which includes hardware, consumables and software licenses, and (ii) services and support revenue which includes Biomarker Center services, maintenance, training and consulting revenue. As described below, significant management judgments and estimates must be made and used in connection with the revenue recognized in any accounting period. Material differences in the amount and timing of our revenue for any period might result if our management made different judgments or utilized different estimates.

We recognize revenue from the sales of systems, consumables and software licenses when:

- persuasive evidence of an agreement exists,
- the price is fixed and determinable,
- the product has been delivered,
- no significant obligations remain, and
- collection of the receivables are deemed probable.

Delivery generally occurs when the product is delivered to a common carrier.

Revenue from Biomarker Center research contracts generally is recognized based upon the achievement of milestones described in the contracts. Revenue from up-front payments is deferred and

recognized ratably over the expected life of the contract. Payments for maintenance services are usually prepaid, and the revenue is deferred and recognized ratably over the contract term, which is generally 12 months. Our training is billed based on published course fees and consulting services are billed based on daily rates. We generally recognize revenue as these services are performed.

At the time of the transaction, we assess whether the price is fixed and determinable and whether or not collection is reasonably assured. We assess whether the price is fixed and determinable based on the payment terms associated with the transaction. If a significant portion of the payment is due after our normal payment terms, which are 30 to 90 days from invoice date, we treat the price as not being fixed and determinable. In these cases, we recognize revenue for the extended portions of the payment as they become due. We assess collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. We do not request collateral from our customers. If we determine that collection of a payment is not reasonably assured, we defer the revenue until the time collection becomes reasonably assured, which is generally upon receipt of cash.

For all sales, except for small amounts of consumables, we use a binding purchase order as evidence of an arrangement. Sales through our distributors are evidenced by a master agreement governing the relationship together with binding purchase orders on a transaction by transaction basis.

For arrangements with multiple elements (for example, undelivered software maintenance and support), we allocate revenue to each component of the arrangement using the fair values of the elements. Fair values for ongoing maintenance are based upon separate sales of renewals to other customers. Fair value of services, such as training or consulting, is based upon separate sales by us of those services to other customers. We defer revenue attributable to any undelivered elements and subsequently recognize the revenue as those goods or services are delivered.

Allowance for Doubtful Accounts

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of Ciphergen's customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances would be required.

Inventory Reserves

We write down our inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand, market conditions and the release of new products that will supercede older ones. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Deferred Taxes

We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. While we have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, in the event we were to determine that Ciphergen would be able to realize its deferred tax assets in the future in excess of its net recorded amount, an adjustment to the deferred tax asset would increase income in the period such determination was made. Likewise, should we determine that Ciphergen would not be able to realize all or part of its net deferred tax asset in the future, an adjustment to the deferred tax asset would be charged to income in the period such determination was made.

Results of Operations

Comparison of Years Ended December 31, 2001, 2000, and 1999

Revenue

Product revenue was $16.9 million in 2001, $8.4 million in 2000 and $4.8 million in 1999. The increase in product revenue from 2000 to 2001, which was $8.5 million or 101%, was due to a number of factors including the acquisition of BioSepra, which added $2.6 million in revenue, and increased unit sales of ProteinChip Systems and Arrays. The increase in product revenue from 1999 to 2000, which was $3.6 million or 74%, was largely driven by increased unit sales of ProteinChip Systems and Arrays.

Service revenue was $2.1 million in 2001, $513,000 in 2000 and $165,000 in 1999. The increase in service revenue from 2000 to 2001 was $1.6 million or 312%. The majority of this increase was driven by increased revenue from collaboration services handled through our Biomarker Centers, as well as an increase in our revenue from maintenance contracts. The increase from 1999 to 2000 was $348,000 or 211%. This increase was a result of the introduction of our Biomarker Center collaboration services and increased numbers of maintenance contracts as our installed base of ProteinChip Biology Systems grew.

Cost of Revenue

Cost of product revenue was $6.0 million in 2001, $3.4 million in 2000 and $1.7 million in 1999. From 2000 to 2001, cost of product revenue increased $2.6 million or 77%. This increase resulted from an increase in unit sales of our ProteinChip Systems and Arrays, as well as an additional $1.3 million of cost of product revenue due to the acquisition of BioSepra. From 2000 to 2001, cost of product revenue as a percentage of product revenue decreased from 40% to 35%. This improvement was largely due to manufacturing efficiencies as unit volumes of our ProteinChip Systems and Arrays increased, partially offset by the inclusion of BioSepra, which had a higher cost of revenue as a percentage of revenue. From 1999 to 2000, the cost of product revenue increased $1.7 million or 102%. This increase was primarily due to an increase in unit sales of our ProteinChip Systems and Arrays. From 1999 to 2000, cost of product revenue as a percentage of product revenue increased from 34% to 40%, due to an increase in staffing required for increased production levels, as well as from increased deferred stock compensation expense. Stock-based compensation expense in cost of product revenue was $232,000 in 2001, $269,000 in 2000 and $39,000 in 1999.

Cost of service revenue was $664,000 in 2001, $119,000 in 2000 and $48,000 in 1999. From 2000 to 2001, cost of service revenue increased $545,000 or 458%. This increase was due to increased collaboration expenses at our Biomarker Centers and increased field service costs to provide service for a greater number of maintenance contracts. Cost of service revenue as a percentage of service revenue increased from 23% to 31% due to an increase in staffing needed to expand the capacities and capabilities of our Biomarker Centers and field service force. The increase from 1999 to 2000 was $71,000, or 148%. This increase was a driven by increased collaboration expenses at our Biomarker Centers. Cost of service revenue as a percentage of service revenue decreased from 29% to 23%. This was due to efficiencies of production as the centers became operational.

Operating Expenses

Research and Development

Research and development expenses were $12.9 million in 2001, $7.5 million in 2000, and $3.1 million in 1999. From 2000 to 2001, research and development expenses increased $5.4 million or 73%. This increase was due in part to a 47% increase in staffing, exclusive of the BioSepra acquisition, thereby increasing payroll costs approximately $2.5 million. The cost of materials and supplies used in

our labs, as well as expensed equipment and depreciation on capital equipment, increased $1.3 million as we devoted more resources to new and ongoing projects. Collaboration fees associated with our Biomarker Center collaborations, such as the one we have with the Johns Hopkins Medical School, increased approximately $1.1 million, while facilities costs attributable to research and development increased about $0.6 million. The acquisition of BioSepra added roughly $0.5 million to our research and development expenses. Stock-based compensation expense in research and development expenses decreased by $1.1 million. Four non-cash milestone payments to Stanford Research Systems in the form of stock grants totaling $268,000 were made in 2001. From 1999 to 2000, research and development expenses increased $4.3 million or 138%. This increase was largely due to a $1.1 million increase in salary expense related to increased staffing, an increase of $0.9 million in facilities costs, an increase of $0.4 million in outside services, and a $1.8 million increase in stock-based compensation expense. Two non-cash milestone payments to Stanford Research Systems in the form of stock grants totaling $521,000 were made in 2000. Stock-based compensation expense in research and development expenses was $851,000 in 2001 (including the $268,000 in milestone payments described above), $2.0 million in 2000 (including the $521,000 in milestone payments described above), and $206,000 in 1999. We expect research and development expenses to increase in 2002 as we develop new instruments, chip surfaces and sorbents, and as we increase activities through our Biomarker Centers to discover, validate and patent biomarkers.

Sales and Marketing

Sales and marketing expenses were $14.3 million in 2001, $9.0 million in 2000, and $5.0 million in 1999. From 2000 to 2001, sales and marketing expenses increased $5.3 million or 59%. This increase was largely driven by payroll and related costs from an increase in the sales and marketing staff of 81% and an increase in promotional activities as new products such as the ProteinChip Biomarker System, Tandem MS Interface and Biomarker Patterns Software were introduced. These increases were partially offset by a decline in stock-based compensation

expense of $0.5 million from 2000 to 2001. From 1999 to 2000, sales and marketing expenses increased $4.0 million or 80%. This was principally due to more than doubling the sales and marketing staff and increasing promotional activities to further develop public awareness of our ProteinChip System. In addition, stock-based compensation expense increased $0.9 million from 1999 to 2000. Stock-based compensation expense in sales and marketing expenses was $919,000 in 2001, $1.4 million in 2000, and $476,000 in 1999. We expect sales and marketing expenses to increase in 2002 as we continue to grow our sales force and increase our promotional activities.

General and Administrative

General and administrative expenses were $13.0 million in 2001, $11.3 million in 2000, and $2.8 million in 1999. From 2000 to 2001, general and administrative expenses increased $1.7 million or 15%. The majority of the increase was due to an increase in legal and patent fees of $2.1 million. In addition, compensation and recruiting expenses increased $1.0 million as the administrative staff grew 53%, exclusive of the BioSepra acquisition. The BioSepra acquisition added $0.1 million to our general and administrative expenses. Costs related to being a public company, such as investor and public relations, increased $0.9 million. Facilities costs attributable to administration increased $0.3 million, while costs associated with the recruiting of new staff increased $0.3 million. These were partially offset by a decline in stock-based compensation of $3.3 million. From 1999 to 2000, general and administrative expenses increased $8.5 million or 305%. The majority of this increase was due to an increase in stock-based compensation expense of $5.6 million. Additionally, compensation expense increased $1.3 million as the general and administrative staff more than doubled to provide the infrastructure necessary to support the increased activity of the company, and legal fees increased $1.0 million. Stock-based compensation expense in general and administrative expenses totaled $2.9 million in 2001, $6.2 million in 2000, and $623,000 in 1999. We expect general and administrative expenses to increase in 2002 as we add necessary infrastructure to support increased activity levels.

Write-Off of Acquired In-Process Technology

In connection with the purchase of BioSepra, we recorded a $1.0 million charge to acquired in-process technology. The amount was determined by identifying research projects for which technological feasibility had not been established and no alternative future uses existed. The value of the projects identified to be in progress was determined by estimating the future cash flows of the product, then discounting the net cash flows back to their present value at a discount rate consistent with the inherent risk of the particular project. The net cash flows from the identified in-process projects are expected to commence at various times from 2002 to 2004 and include estimates of research and development costs needed to bring the project from its current state of development to a point of commercial feasibility. The cash flows are based on expected future revenues, cost of revenues, selling, general and administrative costs, research and development costs needed to maintain the project throughout its life cycle, and applicable income taxes for the projects. The discount rates used in the present value calculations were derived from the weighted-average cost of capital of BioSepra and adjusted upward to reflect additional risks inherent in the development life cycle of the particular project. Such discount rates ranged between 19% and 25% for all projects. Development of the technologies remains a substantial risk to us due to factors including the remaining effort to achieve technological feasibility, rapidly changing customer markets and competitive threats from other companies.

Interest and Other Income (Expense), net

Interest income was $4.1 million in 2001, $2.6 million in 2000, and $245,000 in 1999. The increase from 2000 to 2001 was due to larger average investment balances resulting from the proceeds of the initial public offering in September 2000. The increase from 1999 to 2000 was due primarily to larger average investment balances resulting from the proceeds related to the Series E preferred stock offering in March 2000 and proceeds from the initial public offering in September 2000.

Interest expense was $150,000 in 2001, $170,000 in 2000, and $179,000 in 1999. The decrease from 2000 to 2001 was due to declining debt balances in 2001 prior to the addition of the debt acquired with BioSepra. The decrease from 1999 to 2000 was primarily due to a decrease in average debt balances.

Other income (expense) was ($201,000) in 2001, $27,000 in 2000, and $37,000 in 1999. The majority of the decrease of $228,000 from 2000 to 2001 was due to Delaware franchise tax as a result of reincorporating in that state. In 1999, we received a $315,000 prepayment from Ciphergen Biosystems, K.K. for support and service, which is being recognized over the ten-year life of the agreement.

We recorded our 30% share of the loss incurred by Ciphergen Biosystems, K.K., totaling $12,000 in 2001, $144,000 in 2000 and $159,000 in 1999, as equity in net loss of joint venture. Our share of the net loss for Ciphergen Biosystems, K.K. was an additional $142,000 for 2001, but we are limited to our cost basis for recording losses from this joint venture.

Income Taxes

We have incurred net losses since inception and consequently are not subject to corporate income taxes in the United States to the extent of our tax loss carryforwards. We are subject to various minimal taxes in a number of the other countries in which we operate. At December 31, 2001 we had net operating loss carryforwards of approximately $48.1 million for federal and $23.5 million for state tax purposes. If not

utilized, these carryforwards will begin to expire beginning in 2009 for federal purposes and 2002 for state purposes. We have research credit carryforwards of approximately $1.4 million and $1.2 million for federal and state tax purposes, respectively. If not utilized, the federal carryforwards will expire in various amounts beginning in 2009. The California credit can be carried forward indefinitely. The utilization of net operating loss carryforwards to reduce future income taxes

will depend on our ability to generate sufficient taxable income prior to the expiration of the net operating loss carryforwards. In addition, the maximum annual use of the net operating loss carryforwards may be limited in situations where changes occur in our stock ownership.

Liquidity and Capital Resources

From inception through December 31, 2001 we have financed our operations principally with $37.5 million from the sales of products and services to customers, and with equity financings totaling $157.0 million. This includes the $101.2 million initial public offering in September 2000 and the $29.0 million Series E Preferred Stock financing in March 2000. We had cash balances of $48.3 million with an additional $28.8 million in available-for-sale securities investments, and working capital of $70.9 million at December 31, 2001. Long-term debt and capital lease obligations at December 31, 2001 were $2.6 million. This increase is attributable to the acquisition of BioSepra and the assumption of $2.3 million in debt.

Net cash used in operating activities was $14.6 million in 2001, which was primarily the result of net losses in operations. We expect net cash used in operating activities to increase in 2002 as we continue to expand our operating activities. We currently believe that current cash resources will be sufficient to meet our anticipated financial needs for at least the next two years.

Net cash used in investing activities was $45.0 million in 2001, which consisted of $4.1 million for capital equipment purchases, $28.6 million for the purchase of short and long term investments, and $12.3 million for the acquisition of BioSepra. We expect to acquire additional capital equipment on an ongoing basis as we add staff, increase capacity and improve capabilities. We anticipate capital expenditures of approximately $5.0 to $6.0 million in 2002. Also, it is our current intention to exercise our option to acquire an additional 40% of Ciphergen Biosystems K.K. in 2002 at a price of approximately $380,000. In addition, at that point we will become responsible for repaying the debt of Ciphergen Biosystems K.K., which is estimated to be approximately $2.8 million.

Net cash provided by financing activities was $250,000 in 2001, largely as a result of proceeds from the issuance of common stock and exercise of stock options.

Ciphergen currently expects to fund expenditures for capital requirements as well as liquidity needs from a combination of available cash and marketable securities balances, as well as internally generated funds. We may be required to raise additional capital through a variety of sources, including the public equity market, private financings, collaborative arrangements and debt. If additional capital is raised through the issuance of equity or securities convertible into equity, our stockholders may experience dilution, and such securities may have rights, preferences or privileges senior to those of the holders of the common stock. Additional financing may not be available to us on favorable terms, if at all. If we are unable to obtain financing, or to obtain it on acceptable terms, we may be unable to execute our business plan.

The following summarizes Ciphergen's contractual obligations at December 31, 2001, and the effect such obligations are expected to have on its liquidity and cash flow in future periods.

	Total	Less than 1 Year	1-3 Years	4-5 Years	Beyond 5 Years
			(in thousands)		
Contractual obligations:					
Long-term debt	$ 117	$ 117	$ —	$ —	$ —
Capital lease obligations	2,665	468	786	506	905
Non-cancelable operating lease obligations	20,784	2,990	9,359	6,499	1,936
Total contractual cash obligations	$ 23,566	$ 3,575	$ 10,145	$ 7,005	$ 2,841

Ciphergen is in compliance with all covenants or other requirements set forth in its credit agreements.

Recent Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board (FASB) issued Statements No. 141 and 142 (FAS 141 and FAS 142), "Business Combinations" and "Goodwill and Other Intangible Assets", respectively. FAS 141 eliminated pooling-of-interests accounting prospectively. It also provides guidance on purchase accounting related to the recognition of intangible assets and accounting for negative goodwill. FAS 142 changed the accounting for goodwill from an amortization method to an impairment-only approach. Under FAS 142, goodwill will be tested annually and whenever events or circumstances occur indicating that goodwill might be impaired. FAS 141 and FAS 142 were effective for all business combinations completed after June 30, 2001. Upon adoption of FAS 142, amortization of goodwill recorded for business combinations consummated prior to July 1, 2001 ceased, and intangible assets acquired prior to July 1, 2001 that did not meet the criteria for recognition under FAS 141 were reclassified to goodwill. Companies are required to adopt FAS 142 for fiscal years beginning after December 15, 2001, but early adoption is permitted in certain circumstances. We will adopt FAS 142 on the first day of fiscal 2002 (January 1, 2002). In connection with the adoption of FAS 142, we will be required to perform a transitional goodwill impairment assessment. The implementation of these standards is not expected to have a material impact on our results of operations or financial position.

In August 2001, the FASB issued Statement No. 143 (FAS 143), "Accounting for Asset Retirement Obligations," which is effective for fiscal years beginning after June 15, 2002. FAS 143 addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The Statement applies to all entities. It applies to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development, and/or the normal operation of a long-lived asset except for certain obligations of lessees. Ciphergen does not expect the adoption of FAS 143 will have a significant impact on its results of operations or financial position.

In October 2001, the FASB issued Statement No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." FAS 144 addresses financial accounting and reporting for the impairment of long-lived assets and for long-lived assets to be disposed of. FAS 144 was effective for fiscal years beginning after December 15, 2001. Ciphergen will adopt the provisions of FAS 144 on January 1, 2002 and does not expect that such adoption will have a material effect on its financial statements.

FACTORS THAT MAY AFFECT OUR RESULTS

We expect to continue to incur net losses in the foreseeable future. If we are unable to significantly increase our revenues, we may never achieve profitability.

From our inception in December 1993, through December 31, 2001, we have generated cumulative revenue of approximately $37.5 million and have incurred net losses of approximately $74.7 million. We have experienced significant operating losses each year since our inception and expect these losses to continue for the next several years. For example, we experienced net losses of approximately $25.8 million in 2001, $20.3 million in 2000 and $8.0 million in 1999. Our losses have resulted principally from costs incurred in research and development, sales and marketing, and general and administrative costs associated with our operations. These costs have exceeded our revenue, which, to date, has been generated principally from product sales. We expect to incur additional operating losses and these losses may be substantial as a result of increases in expenses for manufacturing, marketing and sales, research and product development, and general and administrative costs. We may never achieve profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis.

If we are unable to establish the utility of our products, our products and services will not achieve market acceptance.

The commercial success of our ProteinChip Systems will depend upon validating their utility for important biological applications and increasing their market acceptance by researchers in pharmaceutical and biotechnology companies, academic and government research centers and clinical reference laboratories. If the effectiveness of our ProteinChip Systems in providing commercially useful protein information proves to be not equal to or better than current technologies, it could seriously undermine market acceptance of our products and reduce the likelihood that we will ever achieve profitability.

If we are unable to attract clients for our Biomarker Centers, we may not be successful in furthering adoption of our products and technology and achieving profitability.

An element of our business strategy is to establish Biomarker Centers in part through partnerships with academic and government research centers, and pharmaceutical and biotechnology companies. Although we are currently in negotiation with potential partners and clients, to date we have entered into only a few such arrangements. Failure to enter into additional arrangements could limit adoption of our products and prevent us from achieving profitability.

If we fail to successfully develop and commercialize our products, our revenue will not increase and we will not achieve profitability.

We began full commercialization of our products in May 1999. Our success will depend on our ability to continue to develop and expand

commercial sales of our ProteinChip Systems, including our ProteinChip Arrays. We may encounter difficulties in producing our ProteinChip Systems or we may not be able to produce it economically, we may fail to achieve expected performance levels, or we may have to set a price for it that is unacceptable to our customers. We may not be able to successfully develop and commercialize our ProteinChip Systems or any other products on a timely basis, achieve anticipated performance levels, gain industry acceptance of such products or develop a profitable business. We may not be able to successfully develop a profitable chromatography-based protein purification business.

If we are unable to maintain our licensed rights to the SELDI technology, we may lose the right to produce ProteinChip Systems and products based on the SELDI technology and the right to provide services and information related thereto.

Our commercial success depends on our ability to maintain our sublicenses to the SELDI technology. In July 2000, in response to MAS' claims that we had materially breached the sublicense agreements and its threat to terminate the sublicense agreements, we filed a lawsuit against MAS and LumiCyte requesting a declaration of our rights, including that we have the right to sell information and service products, and requesting a preliminary injunction preventing MAS from terminating the sublicense agreements. In October 2000, we made additional claims against MAS and LumiCyte and added Dr. T. William Hutchens as an individual defendant. Hutchens is the Chief Executive Officer of both MAS and LumiCyte, as well as a former officer and director of Ciphergen. He is presently the beneficial owner of less than 10% of the Company's outstanding common stock. In October, 2000, MAS and Lumicyte filed cross-claims against Cipergen and its subsidiaries. In May, 2000, we amended our complaint and brought additional claims against MAS, LumiCyte, and Hutchens. We believe that our causes of action have merit and we intend to pursue the litigation aggressively. Although we believe that the resolution of the litigation will not harm our ability to continue to pursue our business and strategy, litigation is unpredictable and we may not prevail. The court may determine that LumiCyte or others possess exclusive rights to provide information products and service products that we have offered or may seek to offer as part of our business. The sublicense agreements referred to above provide for termination in the event of material breach. Therefore, if we do not prevail in our cause of action, and if the court determines that we have materially breached the sublicense agreements, there is a risk that the sublicense agreements could be terminated. Substantially all of our revenue is derived from products relying on technology covered by the sublicense agreements. If the agreements were terminated and we were unable to obtain a license to these rights, we would be precluded from selling any SELDI-based products within the scope of the Baylor patents, we would no longer generate revenue from the sale of these products and we would have to revise our business direction and strategy. See "Legal Proceedings."

If we are unsuccessful in obtaining a federal registration for the SELDI trademark and we are successfully sued for trademark infringement, we may be required to license the mark or change the name of our technology and incur associated costs.

MAS has opposed our trademark application for the SELDI mark on the basis of alleged earlier use of SELDI. The outcome of that opposition remains pending. As a result, we may not be successful in obtaining a federal registration for the mark and may be sued by MAS for trademark infringement based on MAS' claimed prior use rights to the SELDI mark. If MAS is successful, we will have to license rights to the mark or not use the name, and we will be subjected to costs and damages.

The Company may not be able to realize the benefits of its recent acquisition of BioSepra. Our business could be adversely affected as a result of the acquisition.

We acquired the BioSepra process chromatography business from Invitrogen Corporation on July 31, 2001. This transaction may not be as beneficial to Ciphergen as it expects. We may encounter risks to our business during the integration of BioSepra including:

- difficulties in assimilation of acquired personnel, operations, technologies or products in a timely and non-disruptive manner;
- difficulty of integrating a foreign business;
- unanticipated costs associated with the acquisition;
- diversion of management's attention from other business concerns;

- adverse effects on existing business relationships with BioSepra's customers; and
- inability to retain key employees of BioSepra after the acquisition.

Even with the investment of significant time and resources, the acquisition may not produce the revenues, earnings or business synergies that Ciphergen anticipates. While the market is large and growing for chromatographic processes, BioSepra business prospects may remain with the entrenched suppliers they currently use. BioSepra will need to develop new processes and look to replace entrenched suppliers by

offering superior products. Customers having to separate proteins have traditionally been slow to adopt new technologies, even when those new technologies offer considerable advantages over existing, proven approaches. Even if BioSepra chromatography products and services are more efficient and of higher quality than alternatives, conservative customers may favor established products and companies. If we fail to integrate the acquired business effectively or if key employees of that business leave, the anticipated benefits of the acquisition would be jeopardized. The time, capital, management and other resources spent on an acquisition that fails to meet our expectations could cause our business and financial condition to be materially and adversely affected. In addition, acquisitions can involve non-recurring charges and amortization of significant amounts of intangible assets that could adversely affect our results of operations.

If we are unable to reduce our lengthy sales cycle, our ability to become profitable will be harmed.

Our ability to obtain customers for our products depends in significant part upon the perception that our products and services can help enable protein biomarker discovery, characterization and assay development. From the time we make initial contact with a potential customer until we receive a binding purchase order typically takes between a few weeks to a year or more. Our sales effort requires the effective demonstration of the benefits of our products and may require significant training, sometimes of many different departments within a potential customer. These departments might include research and development personnel and key management. In addition, we may be required to negotiate agreements containing terms unique to each customer. We may expend substantial funds and management effort and may not be able to successfully sell our products or services in a short enough time to achieve profitability.

We may need to raise additional capital in the future, and if we are unable to secure adequate funds on terms acceptable to us, we may be unable to execute our business plan.

We currently believe that current cash resources will be sufficient to meet our anticipated financial needs for at least the next two years. However, we may need to raise additional capital sooner in order to develop new or enhanced products or services, increase our Biomarker Center activities undertaken for our own account, or acquire complementary products, businesses or technologies to respond to competitive pressures. If we are unable to obtain financing, or to obtain it on acceptable terms, we may be unable to successfully execute our business plan.

If we are unable to provide our customers with software that enables the integration and analysis of large volumes of data, the acceptance and use of our products may be limited.

The successful commercial research application of our products requires that they enable researchers to process and analyze large volumes of data and to integrate the results into other phases of their research. The nature of our software enables a level of integration and analysis that is adequate for many projects. However, if we do not continue to develop and improve the capabilities of our ProteinChip Software to perform more complex analyses of customer samples and to meet increasing customer expectations, our products may not gain market acceptance, we may lose our current customers and we may be unable to develop a profitable business.

If we do not effectively manage growth, management attention could be diverted and our ability to increase revenues and profitability could be harmed.

We are rapidly and significantly expanding our operations, which is placing a significant strain on our financial, managerial and operational resources. For example, we have recently increased our worldwide sales force and other personnel significantly, with plans for further expansion, and have established additional Biomarker Centers with plans to expand their scope of activity. These changes could divert management attention or otherwise disrupt our operations. In order to achieve and manage this growth effectively, we must continue to improve and expand our operational and financial management capabilities and resources. Moreover, we will need to effectively train, integrate, motivate and retain our employees. Our failure to manage our growth effectively could damage our ability to increase revenue and become profitable.

Because our business is highly dependent on key executives and scientists, our inability to recruit and retain these people could hinder our business expansion plans.

Ciphergen is highly dependent on its executive officers and its senior scientists and engineers. Our product development and marketing efforts will be delayed or curtailed if we lose the services of any of these people. To expand our research, product development and sales efforts, we need additional people skilled in areas such as bioinformatics, biochemistry, information services, manufacturing, sales, marketing and technical support. Competition for qualified employees is intense. We will not be able to expand our business if we are unable to hire, train and retain a sufficient number of qualified employees.

If we are unable to successfully expand our limited manufacturing capacity for ProteinChip Readers and Arrays, we may encounter manufacturing and quality control problems as we increase our efforts.

We currently have only one manufacturing facility at which we produce limited quantities of our ProteinChip Arrays and ProteinChip Readers. Some aspects of our manufacturing processes may not be easily scalable to allow for production of our ProteinChip Arrays or

ProteinChip Readers in larger volumes, resulting in higher than anticipated material, labor and overhead costs per unit. As a result, manufacturing and quality control problems may arise as we increase our level of production. We may not be able to increase our manufacturing capacity in a timely and cost-effective manner and we may experience delays in manufacturing new products. If we are unable to consistently manufacture our ProteinChip Arrays and ProteinChip Readers on a timely basis because of these or other factors, we will not be able to meet anticipated demand. As a result, we may lose sales and fail to generate increased revenue and become profitable.

We face intense competition in our current and potential markets and if our competitors develop new technologies or products, our products may not achieve market acceptance and may fail to capture market share.

Competition in our existing and potential markets is intense and we expect it to increase. Currently, our principal competition comes from other technologies that are used to perform many of the same functions for which we market our ProteinChip System. The major technologies that compete with our ProteinChip System are liquid chromatography-mass spectrometry and 2D-gel electrophoresis-mass spectrometry. In the life science research market, protein research tools and services are currently provided by a number of companies. In the large scale chromatography market, there are several larger direct competitors. In many instances, Ciphergen's competitors may have substantially greater financial, technical, research and other resources and larger, more established marketing sales distribution and service organizations. Additionally, our potential customers may internally develop competing technologies. If we fail to compete effectively with these technologies and products, or if competitors develop significant improvements in protein detection systems or develop

systems that are easier to use, our products may not achieve market acceptance and our sales may decrease.

If the government grants a license to the SELDI technology to others, it may harm our business.

Some of the inventions covered by the sublicense agreements were developed under a grant from an agency of the U.S. government and therefore the government has a paid-up nonexclusive nontransferable license to those inventions and the right in limited circumstances to grant a license to others on reasonable terms. If the government exercises those rights our business could be harmed.

If a competitor infringes our proprietary rights, we may lose any competitive advantage we may have as a result of diversion of management time, enforcement costs and the loss of the exclusivity of our proprietary rights.

Our commercial success depends in part on our ability to maintain and enforce our proprietary rights. We rely on a combination of patents, trademarks, copyrights and trade secrets to protect our technology and brand. In addition to our licensed SELDI technology, we also have submitted patent applications directed to subsequent technological improvements and application of the SELDI technology. Our patent applications may not result in additional patents.

If competitors engage in activities that infringe our proprietary rights, our management's focus will be diverted and we may incur significant costs in asserting our rights. We may not be successful in asserting our proprietary rights, which could result in our patents being held invalid or a court holding that the competitor is not infringing, either of which would harm our competitive position. We cannot be sure that competitors will not design around our patented technology.

We also rely upon the skills, knowledge and experience of our technical personnel. To help protect our rights, we require all employees and consultants to enter into confidentiality agreements that prohibit the disclosure of confidential information. These agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure.

If others successfully assert their proprietary rights against us, we may be precluded from making and selling our products or we may be required to obtain licenses to use their technology.

Our success also depends on avoiding infringing on the proprietary technologies of others. We are aware of third parties whose business involves the use of mass spectrometry for the analysis of proteins and DNA, and third parties whose business involves providing chromatography sorbents and media. Certain of these parties have issued patents or pending patent applications on technology that they might assert against us. If they successfully make such assertions, we may be required to obtain licenses to use that technology and such licenses may not be available on commercially reasonable terms, if at all. We may incur substantial costs defending ourselves in lawsuits against charges of patent infringement or other unlawful use of another's proprietary technology. Any such lawsuit may not be decided in our favor, and if we are found liable, we may be subject to monetary damages or injunction against using their technology.

We rely on single-source suppliers for many components of our ProteinChip Systems and if we are unable to obtain components we would be harmed and our operating results would suffer.

We depend on many single-source suppliers for the necessary materials and components required to assemble our products. Because of limited quantities of products manufactured at this stage of our development it is not economically feasible to qualify and maintain alternate

vendors for most components of our ProteinChip Readers and Arrays. We have occasionally experienced delays in receiving components resulting in manufacturing delays. If we are unable to procure the necessary

materials and components from our current vendors, we will have to arrange new sources of supply and our materials and components shipments could be delayed, harming our ability to assemble and manufacture our ProteinChip Readers and Arrays, and our ability to sustain or increase revenue could be harmed. As a result, our costs could increase and our profitability could be harmed.

If there are reductions in research funding, the ability of our existing and prospective research customers to purchase our products could be seriously harmed.

A significant portion of our products for research use is likely to be sold to universities, government research laboratories, private foundations and other institutions where funding is dependent upon grants from government agencies, such as the National Institutes of Health. Government funding for research and development has fluctuated significantly in the past due to changes in congressional appropriations. Research funding by the government may be significantly reduced in the future. Any such reduction may seriously harm the ability of our existing and prospective research customers to purchase our products or reduce the number of ProteinChip Arrays used. Limitations in funding for commercial, academic and biotechnology and pharmaceutical companies that are the potential customers for our ProteinChip Systems and Arrays and cost containment pressures for biomedical research may limit our ability to sell our products.

Consolidation in the pharmaceutical and biotechnology industries may reduce the size of our target market and cause a decrease in our revenue.

Consolidation in the pharmaceutical and biotechnology industries is generally expected to occur. Planned or future consolidation among our current and potential customers could decrease or slow sales of our technology and reduce the markets our products target. Any such consolidation could limit the market for our products and seriously harm our ability to achieve or sustain profitability.

Our stock price has been highly volatile, and your investment could suffer a decline in value.

The trading price of our common stock has been highly volatile and could continue to be subject to wide fluctuations in price in response to various factors, many of which are beyond our control, including:

- actual or anticipated variations in quarterly operating results;
- failure to achieve, or changes in, financial estimates by securities analysts;
- announcements of new products or services or technological innovations by us or our competitors;
- conditions or trends in the pharmaceutical, biotechnology and life science industries;
- announcements by us of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- additions or departures of key personnel;
- sales of our common stock; and
- developments regarding our patents or other intellectual property or that of our competitors.

In addition, the stock market in general, and the Nasdaq National Market and the market for technology companies in particular, have experienced significant price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Further, there has been particular volatility in the market prices of securities of life science companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market price

of a company's securities, securities class action litigation has often been instituted. A securities class action suit against us could result in substantial costs, potential liabilities and the diversion of management's attention and resources.

There may not be an active, liquid trading market for our common stock.

There is no guarantee that an active trading market for our common stock will be maintained on the Nasdaq Stock Market's National Market. You may not be able to sell your shares quickly or at the latest market price if trading in our stock is not active.

Anti-takeover provisions in our charter, bylaws and Stockholder Rights Plan and under Delaware law could make a third party acquisition of us difficult.

Our certificate of incorporation, bylaws and Stockholder Rights Plan contain provisions that could make it more difficult for a third party to acquire us, even if doing so might be deemed beneficial by our stockholders. These provisions could limit the price that investors might be willing to pay in the future for shares of our common stock. We are also subject to certain provisions of Delaware law that could delay, deter or prevent a change in control of us.

The rights issued pursuant to our Stockholder Rights Plan will become exercisable the tenth day after a person or group announces acquisition of 15% or more of our common stock or announces commencement of a tender or exchange offer the consummation of which would result in ownership by the person or group of 15% or more of our common stock. If the rights become exercisable, the holders of the rights (other than the person acquiring 15% or more of our common stock) will be entitled to acquire in exchange for the rights' exercise price, shares of our common stock or shares of any company in which we are merged, with a value equal to twice the rights' exercise price.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS

We maintain investment portfolio holdings of various issuers, types and maturities. These securities are classified as available-for-sale, and consequently are recorded on the balance sheet at fair value with unrealized gains and losses reported as a separate component of accumulated other comprehensive income (loss). These securities are not leveraged and are held for purposes other than trading.

The following discussion about our market risk involves forward-looking statements. We are exposed to market risk related mainly to changes in interest rates. We do not invest in derivative financial instruments.

Interest Rate Sensitivity

The fair value of our investments in marketable securities at December 31, 2001 was $28.8 million, with a weighted-average maturity of 210 days and a weighted-average interest rate of 3.75%.

The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. We ensure the safety and preservation of our invested principal funds by limiting default risks, market risk and reinvestment risk. To achieve these objectives, we maintain our portfolio of cash equivalents, short-term investments and long-term investments in a variety of securities, including commercial paper, money market funds, government and non-government debt securities, and, by policy, restrict our exposure to any single corporate issuer by imposing concentration limits. We mitigate default risk by investing in high credit-quality securities.

Some of the securities that we invest in may have market risk. That means that a change in prevailing interest rates may cause the fair value of the principal amount of an investment to fluctuate.

For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing rate rises, the fair value of the principal amount of our investment will probably decline. To minimize the exposure due to adverse shifts in interest rates, we maintain investments at an average maturity of less than one year, with no individual security investment maturing in more than two years.

Our exposure to market risk for changes in interest rates relates primarily to the increase or decrease in the amount of interest income we can earn on our available funds for investment. Our long-term debt and capital lease agreements are at fixed interest rates. We do not plan to use derivative financial instruments in our investment portfolio.

Foreign Currency Exchange Risk

Most of our revenue is realized in U.S. dollars. However, a portion of our revenue from chromatography sorbents is realized in foreign currencies, predominantly in Europe. In addition, all the revenue of our Japanese joint venture is realized in Japanese yen. As a result, our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets. Because most of our revenue is currently denominated in U.S. dollars, an increase in the value of the U.S. dollar relative to foreign currencies could make our products less competitive in foreign markets.

Our subsidiaries' accounts are translated from the local currency to the U.S. dollar using the current exchange rate in effect at the balance sheet date for balance sheet accounts, and using the average exchange rate during the period for revenue and expense accounts. The effects of translation are recorded as a separate component of stockholders' equity. The net tangible assets of our non-U.S. operations, excluding intercompany debt, were $7.1 million at December 31, 2001.

Although we will continue to monitor our exposure to currency fluctuations, we cannot provide assurance that exchange rate fluctuations will not harm our business in the future. We currently do not use derivative financial instruments to mitigate this exposure. We have not taken any action to reduce our exposure to changes in foreign currency exchange rates, such as options or futures contracts, with respect to transactions with our European subsidiaries or transactions with our European customers.

Euro—the New European Currency

The countries of the European Union have adopted a single currency, the "euro." The euro came into existence on January 1, 2000, and during the three-year transition period following its introduction, countries were allowed to transact business both in the euro and in their own currencies at fixed exchange rates. On January 1, 2002, the euro became the only currency in Economic and Monetary Union countries. A significant portion of our business is conducted in Europe. The adoption of the euro did not have a material effect on our business, results of operations, financial position or liquidity.

ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Stockholders of Ciphergen Biosystems, Inc.

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of stockholders' equity (deficit) and of cash flows present fairly, in all material respects, the financial position of Ciphergen Biosystems, Inc. and its subsidiaries at December 31, 2001 and 2000, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2001 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audits 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, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PRICEWATERHOUSECOOPERS LLP

San Jose, California
February 1, 2002

CIPHERGEN BIOSYSTEMS, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31, 2001	December 31, 2000
ASSETS		
Current assets:		
Cash and cash equivalents	$ 48,319	$ 107,633
Short-term investments	21,273	—
Accounts receivable, net of allowance for doubtful accounts of $324 and $160, respectively	5,524	2,949
Accounts receivable from related parties	128	75
Inventories, net	3,889	1,322
Prepaid expenses and other current assets	2,158	969
Total current assets	81,291	112,948
Property and equipment, net	10,228	4,687
Long-term investments	7,532	—
Goodwill and other intangible assets, net	6,709	379
Notes receivable from related parties	384	304
Other long-term assets	672	630
Total assets	$ 106,816	$ 118,948
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 3,069	$ 906
Accounts payable to related party	147	13
Accrued liabilities	4,636	2,877
Deferred revenue	1,975	579
Deferred revenue from related parties	47	137
Current portion of capital lease obligations	410	234
Current portion of long-term debt	117	182
Total current liabilities	10,401	4,928
Deferred revenue	173	128
Deferred revenue from related parties	272	221
Capital lease obligations, net of current portion	2,083	307
Long-term debt, net of current portion	—	117
Other long term liabilities	658	95
Total liabilities	13,587	5,796
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Common stock, $0.001 par value		
Authorized: 80,000,000 shares at December 31, 2001 and 2000		
Issued and outstanding: 27,056,872 shares and 26,783,731 shares at December 31, 2001 and 2000, respectively	27	27
Additional paid-in capital	175,333	175,694
Notes receivable from stockholders	(1,294)	(1,294)
Deferred stock compensation	(6,327)	(12,362)
Accumulated other comprehensive income (loss)	191	(24)
Accumulated deficit	(74,701)	(48,889)

Total stockholders' equity	93,229	113,152
Total liabilities and stockholders' equity	$ 106,816	$ 118,948

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

CIPHERGEN BIOSYSTEMS, INC.
CONDOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Years Ended December 31,		
	2001	2000	1999
Revenue:			
Products	$ 15,742	$ 7,358	$ 3,963
Product revenue from related parties	1,192	1,064	882
Services	2,115	513	165
Total revenue	19,049	8,935	5,010
Cost of revenue:			
Products	5,516	2,774	1,354
Product revenue from related parties	434	587	306
Services	664	119	48
Total cost of revenue	6,614	3,480	1,708
Gross profit	12,435	5,455	3,302
Operating expenses:			
Research and development	12,895	7,475	3,139
Sales and marketing	14,301	9,001	4,989
General and administrative	13,020	11,322	2,799
Amortization of intangible assets	650	318	365
Write-off of acquired in-process technology	1,000	—	—
Total operating expenses	41,866	28,116	11,292
Loss from operations	(29,431)	(22,661)	(7,990)
Interest income	4,125	2,644	245
Interest expense	(150)	(170)	(179)
Other income (expense), net	(201)	27	37
Equity in net loss of joint venture	(12)	(144)	(159)
Loss before provision for income taxes	(25,669)	(20,304)	(8,046)
Provision for income taxes	143	—	—
Net loss	(25,812)	(20,304)	(8,046)
Dividend related to beneficial conversion feature of preferred stock	—	(27,228)	—

Net loss attributable to common stockholders	$ (25,812)	$ (47,532)	$ (8,046)
Net loss per share attributable to common stockholders:			
Basic and diluted	$ (0.97)	$ (4.09)	$ (1.26)
Shares used in computing net loss per share attributable to common stockholders	26,512	11,635	6,397

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

CIPHERGEN BIOSYSTEMS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands)

	Common Stock		Additional Paid-In Capital	Notes Receivable From Stockholders	Deferred Stock Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount						
Balances, January 1, 1999	6,861	$ 6	$ 5,952	$ (386)	$ (1,308)	$ —	$ (20,539)	$ (16,275)
Net loss	—	—	—	—	—	—	(8,046)	(8,046)
Issuances of common stock for services	12	—	14	—	—	—	—	14
Issuance of common stock for cash and notes receivable	339	—	366	(341)	—	—	—	25
Repurchase of common stock	(359)	—	(239)	239	—	—	—	—
Deferred stock compensation	—	—	3,723	—	(3,723)	—	—	—
Amortization of deferred stock compensation	—	—	—	—	1,344	—	—	1,344
Balances, December 31, 1999	6,853	6	9,816	(488)	(3,687)	—	(28,585)	(22,938)
Comprehensive loss:								
Net loss	—	—	—	—	—	—	(20,304)	(20,304)
Foreign currency translation adjustment	—	—	—	—	—	(24)	—	(24)
Total comprehensive loss								(20,328)
Issuances of common stock for services	15	—	174	—	—	—	—	174
Stock options exercised	637	1	1,344	(891)	—	—	—	454
Repayment of stockholder notes	—	—	—	65	—	—	—	65
Repurchase of common stock	(18)	—	(21)	20	—	—	—	(1)
Deferred stock compensation	—	—	17,985	—	(17,985)	—	—	—
Amortization of deferred stock compensation	—	—	—	—	9,310	—	—	9,310
Issuance of preferred stock and warrants with beneficial conversion feature	—	—	27,228	—	—	—	—	27,228
Dividend related to beneficial conversion feature of preferred stock.	—	—	(27,228)	—	—	—	—	(27,228)
Conversion of preferred stock and warrants to common stock and warrants	12,972	14	53,967	—	—	—	—	53,981
Issuance of common stock, net of offering costs	6,325	6	92,429	—	—	—	—	92,435
Balances, December 31, 2000	26,784	27	175,694	(1,294)	(12,362)	(24)	(48,889)	113,152
Comprehensive Loss:								
Net loss	—	—	—	—	—	—	(25,812)	(25,812)
Unrealized gain on marketable securities	—	—	—	—	—	204	—	204
Foreign currency								

translation adjustment	—	—	—	—	—	11	—	11
Total comprehensive loss								(25,597)
Issuances of common stock for services	51	—	268	—	—	—	—	268
Stock options exercised	118	—	183	—	—	—	—	183
Purchase of common stock under employee stock purchase plan	114	—	604	—	—	—	—	604
Repurchase of common stock	(10)	—	(28)	—	—	—	—	(28)
Deferred stock compensation	—	—	(1,388)	—	1,388	—	—	—
Amortization of deferred stock compensation	—	—	—	—	4,647	—	—	4,647
Balances, December 31, 2001	27,057	$ 27	$ 175,333	$ (1,294)	$ (6,327)	$ 191	$ (74,701)	$ 93,229

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

CIPHERGEN BIOSYSTEMS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended December 31,		
	2001	2000	1999
Cash flows from operating activities:			
Net loss	$ (25,812)	$ (20,304)	$ (8,046)
Adjustments to reconcile net loss to cash used in operating activities:			
Depreciation and amortization	2,723	1,297	945
Write-off of acquired in-process technology	1,000	—	—
Stock issued for services	268	553	14
Amortization of deferred stock compensation and accelerated vesting of stock options	4,647	9,310	1,344
Amortization of debt discount	—	4	19
Equity in net loss of joint venture	12	144	159
Loss on disposal of fixed assets	5	48	164
Changes in operating assets and liabilities, net of assets acquired and liabilities assumed in business combination:			
Accounts receivable, net	(1,196)	(2,269)	12
Accounts receivable from related parties	(53)	243	62
Inventories, net	(168)	(407)	8
Prepaids and other current assets	(507)	(647)	(91)
Other long-term assets	(53)	(596)	(22)
Accounts payable and accrued liabilities	2,474	2,124	467
Accounts payable to related party	134	(29)	(327)
Deferred revenue	1,440	501	81
Deferred revenue from related parties	(39)	(28)	134
Other long-term liabilities	565	95	—
Net cash used in operating activities	(14,560)	(9,961)	(5,077)
Cash flows from investing activities:			
Purchase of property and equipment	(4,070)	(4,604)	(602)
Acquisition of BioSepra, net of cash acquired	(12,257)	—	—
Purchase of marketable securities	(36,937)	—	—
Maturities of marketable securities	8,336	—	—

Issuance of notes receivable to related parties	(80)	(43)	(19)
Investment in joint venture	—	—	(315)
Net cash used in investing activities	(45,008)	(4,647)	(936)
Cash flows from financing activities:			
Proceeds from issuance of common stock, net of issuance costs	—	92,435	—
Repurchase of common stock	(28)	(1)	—
Proceeds from exercise of stock options and warrants	183	1,460	95
Issuance of common stock under employee stock purchase plan	604	—	—
Repayment of stockholder notes	—	65	—
Proceeds from issuance of preferred stock, net of issuance costs	—	26,902	1,019
Principal payments on capital lease obligations	(326)	(200)	(70)
Proceeds from long-term debt	—	—	467
Repayments of long-term debt	(183)	(370)	(526)
Borrowings under line of credit	—	285	2,554
Repayments under line of credit	—	(1,110)	(1,729)
Net cash provided by financing activities	250	119,466	1,810
Effect of exchange rate changes	4	(24)	—
Net increase (decrease) in cash and cash equivalents	(59,314)	104,834	(4,203)
Cash and cash equivalents, beginning of year	107,633	2,799	7,002
Cash and cash equivalents, end of year	$ 48,319	$ 107,633	$ 2,799
Supplemental cash flow information:			
Cash paid for interest	$ 161	$ 143	$ 140
Cash paid for income taxes	—	—	—
Supplemental schedule of non-cash investing and financing activities:			
Acquisition of property and equipment under capital leases	—	436	218
Common stock issued in exchange for notes receivable from stockholders	—	891	327
Repurchase of common stock for cancellation of notes receivable	—	20	239
Dividend related to beneficial conversion feature of preferred stock	—	27,228	—
Issuance of warrants in connection with Series E financing	—	214	—
Additions to (reductions in) deferred stock compensation	(1,388)	17,985	3,723
Transfer of fixed assets to inventory	301	193	—
Conversion of preferred stock and warrants to common stock and warrants	—	53,981	—

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

CIPHERGEN BIOSYSTEMS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Summary of Significant Accounting Policies

The Company

Ciphergen Biosystems, Inc. (the "Company" or "Ciphergen"), which was reincorporated in the State of Delaware on June 21, 2000, develops, manufactures and sells ProteinChip Systems, which consist of consumable ProteinChip Arrays, ProteinChip Readers and ProteinChip Software for life science researchers. These products are sold primarily to biologists at pharmaceutical and biotechnology companies, and academic and government research laboratories. The Company also provides research services and, with its acquisition of the BioSepra chromatography business (Note 4), has entered the protein purification market.

Basis of Presentation

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

The Company reports its minority ownership interest in Ciphergen Biosystems, K.K., a joint venture in Japan, using the equity method of accounting. Intercompany profits have been eliminated in the consolidated financial statements.

Use of Estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Certain Risks and Uncertainties

The Company's products and services are currently concentrated in a single segment of the life science research field which is characterized by rapid technological advances and changes in customer requirements. The success of the Company depends on management's ability to anticipate or to respond quickly and adequately to technological developments in its industry, changes in customer requirements or industry standards. Any significant delays in the development or introduction of products or services could have a material adverse effect on the Company's business and operating results.

The Company licenses certain technologies that are used in products that represent substantially all of its revenues. An inability to retain such technology licenses could result in a material adverse effect to the Company. Additionally, some of the components used in its products are from single-source suppliers. If the Company is unable to obtain such components, its financial condition and operating results could be significantly impacted.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

Investments

Management determines the appropriate classification of the Company's investments in marketable debt and equity securities at the time of purchase, and re-evaluates this designation at each balance sheet date. The Company classifies all securities as "available-for-sale" and carries them at fair value with unrealized gains or losses related to these securities included as a component of stockholders' equity in the consolidated balance sheet. The Company's investment objectives include the safety and preservation of invested funds and liquidity of investments that is sufficient to meet cash flow requirements. Cash, cash equivalents, and investments in debt and equity securities are placed with high credit quality financial institutions and commercial companies and government agencies in order to limit the amount of credit exposure. Realized gains and losses are determined using the specific identification method.

Fair Value of Financial Instruments

The carrying amounts of certain of the Company's financial instruments including cash and cash equivalents and accounts payable approximate fair value due to their short maturities. Based on borrowing rates currently available to the Company for loans with similar terms, the carrying value of its debt obligations approximates fair value.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents and accounts receivable. Most of the Company's cash and cash equivalents as of December 31, 2001 were deposited with financial institutions in the United States and exceeded federally insured amounts. The Company also maintains minimal cash deposits with banks in Western Europe and Canada. The Company has not experienced any losses on its deposits of cash and cash equivalents. The Company's accounts receivable are derived from sales made to customers located in North America, Europe and Asia. The Company performs ongoing credit evaluations of its customers' financial condition and generally does not require collateral. The Company maintains an allowance for doubtful accounts based upon the expected collectibility of accounts receivable.

Ciphergen Biosystems, K.K. accounted for 5% and 11% of revenue in 2001 and 2000, respectively. No other customer accounted for more than 10% of revenue in 2001 or 2000.

Inventories

Inventories are stated at the lower of standard cost, which approximates average cost, or market value.

Property and Equipment

Property and equipment are stated at cost and depreciated on a straight-line basis over the estimated useful lives of the related assets. Computer equipment is depreciated over three to four years, laboratory equipment over three to eight years, office furniture and equipment over three to ten years, and demonstration equipment over two years. Leasehold improvements are depreciated over the lease term. Gains and losses upon asset disposal are reflected in operations in the year of disposition.

Goodwill and Other Intangible Assets

Goodwill represents the excess of the purchase price over the estimated fair value of the tangible and intangible net assets acquired in the Company's acquisitions of IllumeSys Pacific, Inc. in 1997, Ciphergen Technologies, Inc. in 1998, and BioSepra S.A. in 2001. Prior to the adoption of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" (see "Recent

Accounting Pronouncements" below), goodwill was being amortized on a straight-line basis over five years.

Other intangible assets consist of patents and developed product technology arising from the acquisition of the BioSepra business. These intangibles are being amortized on a straight-line basis over their estimated useful lives of seven years.

Goodwill and other intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Long-lived Assets

Long-lived assets are reviewed for impairment when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the asset's carrying amount to future net undiscounted cash flows the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the projected discounted future net cash flows arising from the assets.

Revenue Recognition

Revenue from product sales is recognized upon product shipment, provided no significant obligations remain and collections of the receivables are deemed probable. Revenue from research contracts is recognized as the work is performed, based on the achievement of milestones described in the contracts. Revenue from up-front payments is deferred and recognized ratably over the expected life of the contract. Payments for maintenance contracts are usually prepaid, and the revenue is deferred and recognized ratably over the term of the service contract, which is generally 12 months. For multiple element arrangements, revenue is allocated to each component of the contract using the fair value of the elements. The revenue attributable to any undelivered elements is deferred and is subsequently recognized as the Company fulfills its obligations to deliver those goods or services.

Research and Development Costs

Research and development expenditures are charged to operations as incurred. Software is an integral component of the Company's ProteinChip Systems. Software development costs incurred in the research and development of new products are expensed as incurred until technological feasibility is established. To date, products and upgrades have generally reached technological feasibility and have been released for sale at substantially the same time.

Stock-based Compensation

The Company accounts for its stock-based employee compensation arrangements in accordance with provisions of Accounting Principles Board Opinion No. 25 ("APB 25"), "Accounting for Stock Issued to Employees" and complies with the disclosure provisions of Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation." Under APB 25, unearned compensation expense is based on the difference, if any, on the date of the grant, between the fair value of the Company's stock and the exercise price. Unearned compensation is amortized and expensed in accordance with Financial Accounting Standards Board Interpretation No. 28. The Company accounts for stock issued to non-employees in accordance with the provisions of SFAS No. 123 and Emerging Issue Task Force No. 96-18, "Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services."

Income Taxes

The Company accounts for income taxes using the liability method. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and the tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. A valuation allowance is established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Foreign Currency Translation

The functional currencies of the Company's foreign subsidiaries are the local currencies. Accordingly, all monetary assets and liabilities of the foreign operations are translated into U.S. dollars at current period end exchange rates, and non-monetary assets and related elements of expense are translated using historical rates of exchange. Revenues and other expense elements are translated to U.S. dollars using average exchange rates in effect during the period. The gains and losses from foreign currency translation of these subsidiaries' financial statements are recorded directly into a separate component of stockholders' equity under the caption "Accumulated other comprehensive income (loss)." Foreign currency transaction gains and losses have not been significant.

Net Loss per Share

Basic net loss per share attributable to common stockholders is computed by dividing net loss attributable to common stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders for the period by the weighted average number of common and potential common shares outstanding during the period, if their effect is dilutive. Potential common shares include common stock subject to repurchase and incremental shares of common stock issuable upon the exercise of stock options and warrants and upon the conversion of convertible preferred stock.

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders for the periods indicated (in thousands, except per share amounts):

	Years Ended December 31,		
	2001	2000	1999
Numerator:			
Net loss attributable to common stockholders	$ (25,812)	$ (47,532)	$ (8,046)
Denominator:			
Weighted average common shares outstanding	26,894	12,110	6,750
Weighted average unvested common shares subject to repurchase	(382)	(475)	(353)
Denominator for basic and diluted calculations	26,512	11,635	6,397
Basic and diluted net loss per share attributable to common stockholders	$ (0.97)	$ (4.09)	$ (1.26)

The following table sets forth the potential shares of common stock that are not included in the diluted net loss per share attributable to common stockholders calculation above because to do so would be anti-dilutive for the periods indicated (in thousands):

	Years Ended December 31,		
	2001	2000	1999
Effect of dilutive securities:			
Convertible preferred stock outstanding	—	—	8,231

Common stock subject to repurchase	293	505	392
Stock options outstanding	2,300	1,492	561
Common stock warrants outstanding	9	9	242
	2,602	2,006	9,426

Recent Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board (FASB) issued Statements No. 141 and 142 (FAS 141 and FAS 142), "Business Combinations" and "Goodwill and Other Intangible Assets", respectively. FAS 141 eliminates pooling-of-interests accounting prospectively. It also provides guidance on purchase accounting related to the recognition of intangible assets and accounting for negative goodwill. FAS 142 changes the accounting for goodwill from an amortization method to an impairment-only approach. Under FAS 142, goodwill will be tested annually and whenever events or circumstances occur indicating that goodwill might be impaired. FAS 141 and FAS 142 were effective for all business combinations completed after June 30, 2001. Upon adoption of FAS 142, amortization of goodwill recorded for business combinations consummated prior to July 1, 2001 ceased, and intangible assets acquired prior to July 1, 2001 that do not meet the criteria for recognition under FAS 141 were reclassified to goodwill. Companies are required to adopt FAS 142 for fiscal years beginning after December 15, 2001, but early adoption is permitted in certain circumstances. The Company will adopt FAS 142 on the first day of fiscal 2002 (January 1, 2002). In connection with the adoption of FAS 142, the Company is required to perform a transitional goodwill impairment assessment. The Company believes that the implementation of these standards will not have a material impact on its results of operations or financial position.

In August 2001, the FASB issued Statement No. 143 (FAS 143), "Accounting for Asset Retirement Obligations," which is effective for fiscal years beginning after June 15, 2002. FAS 143 addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The Statement applies to all entities. It applies to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development, and/or the normal operation of a long-lived asset except for certain obligations of lessees. Ciphergen does not expect the adoption of FAS 143 will have a significant impact on its results of operations or financial position.

In October 2001, the FASB issued Statement No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." FAS 144 addresses financial accounting and reporting for the impairment of long-lived assets and for long-lived assets to be disposed of. FAS 144 was effective for fiscal years beginning after December 15, 2001. Ciphergen will adopt the provisions of FAS 144 on January 1, 2002 and does not expect that such adoption will have a material effect on its financial statements.

2. Balance Sheet Components (in thousands)

	December 31,	
	2001	2000
Inventory, net:		
Raw materials	$ 1,354	$ 605
Work in progress	818	393
Finished goods	1,717	324
	$ 3,889	$ 1,322
Property and equipment:		
Land	$ 348	$ —
Buildings and improvements	2,540	—
Machinery and equipment	8,472	3,175
Leasehold improvements	2,559	2,136
Computers and equipment	1,427	785
Furniture and fixtures	810	524
	16,156	6,620
Less: accumulated depreciation and amortization	(5,928)	(1,933)

	$ 10,228	$ 4,687

Property and equipment includes $3,718 and $830 of equipment under capital leases at December 31, 2001 and 2000, respectively. Accumulated amortization of assets under capital leases totaled $837 and $318 at December 31, 2001 and 2000, respectively.

Goodwill and other intangible assets, net:		
Goodwill	$ 2,501	$ 1,322
Patents	400	—
Purchased technology	5,400	—
	8,301	1,322
Less: accumulated amortization	(1,592)	(943)
	$ 6,709	$ 379

Accrued liabilities:		
Payroll and related expenses	$ 2,639	$ 1,244
Security deposit	166	332
Legal and accounting fees	563	331
Rent and related liabilities	167	484
Tax-related liabilities	470	140
Other accrued liabilities	631	346
	$ 4,636	$ 2,877

3. Marketable Securities

Marketable securities, which are classified as available-for-sale, are summarized as follows as of December 31, 2001 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Aggregate Fair Value
U.S. Treasury securities and debt securities of U.S. government agencies	$ 5,595	$ 17	$ 5,612
Corporate debt securities	23,006	187	23,193
	$ 28,601	$ 204	$ 28,805

The Company had no marketable securities at December 31, 2000.

At December 31, 2001, marketable debt securities with an aggregate fair value of $21.3 million had scheduled maturities of less than one year. All remaining marketable debt securities had scheduled maturities of between one and two years. No marketable debt securities had maturities of less than three months at the date of purchase, and none were classified as cash equivalents.

During 2001 and 2000, no marketable securities were sold prior to maturity.

4. Acquisition

On July 31, 2001, the Company acquired BioSepra S.A. ("BioSepra") and certain other assets related to BioSepra's chromatography business from Invitrogen Corporation. Located near Paris, France, BioSepra develops, manufactures and sells chromatography sorbents for large scale purification of proteins. Ciphergen believes that BioSepra's protein chromatography products, combined with Ciphergen's ProteinChip Systems, will create a novel approach to protein purification and address a significant bottleneck in the field of proteomics. The

Company paid approximately $12.0 million in cash, net of cash acquired, while incurring direct acquisition costs of approximately $257,000. The acquisition was accounted for using the purchase method of accounting. Accordingly, the results of operations of BioSepra and the estimated fair value of assets acquired and liabilities assumed were included in the Company's consolidated financial statements as of August 1, 2001 through December 31, 2001.

The total purchase price was allocated to the estimated fair value of assets acquired and liabilities assumed based on independent appraisals and management estimates as follows (in thousands):

Tangible net assets acquired:		
Accounts receivable, net, and other current assets	$	2,028
Inventories, net		2,067
Property and equipment, net		3,859
Accounts payable and accrued liabilities		(1,427)
Capital lease obligations		(2,249)
		4,278
Acquired in-process technology		1,000
Completed technology		5,400
Patents		400
Excess of purchase price over net assets acquired		1,179
Total purchase price	$	12,257

In connection with the purchase of BioSepra, the Company recorded a $1.0 million charge to acquired in-process technology. The amount was determined by identifying research projects for which

technological feasibility had not been established and no alternative future uses existed. The value of the projects identified to be in progress was determined by estimating the future cash flows of the product, then discounting the net cash flows back to their present value at a discount rate consistent with the inherent risk of the particular project. The net cash flows from the identified in-process projects are expected to commence at various times from 2002 to 2004 and include estimates of research and development costs needed to bring the project from its current state of development to a point of commercial feasibility. The cash flows are based on expected future revenues, cost of revenues, selling, general and administrative costs, research and development costs needed to maintain the project throughout its life cycle, and applicable income taxes for the projects. The discount rates used in the present value calculations were derived from the weighted-average cost of capital of BioSepra and adjusted upward to reflect additional risks inherent in the development life cycle of the particular project. Such discount rates ranged between 19% and 25% for all projects. Development of the technologies remains a substantial risk to the Company due to factors including the remaining effort to achieve technological feasibility, rapidly changing customer markets and competitive threats from other companies. Actual expenses incurred to date have not been materially different from those used in the calculations described above.

The amounts allocated to completed technology and patents are being amortized over their estimated useful lives of seven years using the straight-line method.

The amount of the purchase price in excess of the net assets acquired was recorded as goodwill and will be periodically evaluated for impairment in accordance with FAS 142.

The following pro forma summary is provided for illustrative purposes only and is not necessarily indicative of the consolidated results of operations for future periods or that actually would have been realized had the Company and Biosepra been a consolidated entity during the periods presented. The summary combines the results of operations as if Biosepra had been acquired as of the beginning of the periods presented. The summary includes the impact of certain adjustments such as amortization of intangibles. Additionally, the in-process technology charge of $1.0 million discussed above has been excluded from the periods presented as it arose from the acquisition of Biosepra.

	Twelve Months Ended December 31,	
	2001	2000
	(Unaudited) (in thousands, except per share amounts)	

Revenue	$	22,157	$	13,968
Net loss attributable to common stockholders	$	(24,618)	$	(47,595)
Basic and diluted net loss per share	$	(0.93)	$	(4.09)

5. Investment in Joint Venture

In January 1999, the Company entered into a joint venture agreement with a Japanese company to form a limited liability corporation, Ciphergen Biosystems, K.K., to be incorporated under the commercial code of Japan. The Company invested $315,000 in exchange for 30% ownership of the joint venture. The Company has no future funding commitments to Ciphergen Biosystems, K.K. Commencing after the fiscal year ending December 31, 2001, the Company has the option to purchase, based on a predetermined formula price, an aggregate of 40% of Ciphergen Biosystems, K.K. from its joint venture partner each year within 30 days of the receipt of the joint venture's audited financial statements. Such buyout option terminates automatically 30 days after the receipt of the joint venture's audited financial statements for the year ending December 31, 2004. The Japanese partner is obligated to provide or arrange for working capital for the joint venture until the Company purchases the additional 40% ownership, at which time the joint venture must repay such financing and arrange its own working capital financing. The Company's proportionate share of the joint venture's losses were

recorded in the statement of operations as non-operating losses, until such time as the original investment was written down to zero. Approximately 5% and 11% of the Company's revenues in 2001 and 2000, respectively, were from sales to the joint venture.

In connection with the joint venture agreement, the Company entered into a distribution and marketing agreement with the joint venture whereby the joint venture would distribute the Company's products in the life science research markets in Japan. In exchange for providing trading, technical support, equipment demonstrations and seminars, the Company received a non-refundable payment of approximately $315,000. Such payment is included in deferred revenue and is being recognized as other income over a 10-year period, the term of the joint venture agreement.

6. Long-term Debt (in thousands)

	December 31,	
	2001	2000
Notes payable to a financial institution, bearing interest between 14.7% and 16.8% collateralized by equipment and inventory, with principal and interest payable monthly through August 2002	$ 117	$ 295
Notes payable to a financial institution, bearing interest at 6%, collateralized by certain equipment, with principal and interest payable monthly through November 2001	—	4
	117	299
Less: current portion	(117)	(182)
	$ —	$ 117

The notes payable to financial institutions are subject to certain covenants, including restrictions on the payment of dividends and the sale of assets. At December 31, 2001, the Company was not in violation of any covenants.

7. Commitments and Contingencies

Capital Leases

The Company leases certain machinery and equipment in the U.S. under capital lease agreements, with an independent finance company, which expire through May 1, 2003. The Company also leases its facility in France, under a capital lease with an independent finance company, which expires on February 3, 2011. The interest rate on one capital lease is variable based on the Euribor rate.

As of December 31, 2001, future minimum lease payments under capital lease agreements were as follows (in thousands):

2002	$ 468
2003	314
2004	232
2005	240
2006 and after	1,411
Total minimum lease payments	2,665
Less: amount representing interest	(172)
Present value of minimum lease payments	2,493
Less: current portion	(410)
Non-current portion	$ 2,083

Operating Leases

The Company leases various equipment and facilities in Fremont, California; Malvern, Pennsylvania; Copenhagen, Denmark; and Beijing, China. The facility leases expire in July 2008, September 2005, March 2003 and November 2002, respectively. Under the terms of the facility leases in Fremont and Malvern, the Company is responsible for common area maintenance. Total rent expense under all leases, net of sublease income, was $1,791,000, $896,000 and $397,000 for the years ended December 31, 2001, 2000 and 1999, respectively.

As of December 31, 2001, future minimum payments under non-cancelable operating leases, exclusive of sublease income, were as follows (in thousands):

2002	$ 2,990
2003	3,052
2004	3,114
2005	3,193
2006 and after	8,435
	$ 20,784

Contingencies

The Company is currently party to three legal proceedings.

(1) *Ciphergen Biosystems, Inc., Ciphergen Technologies, Inc. and IllumeSys Pacific, Inc. v. Molecular Analytical Systems, Inc., LumiCyte, Inc. and T. William Hutchens.* On July 12, 2000, the Company filed a lawsuit in the Superior Court of the State of California against Molecular Analytical Systems, Inc. ("MAS") and LumiCyte, Inc. ("LumiCyte") requesting a declaration of the Company's rights, including that Ciphergen has the right to sell information and service products, and requesting a preliminary injunction preventing MAS from terminating the sublicense agreements. In October 2000, the Company made additional claims against MAS and LumiCyte, and added T. William Hutchens as an individual defendant. Hutchens is the Chief Executive Officer of both MAS and LumiCyte, as well as a former officer and director of Ciphergen. He is presently the beneficial owner of less than 10% of the Company's outstanding common stock. Ciphergen's action seeks, among other things, damages and injunctive relief against defendants for unfair competition, misappropriation of trade secrets, and breach of contract, as well as an injunction precluding defendants from operating in Ciphergen's licensed markets. In October 2000, MAS and LumiCyte filed a cross-complaint against Ciphergen,

Ciphergen Technologies, Inc. and IllumeSys Pacific, Inc., the three plaintiffs which filed the underlying lawsuit against MAS and LumiCyte described above. The cross-complaint alleges claims for breach of contract, intentional interference with prospective economic advantage, unfair competition, misappropriation of trade secrets and declaratory relief regarding the rights of the parties under the two technology transfer sublicense agreements between MAS and Ciphergen. The cross-complaint also seeks to terminate the sublicense agreements, to obtain injunctive relief, to prevent use of alleged trade secrets of MAS, and damages. Ciphergen and MAS have entered into an agreement that provides that MAS' license termination notices are suspended pending the conclusion of this lawsuit. In May 2001, the Company amended its complaint and brought additional claims against MAS, LumiCyte and Hutchens.

(2) *Molecular Analytical Systems, Inc. v. Ciphergen Biosystems.* The proceeding was filed December 9, 1999 in the United States Trademark and Appeal Board. The Company applied for registration of the term "SELDI" as a trademark. MAS has opposed registration of the trademark and is seeking to have the trademark registered in its name instead. The Trademark and Appeal Board has suspended the proceeding until resolution of the lawsuit described above.

(3) On July 27, 2001, the Company served a demand for arbitration on T. William Hutchens under the July 28, 1998 Stock Exchange Agreement among the Company, Ciphergen Technologies, Inc., Hutchens and others. The demand for arbitration asserts that Hutchens, who was a selling shareholder of Ciphergen Technologies, made representations and warranties to Ciphergen about the conduct of Ciphergen Technologies' business and its ownership of assets that are contrary to certain claims asserted in the cross-complaint filed by MAS and LumiCyte and, therefore, that he must pay Ciphergen's attorneys fees and indemnify Ciphergen for any losses it might incur resulting from filing of the cross-claims, regardless of their merit. The parties have agreed to stay the arbitration until the earlier of August 1, 2002, or the resolution of any of several of plaintiffs' and cross-complainants' causes of action.

Although the ultimate outcome of these matters is not presently determinable, management believes that the resolution of all such pending matters will not have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows. However, should the outcome of these matters be unfavorable to the Company, the impact could be material to the Company's consolidated financial position, results of operations or cash flows.

8. Stockholders' Equity

Stock Split

On September 26, 2000 the board of directors and stockholders approved a 0.43-for-1 reverse stock split of the common and preferred stock. All share and per share amounts for all periods presented in the accompanying consolidated financial statements have been adjusted retroactively.

Initial Public Offering

The Company had its initial public offering ("IPO") of 5,500,000 shares of common stock on September 28, 2000 at a price of $16 per share. On October 3, 2000 the underwriters exercised their option to purchase an additional 825,000 shares of common stock. The IPO generated aggregate gross proceeds of approximately $101.2 million for the Company. The net proceeds to the Company were approximately $92.4 million, after deducting underwriting discounts and commissions of approximately $7.1 million and expenses of the offering of approximately $1.7 million. Concurrent with the IPO, all of the Company's preferred stock and preferred stock warrants automatically converted to common stock and common stock warrants, respectively.

Preferred Stock

In February 1995, the Company entered into a joint development agreement with Stanford Research Systems which was amended in June 2000. It provided for the issuance of a total of 949,113 shares of Series B preferred stock. Through December 31, 1999, a total of 712,613 shares of preferred stock were issued under the agreement. During 2000, two additional milestones were attained and 25,800 shares of preferred stock valued at $379,000 and 12,900 shares of common stock valued at $142,000 were issued, respectively. In 2001, a total of 51,600 common shares valued at $268,000 were issued upon the attainment of four additional milestones. The remaining 146,200 shares will be issued as common stock upon the achievement of additional milestones.

In March 2000, the Company issued 4,468,070 shares of Series E preferred stock ("Series E") at $6.395 per share resulting in net cash proceeds of $26.9 million. The difference between the conversion price and the fair market value per share of the common stock on the transaction date resulted in a beneficial conversion feature of $26.7 million which has been reflected as a preferred stock dividend in the consolidated financial statements. In connection with the Series E financing, the Company issued the underwriter warrants to purchase 63,053 shares of Series E preferred stock for $6.395 per share. The warrants had a fair value of $8.32 per share based on a calculation using the Black-Scholes option-pricing model at the time of issuance. The aggregate amount allocated to the warrants based on the relative value of the warrants to the Series E preferred stock was $213,000. In March 2000, the underwriters exercised the 63,053 warrants. The resulting difference between the exercise price of the warrants and fair market value of the common stock underlying the Series E preferred stock resulted in an additional beneficial conversion feature of $542,000 on the date these warrants were exercised. This has been reflected as a preferred stock dividend in the consolidated financial statements.

At December 31, 2001 and 2000, 5,000,000 shares of preferred stock were authorized, but no shares were issued or outstanding.

9. Stock Options, Warrants and Employee Stock Purchase Plan

1993 Stock Option Plan

The Company has no shares of common stock reserved for sale to employees, directors or consultants under its 1993 Stock Option Plan (the "Plan"). Under the Plan, options were granted at prices not lower than 85% and 100% of the fair market value of the common stock for nonstatutory and statutory stock options, respectively. Options are exercisable when granted and such unvested shares are subject to repurchase upon termination of employment. Should the employment of the holders of common stock subject to repurchase terminate prior to full vesting of the outstanding shares, the Company may repurchase all unvested shares at a price per share equal to the original exercise price. Options generally vest monthly over a period of five years. At December 31, 2001, a total of approximately 293,000 shares of common stock were subject to repurchase by the Company at a weighted average repurchase price of $2.18 per share. Unexercised options generally expire ten years from the date of grant (five years for incentive stock options granted to holders of more than 10% of the Company's common stock). During 2001, no options were granted under this Plan. Options for 137,621 shares were cancelled during 2001 and the shares reserved under the Plan were reduced by the same amount.

2000 Stock Plan

In April 2000, the stockholders approved the 2000 Stock Plan (the "New Plan"). The Company currently has 2,550,000 shares of common stock reserved for sale to employees, directors and consultants under this new stock option plan. Under the New Plan, options may be granted at prices not lower than 85% and 100% of the fair market value of the common stock for nonstatutory and statutory stock options, respectively. Options generally vest monthly over a period of five years. During

2000 there was no activity under this New Plan. During 2001, options for 1,105,100 shares were granted and options for 41,517 shares were cancelled.

Activity under the two Plans was as follows (in thousands, except per share data):

		Options Outstanding			
	Shares Available for Grant	Number of Shares	Price Per Share	Aggregate Price	Weighted Average Exercise Price
Balances, December 31, 1998	168	439	$ 0.12-1.16	$ 273	$ 0.62
Shares reserved for the Plan	516				
Options granted	(505)	505	1.16	586	1.16
Options canceled/shares repurchased	403	(44)	0.23-1.16	(30)	0.69
Options exercised	—	(339)	0.23-1.16	(366)	1.08
Balances, December 31, 1999	582	561	0.12-1.16	463	0.83
Shares reserved for the Plans	2,064				
Options granted	(1,624)	1,624	3.49	5,666	3.49
Options canceled/shares repurchased	118	(99)	0.23-3.49	(220)	2.21
Options exercised	—	(594)	0.23-3.49	(1,345)	2.27
Balances, December 31, 2000	1,140	1,492	0.12-3.49	4,564	3.06
Shares reserved for the Plan	325				
Reduction in shares reserved	(213)				
Options granted	(1,105)	1,105	2.99-8.50	7,022	6.35
Options canceled/repurchased	189	(179)	1.16-8.50	(734)	4.10
Options exercised	—	(118)	0.12-3.49	(182)	1.55
Balances, December 31, 2001	336	2,300	$ 0.23-$8.50	$ 10,670	$ 4.61

The options outstanding and currently exercisable by weighted average exercise price at December 31, 2001 were as follows:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number (in thousands)	Weighted Average Remaining Contractual Life (Years)	Price	Number (in thousands)	Price

$0.23-$1.16	144	6.6	$ 0.89	144	$ 0.89
$2.99-$3.49	1,169	9.2	$ 3.46	1,098	$ 3.49
$4.86-$5.60	241	9.8	$ 5.22	21	$ 4.93
$6.08-$6.74	516	9.4	$ 6.35	61	$ 6.39
$8.50	230	9.1	$ 8.50	44	$ 8.50
	2,300			1,368	

Fair Value Disclosures

The Company applies the measurement principles of APB 25 in accounting for its stock option plans. Had compensation expense for options granted been determined based on fair value at the grant date as prescribed by SFAS No. 123, the Company's net loss per share attributable to common stockholders would have increased to the pro forma amounts indicated below (in thousands, except per share data):

	Years Ended December 31,		
	2001	2000	1999
Net loss attributable to common stockholders:			
As reported	$ (25,812)	$ (47,532)	$ (8,046)
Pro forma	$ (27,577)	$ (48,921)	$ (8,481)
Basic and diluted net loss attributable to common stockholder per share:			
As reported	$ (0.97)	$ (4.09)	$ (1.26)
Pro forma	$ (1.04)	$ (4.20)	$ (1.33)

The value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model in 2001 and 2000 and the minimum value method in 1999 with the following weighted assumptions:

	Years Ended December 31,		
	2001	2000	1999
Risk-free interest rate	4.6%	6.2%	5.6%
Expected average life	5 years	5 years	5 years
Expected dividends	—	—	—
Volatility	75%	75%	n/a

The expected average life is based on the assumption that stock options on average are exercised 5 years after they are granted. The risk-free interest rate was calculated in accordance with the grant date and expected average life. During the years ended December 31, 2000 and 1999, the exercise prices of all options granted were less than the market value of the underlying stock on the respective grant dates. During the year ended December 31, 2001, the exercise prices of all options granted were equal to fair market value on the dates of grant. The weighted-average fair value of options granted during the years ended December 31, 2001, 2000 and 1999 was $4.10, $12.32 and $0.26 per share, respectively.

Stock-Based Compensation

During the period from April 1997 through December 31, 2001, the Company recorded $26.0 million of stock-based compensation in accordance with APB 25, SFAS 123 and Emerging Issues Task Force 96-18, related to stock options granted to consultants and employees. For options granted to consultants, the Company determined the fair value of the options using the Black-Scholes option pricing model with the following assumptions: expected lives of five years; weighted average risk-free rate calculated using rates between 4.5% and 6.2%; expected dividend yield of zero percent; volatility of 75% and deemed values of common stock between $0.70 and $14.67 per share. Stock compensation expense is being recognized in accordance with FIN 28, an accelerated amortization method, over the vesting periods of the related options, generally five years.

The allocation of stock-based compensation expense by functional area was as follows (in thousands):

	Years Ended December 31,		
	2001	2000	1999
Cost of revenue	$ 232	$ 269	$ 39
Research and development	583	1,454	206
Sales and marketing	919	1,395	476
General and administrative	2,913	6,192	623
Total stock-based compensation	$ 4,647	$ 9,310	$ 1,344

Warrants

During 2000, outstanding warrants to purchase 290,623 shares of preferred stock were exercised for total proceeds of $1.0 million. Warrants exercised after the Company's initial public offering were exercised for common stock. No warrants were issued or exercised in 2001. At December 31, 2001, the Company had 9,010 common stock warrants outstanding at a weighted average exercise price of $3.54 per share.

Employee Stock Purchase Plan

In April 2000, the stockholders approved the 2000 Employee Stock Purchase Plan, under which eligible employees may purchase common stock of the Company through payroll deductions. Purchases are made semi-annually at a price equal to the lower of 85% of the closing price on the applicable offering commencement date or 85% of the closing price at the end of the purchase period. The Company currently has 250,999 shares of common stock reserved for issuance to employees under this Plan. There was no activity under this plan in 2000. During 2001, purchases of 114,001 shares were made under this Plan.

10. Income Taxes

The Company accounts for income taxes using the liability method. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using the current tax laws and rates. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The provision for income taxes was due to current foreign income taxes, which were $143,000 for the year ended December 31, 2001.

Based on the available objective evidence, management believes it is more likely than not that the net deferred tax assets will not be fully realizable. Accordingly, the Company has provided a full valuation allowance against its net deferred tax assets at December 31, 2001.

Deferred tax assets consisted of the following (in thousands):

	December 31,	
	2001	2000
Net deferred tax assets:		
Depreciation and amortization	$ 1,135	$ 485
Other	1,163	751
Research and development and other credits	2,277	1,293
Net operating losses	17,637	10,783
Deferred tax assets	22,212	13,312
Less: valuation allowance	(22,212)	(13,312)
	$ —	$ —

Reconciliation of the statutory federal income tax to the Company's effective tax:

	2001	2000	1999
Tax at federal statutory rate	(34)%	(34)%	(34)%
State, net of federal benefit	(6)	(2)	(2)
Research and development credits	(2)	(1)	1
Change in valuation allowance	35	20	30
Stock-based compensation	7	17	5
Foreign rate difference and other	1	—	—
Provision for income taxes	1%	0%	0%

As of December 31, 2001, the Company had net operating loss carryforwards of approximately $48.1 million for federal and $23.5 million for state tax purposes. If not utilized, these carryforwards will begin to expire beginning in 2009 for federal purposes and 2002 for state purposes.

The Company had research credit carryforwards of approximately $1.4 million and $1.2 million for federal and state income tax purposes, respectively. If not utilized, the federal carryforward will expire in various amounts beginning in 2009. The California credit can be carried forward indefinitely.

The Internal Revenue Code limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event the Company has had a change in ownership, utilization of the carryforwards could be restricted.

11. Employee Benefit Plans

The Company maintains the Ciphergen Biosystems, Inc. 401(k) Savings Plan for its U.S. employees. The Plan allows eligible employees to defer up to 20%, subject to the Internal Revenue Service annual contribution limit, of their pretax compensation in certain investments at the discretion of the employee. Under the Plan, the Company is not required to make Plan contributions. The Company had not made any contributions to the Plan as of December 31, 2001.

12. Related Parties

At December 31, 2001, the Company had two notes receivable totaling $230,000 from an officer, with an imputed interest rate of 6.0%. The notes are repayable on or before December 30, 2003. Additionally, the Company has various notes receivable from stockholders in the aggregate amount of approximately $1.3 million related to the early exercise of stock options. These full recourse notes have five year terms, bear interest between 5.59% and 6.85% and are collateralized by the underlying stock and other personal assets. All notes receivable related to the early exercise of options become due immediately upon termination of employment. At December 31, 2001, accrued interest on these notes amounted to $154,000.

During the years ended December 31, 2001 and 2000, the Company recorded revenue in the amount of $1.2 million and $1.1 million, respectively, on sales to related parties. These sales were transactions related to the sale of equipment and consumables to customers who hold minority investments in the Company. Additionally, each year the Company recorded approximately $31,000 of other income for services performed under the Ciphergen Biosystems, K.K. distribution and marketing agreement. The Company also purchased $372,000 and $352,000 of inventory in 2001 and 2000, respectively, from one of its related parties, and in 2001 and 2000 made non-cash payments in the form of Ciphergen stock to this related party under the terms of a joint development agreement. (See Note 8.)

13. Segment Information

The Company operates in one business segment. The Company sells its products and services directly to customers in North America and Europe, and through distributors in Asia.

Revenue for geographic regions reported below are based upon the customers' locations. Long-lived assets, predominately machinery and equipment, are reported based on the location of the assets. Following is a summary of the geographic information related to revenues, long-lived assets and information related to significant customers for the years ended December 31, 2001, 2000 and 1999:

	2001	2000	1999
	(in thousands)		

Revenue			
North America	$ 10,435	$ 5,540	$ 3,142
Europe	6,124	2,327	1,320
Asia	2,490	1,068	548
Total:	$ 19,049	$ 8,935	$ 5,010
Long-lived assets			
North America	$ 5,558	$ 4,324	$ 777
Europe	4,670	363	90
Total:	$ 10,228	$ 4,687	$ 867

14. Quarterly Consolidated Financial Data (Unaudited)

The following table presents certain unaudited consolidated quarterly financial information for the eight quarters ended December 31, 2001. In our opinion, this information has been prepared on the same basis as the audited consolidated financial statements and includes all adjustments (consisting

only of normal recurring adjustments) necessary to present fairly the unaudited quarterly results of operations set forth herein.

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Fiscal Year
	(in thousands, except per share data)				
Net sales					
2001	$ 2,683	$ 3,663	$ 5,404	$ 7,299	$ 19,049
2000	1,495	2,146	2,338	2,956	8,935
Gross profit					
2001	1,683	2,636	3,454	4,662	12,435
2000	922	1,208	1,307	2,018	5,455
Net loss					
2001	(5,984)	(5,814)	(6,916)(1)	(7,098)	(25,812(1))
2000	(2,658)	(6,552)	(6,171)	(4,923)	(20,304)
Net loss attributable to common stockholders					
2001	(5,984)	(5,814)	(6,916)(1)	(7,098)	(25,812(1))
2000	(29,885)(2)	(6,552)	(6,171)	(4,924)	(47,532(2))
Basic and diluted net loss per share attributable to common stockholders					
2001	(0.23)	(0.22)	(0.26)	(0.27)	(0.97)
2000	(4.59)	(0.98)	(0.89)	(0.19)	(4.09)

(1) Includes a $1.0 million charge related to the write-off of acquired in-process technology.

(2) Includes a $27.2 million dividend related to the beneficial conversion feature of preferred stock.

Quarterly and annual earnings per share are calculated independently, based on the weighted average number of shares outstanding during the periods.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

PART III

ITEM 10. DIRECTORS AND OFFICERS OF THE REGISTRANT

The information regarding our directors and officers is incorporated by reference from "Election of Directors" in our Proxy Statement for our 2002 Annual Meeting of Stockholders.

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") requires the Company's Executive Officers and Directors and persons who own more than ten percent (10%) of a registered class of the Company's equity securities to file reports of ownership and changes in ownership with the Securities and Exchange Commission (the "Commission") and the National Association of Securities Dealers, Inc. Executive Officers, Directors and greater than ten percent (10%) stockholders are required by Commission regulation to furnish the Company with copies of all Section 16(a) forms they file. The Company believes that all Executive Officers and Directors of the Company complied with all applicable filing requirements during the fiscal year ended December 31, 2001.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference from our definitive Proxy Statement referred to in Item 10 above under the heading "Executive Compensation and Other Matters."

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this Item is incorporated by reference from our definitive Proxy Statement referred to in Item 10 above under the heading "Security Ownership of Certain Beneficial Owners and Management."

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this Item is incorporated by reference from our definitive Proxy Statement referred to in Item 10 above under the heading "Certain Relationships and Related Transactions."

PART IV

ITEM 14. EXHIBITS, CONSOLIDATED FINANCIAL STATEMENTS, SCHEDULES AND REPORTS ON FORM 8-K

(a) The following documents are filed as part of this Form 10-K:

(1) Index to Financial Statements:

(2) Financial Statement Schedules:

The following financial statement schedule of Ciphergen Biosystems, Inc. for the years ended December 31, 2001, 2000 and 1999 is filed as part of this Annual Report and should be read in conjunction with the Consolidated Financial Statements of Ciphergen Biosystems, Inc.

Schedule II—Valuation and Qualifying Accounts

All other schedules have been omitted since the required information is not present in amounts sufficient to require submission of the schedule or because the information required is included in the financial statements or notes thereto.

(b) Reports on Form 8-K

No reports on Form 8-K were filed during the quarter ended December 31, 2001.

(c) Exhibits:

Number	Description of Document
3.2*	Amended and Restated Certificate of Incorporation of Registrant
3.4*	Amended and Restated Bylaws of Registrant
3.5***	Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock of Ciphergen Biosystems, Inc.
4.1*	Form of Registrant's Common Stock Certificate
4.2***	Preferred Shares Rights Agreement dated March 20, 2002 between Ciphergen Biosystems, Inc. and Continental Stock Transfer & Trust Company
10.1*	Form of Preferred Stock Purchase Agreement
10.2*	Fourth Amended and Restated Investors Rights Agreement dated March 3, 2000
10.3*	1993 Stock Option Plan
10.4*	Form of Stock Option Agreement
10.5*	2000 Stock Plan and related form of Stock Option Agreement
10.6*	2000 Employee Stock Purchase Plan
10.7*	401(k) Plan

10.8*	Form of Warrant
10.9*	Form of Proprietary Information Agreement between the Registrant and certain of its employees
10.12*	Lease Agreement dated January 28, 2000, between the Registrant and John Arrillaga, Trustee of the John Arrillaga Survivor's Trust and Richard T. Peery, Trustee of the Richard T. Peery Separate Property Trust, and Amendment No. 1 dated August 8, 2000
10.13*	Employment Agreement dated August 24, 2000, between William E. Rich and the Registrant
10.14*	Sublease Agreement between the Registrant and BigBand Networks, Inc. dated August 25, 2000
10.15	First Amendment dated September 30, 2001 to the Sublease Agreement between the Registrant and BigBand Networks, Inc. dated August 25, 2000
10.23*	MAS License Agreement with IllumeSys Pacific, Inc. dated April 7, 1997

10.24*	MAS License agreement with Ciphergen Technologies, Inc. (formerly ISP Acquisition Corporation) dated April 7, 1997
10.25*	Joint Venture Agreement between Registrant and Sumitomo Corporation
10.26*	Distribution and Marketing Agreement between Registrant and Ciphergen Biosystems, K.K. dated March 24, 1999
10.27*	Joint Development Agreement between Registrant and Stanford Research Systems, Inc. dated February 2, 1995 and amendment thereto
10.28**	Asset Purchase Agreement dated June 25, 2001 by and between Invitrogen Corporation and Ciphergen Biosystems, Inc.
10.29	OEM Agreement between Salford Systems and Ciphergen Biosystems, Inc. dated February 27, 2001
10.30	Supply Agreement between Beckman Coulter, Inc. and Ciphergen Biosystems, Inc. dated November 2, 2001
10.31	Lease Agreement by Natiocredimurs and Cicamur for BioSepra S.A. dated the 29th of April 1998.
21.1*	Subsidiaries of Registrant
23.1	Consent of PricewaterhouseCoopers LLP, Independent Accountants
24.1	Power of Attorney (see page 64)
27.1*	Financial Data Schedule

* Incorporated by reference from our registration statement on Form S-1, registration number 333-32812, declared effective by the Securities and Exchange Commission on September 28, 2000

** Incorporated by reference to our Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission for the period ended June 30, 2001, file number 000-31617

*** Incorporated by reference to our Registration Statement on Form 8-A, filed with the Securities and Exchange Commission on March 21, 2002

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CIPHERGEN BIOSYSTEMS, INC.

By: /s/ WILLIAM E. RICH, PH.D.

William E. Rich, Ph.D.
President and Chief Executive Officer

Dated: March 29, 2002

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William E. Rich and Matthew J. Hogan, and each of them, his true and lawful attorneys-in-fact, each with full power of substitution, for him in any and all capacities, to sign any amendments to this report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant

and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ WILLIAM E. RICH, PH.D. William E. Rich, Ph.D.	President and Chief Executive Officer, and Director (Principal Executive Officer)	March 29, 2002
/s/ MATTHEW J. HOGAN Matthew J. Hogan	Chief Financial Officer (Principal Financial Officer)	March 29, 2002
/s/ DANIEL M. CASERZA Daniel M. Caserza	Corporate Controller (Principal Accounting Officer)	March 29, 2002
/s/ JOHN A. YOUNG John A. Young	Director	March 29, 2002
/s/ MICHAEL J. CALLAGHAN Michael J. Callaghan	Director	March 29, 2002
/s/ WILLIAM R. GREEN William R. Green	Director	March 29, 2002
/s/ JAMES L. RATHMANN James L. Rathmann	Director	March 29, 2002

REPORT OF INDEPENDENT ACCOUNTANTS ON FINANCIAL STATEMENT SCHEDULE

To the Board of Directors and Stockholders of Ciphergen Biosystems, Inc.

Our audits of the consolidated financial statements referred to in our report dated February 1, 2002, appearing in this Form 10-K also included an audit of the consolidated financial statement schedule listed in Item 14(a)2 of this Form 10-K. In our opinion, this consolidated financial statement schedule presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements.

PRICEWATERHOUSECOOPERS LLP

San Jose, California
February 1, 2002

SCHEDULE II
CIPHERGEN BIOSYSTEMS, INC.
VALUATION AND QUALIFYING ACCOUNTS

Years ended December 31, 2001, 2000 and 1999

(in thousands)

	Balance at Beginning of Year	Additions Charged to Earnings	Deductions	Other Charges	Balance at End of Year
Allowance for doubtful accounts:					
31 Dec 2001	$ 160	$ 180	$ 51	$ 35	$ 324
31 Dec 2000	100	60	—	—	160
31 Dec 1999	40	60	—	—	100
Inventory reserve:					
31 Dec 2001	107	248	22	532	865
31 Dec 2000	69	38	—	—	107
31 Dec 1999	206	5	—	(142)(1)	69
Deferred tax valuation allowance:					
31 Dec 2001	13,312	8,900	—	—	22,212
31 Dec 2000	9,306	4,006	—	—	13,312
31 Dec 1999	6,701	2,605	—	—	9,306
Warranty reserve:					
31 Dec 2001	74	—	64	—	10
31 Dec 2000	61	111	98	—	74
31 Dec 1999	43	109	91	—	61

(1) Represents a reclassification between property and equipment, and inventory reserve.

QuickLinks

EXHIBIT 10.15

FIRST AMENDMENT TO SUBLEASE AGREEMENT

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT (this "Amendment") is made as of the 30 th day of September, 2001, by and between Ciphergen Biosystems, Inc., a Delaware corporation ("Sublessor") and BigBand Networks, Inc., a Delaware corporation ("Sublessee"), with reference to the following facts and objectives:

RECITALS

A. Sublessor, as tenant, and John Arrillaga, Trustee or his Successor Trustee, UTA dated 7/20/77 (John Arrillaga Survivor's Trust) as amended, and Richard T. Peery, Trustee or his Successor Trustee, UTA dated 7/20/77 (Richard T. Peery Separate Property Trust) as amended, as landlord ("Master Lessor"), entered into that certain lease, dated as of January 28, 2000, pertaining to certain premises located at 6607 Dumbarton Circle, Suite 200, Fremont, California (the "Master Premises").

B. Sublessor subleased a portion of the Master Premises to Sublessee (the "Premises"), under a Sublease Agreement dated as of August 25, 2000, as amended by a memo dated January 2, 2001 (as amended, the "Sublease").

C. Sublessee desires to (i) reduce the size of the Premises; (ii) reduce the rent payable under the Sublease; (iii) post a reduced security deposit with Sublessor; (iv) obtain one (1) option to extend the term of the Sublease by up to an additional one (1) year period for the agreed to approximately 8,000 square foot portion of the original premise; and (v) in consideration for the foregoing, pay an amendment fee to Sublessor, all as more particularly set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of good and valuable consideration, including the payment to Sublessor as set forth in Paragraph 5 hereof the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. *Effective Date.* As used herein, the term "Effective Date" shall mean the later of (i) October 1, 2001 and (ii) the date Master Lessor consents to this Amendment as set forth in Paragraph 11 hereof.

2. *Premises.* As of the Effective Date, the Premises shall be reduced to the approximately 8,000 square foot portion of the original Premises shown on *Exhibit A* attached hereto. On or before the Effective Date, Sublessee shall surrender that portion of the original Premises which will not be part of the reduced Premises as described on *Exhibit A* , in broom clean condition, with all of its furniture, fixtures and equipment removed and otherwise in accordance with the terms of the Sublease. As of the Effective Date, the portion of Paragraph 2 of the Sublease which reads: "30,488 sq. ft. section of a larger 60,720+/- sq. ft. single story office/R&D building" shall be deleted and replaced with the following:

> "8,000 sq. ft. section of a larger 60,720+/- sq. ft. single-story office/R&D building all as more particularly described on *Exhibit A* attached hereto and incorporated herein. Sublessee shall also have the non-exclusive right to use the reception area, kitchen and bathroom facilities located closest to the Premises. The parties hereto acknowledge and agree that (i) the Premises are not separately

demised from the remainder of the building in which the Premises are located, and (ii) Sublessee shall have no right to use, and shall prevent its agents, employees, contractors, invitees or licensees from using, any portions of the building in which the Premises are located other than the Premises and the aforementioned bathrooms, reception area and kitchen facilities as expressly

set forth herein. The entry by Sublessee or its agents, employees, contractors, invitees or licensees into any other areas shall constitute a default hereunder. All measurements of area contained in this Sublease are conclusively agreed to be correct and binding upon the parties, and any subsequent determination that the area is more or less than shown in this Sublease shall not result in a change in any of the computations of rent or other matters described in this Sublease where area is a factor."

As of the Effective Date, *Exhibit A* attached hereto shall become *Exhibit A* to the Sublease.

3. *Base Rent.* As of the Effective Date, the second sentence of Paragraph 4.1 of the Sublease shall be deleted and replaced with the following:

"Commencing on October 1, 2001 through March 31, 2002, Sublessee shall pay to Sublessor as Base Rent for the Premises equal monthly payments of Thirty-five Thousand Dollars ($35,000)."

4. *Operating Expenses.* As of the Effective Date, Paragraph 13 of the Sublease shall be deleted and replaced with the following:

"Sublessee shall continue to use the Premises in the same manner as Sublessee used the Premises prior to October 1, 2001, including, without limitation, using the same level and intensity of utilities. Sublessee shall not be responsible for the payment of real property taxes, building insurance, common area maintenance or similar operating expenses which accrue on or after October 1, 2001; provided, however, that if Sublessor reasonably determines that Sublessee uses utilities in excess of the amount of utilities used by Sublessee prior to October 1, 2001, then, in addition to Sublessor's other rights and remedies, Sublessee shall pay for such extra use an amount reasonably determined by Sublessor to cover the cost of such extra use."

5. *Buy-Out Payment.* Sublessee acknowledges that, in entering into this Amendment, Sublessor will significantly reduce the amount of the payments it will receive from Sublessee under the Sublease. In consideration for Sublessor's agreement to enter into this Amendment and forego such additional payments, Sublessee has agreed to pay to Sublessor prior to the Effective Date a fee in the amount of Three Hundred Thirty-Two Thousand Three Hundred Nineteen and 20/100 Dollars ($332,319.20)(the "Buy-Out Payment"). The parties acknowledge that Sublessee, upon execution of the Sublease, deposited with Sublessor a security deposit in the amount of the Buy-Out Payment (the "Original Security Deposit"). In lieu of Sublessee making to Sublessor a cash payment of the Buy-Out Payment, Sublessor shall retain the full amount of the Original Security Deposit. Such amount shall be fully earned as of the Effective Date, Sublessor shall have no obligation to return any portion of the Original Security Deposit, and the amount deposited as the Original Security Deposit shall no longer serve as a security deposit under the Sublease.

6. *New Security Deposit; Liquidated Damages.* Upon execution of this Amendment, Sublessee shall deposit with Sublessor a new security deposit under the Sublease in the amount of Two Hundred Thousand Dollars ($200,000). As of the Effective Date, (a) the reference in Section 5 of the Sublease to "$332,319.20" shall be changed to "$200,000" and (b) the following shall be added as Paragraph 5.1 to the Sublease:

5.1 *Liquidated Damages.* IF SUBLESSEE FAILS TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN SUBLESSOR WILL SUSTAIN SUBSTANTIAL DAMAGES RESULTING FROM SUCH FAILURE. SUBLESSEE AND SUBLESSOR AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES SUSTAINED BY THE EVENT OF A DEFAULT HEREUNDER BY SUBLESSEE. THEREFORE, SUBLESSEE AND SUBLESSOR AGREE THAT IF SUBLESSEE COMMITS SUCH A DEFAULT, THE SECURITY DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE AMOUNT OF DAMAGES FOR SUCH DEFAULT, AND SUBLESSOR SHALL BE ENTITLED TO RECOVER SUCH AMOUNT AS LIQUIDATED DAMAGES FOR

SUCH DEFAULT. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT SAID AMOUNT IS PRESENTLY A REASONABLE SUM CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS SUBLEASE, INCLUDING THE RELATIONSHIP OF THE AMOUNT TO THE RANGE OF HARM TO SUBLESSOR THAT REASONABLY COULD BE ANTICIPATED TO INCUR, AND THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY AND EXTREMELY DIFFICULT OR IMPRACTICABLE.

7. *Use.* As of the Effective Date, the following sentence shall added to the end of Paragraph 6.1 of the Sublease:

"Each party hereto agrees to have its representative meet with the representative of the other party on a monthly basis to discuss in good faith any issues related to the use or occupancy of the Premises and of any common areas associated therewith."

8. *Option to Extend.* As of the Effective Date, the following shall be added as Paragraph 14 of the Sublease:

14. *Extension Right.* If Sublessee has not been in default of any term or provision of this Sublease and has not assigned this Sublease or sub-sublet any space covered thereby or agreed to do so in the future, Sublessee shall have one (1) option (the "Extension Option") to extend the term of the Sublease with respect to the entirety of the Premises for an additional period of up to one (1) year commencing when the then-existing term of the Sublease expires (the "Extension Period"), solely in accordance with the terms of this section, and subject to the following conditions:

(i) The Extension Option shall be exercised, if at all, by written notice of exercise delivered to Sublessor by Sublessee not more than one hundred twenty (120) nor less than ninety (90) days prior to the expiration of the initial Sublease term.

(ii) Sublessee shall accept the Premises on an "AS-IS" basis.

(iii) Base Rent during the Extension Period shall be as set forth in Paragraph 4.1 of this Sublease, as amended by the First Amendment to Sublease.

(iv) During the Extension Period, either party may terminate this Sublease by delivering written notice to the other party setting forth the date of such early termination, which termination date shall not be less than ninety (90) days after the date of such notice.

(v) All other terms and conditions of this Sublease shall remain in effect during the Extension Period.

(vi) Anything herein to the contrary notwithstanding, if Sublessee is in default under any of the terms, covenants or conditions of this Sublease, either at the time Sublessee exercises the Extension Option or at any time thereafter prior to or upon the commencement date of the Extension Period, Sublessor shall have, in addition to all of Sublessor's other rights and remedies provided in this Sublease, the right to terminate the Extension Option upon notice to Sublessee.

9. *Relocation Right.* As of the Effective Date, the following shall be added as Paragraph 15 to the Sublease:

15. *Relocation Right.* Anything in this Sublease to the contrary notwithstanding, Sublessor shall have the right, at any time and from time to time during the Sublease term, to relocate the Premises in whole or part to other space in the building; provided, however, if Sublessor so relocates Sublessee, then Sublessor shall pay for the reasonable costs of moving Sublessee from the Premises to the new Premises; and provided further that in no event shall Sublessor relocate Sublessee's "Demonstration Center." Following such relocation, the Premises, as used in this Sublease, shall mean the new Premises to which Sublessee is relocated and *Exhibit A* shall be

revised to reflect the new Premises. If, upon 90 days written notice, Sublessor relocates Sublessee to a new location, then the terms and conditions of this Sublease shall remain in full force and effect, except that if the new Premises to which Sublessee is relocated is not the same size as the Premises immediately prior to such relocation, then the Base Rent payable by Sublessee shall be adjusted accordingly based on the relative size of the new premises.

10. *Master Lessor's Consent.* This Amendment and Sublessor's obligations hereunder are conditioned upon Sublessor's receipt of the written consent of Master Lessor in a form reasonably acceptable to Sublessor. If Sublessor does not receive such consent within thirty (30) days after execution of this Amendment by Sublessor, then Sublessor may terminate this Amendment by giving Sublessee written notice thereof.

11. *Miscellaneous.* This Amendment, together with the Sublease, constitutes the entire agreement between Sublessor and Sublessee regarding the Sublease and the subject matter contained herein and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements or understandings. This Amendment shall be binding upon and inure to the benefit of Sublessor and Sublessee and their respective heirs, legal representatives, successors and assigns. No subsequent change or addition to this Amendment shall be binding unless in writing and duly executed by both Sublessor and Sublessee. Except as specifically amended hereby, all of the terms and conditions of the Sublease are and shall remain in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have executed this Amendment, by their duly authorized signatories, as of the day and year first above written.

SUBLESSOR:	SUBLESSEE:
CIPHERGEN BIOSYSTEMS, INC., a Delaware corporation	BIGBAND NETWORKS, INC., a Delaware corporation
By: /s/ [illegible]	By: /s/ [illegible]
Title: CFO	Title: Chief Operating Officer

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[*] = CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Exhibit 10.29

February 27, 2001

Dick Rubin
Ciphergen Biosystems, Inc.
6611 Dumbarton Circle
Fremont, California 94555

Re: OEM Agreement

Dear Dick,

This letter will outline the proposed OEM arrangement between Ciphergen and Salford Systems. Based on our meeting this morning, we propose that the arrangement take on the attributes similar to a reseller relationship wherein Ciphergen is positioned to both profit as a value added reseller for Salford Systems' product, CART® (and MARS™). And Ciphergen also has the option to market off any positive Industry/media history. Salford Systems has attained in the past 15 years to help reinforce the pedigree of the proposed software offering.

The discount availed to Ciphergen will work on a sliding scale, increasing as the sales volume increases. The following table designates the discount scale based on number of units purchased for resale:

Number of Units	Discount from List
15	[*]
30	[*]
45	[*]
60 and above	[*]

The standard unit shall be a 64 mb CART Pro 4.0 1-5 user site license with a list price of [*] (or like updates to future versions). Should the required units differ from the suggested standard, the discount will be applied based on revenue accumulation, which will mirror the suggested standard units. Ciphergen will resell at manufacturer's suggested list. Salford will notify Ciphergen of price changes 30 days prior to effect. The software is a license for one year, and is subject to [*] annual renewable license fee. The discount passed to Ciphergen for the renewal fees will be determined by the unit summation, but renewals will not add to the unit summation.

Ciphergen will purchase an initial inventory of four copies of CART, which will approximate $[*]. We suggest the purchase of four CART Pro 4.0. 64 mb, 1-5 user site licenses at $[*] each, for a total of $[*]. This amount will be subject to the initial discount of [*] net amount being $[*] and shall apply to the inventory count toward greater discounts. Terms on all purchases shall be net 30 days. It is acknowledged that this initial purchase is constructed to help contribute toward Salford's cost of development of the API.

The API has been developed to date by Salford will be further refined to the specific requirements for Ciphergen by joint development efforts between the two companies. Salford will provide sales and all technical support for the initial 15 sales. Ciphergen will progressively take on most routine tech support (installation and elementary questions commonly answered by Salford's FAQs). Salford will always provide advanced technical support for issues not addressed by published FAQs. Salford reserves the right to add repeating technical questions to its published FAQs.

After placement of the first OEM order, Salford will provide initial training for up to 5 Ciphergen personnel at Salford's offices at no charge. This training will consist of 3 days of coursework normally

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offered in Salford's intro to CART and Advanced CART courses. Ciphergen will be awarded a flat fee of $[*] for any Salford course sold to its customer(s) at full list.

The above terms and conditions are proposed in anticipation of perfecting a joint agreement between the parties. We look forward to your response.

Best Regards,

Gary Anderson
Account Executive

---

23 March

Gary Anderson
Salford Systems
8880 Rio San Diego, Suite 1045
San Diego, CA 92108

Dear Gary:

Thank you for your OEM proposal of 27 February 2001 concerning Salford Systems' CART® (and MARS™) program.

Ciphergen Biosystems, Inc. (CBI) is prepared to accept your proposal with the following clarifying terms:

1. Ciphergen will initially purchase four CART Pro 4.0, 64 mb 1-5 user site license packages per your quotation of 22 March 2001. These packages will include the API and instruction manual changes to rename the product, "Biomarker Classification Analysis Tool™" or B-CAT for short. You can carry through the 4.0 version designation as you see fit. Contact information embedded in the program and manual should reference:

   Ciphergen Biosystems, Inc.
   6611 Dumbarton Circle
   Fremont, CA 94555
   Tel: (510) 505-2100
   Fax: (510) 505-2101
   Email: *support@ciphergen.com*

2. The package will also contain a modification to give an on-screen 60-day warning of the impending license expiration date. The message dialog will instruct users to contact CBI to purchase the license extension. CBI will carry no fiscal responsibility for un-renewed licenses. For any clients whose license expires and, at some later date, wishes to purchase a renewal there will be no penalty fees added to the renewal price.

3. At this time, CBI is undertaking no commitment to joint development of the API. However, in good faith, we wish to express our interest in working with Salford Systems to improve the application of the package for CBI's customers as packages are placed and customer feedback is registered.

If these terms are agreeable, please sign below and return a copy of this agreement.

We look forward to a mutually beneficial relationship between our companies.

Sincerely yours,

Richard B. Rubin
Director of Marketing
Ciphergen Biosystems, Inc.

Agreed to by:

Signature	Date
Printed Name	
Position	
Company	

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Exhibit 10.30

SUPPLY AGREEMENT BETWEEN

BECKMAN COULTER, INC.

AND

CIPHERGEN BIOSYSTEMS, INC.

AGREEMENT effective this 2nd day of November, 2001 by and between CIPHERGEN BIOSYSTEMS, INC., a corporation organized under the laws of the State of Delaware, having its principal place of business at 6611 Dumbarton Circle, Fremont, California 94555 ("Buyer", as that term is more fully defined in Paragraph 1.3) and BECKMAN COULTER, INC., a corporation organized under the laws of Delaware, having a place of business at 4300 North Harbor Boulevard, Fullerton, California 92834-3100 ("Beckman", as that term is more fully defined in Paragraph 1.2).

R E C I T A L S

I. Beckman manufactures a proprietary automated liquid handling platform and sells such platform under the Beckman trademark "BIOMEK 2000" (the "Instrument" as that term is more fully defined in Paragraph 1.5).

II. Buyer desires to purchase commercial quantities of the Instrument for the sole purpose of reconfiguring and reselling the Instrument as a component of a Buyer designed and manufactured system (the "Buyer System").

NOW THEREFORE in consideration of the mutual undertakings contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1.0 DEFINITIONS

For purposes of this Agreement the following terms shall have the following meaning:

1.1 " **Affiliate** " means each and every corporation or other business entity controlled by, controlling or under common control with, a party hereto. For the purposes of this definition, the word and root "control" shall, in the context of a corporation, mean direct or indirect beneficial ownership of at least fifty percent (50%) of the shares entitled to vote for members of the Board of Directors of such corporation, and, in the context of any other business entity, shall mean the right to exercise similar management and control of such entity.

1.2 " **Beckman** " means Beckman Coulter, Inc., its Affiliates, and its and their successors and permitted assigns.

1.3 " **Buyer** " means Ciphergen Biosystems, Inc., its Affiliates, and its and their successors and permitted assigns.

1.4 " **Effective Date** " means the last date in time adjacent the signature of the authorized representatives of the parties on the last page of this Agreement.

1.5 " **Instrument** " means the BIOMEK 2000 system and accessories defined in attached Exhibit A.

1.6 " **Year** " means the twelve (12) month periods beginning with the Effective Date and each anniversary of the Effective Date.

2.0 MANUFACTURE AND SALE OF INSTRUMENTS

2.1 ***Manufacture and Sale*** —Beckman agrees to and shall manufacture, sell and deliver to Buyer and Buyer agrees to and shall purchase and take from Beckman such quantities of the Instruments as Buyer may order in accordance with Paragraphs 2.5.

2.2 ***Shipment Terms*** —The Instruments are sold FOB the Beckman facility in Fullerton, California. Title to and the risk of loss for the Instruments shall pass to Buyer upon delivery by Beckman to a Buyer specified carrier at the Beckman delivery dock at such location.

2.3 ***Specifications*** —Each of the Instruments shall confirm to the specifications attached to this Agreement as Exhibit B.

2.4 ***Purchase Price*** —The purchase price to Buyer for Instruments ordered under Paragraph 2.5 during the first Year of this Agreement shall be the Beckman list price in Exhibit B less the applicable discount in Exhibit A. After the first Year of this Agreement, Beckman reserves the right to change its list price at any time on sixty (60) days prior written notice to Buyer. Accordingly, after the first Year the purchase price for Instruments ordered under Paragraph 2.5 shall be the Beckman list price then in effect less the applicable discount in Exhibit A.

2.5 ***Forecasts*** —Buyer shall, promptly after the Effective Date provide Beckman with a written initial forecast of the quantity of Instruments, which Buyer anticipates it will purchase from Beckman during each of the next twelve (12) months. Buyer shall, within ten (10) days of the end of each month during the term of this Agreement, send Beckman a revised twelve (12) month forecast. The initial and each revised forecast shall not be binding on either party and shall be used for planning purposes only.

2.5.1 Beckman shall build Instruments for Buyer only in response to a Buyer Purchase Orders and not to a Buyer forecast.

2.5.2 Beckman estimates delivery of Instruments against Buyer purchase orders within 4 weeks of acceptance of each such order.

2.6 ***Payment Terms*** —Buyer shall pay each Beckman invoice for Instruments within thirty (30) days of the later of (a) receipt of the invoice or (b) receipt of the Instruments referenced on such invoice. There are no discounts for prompt payment of invoices and none shall be taken.

2.7 ***Beckman Warranty*** —Beckman warrants that all Instruments are, upon receipt by Buyer, and will be for a period of twelve (12)

months thereafter, free from defects in materials and workmanship, and shall conform to each and all of the specifications therefor in attached Exhibit A. Beckman shall, with its employees and contractors, at its option, repair or replace any Instruments failing to comply with the foregoing warranty without cost or expense therefor to Buyer or its customer.

EXCEPT FOR WARRANTY OF TITLE, THERE ARE NO OTHER WARRANTIES UNDER THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, OR OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NONE SHALL BE CREATED WHETHER UNDER THE UNIFORM COMMERCIAL CODE, USEAGE OR CUSTOM IN THE INDUSTRY OR THE COURSE OF DEALINGS BETWEEN THE PARTIES. BECKMAN'S SOLE LIABILITY UNDER THIS AGREEMENT AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND ANYONE CLAIMING THROUGH BUYER SHALL BE FOR BECKMAN TO REPAIR ANY INSTRUMENT NOT COMPLYING WITH THE FOREGOING WARRANTY DURING THE PERIOD OF SUCH WARRANTY. BECKMAN SHALL NOT BE LIABLE, WHETHER UNDER CONTRACT, TORT, BREACH OF WARRANTY OR ANY OTHER CAUSE OF ACTION, FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OF ANY KIND OR NATURE.

2.8 ***Buyer Representation*** —Buyer represents and warrants that they shall not resell the Instrument as a stand-alone product and shall only resell the Instrument and the Buyer customization package as part of the Buyer System. Buyer warrants that they shall promptly send Beckman written notice of any requests from Buyer's customers for repair or service of an Instrument received by Buyer during the twelve (12) months preceding receipt by Buyer of such Instrument. Buyer represents and agrees that they shall not make any claims for the Instrument or representations about the Instrument or its performance, which have not received the prior written approval of Beckman.

2.9 ***Return Material Authorization*** —Buyer shall not return any Instruments to Beckman without a written return material authorization. Beckman may refuse to receive and may return to Buyer, at Buyer's sole cost for all freight and insurance costs, Instruments returned to Beckman without such a written return material authorization.

2.10 ***Purchase and Sale Forms*** —Any terms and conditions on either a Buyer Purchase Order or a Beckman Order Acknowledgement or any other document relating to the purchase, sale or transfer of Instruments between the parties which are in conflict with any of the terms of this Agreement shall be null and void and without legal effect.

2.11 ***Technical Literature*** —Buyer shall not publish or use any brochures, or technical literature which includes, depicts, represents or refers to the Instrument or Beckman or uses any Beckman trademarks or trade names without the prior written approval of Beckman.

2.12 ***Trademarks*** —Buyer acknowledges and agrees that the trademarks "BIOMEK", "BIOMEK 2000" and "BECKMAN" and the trade name "Beckman Coulter" are the sole and exclusive property of Beckman. Buyer agrees that it has not received any license or rights to use such trademarks or trade names except in conjunction with Instruments purchased under this Agreement from Beckman and that it will not adopt or use any trademark which incorporates, in whole or in part, any of such Beckman trademarks or trade name or any trademark or trade name confusingly similar thereto. Buyer expressly agrees that is shall not make, adopt or use a compound trademark that incorporates one or more of its trademarks or trade names with a Beckman trademark. The undertakings contained in this Paragraph 3.12 shall survive the term or any termination of this Agreement as if they were part of a separate agreement with an unlimited term.

2.13 ***Customer Assistance*** —Beckman shall be the first interface in responding to inquiries from Buyer's customers specifically related to the performance of the Instruments and not to the performance of the Buyer System. Buyer shall refer all such Instrument specific inquiries directly to Beckman. Buyer shall be the first interface responding to inquiries from its customers regarding any Buyer System containing an Instrument, which is not immediately identifiable as isolated to the Instrument. If Buyer determines that the customer problem is isolated to the Instrument, Buyer will call upon Beckman. Beckman shall use reasonable commercial efforts to respond to the customer and resolve the problem.

2.14 ***Program Manager*** —Each party shall appoint a Program Manager who, except for notices under Article 5.0, shall be the source of all communications from, and the addressee of all communications to, such party relative to the purchases of Instruments. The Program Managers shall meet from time to time, not less than semi-annually, to discuss each party's performance and resolve any differences.

2.15 ***Hold Harmless*** —Beckman agrees to and shall defend, indemnify and hold Buyer, its employees, agents and officers harmless, including professional fees necessary to consider, advise and defend from and against any suit or proceeding alleging injury to persons, including death, or property and any liability, damages or penalties awarded or agreed to therein by Beckman and resulting from or arising out of Beckman's negligence in the design, development, specification, manufacture, storage or transport of Instruments prior to their receipt by Buyer. Buyer agrees to

and shall defend, indemnify and hold Beckman, its employees, agents and officers harmless, including professional fees necessary to

consider, advise and defend, from and against any suit or proceeding alleging injury to persons, including death, or property and any liablity, damages or penalties awarded or agreed to therein by Buyer and resulting from or arising out of Buyer's negligence in the design, development, specificaton, manufacture, storage or transport of the Buyer System.

2.16 ***Insurance*** —Each party shall, at all times during the term of this Agreement, self-insure for, or purchase and maintain, comprehensive general liability insurance including product liability, contractual liability and broad form property damage with combined single limits for bodily injury and/or death and property damage of at least $1,000,000 for any one occurrence.

Such insurance shall also require thirty (30) days prior written notice of cancellation or material change in coverage. The insurance to apply to any claim governed by Paragraph 2.15 and with respect to a party's indemnification obligations thereunder, shall provide that such insurance is primary without right of contribution from any other insurance which might otherwise be available to the insured party and provide that in the event of loss payment under a policy the insurer shall waive any rights of subrogation against the insured party and shall waive any set-off or counterclaim or any other deduction whether by attachment or otherwise as repects the activities under this Agreement.

3.0 CONFIDENTIALITY

3.1 ***Confidentiality*** —Each party shall maintain in confidence any information received from the other party in writing during the term of this Agreement, and shall neither publish, disseminate nor disclose such information to any third party nor use such information except for the furtherance of the purposes of this Agreement without the prior express written permission of such other party. Subject to the next sentence, the foregoing obligations of confidentiality and non-use shall continue for three (3) years after the expiration of this Agreement. The obligation of the first sentence shall not apply to any information, which is:

(a) now or hereafter comes into the public domain, or

(b) which is already in the possession of the receiving party other than as a result of having received it from the disclosing party and as shown by written records, or

(c) is brought to the receiving party by a third party who does not require that it be maintained confidential, or (d) is independently developed by the receiving party without use of or access to the information of the disclosing party. Upon termination of this Agreement, each party shall, at the other party's request, destroy or return to such other party all copies of such information; provided that, counsel for each receiving party may retain one (1) copy of such information solely for the purpose of monitoring such party's obligation of confidentiality under this Agreement.

3.2 ***Obligations of Receiving Party*** —Each party agrees that it shall, at its sole cost, take all measures (including but not limited to court proceedings) to restrain its officers, employees, directors and agents from unauthorized use or disclosure of the disclosing party's information.

3.3 ***Injunction*** —Each party, acknowledges and agrees that money damages would not be a sufficient remedy for its breach of this Article 3.0 and that the disclosing party shall be entitled to equitable relief including injunction and specific performance as a remedy for any such breach. Such remedies shall not be deemed the exclusive remedy for the receiving party's breach but shall be in addition to all other remedies available to the disclosing party. Article 11.0 (Law Governing and Construction) shall not be a limitation on the remedies available to the disclosing party for a breach by the receiving party of this Article 3.0.

4.0 TERM AND TERMINATION

4.1 ***Term*** —The term of this Agreement shall begin on the Effective Date and, unless earlier terminated in accordance with Paragraph 4.2 shall expire on the fifth (5th) anniversary of the Effective Date.

4.2 ***Termination*** —If either party is in default as to any material term or condition of this Agreement and within thirty (30) days of written notice from the non-defaulting party, the defaulting party has not effected a complete cure, then the non-defaulting party shall have, in addition to all other remedies available at law or in equity, the right to terminate this Agreement in its entirety, upon delivery or ten (10) days prior written notice of termination to the defaulting party, provided that:

(a) Such termination shall only relieve the parties of obligations which would have arisen under this Agreement after the effective date of termination and shall in no way relieve the parties from any obligations existing on the date of such termination; and

(b) the failure of the non-defaulting party to terminate this Agreement for any cause shall not constitute a waiver of such right in the future as to any subsequent default for the same or similar cause nor shall such waiver be implied by the mailing or acceptance

of any payment.

5.0 NOTICES

All notices provided for in this Agreement shall be in writing and shall be considered delivered when they are personally delivered or sent by facsimile or telex with confirmation of receipt in good order requested and received or deposited in the United States mail, certified first class air mail postage prepaid, addressed to the respective parties as follows:

If to Beckman:	BECKMAN COULTER, INC. 4300 North Harbor Boulevard Fullerton, California 92834-3100 Attention: General Manager
with a copy to:	BECKMAN COULTER, INC. 4300 North Harbor Boulevard Fullerton, California 92834-3100 Attention: General Counsel
If to Buyer:	CIPHERGEN BIOSYSTEMS, INC. 6611 Dumbarton Circle Fremont, California 94555 Attention: John Storella

6.0 ASSIGNMENT

Neither party shall assign this Agreement to another without the prior written consent of the other party; provided, however, that either party may assign this Agreement to a successor in ownership of all or substantially all of its business assets to which this Agreement pertains whether by sale of assets, merger, consolidation or otherwise. Any other purported assignment shall be void. This Agreement shall be a binding obligation of the heirs, successors and permitted assigns of all the right, title and interest of each party hereto.

7.0 PUBLIC STATEMENTS

Neither party shall make any public announcement or authorize or author any statement to the press regarding this Agreement or any of its terms or conditions or the relationships between the parties created by this Agreement without the prior written permission of the other party. The terms and conditions of this Agreement shall be maintained as confidential in accordance with Article 4.0 hereof.

8.0 SEVERABILITY

8.1 ***Invalid or Unenforceable Provision*** —In the event a court of competent jurisdiction holds any provision of this Agreement to be invalid or unenforceable, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.

8.2 ***Conflict with Applicable Statute*** —If any of the provisions of this Agreement are in conflict with any applicable statute or rule of law, then such provisions shall be deemed inoperative to the extent that they conflict therewith and shall be deemed to be modified so as to conform with such statute or rule of law.

8.3 ***Effect and Remedies*** —In the event that the provisions of this Agreement are materially altered as a result of Paragraphs 8.1 and 8.2 the parties will renegotiate the affected terms and conditions to resolve any inequities.

9.0 HEADINGS

The paragraph headings herein are for convenience only and shall not effect the construction or interpretation of this Agreement.

10.0 INDEPENDENT CONTRACTORS

The parties are acting as independent contractors and shall not be considered partners, joint venturers or agents of the other. Neither party shall have the right to act on behalf of or bind the other except as expressly provided for in this Agreement or as may be thereafter agreed in writing.

11.0 LAW GOVERNING AND CONSTRUCTIONS

11.1 ***Mediation and Arbitration*** —Except for any actual or threatened breach of Article 3.0 to which the parties may refer to the State Courts of California for relief, any controversy or conflict involving this Agreement, its interpretation or the respective rights or obligations of the parties shall first be submitted to their respective General Managers for amicable resolution. If the parties cannot agree, the controversy shall be submitted to mediation to be held in a mutually agreeable neutral place. The parties shall mediate in good faith and use their best efforts to resolve the controversy or conflict by mediation. If the parties still cannot settle the controversy or reach an accommodation, the matter shall be submitted to binding arbitration to be conducted in a mutually agreeable place in California in accordance with the following rules:

(a) If a party intends to begin an arbitration to resolve a dispute, such party shall provide written notice to the other party informing the other party of such intention and the issues to be resolved, the date of which notice shall be referred to as the "Notice Date". Within ten (10) business days after the receipt of such notice, the other party may, by written notice to the party initiating arbitration, add additional issues to be resolved. Within twenty (20) business days following the Notice Date a list of not less than ten (10) neutrals shall be provided to the parties by then-President of the Center for Public Resources ("CPR"), 680 Fifth Ave., New York, New York 10019, or its successor organization. The list shall include the experience and qualifications of each person identified thereon. The neutral shall be an individual who shall preside in resolution of any disputes between the parties. Each of the neutrals identified on the list shall not be an employee, consultant, independent contractor, director or shareholder of either a party or of an Affiliate of either party, and shall be a lawyer licensed to practice in the state, which is the site of the arbitration. The parties shall have ten (10) business days from the date the list is provided to agree on a neutral. If the parties cannot agree, each party shall have twenty (20) business days from the date the list is provided to the parties by CPR to object in good faith to four (4) of the persons on the list. The then-President of CPR shall, as soon as possible thereafter, select the neutral from the persons remaining on the list. This selection shall be final.

(b) All disputes existing on the Notice Date, which are not specifically raised by the parties in the arbitration process, shall be forever waived.

(c) No later than one hundred twenty (120) business days after selection the neutral shall hold a hearing to resolve each of the issues identified by the parties.

(d) Within thirty (30) days of the Notice Date, representatives of the parties shall meet in an attempt in good faith to agree on procedures for the expeditious exchange of information that may be needed to prepare for the arbitration. If the parties cannot agree on the exchange of documents or other information, the neutral may require exchange of documents, upon showing by the requesting party that it will be prejudiced and not otherwise able to prepare for or put on its case without access to and use of the requested documents or information. Any documents required to be produced shall be produced no less than sixty (60) days prior to the hearing.

(e) At least forty-five (45) business days prior to the hearing, each party shall submit to the other party and the neutral a list of all documents on which such party intends to rely in any oral or

written presentation to the neutral and a list of all witnesses, if any, such party intends to call at such hearing. Such lists will be accompanied by: (i) one true and correct copy of each of the documents on the above-referenced list; and (ii) a summary of the anticipated testimony of each of such party's witnesses. Except as expressly set forth herein, the neutral shall not require nor shall there be any discovery by any means, including depositions, interrogatories or investigation of documents.

(f) After the exchange of the documents and information required by Paragraph (e) above, each party may, at its option, take depositions. In any event, neither party shall take more than (i) sixteen (16) total hours of depositions as calculated by the court reporter, of not more than four (4) people; plus (ii) a deposition of each expert witness listed by the other party, which expert witness deposition shall not exceed four (4) hours. Such depositions shall be taken between the receipt of the lists called for by Paragraph (e) above and fifteen (15) days before the hearing. Each party shall cooperate in making its witnesses available California at a convenient place and time for such deposition. No party shall instruct a witness at a deposition not to answer a

question except on grounds of attorney-client privilege or work-product doctrine.

(g) A party may request an extension and the neutral shall grant an extension of the time for a hearing if the neutral finds that the other party failed to comply with or delayed in complying with discovery permitted under this Agreement. The extension shall be commensurate with the delay found by the neutral but in no event shall it be greater than thirty (30) days.

(h) Each party may file with the neutral a prehearing memorandum, not exceeding fifty (50) pages, setting forth applicable law, facts, arguments, and other relevant information.

(i) At least ten (10) business days prior to the hearing, each party must submit to the neutral and serve on the other party a proposed ruling on each issue to be resolved. Such writing shall be limited to a statement of the proposed rulings, shall contain no argument on or analysis of the facts or issues, and shall be limited to not more than twenty (20) pages.

(j) Each party shall be entitled to no more than ten (10) hours of hearing to present testimony or documentary evidence and argument. The testimony presented by both parties shall be presented during the same calendar day or on consecutive days. Such time limitation shall include any direct, cross or rebuttal testimony, but such time limitation shall only be charged against the party conducting such direct, cross or rebuttal testimony. It shall be the responsibility of the neutral to determine whether the parties have had the ten (10) hours to which they are entitled.

(k) Each party may file a post-hearing memorandum not exceeding three (3) pages.

(l) Each party shall have the right to be represented by counsel. The neutral shall have sole discretion with regard to the admissibility of any evidence; however, no prior drafts of any of the agreements between the parties shall be shown to the neutral or admissible in evidence.

(m) The neutral shall rule on each disputed issue within ten (10) days following the completion of the testimony of both parties. Such ruling shall adopt the proposed ruling of one of the parties on each disputed issue. The neutral shall have authority to award complete legal and equitable relief to the maximum extent a court of law and equity could award in accordance with applicable law.

(n) All applicable common law or statutory privileges such as attorney-client or attorney work Instrument shall be applicable to the arbitration preceedings.

(o) Either party may, at its option, use prepared testimony as long as the witness whose testimony is so presented is available to the other party for cross-examination.

(p) All cost incurred for the neutral, the hearing room and the court reporter shall be shared equally between the parties. The parties shall otherwise bear their own expenses.

(q) The neutral shall be given a copy of these provisions at the time of selection.

(r) All arbitration proceedings and the outcome of such proceedings shall be treated as confidential by the parties and the neutral.

(s) The parties agree to refrain from filing a lawsuit with regard to any aspect of their controversy and to abide by and perform any award rendered by the neutral. The parties further agree that a judgment of a Court having jurisdiction may be entered upon the award and an execution may be issued for its collection. The parties further agree neither to contest the jurisdiction or execution of such Court nor to contest in any foreign court the application of such judgment or execution.

11.2 ***Mutuality*** —The Agreement has been drafted on the basis of mutual understanding and neither party shall be prejudiced as being the drafter thereof.

12.0 ENTIRE AGREEMENT, MODIFICATIONS, ETC.

12.1 ***Entire Agreement*** —This instrument contains the entire and only agreement between the parties respecting the subject matter hereof; and, any representation, promise or condition in connection therewith not incorporated herein shall not be binding on either party.

12.2 ***Waiver or Modification*** —No waiver, alteration, modification, renewal or extension of this Agreement shall be valid unless made in writing and signed by a duly authorized representative of Beckman and Buyer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the Effective Date.

BECKMAN COULTER, INC.	CIPHERGEN BIOSYSTEMS, INC.
By: [Illegible]	By: [Illegible]
Date: 11/05/01	Date: Nov. 2, 2001

Exhibit A

Quantity	Discount rate
1-20 instruments	[*]
21-35 instruments	[*]
35 instruments and above	rate to be negotiated in good faith once purchase of [*] instruments has been achieved

Ciphergen Configurator System

Exhibit B

PN:	QTY	Description
609000	1	Biomek® 2000 Workstation, 50/60 Hz, 100-240 V
609048	1	Biomek®) 2000 Lift Side Module
609120	5	Labware Holder, Gray
609121	3	Pipette Tip Rack Holder, Black
267653	1	Biomek® 2000 Controller with BioWorks™ 3.2 for New Systems
609024	1	MP 20 Eight-Tip Pipette Tool—Capacity: 1-20 µL for each tip
609025	1	MP 200 Eight-Tip Pipette Tool—Capacity: 5-200 µL for each tip
609027	1	Eight-Channel Wash Tool—Capacity: 50µL—18.75 mL per channel
609056	1	Wash Unit with Automatic 6-Port Valve
267615	1	96-Filtration System for Biomek® 2000—Includes Vacuum Valve Unit
380560	1	DPC Micro Mix 5 Shaker
380561	1	DPC Shaker Integration Kit for Biomek 2000

[*] CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

QuickLinks

Exhibit 10.30

SUPPLY AGREEMENT BETWEEN BECKMAN COULTER, INC. AND CIPHERGEN BIOSYSTEMS, INC.
R E C I T A L S

QuickLinks -- Click here to rapidly navigate through this document

EXHIBIT 10.31

**LEASE AGREEMENT BY NATIOCREDIMURS AND CICAMUR
FOR BIOSEPRA S.A.**

Mr. Pascal Dufour, notary, member of the company "Pascal DUFOUR, Jean-Pierre BENOIST, and Claudin SAVARY, associates of civil professional company owning a notarial office," the headquarters of which are at boulevard Poissonniere 15, PARIS, 2eme [2nd] arrondissement [ward], has received the present document in authentic form:

AT THE REQUEST OF:

1ST: The company called NATIOCREDIMURS SOCIETE EN NOM COLLECTIF, a company with a group name, with a capital of 150,000,000 francs, having headquarters at "Le Metropole" building, 46/52 Rue Arago, PUTEAUX (Hauts de Seine), registered in the Registry of Commerce and Companies of NANTERRE under number B 332,199,462 (96 B 04190),

having agreed definitively in its capacity as a financial credit institution and as a result of a decision of the committee on credit institutions, dated at PARIS, March 20, 1985, and of a letter from the BANK OF FRANCE, dated May 9, 1985,

REPRESENTED BY:

Mr. Bernard DEVAUX, attorney, domiciled at 46/52 rue Rago, PUTEAUX,

Acting by virtue of the delegation of powers conferred on him under terms of minutes of the notarial office at 15, boulevard Poissonniere, PARIS (2eme), January 21, 1998,

by Mr. Jean-Rene BRUNON, who has acted in his capacity are president of the administrative council of the corporation called NATIO LOCATION, with a capital of 31,000,000 francs, having its company headquarters at "Le Metropole" building, 46/52 Rue Arago, PUTEAUX (Hauts de Seine), and registered it the Registry of Commerce and Companies of NANTERRE under no. B 310,188,794, appointed for these functions starting July 1, 1992, under terms of a decision of said administrative council dated June 23, 1992, for the duration of his mandate as administrator or until the end of the regular general meeting ruling the accounts for fiscal year 1997.

A certified copy conforming with the record of this decision has been deposited along with the minutes of the above-named notarial office, accompanying a document dated July 15, 1992.

The company NATION LOCATION acting in its capacity as co manager of the company NATIOCREDIMURS SOCIETE EN NOM COLLECTIF, which has been appointed to this function for an indefinite period under terms of its statutes indicated above.

2ND: The company called "CICAMUR," a corporation with capital of 30,000,000 francs, having its headquarters at 57, rue de la Victoire, PARIS (9eme), registered the Registry of Commerce and Companies of PARIS under number B 349,901,405,

having agreed definitively in its capacity as a financial institution as a result of a decision of the committee on credit institutions of May 23, 1989, and a letter from the BANK OF FRANCE dated August 22, 1989.

OBSERVATION BEING MADE HERE that the headquarters initially located at 66, rue de la Victoire, PARIS (9eme) have been transferred to 57, rue de la Victoire, PARIS (9eme), following a decision of the administrative council of said company dated October 20, 1994, a copy of which, certified as conforming, has been deposited along with the minutes of

Mr. DUFOUR, notary in PARIS, according to the document received by him on January 20, 1995,

REPRESENTED BY:

Mr. Pierre MOTAIS, associate general director of the said company, domiciled at 57, rue de la Victoire, PARIS (9eme),

acting by virtue of the powers conferred on him by Mr. Pierre LATROBE, president and general director of said company, residing at 57, rue de la Victoire, PARIS (9eme), in accordance with a private agreement dated at PARIS on April 7, 1998, the original of which is attached hereto after identification,

Mr. LATROBE having himself acted by virtue of the powers conferred on him by the law and the statutes, in his capacity as president and general director of said company.

A copy of the CICAMUR agreements as a financial institution, certified as conforming, was deposited with the minutes of Mr. DUFOUR, notary in PARIS, on September 22, 1988.

The said companies NATIOCREDIMURS and CICAMUR acting jointly together in the indivisible proportions, namely:

- NATIOCREDIMURS 70%
- CICAMUR 30%

called hereafter "THE LESSOR."

The relations with the LESSEE regarding leasing being insured by NATIOCREDIMURS, file leader.

TOGETHER AS ONE PARTY,

3RD: and the company called "BIOSEPRA SA," a corporation with capital of 21,300,000 francs, having its company headquarters at 35, avenue Jean Jaures, VILLENEUVE LA GARENNE (Hauts de Seine—92390), registered in the Registry of Commerce and Companies of NANTERRE under number B 331,502,641 (85 B 00168),

Said company being represented by:

Mrs. Therese BOURDY, domiciled at 35 avenue Jean Jaures, VILLENEUVE LA GARENNE,

acting in her capacity as general director of said company, appointed to this function, which she has accepted, under terms of a decision of the administrative council dated August 16, 1995, and specially empowered for present purposes by virtue of a decision of the administrative council dated February 10, 1998, a copy of which, certified as conforming, is attached to the present document after identification,

said company hereafter called "THE LESSEE" or "THE RENTER."

AS THE OTHER PARTY

WHO HAVE, prior to the object of the present document, declared and stated as follows:

PRELIMINARY DECLARATION
TRANSFER OF RISKS TO THE LESSEE

The LESSEE has taken the initiative of investment in a the property that is the object of the present document, of which it has defined or accepted all the technical characteristics.

Under these conditions, and although the property belongs to the LESSOR, it seems legitimate that the LESSEE assume all risks and obligations of whatever kind, even those resulting from force majeure [act of God], which according to common law are incumbent on the builder or owner of these assets.

It is under the scope of this preliminary declaration, to which it will always be convenient to refer for justification in regard to the distribution between the parties of the charges, obligations, and risks and to define their common intention, that the present agreement is concluded.

STATEMENT

- I -

REQUEST FOR LEASE

The LESSEE has asked the LESSOR to support its competition for financing in the form of a property lease within the framework of the texts cited below:

- the acquisition price of the ground located in the Pare d'Activites de Cergy Saint Christophe (Saint Christophe Industrial Park of Cergy) in the municipality of CERGY (Val d'Oise), with an area of 8737 square meters, surveyed section DY nos. 12, 16, and 18,

- the costs of the acquisition document,

- and the cost of construction of a building for industrial use and offices.

- II -

ACQUISITION

In order for this operation to be realized, the LESSOR has acquired the property designated more precisely above, of:

The ETABLISSEMENT PUBLIC D'AMENAGEMENT DE LA VILLE NOUVELLE DE CERGY PONTOISE [Public management building of the new city of Cergy Pontoise], a building of an industrial and commercial nature, created by decree no. 69-358 of April 16, 1969, having its headquarters at rue de la Gare, CERGY (Val d'Oise).

Under terms of a document received today for the records of Mr. Rene HUCHET, notary in CERGY.

This acquisition took place at the principal price of 3,478,000 francs, without taxes, to which the amount of the usual VAT was to be added, amounting to 716,468 francs, or a TTC price of 4,194,468 francs,

from which the amount of the subsidy granted to the seller by the general council of Val d'Oise is to be deducted, amounting to 869,300 francs,

or a price of 3,324,968 francs, payable in the following manner:

- 977,318 francs at the time of the agreement, applying 716,468 francs to the amount of the VAT, taking into account the terms of the document that contains a receipt for this.

The rest of the price, or the sum of 2,347,650 francs, has been stipulated as payable to the seller, without interest, by December 19, 1998, at the latest.

Concerning all other particular conditions and stipulations of the said sale, the parties declare that reference is to be made to the specified document, to which the lessee consents and gives its agreements.

- III -

BUILDING PERMIT

The building permit was obtained according to the prefectural decree issued August 7, 1997, under number 95,127 97 A0030.

The LESSEE declares that:

- this building permit has been posted in the office of the mayor and on the site, as can be seen in certifications issued by Mr. Jean-Pierre TRISTANT, court bailiff at

PONTOISE (Val d'Oise) dated August 12 and 13, 1997,

- and that it has not been the object of any litigation, as can be seen in a letter addressed February 3, 1998, by the Etablissement Public d'Amenagement de la Ville Nouvelle de Cergy Pointoise, to the LESSEE, a copy of which is attached hereto after identification.

Observation is made here that the LESSEE intends to submit a request to modify the permit, with the particular object of reducing the net unimproved area of 3938 square meters, authorized by the above-mentioned permit.

The LESSEE shall produce for the LESSOR:

- a copy of this request, when it is created,
- the decree modifying the permit, when it is issued,
- the certification of posting of said permit,
- the evidence of absence of legal proceedings, within the legal period.

- IV -

CONSTRUCTION INSURANCE

In conformity with law no. 78 12 of January 4, 1978, and article 4 of the PRELIMINARY AGREEMENTS below, the LESSEE shall sign, through the intermediary of the SOCIETE GENERALE D'ASSURANCE AT DE PREVOYANCE [General Insurance and Providence Company], 50 rue de Chateaudun, PARIS (9 eme), the insurance policies defined in said article 4.

- V -

CLASSIFIED INSTALLATIONS

The LESSEE has deposited with the PREFECTURE OF VAL D'OISE, OFFICE OF LOCAL COLLECTIVES, THE ENVIRONMENT, AND MANAGEMENT, Office of the Environment, a file relating to the installations it proposes to exploit on the site that is the object of the present document, as will be stated below under article 22 of TITLE III.

- VI -

INVESTMENT

The amount of the investment is fixed, without taxes, as the associated value in the amount of TWENTY TWO MILLION TWO HUNDRED SIXTY-NINE THOUSAND FIVE HUNDRED FRANCS, consisting of the following:

—	Acquisition price of the ground	$	78,000	francs, without taxes
—	Acquisition cost		45,000	francs, without taxes
—	Construction cost		10,046,500	francs, without taxes

or a total of	22,269,500.00	francs, without taxes

Observation is made that, taking into account the above-mentioned subsidy, amounting to 869,500 francs, granted to the seller by the general council of Val d'Oise, the sale price of the ground actually paid by the LESSOR is found to be reduced to 3,608,500 francs, without taxes, so that the calculation of rents will be made on the basis of an investment of 21,400,000 francs, without taxes, as will be stated below under Title III.

- VII -

The present document determines the preliminary agreements, then the general and particular agreements which the LESSOR proposes to obtain from the LESSEE, first from enjoying the title of LESSOR, then possibly the ownership, if the LESSOR so desires, of the property designated below.

THIS HAVING BEEN STATED, we proceed to the agreements that are the object of the present document.

PLAN

The agreements are arranged as follows:

PRELIMINARY AGREEMENTS

TITLE I
GENERAL LEASE CONDITIONS

L — Cancellation on request of the LESSOR
M — Lease fee or VAT option
N — Expropriation and requisition

TITLE II
UNILATERAL PROMISE TO SELL

O — Promise to sell
P — Exercise of anticipated option
Q — Evacuation of the premises at the end of the lease
R — Possible regularization of the VAT deduction

TITLE III
PARTICULAR CONDITIONS

TITLE IV
MISCELLANEOUS PROVISIONS

PRELIMINARY AGREEMENTS

ARTICLE 1—UNDERTAKINGS OF THE LESSOR

Provided that the LESSEE respects the obligations contracted for in the present contract, the LESSOR undertakes, on express request of the Lessee and under these indications:

— to make and/or have made, under the conditions defined below and to finance the property operation described in the statement, "to lease to the LESSEE said property unit, within the framework of a lease operation in conformity with article 1 (section 2) and subsequent articles of law no. 66-455 of July 2, 1966, and of subsequent tests.

The basis of the financing agreed to by the LESSEE is established in the PARTICULAR CONDITIONS. Any excess will be taken in charge by the LESSOR, the elements or parts of elements that the latter will finance becoming, by accession and without indemnity, the property of the LESSOR at the time when they are incorporated into the total.

The LESSOR will not make any other payment before becoming, by an authentic document, the owner of a real property right to the property.

ARTICLE 2—UNDERTAKINGS OF THE LESSEE

Taking into account the special nature of the property-lease operations and the fact that the intervention of the LESSOR has been requested by the LESSEE in a property program define by it as satisfactory for its needs, the LESSEE undertakes:

— to obtain all administrative authorizations required to use the ground and for the planned construction and to have them transferred, if necessary, to the name of the LESSOR; to insure that all necessary formalities in this regard have been properly accomplished, to demonstrate this to the LESSOR by sending all documents already made by the LESSEE or signed by the LESSOR of any undertaking arising from the present contract;

— to participate in the document establishing the real right to the benefit of the LESSOR, stated in the preceding statement, and to respect its conditions, whether they concern administrative or particular or from obligations resulting from general or special specifications, agreements, etc., both during the construction period and through the end of the lease;

— to assume exclusively the risks associated with the nature and the acquisition of the property, as well as the risks from the fact of and/or supported by the construction (even for the case of accident or force majeure) normally assumed by the construction supervisor, with renunciation of all contrary legal provisions;

— to execute and have executed under its own responsibility, to the exclusion, however, of any contract for property development within the framework of the general descriptive estimate and the estimates for which it should have received prior agreement from the LESSOR, all work envisioned, by activating, directing, coordinating, and monitoring all operations necessary for this realization, until it is completed.

ARTICLE 3—PRE-RENTS

The LESSEE shall given to the LESSOR, by way of pre-rent, until the date of occupation of the premises:

— an engagement commission, payable in advance, fixed in the PARTICULAR CONDITIONS; it shall be calculated on the provisional amount of the investment, without taxes, starting from the date specified in the PARTICULAR CONDITIONS;

— at the end of each calendar quarter and rental period, interest calculated pro rata on the amount of the sums effectively paid, including taxes, at the rates fixed in the PARTICULAR CONDITIONS; it being specified, however, that the amount corresponding to the VAT included in said provisions, shall be deducted from the basis of term calculation, within a recovery period defined in the PARTICULAR CONDITIONS.

These pre-rents shall be paid by transfer notice by the LESSEE to the bank account whose references are indicated in the PARTICULAR CONDITIONS.

By express agreement between the parties, the pre-rents shall be increased by the VAT and/or the lease fee and any other tax that may be added to or replace it.

In case of non-payment at the end of pre-rent period or non-repayment when first requested of any other amount paid by the LESSOR by way of charges on property assets, financial and other fees, interest on arrears shall be due to the LESSOR, without any other delay needing to be observed, on the unpaid amounts, calculated at the interest rate on pre-rents, increased by 4%, starting from the due date, each month started being counted as a full month.

ARTICLE 4—INSURANCE DURING CONSTRUCTION

The LESSEE shall monitor that the architects and contractors who participate in the construction are suitably and sufficiently insured for all responsibilities that they incur and give the LESSEE evidence thereof.

Moreover, for the purpose of covering the risks connected with execution of the construction work for the LESSOR by the LESSEE in its capacity as assigned construction supervisor, the policies below shall be signed by intermediary of the insurance advisor of the LESSOR, namely:

SOCIETE GENERALE D'ASSURANCES ET DE PREVOYANCE
50 Rue de Chateaudun
75009 PARIS

A—"ALL SITE RISKS" POLICIES

a) This policy has the purpose of guaranteeing material damages occurring at the site during the period of the work, damages occurring to existing objects, possible financial losses, and miscellaneous cost and fees, as well as covering the property at new value, expert's fees and the responsibility of the LESSOR or of the LESSEE for risks connected with fires or explosions an the CIVIL RESPONSIBILITY to guarantee claims that may be formulated by third parties against the LESSOR and the LESSEE in consequence of accidental damages originating from the construction work, including guarantee amounts compatible with the nature of the work performed and, at a minimum, for the period of the work.

b) At the time of signing of the present contract, the insurance advisor of the LESSOR will make contact with the LESSEE, who undertakes to communicated to it, without reticence, all items needed in order to minimize current risks at the site. The LESSEE undertakes to assume all obligations generally incumbent on an insured party.

A copy of this policy shall be sent to the LESSOR.

c) The LESSEE undertakes to permit the insurance advisor of the LESSOR to make, at any time, any verification of the risks needed to work out and monitor this policy and to provide to the LESSOR the date of the end of the work, as well as the definitive amount of the latter, this amount having as its purpose the calculation of the definitive premium, with deduction being made from the provisional premium due when the policy is signed.

d) The LESSEE undertakes to report any disaster within the periods required by the policy and to provide all invoices and documents required by the insurer.

e) In case of a disaster, the LESSOR receive the indemnity/indemnities paid by the insurer that are intended for reconstructed of the work that has been destroyed.

In the case where this indemnity is insufficient, the LESSOR shall bear all excess costs of the reconstruction work.

B—"DAMAGE TO THE WORK" POLICIES

a) The LESSOR, in its capacity as owner and principal project supervisor, shall sign both in its name and on behalf of the LESSEE, and "DAMAGES TO THE WORK" policy, in conformity with the provisions decreed by law no. 78.12 of January 4, 1978, concerning reform of construction insurance.

b) This policy has the purpose of guaranteeing payment for the work of repairing damages, even those resulting from a defect in the soil or in nature of those who are responsible: the builders in terms of article 1792-1 of the Civil Code, the manufacturers and importers, or the technical controller, damages that:

— compromise the solidity of the work,

— make the work unsuitable for its purpose,

— affect the equipment items that are inseparable from the viability of the work, the foundation, and closing and opening in terms of article 1792-2 of the Civil Code, making the work unsuitable for its destination.

This policy likewise covers damages that affect the construction-equipment items and that make the work unsuitable for its purpose, for a period of 2 years, starting from its receipt.

It likewise includes a guarantee for consequent immaterial damages.

This insurance policy, signed at the opening of the site, shall guarantee the superintendent of the work as well as all successive owners for a period of ten years, starting from receipt of the work.

c) At the time of the signing of the present contract, the insurance advisor of the LESSOR shall make contact with the LESSEE, who undertakes to provide it with all items and documents needed for the signing of this policy.

d) A copy of this policy shall be sent to the LESSOR, who undertakes to communicate to the insurer all elements that tend to modify the risk and to assume all obligations generally incumbent on the insured party.

e) The LESSEE undertakes to permit the insurer of the LESSOR to make, at any time, any technical check of risk needed for working out and monitoring this insurance and to provide to the LESSOR and its insurer the date of receipt of the work as well as the definitive amount of the accounts, this amount having the purpose of calculating the definitive premium deduction being made of the provisional premium due at the time the contract is signed.

C—"CIVIL RESPONSIBILITY FOR NON-BUILDING CONTRACTORS" POLICY

The LESSOR, it its capacity as project supervisor, shall sign, both on its own behalf and on behalf of the LESSEE, an insurance policy called "Civil Responsibility of Non-building Contractors," intended to cover their ten-year responsibility.

Payment of premiums corresponding to the above insurance policies, which constitute additions to the cost of the construction, shall be made by the LESSOR and included in the cost of investment, within the limit of the total amount specified in the PARTICULAR CONDITIONS.

If this amount has already been reached, the LESSEE undertakes to pay the excess directly or to reimburse the LESSOR for it, within fifteen days of its request.

The premium rates applicable to the policies envisioned above, as well as the extent of the guarantee, are subject to a technical check made on the PROPERTY during construction by an agreed technical-control office.

The LESSOR shall request intervention by the control office and it choice, which will have the assignment to check the design of the work and the execution of the work during the construction. This check shall be at least of type L.

In case of an intervention on an existing object, a check of type E is obligatory.

Payment of costs connected with execution of the control assignment constituting additions to the cost of the construction shall be made by the LESSOR and included in the cost of the investment, within the limit of the total amount specified in the PARTICULAR CONDITIONS.

If this amount has already been reached, the LESSEE undertakes to pay the excess noted directly or to reimburse the LESSOR, within fifteen days from its request.

The LESSOR will make to payment applicable to buildings or to construction work in the case where the SOCIETE GENERAL D'ASSURANCES ET DE PREVOYANCE (SGAP) cannot obtain from the LESSEE the documents necessary to set up the file permitting insurance of the provisional certificate of signing the above insurance.

ARTICLE 5—PROJECT SUPERVISION

The date for starting the work is established in the PARTICULAR CONDITIONS.

The work of ground excavation, if necessary, and of construction will be done at the LESSOR'S cost, under the direction and responsibility of the LESSOR, in conformity with the plans and descriptive estimates and estimates by state entities, which, when presented by the latter, will have been accepted by the LESSOR, to whom a copy, certified as conforming, of the steps and agreements taken with the contractors and architects, research office, etc. shall be sent. A copy of each of these documents, accompanied by a provisional schedule of work, of the schedule of payments, and of all useful indications, so that the LESSOR will be able to monitor the development of the construction

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and control its expenses at all times, should be sent to it before the document permitting it to have access to the ground is signed.

The LESSEE shall at the same time communicate to the LESSOR the name of the architect, the name or business name of the contractors and their subcontractors; it should have the technical check made, at its cost, by an agreed control office, both during and through the end of the work and communicate the record thereof to the LESSOR as soon as it is received.

The LESSOR, the assigned project supervisor, shall require that all contractors relying in whole or in part on subcontractors obtain in advance, in writing, from each subcontractor acceptance of and agreement with the payment conditions by the LESSOR, the project supervisor.

It is incumbent on the LESSEE, under its exclusive responsibility, to monitor respect for the legal provisions relating to subcontracting and especially to assure that a security be provided for subcontractors who do not have the benefit of delegation of payment, in such a way that the LESSOR cannot be sought out or disturbed in this regard.

Payments of the LESSOR are subject to the provisions of law no. 75-1334 of December 31, 1975, amended January 6, 1986, and in application texts.

Moreover, in application of the provisions of articles L. 235ff and R. 238-1ff of the Labor Code, the LESSEE undertakes to comply with everything regarding SAFETY and WORKER HEALTH, and in particular it shall proceed by mutual agreement with the project supervisor, to appoint a SAFETY COORDINATOR and establish a contract defining precisely the content of his mission.

A copy of this contract should be sent to the LESSOR before any payment.

ARTICLE 6—REGULATION OF THE AMOUNT OF WORK

Every month, the LESSEE shall present to the LESSOR, accompanied by its seal and signature with the indication "Bon a Payer" (OK to pay) and also supported by the signature of the architect, the memos, invoices from contractors, and bills for fees issued in the name of the LESSOR, in conformity with the directives that it gives.

After collation, the LESSOR shall proceed to pay the memos, invoices, and bills for fees that have been presented to it under the conditions established above.

Agreements made by the LESSEE with contractors should envision that withholding of a guarantee shall be replaced, in conformity with the provisions of article 2 of law no. 71-584 of July 16, 1971, by the joint security of the contractor's banker, set up according to the model that will be sent to the LESSEE. Securities established in favor of the LESSOR shall, nevertheless, in agreement with the LESSEE, be governed by the latter, which shall assure its delivery, state any reservations, and give all releases.

ARTICLE 7—END OF THE WORK

The date fixed for completion of the work is indicated in the PARTICULAR CONDITIONS.

In the case where, by reason of unforeseen delays, the work is not completed by the indicated date, the LESSOR can agree on their completion during a period, the duration of which is established in the PARTICULAR CONDITIONS; the conditions of interest to be paid as pre-rent during this period are likewise specified there.

The records of receipt shall be signed by the LESSOR, which is obligated to send them to the LESSOR.

The declaration of completion shall be signed by the LESSOR, in its capacity as assigned project supervisor, and transmitted to the Administration within the period provided. Evidence of this should be given to the LESSOR.

ARTICLE 8—CERTIFICATE OF CONFORMITY

The LESSEE shall send to the LESSOR the certificate of conformity within one month of its issuance.

If said certificate of conformity is not obtained within a period of two years, starting from the delivery of the construction, the LESSOR can, if it seems appropriate, exercise the cancellation clause stipulated under paragraph L of the General Conditions.

In this case, the rents paid or still due, representing compensation for making the premises available, as well as the pre-rents paid or still due, shall remain acquired by the LESSOR.

The LESSEE is obligated:

— to pay, at its cost, without recourse against the LESSOR, for all work and changes that may be imposed by the administrative authority in case of construction not conforming to the building permit and/or the urbanization regulation in force or that may be imposed by the Administration in view of the delivery of the certificate of conformity;

— to guarantee expressly that the LESSOR will be reimbursed for all sums or penalties that the latter may owe because of the improvement of the property that is the object of the present lease and does not conform to the building permit;

— to make this situation its personal business and to protect the LESSOR from all trouble or prejudice from this matter.

TITLE I
GENERAL LEASE CONDITIONS

The present contract does not provide any change to the obligations resulting from any agreement made previously between the parties that have not been executed as of the effective date of the present contract, except for contrary provisions or modifying contents in this document under its various titles.

A—OBJECT AND NAME

The LESSOR leases and rants, in conformity with law no. 66-455 of July 2, 1966, and subsequent texts, to the LESSEE, which is accepted for it by its representative,

the PROPERTY designated below, as it shall exist after completion, namely:

DESIGNATION

MUNICIPALITY OF CERGY, PARC D'ACTIVITES DE CERGY SAINT CHRISTOPHE, CERGY ET PUISEUX-PONTOISE

property for industrial usage, comprising:

- a building consisting of a ground floor and a partial story with a net usable area of about 3938 square meters, divided into spaces to be used as workshop, laboratory, and offices,
- traffic and parking areas,
- green spaces.

The completely surveyed section DY, namely:

— no. 12, with an area of	3 a, 79 ca
— no. 16, with an area of	74 a, 16 ca
— no. 18, with an area of	9 a, 42 ca
TOTAL	87a, 37 ca

ZAC OF MOULIN A VENT

The above-mention property is in the "Moulin a Vent" joint-management zone [ZAC] created in accordance with the ministerial decree dated May 8, 1981, within the framework of the management and outfitting of the Parc d'Activites de Cergy Saint Christophe, Cergy and Puiseux-Pontoise; the management plan of the zone has been approved in accordance with the decree of the prefect of Val d'Oise of November 18, 1981, amended in accordance with the decrees of the prefect of Val d'Oise date December 24, 1984, and December 3, 1986.

The list of charges of the Parc d'Activites de Cergy Saint Christophe has been established in conformity with the provisions of appendix III of decree no. 55-216 of February 3, 1955.

A copy of said list of charges, duly approved by the prefect of Val d'Oise on June 30, 1997, concerning the ground that is the object of the present document likewise substitutes for the urbanization certificate envisioned in article L. 131-5 of the Urbanization Code.

The LESSEE acknowledges having received already before this date a copy of the above decrees as well as a copy of the ZAC items, in particular the regulation of the zone-management plan and the list of charges, which it states that it is fully aware of, and it makes the resulting obligations its personal business, without recourse to the LESSOR.

B—PURPOSE OF THE PREMISES

Throughout the entire period of the lease, the LESSEE can only use the leased spaces, as it is obligated to do, for the usage indicated in Title II of the present contract.

This purpose should not be the object of any change without the express agreement of the LESSOR in writing. In no case can the LESSOR be sought out for the case where the LESSEE violates this rule of purpose; consequences of this shall be the exclusive responsibility of the LESSEE.

C—DURATION

The present lease is agreed to and accepted for a number of whole and consecutive years; the effective date and the number of years are fixed in Title III—PARTICULAR CONDITIONS.

D—CHARGES AND CONDITIONS

The present lease is also agreed to and accepted under the following general specifications and conditions, which the LESSEE is obligated to execute and accomplish, namely:

1ST) The LESSEE shall take the leased premises in their condition on the date when the lease takes effect, without being able to require from the LESSOR any management or repair at any time or of any kind.

2ND) If it seems appropriate to the LESSOR, the condition of the premises shall be established by the parties together during the month following occupation of the premises, at the cost of the LESSEE.

The LESSEE is prohibited from exercising against the LESSOR any recourse because of defects, flaws, or faults, visible or hidden, even when they impede usage of the leased spaces, and it is not able to claim any rent reduction or indemnity.

Because of this, the LESSEE is obligated to report to the LESSOR, with one month of their recognition, all faults or flaws that is notices during construction, in order to permit the LESSOR to take any recourse it deems appropriate.

Moreover, the LESSEE cannot exercise any recourse against the LESSOR in case of damage from fire or explosion, floods, or any other circumstance that damages the leased spaces, in case of total or partial stoppage of its activity caused by material or immaterial damages of whatever cause.

No indemnity can be claimed from the LESSOR for any deprivation of usage, loss of exploitation, or direct or indirect prejudice.

3RD) The LESSEE shall perform all maintenance and repair work, replacements of all kinds, including closings, openings, Iron and other curtains, floors, tiles, locks, plumbing, woodwork, sanitary equipment, etc., at its cost, during the lease—this lease being only enunciative and in no way limiting—including large repairs such as those defined by article 606 of the Civil Code, in such a way that everything is always in good condition, free of any deterioration or degradations of any kind.

The LESSOR shall allow the LESSEE to do any repair work to the leased spaces that turn out to be necessary because of its failure, without being able to claim any indemnity or rent reduction, with the LESSEE renouncing expressly the benefits of the provisions of article 1724, second paragraph, of the Civil Code.

4TH) The LESSEE shall not be able, without the express consent of the LESSOR, any significant changes to the leased spaces involving distribution, any opening in the walls, or any modification. In any case, all work that the LESSEE will have done shall be under its responsibility and at its cost, risk, and peril. In the case where the work affects the entire project, it shall be subject to monitoring by the architect of the LESSOR, whose fees (charges) are to be charged to the LESSEE, said architect shall be particularly charged with recognizing whether the work done does not damage the appearance and the solidity of the property and does not diminish its value.

The LESSEE also undertakes not to load the floors beyond what is permitted, after verification, by an office or a specialized organization, the costs and fees of which shall be charged to the LESSEE.

5TH) At the time of departure, the LESSEE shall leave all installations, improvements, and embellishments for any reason in good condition and without indemnity, when the end of the lease arrives, unless the LESSOR requires that restoration of all or part of the spaces to the state they were in on the date when the present lease took effect, taking into account the modifications expressly authorized by the LESSOR.

The LESSOR also reserves the right to choose between material execution of the necessary work or an indemnity representing their cost, which indemnity shall constitute a privileged credit of the same kind as the rent. The work of restoration, if needed, shall be done under the control of the architect of the LESSOR, at the LESSEE's cost.

All work of whatever kind performed during the lease should be the object of insurance covering liabilities that may arise.

6TH) The LESSEE should allow the LESSOR or any persons it appoints, after it has been notified, free access to the leased spaces, whenever it seems appropriate to evaluate their condition.

7TH) The LESSEE shall preserve the leased spaces and constantly keep a material, furniture and movable items, and merchandise, in sufficient quantity and of sufficient value to correspond at all times to payment of the lease and execution of all conditions of the lease.

8TH) Taking into account the special nature of the present contract, the LESSEE shall bear all obligations relating to the leasing of property assets generally incumbent on the LESSOR, as well as the personal taxes on movable assets, professional fees, or anything that may replace them, taxes of all kinds, including the annual tax on offices, waste management, sewer discharge, sweeping, and everything else that may replace or be added to them, so that the LESSOR is never disturbed or sought out on this subject.

After being informed, the LESSOR shall pay or reimburse to it, when first requested, all fees, especially property taxes, other taxes, and all charges to which the leased spaces or the lease itself may be subject, so that under any assumption the rent established below is received free of all real charges of whatever kind, with the sole exception of the fees that may encumber the lease income and remain the responsibility of the LESSOR. The reimbursement or payment of these charges by the LESSEE should be made in the form of an addition to the rent.

The LESSEE shall itself bear and otherwise remain responsible for the consequences of any errors, insufficiencies, or omissions in statements that are attributable to it and that would be injurious to the LESSOR.

9TH) The LESSEE, the final debtor of the fees, taxes and charges that encumber the leased spaces or the lease, shall have the ability to contest the amount or the principal of the charges, but it can only formulate this challenge against interested administrations or collectives, its exclusive cost, risk, and peril, in the name of the LESSOR, which hereby delegates to it all powers needed for this purpose, in case of need. Any claims or challenges that may be formulated by the LESSEE against the LESSOR would be considered inoperative, as the LESSOR does not itself intend to take charge of possible challenges against the administrations or organizations. However, such a challenge cannot have the effect of delaying the due date of these charges.

Any reimbursement of fees or taxes, and any encumbrances that may be obtained, shall benefit the LESSEE exclusively.

10TH) In the case where the leased assets depend on a co-owner, the LESSEE shall reimburse to the LESSOR all sums paid by it to the co-ownership group for charges and work.

The LESSOR gives to the LESSEE from this point on all powers to represent it before general meetings of the co-ownership.

11TH) The LESSEE undertakes to conform to all decrees, especially municipal, present and future, for everything concerning the storage of all fuels (quantity and storage methods), all flammable and toxic products, and in general all regulations relating to pollution of the environment.

Likewise, it shall be the exclusive responsibility of the LESSEE to do whatever is necessary to have destroyed, at its cost, all insects, rodents, or other parasites, as soon as they appear.

12TH) The LESSEE is prohibited from disturbing the tranquility or the peaceful enjoyment by the other occupants or neighbors of the property, both at the time of deliveries and of the coming and going of employed personnel, and likewise, it is prohibited from using, even in part, the leased spaces for an activity that may affect the good morals or the good operation of the entire property.

13TH) The LESSEE shall make easements of all kinds that encumber or may encumber said ground and constructions its personal business, without recourse against the LESSOR, reserving the right to defend itself from them and to profit from these assets, if applicable.

In the case where the entire property is constructed on ground located in a regulated zone, the LESSOR is obligated to respect all regulations of any kind whatever, including those that are the responsibility of the owner, that may result from the lists of charges and other documents regulating this zone.

14TH) To the extent that it has opted or is compelled to maintain accounting of commercial type, the LESSEE is obligated, during the entire period of the lease, to produce for the LESSOR, when first requested, a copy, certified as conforming, of its balances and profit statements, as well as a copy of the reports of the administrative council to the general meeting and accounting commissioners.

The LESSEE shall inform the LESSOR of registrations of privileges that may be taken against it by virtue of legislative and regulatory texts, as well as all operations of leasing movable assets relating to the installed assets in the spaces that constitute the object of the present lease.

15TH) The LESSEE is obligated to respect all current or future regulations relating to the occupation, use, and management of the entire property and to the activity performed by it. More specifically, in regard to the rules of safety, it is expressly prohibited to use the spaces until it can be proved to the LESSOR that the required formalities have been completed and that the possibly required authorization envisioned for

protection against the risks of fire and panic in the buildings with public access [has been obtained].

The LESSEE shall not be able for any reason whatever to cite the difficulties that may arise within the framework of its obligations and respecting the above provisions to relieve itself from the charges, especially financial, of the present contract or to claim from the LESSOR an indemnity or reduction in the obligations incumbent on it.

16TH) In the case where the construction that is the object of the present contract has been built on ground that the LESSOR has leased by a construction lease or a long-term lease or where it has been authorized in any way whatsoever by the owner of the ground to use as it pleases the rents from the leases or indemnities paid to the owner of the ground, the LESSOR shall be reimbursed by the LESSEE in addition to the terms of the rents defined below. The LESSEE is also obligated to respect the clauses and conditions of the contracts by which the LESSOR can make use of the ground.

E—INSURANCE

In the common intention of the parties, the leased movable assets should be maintained in their integrity during the entire period of the lease. For this purpose, the insurance contracts signed or to be signed should guarantee their eventual complete restoration and damaging consequences from a disaster of whatever cause, including third parties.

In case the contracts are insufficient, the financial consequences of a disaster shall fall, after payment by the insurance companies, on the LESSEE, which accepts this undertaking.

The LESSEE shall guarantee, both on its own account and on behalf of the LESSOR, with companies that are known to be solvent, the financial consequences of civil liability that one or the other may incur of whatever kind and for whatever reason.

1ST) SIGNING OF POLICIES RELATING TO THE BUILDING

a) The LESSEE shall sign with its own insurer, both on its own account and on behalf of the LESSOR, an insurance contract intended to cover the fixed assets and all fittings and installations of a fixed nature that are made available to the LESSEE.

This contract shall cover the following risk:

- fire, lightning, and all explosions at new value,
- loss of lease rent (18 months) or pre-rent and/or deprivation of usage,
- electrical damages,
- expert's fees,
- storms, hurricanes, cyclones, whirlwinds, tornados, hail on the roofs,
- strikes, riots, popular uprisings,
- shock from a ground vehicle,
- falling of airplanes and space machines,
- smoke,
- water discharges,
- civil liability of the property owner,
- recourse by neighbors and third parties,
- broken glass

and shall include a clause renouncing recourse against the LESSOR.

b) If the LESSOR deem the above guarantees to be insufficient, it can sign all insurance that seems necessary to it to supplement or complete the guarantees imposed by the LESSOR. The LESSEE shall not be able to cite insufficient coverage for risks that would be a consequence of an exclusion or of a non-guarantee in order not to perform the obligations for which is made responsible by the lease contract.

The LESSEE here and now authorizes the LESSOR, for the entire duration of the lease, to make at any time any verifications of the risks needed for working out and monitoring these insurance.

2ND) SIGNING OF POLICIES RELATING TO THE CONTENT

a) Moreover, the LESSEE should insure, on behalf of both, if applicable, the fittings and installations attached to furniture that become fixed by intent, the movable items and movable assets, the merchandise, the material, and, in general, all associated or installed assets, at its own cost, as well as the responsibilities arising both from possession of said goods and from its capacity as occupant and user or as contractor.

This contract should, in particular, cover the following risks:

- fire, including fire due to malice, lightning, and explosion, at replacement value or new value, as applicable (movable or fixed items),
- falling of airplanes and space machines,
- storms, hurricanes, cyclones,
- strikes, riots, and popular uprisings,

- discharges of water,
- theft,
- civil liability,
- recourse by neighbors and third parties,

and shall include a clause renouncing any recourse against the LESSOR.

b) An insurance policy covering losses of use should also be signed by the LESSEE of the spaces, which renounces the exercise of any recourse against the LESSOR in case of a total or partial stoppage of its activity, due to material or immaterial damages of whatever cause. The LESSEE gives from this time on its agreement that the insurance company delegates to the LESSOR the lease rents included in the general insured costs.

3RD) MISCELLANEOUS PROVISIONS

a) The annual premiums shall be paid by the LESSEE, who is obligated to do so and should give evidence of them to the LESSOR when first requested, even if these policies are necessarily signed both for its own account and on behalf of the LESSOR, which hereby gives the LESSEE a mandate to this effect under terms of article 1984 of the Civil Code, which is accepted by the LESSEE.

These provisions entail the obligation for the LESSEE:

- to have stated clearly in the polices the quality by it to the LESSOR as direct beneficiary to all the indemnities relating to the movable contents;
- to communicate to the interested companies, so that they cannot ignore it, a copy, certified as conforming, of the 1st) and 2nd) stipulations of Title I, E—Insurance, as well as the present miscellaneous provisions;
- to take, together with said companies, all necessary steps to inform the LESSOR immediately and directly of any total or partial non-payment of premiums during the month when they are due and before any suspension, cancellation, or reduction of the guarantees involved takes effect, no matter what the reasons, without the previous written agreement of the LESSOR.

These provisions constitute an essential and critical condition, without which the present contract would not have been concluded. Consequently, the LESSOR shall be able, if its seems appropriate, to enforce the cancellation clause by the request of the LESSOR stipulated below in case of a serious failure that may affect the scope or the validity of the policies;

- to address to the LESSOR, in consequence, on its first request, a certification issued by said companies, detailing the covered risks and liabilities and the corresponding amounts.

b) Evidence of all policies signed by all interested parties should be given before the acquisition of the property by the LESSOR, and therefore its effect would benefit succeeding acquirers; it shall therefore be thus obligatorily for policies concerning the construction envisioned by the legislation in force.

c) The LESSEE shall also make all damages caused to the fittings that it makes in the leased spaces its personal business, as well as those caused to furniture, materials, merchandise, and all objects of which it shall be the owner for whatever reason.

d) The LESSEE should be in a position to give evidence, when first requested by the LESSOR, of subscription to "Fire Control and Prevention" with an organization agreed on by the general meeting of the fire-insurance companies, the tasks of which shall cover at least the obligations arising from all current or future legal provisions or regulations relating to the nature and purpose of the buildings.

e) The LESSEE should, in regard to the work performed during the lease period, insure the project or supplementary work in reference to both the legal provisions and the terms of the present contract as well as after completion (insurance for damage to the building, fire, civil liability, etc.),

f) In the case where the sites to be insured depend on a co-owner, insurance against fire and other risks should also be contracted for the needs of the ownership group, under the conditions envisioned in the co-ownership regulation.

The supplemental insurance policies to be signed by the LESSEE should, on the one hand, cover the work, fittings, and installations done by it, and to which, because of this, a collective guarantee taken by the ownership group cannot be extended, and on the other hand, it should complete this collective guarantee in such a way that the risks and liabilities are insured, both as to nature and amounts, as demanded in the 1st and 2nd paragraphs above.

The premiums associated with the policies signed by the co-owners shall be included in the charges for which payment is mentioned in article D, 10th item, it being specified here that for this purpose the LESSOR gives a mandate to the LESSEE, which accepts it, for the purpose of paying the premiums to the group directly.

4TH) DISASTER

a) The LESSEE should report any disaster to the insurer, in the forms envisioned in the insurance contract, regardless of size, even if no apparent damage results from it; a copy, certified as conforming, shall be sent on the same day to the LESSOR by registered mail.

b) In the case where, following a fire, explosion of whatever origin, or any disaster, the leased spaces come to be destroyed, partially or totally, or rendered unusable, the present agreement, notwithstanding the provisions of article 1722 of the Civil Code, shall not be canceled and shall continue to produce all its effect.

Consequently, the LESSOR undertakes to give a mandate to the LESSEE for it to proceed with reconstruction of all the destroyed items, the LESSOR reserving the right to check the execution of the work by its architect at any time.

Insurance indemnities shall be paid directly to the LESSOR, which shall apply them to payment of the restoration work; the LESSOR being responsible in this case only for the amount of the indemnities received, without taxes.

All sums paid by the LESSOR as VAT shall give rise to credits in its favor toward interest paid by the LESSOR, under conditions to be determined at the time between the parties until such time as the LESSOR is credited by the Administration.

In case of insufficiency, for whatever reason, the LESSEE shall be required to pay them and any expenses.

The LESSEE should have this reconstruction done on an equivalent developed area, at the LESSOR's cost, respecting the urbanization regulations in force, using materials of the same quality.

The reconstruction should start within six months following the disaster, to be completed imperatively within twenty-four months from the date of the disaster, unless this duly found by the parties to be impossible.

c) The LESSOR shall determine, in agreement with the LESSEE, the methods by which it will directly pay to the architects and contractors the amounts of the invoices, using funds received from the insurance companies.

d) Before starting the work, the LESSEE should provide the LESSOR with the joint bank guarantee of a undertaking to respond at the proper times and place; to calls for funds from architects and contractors that are not covered by insurance companies, unless otherwise agreed by the undersigned parties.

e) If complete insurance indemnity does not exist or the above guarantee causes doubts before the start of the work, the lease shall be cancelled in full, if this seems good to the LESSOR. This cancellation shall entail the loss of the benefit of promise to sell and cause the LESSEE to assume payment of an indemnity, the amount of which is established under "Title III—PARTICULAR CONDITIONS," to which one year's rent shall be added.

However, in order to avoid the consequences of cancellation of the lease, which has just been mentioned, the LESSEE shall be able, if desired, to enforce the anticipated option clause (Title II—P), independent of the date of the disaster, on condition that a registered letter be sent to the LESSOR with return receipt requested.

The repurchase shall take place within a period of three months, with the LESSEE having to pay to the LESSOR one entire year's rent, in addition to the repurchase price defined in Title III—"PARTICULAR CONDITIONS," for the end of the current year.

In either of these two cases, the insurance indemnity received by the LESSOR shall be credited, after deduction of amounts possible due to the Tax Administration on the indemnity received, with proper agreement, to any amounts due from the LESSEE.

If there is a cancellation as defined in the first paragraph of the present article, the surplus shall remain the property of the LESSOR. If the repurchase clause is applied, the surplus shall be returned to the LESSEE.

f) The LESSEE shall continue to make regular payments of the amount of rent on the principal item and on accessories, if any, notwithstanding the disaster, during the reconstruction period for the sites totally or partially destroyed.

Any indemnity paid to the LESSOR as "loss of rent" insurance and/or loss of usage, shall be credited to the rent due.

g) In the case where, for any reason whatever, the LESSEE runs up against an impossibility of reconstruction not due to his own fault, and even in the case where this reconstruction would not be possible in part, the LESSEE shall be able, at its choice:

- either to request that the lease be cancelled, in which case the indemnity envisioned under Title III—"PARTICULAR CONDITIONS," increased by six months' rent, should be paid to the LESSOR.

In this case, the insurance indemnity received by the LESSOR shall be credited, after deduction of amounts possibly owed to the Tax Administration, with proper agreement, to amounts owed by the LESSOR. If this indemnity, as just described, is greater that these amounts, the surplus shall remain the property of the LESSOR.

Cancellation requested in this manner shall entail full loss of the benefit of the promise to sell;

- or to acquire the leased assets within the framework of the promise to sell, reduced by payment in full of the price envisioned in Title III—"PARTICULAR CONDITIONS," to which the amount of six months' rent shall be added.

In this case, the insurance indemnities received by the LESSOR shall be credited, after deduction of amounts possibly owed to the Tax Administration, with proper agreement, to amounts owed by the LESSOR. If this indemnity, as just described, is greater than these amounts, the surplus shall remain the property of the LESSOR.

b) The amount of the indemnities that may be due from the insurance companies because of partial or total disaster occurring in the rented spaces, shall be agreed on by the LESSOR in the presence of the LESSEE.

Offers that may be made by the insurance companies can only be accepted by the LESSOR with the agreement of the LESSEE, but the latter cannot delay its response beyond a maximum period of one month, starting from the notification that will be made by the LESSOR of its intention to accept the proposed offers.

In case of disagreement with the LESSEE on the amount of the indemnities offered by the insurance companies, the LESSOR authorizes the LESSEE to challenge, at its own cost and risk, the amount of these indemnities, call any experts, and initiate any actions it advises, being responsible to invite the LESSOR to participate in the discussion and the proceedings.

During the period of the challenge, the LESSEE shall continue to pay the amount of the rents due during the period under consideration. Moreover, it shall also bear and pay directly any costs, fees, and honorariums that may be due.

Assuming that the LESSEE's challenge has the result of delaying the start of reconstruction work, the periods defined above in article D, 4th) and 6th sections, shall only start to run on the date when the insurance companies have given their agreement for the work to start.

In the case where the LESSEE's challenge to the offer that the LESSOR was disposed to accept, leads, for whatever reason, to a lesser amount of indemnity being accepted by the LESSOR, the LESSEE is obligated to pay, out of its own funds, the difference between the definitive indemnity and the offer accepted by the LESSOR to the LESSOR.

F—TRANSFER

1ST) BY THE LESSEE

The LESSEE shall not be able to transfer its right to the present lease, in whole or in part, except to the acquirer of its business, without the express written consent of the LESSOR, under threat of invalidation of the agreed transfer for violation of the present clause and even cancellation of the present lease, if this seems good to the LESSOR.

Possible transfer of the present lease shall obligatorily entail full transfer of the benefit of the promise to date agreed to below.

Moreover, the transferring LESSEE shall be responsible jointly with its transferee for all obligations that have been made its responsibility by this document, especially for the payment of the rents when due and full execution of clauses of the present lease.

Consequently, subsequent leases, even those who, having transferred their right to the lease, no longer occupy the leased spaces, shall be jointly responsible together with respect to the LESSOR for payment of the rents and changes and for execution of all clauses and conditions of the lease, so that the LESSOR can act against all subsequent lessees or any of them, all being jointly responsible.

The preceding stipulations apply to all cases of transfer, under any form whatever, and to application of the right to the lease to any company of whatever kind, whether this application is made to a new company or to a pre-existing company.

Transfer of application to a company should be made in the presence of the LESSOR or it should be duly invited by means of a simple registered letter with return receipt requested, addressed to its company headquarters at least eight days in advance.

The transfer of application shall be responded to by an authentic document, of which an executable copy shall be delivered without cost to the LESSOR.

2ND) BY THE LESSOR

In conformity with the provisions of article 2-1 of law no. 66-455 of July 2, 1966, and subsequent texts, the LESSOR is obligated, in the case of a sale or transfer of the assests that are the object of the present lease, during its duration, to impose on the acquirer, transferee, or similar entity, the execution of all clauses and conditions of the present lease conditions.

In the case of transfer of credits arising from the present contract to an ordinary credit fund, in conformity with the legal provisions and regulations in force, the transfer of securities that can guarantee each credit, including, if applicable, the benefit of insurance, shall be made fully to the benefit of said funds, in conformity with the provisions of article 34, paragraph 7, of law no. 88-1201 of December 23, 1988, as amended.

In addition, the charge for recovering the credits granted in this way, can be transferred according to the provisions envisioned in article 36, paragraph 3 of the law cited. In this case, the LESSEE shall be notified of this by a simple letter.

G—SUBLEASING

The LESSEE has the ability to sublet all or part the spaces that are the object of the present contract, under the following reservations, to which it cannot make an exception, under threat of cancellation:

1) Any total or partial sublease of the space can be granted by the LESSEE only with prior written agreement from the LESSOR.

2) In case a sublease is authorized, the LESSEE shall be under obligation to respect the following conditions:

- the sublease(s) granted should in no case expire later than the lease contract,

- all work of fittings or restoration in consequence of the subleases shall be charged exclusively to the LESSEE, likewise indemnities of all kinds that may be claimed by the sublessee for any reason whatever,

- cancellation of the lease for whatever reason shall entail full cancellation of the subleases granted.

- in case of default in the payment of amounts due from the lease contract, the LESSEE here and now authorizes the LESSOR to receive directly any amounts due from its sublessees.

- the following clause shall be reproduced completely in any sublease contract granted by the LESSEE:

"The right to use the rented spaces derives for the lessor from a lease contract that has been granted to it by the landlord, which will expire on , of which the sublessee acknowledge being aware and undertakes to observe the terms.

"Prior to the present sublease, the sublessee explicitly acknowledges having been informed that the sublease granted to it depends of the existence of the lease contract, of which the lessor is the owner.

"Because of this, the sublease shall expire irrevocably when the term of the lease contract matures, in the absence of options to sell being exercised by the lessor, or when it is cancelled for any reason.

"In case the lease contract expires without the lessor having exercised the option to sell or in case the lease contract is cancelled for any reason whatever, the sublessee shall be required to vacate the rented premises immediately, without being able to oppose this through a right based on the present contract against the leasing company, which retains ownership.

"The lessor and the sublessee shall secure to the landlord the credit for the sub-rents resulting from the present contract.

"When first requested by the landlord, the sublessee shall be required to pay to it any amount that may be due to the lessor."

H—SECURITY

The LESSEE shall only be able to give the commercial funds used in the property that is the object of the present contract as security only after being advised by the LESSOR by registered letter with return receipt requested and having received its written consent.

In the case where a security has been given in violation of this clause, and likewise in case of a registration taken by a third party and recognized as valid by a judicial decision that has taken effect and not been cancelled in execution of the decision, the LESSOR shall be able to cancel the contract, if this seems good to it: the conditions of this cancellation shall then be those mentioned below in article L Cancellation on Request of the LESSOR.

I—RENT

The present lease contract is granted and accepted in exchange for payment of rent, without taxes, at intervals and according to the above modalities, the amount and payment conditions of which are specified in Title III.

This rent will be increased by the value-added tax (VAT) or by any fees or taxes that may replace or be added to this tax in the future.

Any amounts due from the LESSEE to the LESSOR as rents, charges, and any taxes shall be paid by withdrawal notice.

Subsequent payments should be made at the regular intervals specified below in the PARTICULAR CONDITIONS, after the due date of the first payment.

In case of non-payment by the LESSEE when due for one rental payment or of non-payment of the charges or other amounts due on the basis of the present contract within fifteen days from the sending of the invoice or evidence justifying the expense, interest shall be due, as a penalty clause and without necessity of a preliminary period, calculated at the date established in the PARTICULAR CONDITIONS, starting from the due date and independent of the exercise of the cancellation clause on request of the LESSOR envisioned below under article L.

J—INFORMATION RELATING TO REPLACEMENT OF THE FRENCH MONETARY UNIT BY A SINGLE EUROPEAN CURRENCY

In case of need, in conformity with the general principles of monetary law, we recall that credits for sums of money denominated and/or payable in the currency of a member state of the European Community (National Monetary Union) by virtue of the present documents shall be considered a fully denominated and/or payable in the single European currency when this national monetary unit ceases to be legal tender or, more generally, it is replaced by the single European currency in conformity with the applicable community and/or national regulations.

The rates and conditions for the conversion from the national monetary unit shall be those resulting from application of the provisions of article 109 L of the European Union Treaty.

K—CANCELLATION ON REQUEST OF THE LESSEE

1st) The LESSEE shall only be able to request cancellation of the present contract starting with the date established in Title II and on condition that notice be sent to the LESSOR at least three months in advance by registered letter with return receipt.

However, regardless of the date of a disaster or expropriation, the LESSEE shall be able to exercise the present cancellation clause on condition that the LESSOR be notified by registered letter with return receipt.

This cancellation shall take effect only after a period corresponding to one rent period.

2nd) An amount determined in Title III—"PARTICULAR CONDITIONS" shall be payable by the LESSEE eight days in advance of the cancellation date chosen by it, as an agreed indemnity penalty.

3rd) The cancellation indemnity, in connection with the particular nature of the lease, shall be due by the LESSEE in a situation of legal compensation, under the assumption that the legal administrator does not pursue execution of the contract.

4th) It is expressly stipulated that cancellation of the contract remains subject in all cases to complete execution of each and all of the clauses, charges, and conditions stated in Title I of the present contract.

5th) Cancellation of the lease shall entail full loss of the benefit of the promise to sell.

6th) In case of legal compensation or liquidation, the LESSEE shall vacate the premises as of the effective date of the cancellation. If this date is not respected, the occupant should pay to the LESSOR a monthly and indivisible "precarious" occupation indemnity equal to triple the monthly rent calculated on the basis of the rent in force, this indemnity is not to be confused with that envisioned in article K, 2nd), above.

L—CANCELLATION ON REQUEST OF THE LESSOR

If any period of pre-rent, rent, or execution of any of the clauses of the present contract is in default, and after fifteen days starting from a demand for payment or placement in arrears addressed by a extra-legal document has remained without effect and expressing the desire of the LESSOR to exercise the present clause, the lease contract shall be cancelled immediately, without a necessity for complying with any legal proceedings and notwithstanding any later offers or payments.

During the pre-financing period, this cancellation shall entail for the LESSEE or anyone that may have replaced it with agreement of the LESSOR, the obligation to pay all at once, at the latest within two months to the LESSOR:

1st) all the financing expended through the cancellation date and any invoices still due for work done;

2nd) any indemnities possible due for the cancellation of contracts in progress (especially with architects, contractors, or supplier);

3rd) on cancellation indemnity established as a penalty of 10 of the basis for financing, without taxes.

In any cases, the pre-rents or rents paid or due to the LESSOR shall remain acquired by it.

During the lease, cancellation of the present contract shall entail full cancellation of the benefit of the promise to sell and payment of agreed penalties for damage interest, a sum equal to that envisioned in Title III—"PARTICULAR CONDITIONS," to which one year's rent shall be added.

The LESSEE and/or any occupant under it should vacate the premises as of the effective date of the cancellation of the contract. If it refuses to do so, it may be forced to by a simple injunction order. In this case, the LESSEE and/or any occupant under it should pay an occupation indemnity calculated in conformity with the provisions of article K, 6th), until the premises have been effectively vacated.

In case a legal procedure for compensation is institute against the LESSEE, the LESSOR shall address an placement in arrears to the legal administrator, to inform him whether or not the contract will be continued.

If no response is received within a period of one month, starting from the receipt of the letter, the administrator shall be presumed to renounce the benefit of the contract, in conformity with the law, and the cancellation shall take place in full, with all the consequences envisioned previously.

The preceding conditions constitute an essential determining condition of the present lease, without which it would not have been agreed to.

M—LEASE FEE OR VAT OPTION

The "PARTICULAR CONDITIONS" specify whether the LESSOR opts for imposition of the value-added tax on revenues from the present lease.

If there is no option for the VAT, the rents and additions to the rents shall be subject to the lease law and to the possible additional tax.

In the case of an option for the VAT, the LESSEE shall continue to pay to the LESSOR, in addition to the rents, interest calculated according to the methods specified in TITLE III—PARTICULAR CONDITIONS.

N—EXPROPRIATION AND REQUISITION

Until the execution date of an order prescribing the property transfer of the entire property in favor of the expropriating organization, the rents due shall continue to be payable, independent of the way in which the LESSEE is occupying the expropriated premises.

It is agreed that discussions with the expropriating administration for establishing expropriation indemnities shall be conducted jointly by the LESSEE and the LESSOR.

1ST) TOTAL EXPROPRIATION

The lease shall be cancelled in full, starting from the date of execution of the order discussed above, without an indemnity being charged to the LESSOR to the benefit of the LESSEE.

In this case, the LESSEE shall pay to the LESSOR an indemnity equal to the amount envisioned in TITLE III—"PARTICULAR CONDITIONS."

The amounts paid to the LESSOR for the expropriation shall be credited, with deduction of the taxes that may be due by the LESSOR for

receiving the expropriation indemnity, with proper agreement on the amount of the cancellation indemnity, any eventual surplus being paid by the LESSOR to the LESSEE.

2ND) PARTIAL EXPROPRIATION

If the property is expropriated only in part, the lease shall be continue on the non-expropriated part. A reduction of the amount of the rent may then be agreed on by the parties, which reduction shall take into account, in addition to the possibilities for the LESSEE to take legal action regarding the expropriation and the amount of indemnities received by both parties.

If the non-expropriated portion of the property is insufficient to permit usage of the leased parties, the LESSEE shall have the ability to ask the LESSOR, on condition that a registered letter is sent with return receipt three months in advance:

- either to cancel the present contract under the conditions proved above under article K—Cancellation at the request of the LESSEE, with no delay required.

  In this case the expropriation indemnity received by the LESSOR shall be credited, after deduction of amounts possibly due to the Tax Administration, with proper agreement, to amounts owed by the LESSEE.

  If this indemnity, which has just been discussed, is greater than these amounts, the surplus shall remain the property of the LESSOR.

  If this expropriation indemnity is less than the cancellation indemnity owed by the LESSEE, the latter is obligated to repay the difference to the LESSOR from its own funds.

- or to repurchase the remaining part of the property by paying the total price envisioned in Title III—"PARTICULAR PROVISIONS" under the same conditions as those provided above under article N, 1st), relating to total expropriation.

3RD)—REQUISITION OF THE PROPERTY

The lease shall continue to produce its full and complete effect, the rent continuing to be due without reduction, the requisition, temporary occupation, or partial indemnity that will be paid in totality to the LESSOR, but which will be forwarded by it to the LESSOR as soon as it has been notified by the authority making the requisition, to be credited to future rents.

TITLE II

UNILATERAL SALE PROMISE TO SELL

O—PROMISE TO SELL

The LESSOR promises to the LESSEE to sell to it the property that is the object of the present document at the expiration of the lease, under the usual legal conditions, and in particular for the purchases, to take the assets sold in their state and conditions as of the date of the sale.

The acquirer should reimburse to the seller the entire property tax relating to the year in which the sale takes place. If the notice has not been delivered on the date the document is signed, the acquirer should pay to the seller an amount determined on the basis of the tax for the preceding year. If applicable, all amounts due for charges and work, executed or not, because of co-ownership shall likewise be reimbursed to the seller by the acquirer.

This sale shall take place at the risk and peril of the LESSEE, without any guarantee on the part of the LESSOR for any reason whatever, and in particular for any defect or hidden faults, with express waiver of the provisions of article 1641 of the Civil Code.

It is expressly stipulated that realization of the promise to sell is subject to complete execution by the LESSEE of each and all of the clauses, charges, and conditions stipulated in Title I of the present contract.

The sale price, for the case of realization of this promise, is indicated in Title III of the present contract. It shall be payable at the time the authentic document is signed, which should occur at the latest on the date on which the lease expires.

Moreover, the LESSEE assumes all the fees, costs, and honorarium associated with this change, and all taxes, fees, and contributions that

the Administration may require from either of the parties, in consideration of the duration of the contract, the sale price, and the rules of amortization, except those that are appropriate to the LESSOR.

The LESSEE should notify the LESSOR by registered letter with return receipt, at latest six months before the date on which the lease expires, of its intention to exercise the option offered to it.

P—EXERCISE OF ANTICIPATED OPTION

The LESSEE shall also have the ability to acquire the leased assets starting from the date indicated in Title III, with the reservation that it has regularly met the obligations imposed it and that it has notified the LESSOR at least one year in advance of the date on which it intends to make this acquisition effective, by registered letter with return receipt.

This acquisition can take place only on the anniversary of the date on which the present contract takes effect.

In this case, the LESSEE should pay to the LESSOR the amount established in Title III—"PARTICULAR CONDITIONS."

In this event, as in the case of a realization of the promise to sell at the end of the contract, all fees, costs, and honorariums due to this change, likewise all taxes, fees, or contributions that the Administration may require from either of the parties, taking into consideration the duration of the contract, the sale prices, and the rules of amortization, shall be charged exclusively to the LESSEE; also, all amounts that have not been received as rent according to the methods of the present contract, for whatever reason, likewise all amounts due as principal or accessories, including interest on arrears calculated as stated above (Title I, Article 1—rent), should have been delivered to the notary charged with drawing up the document by 48 hours before the date selected by the LESSEE or the date of the end of the contract.

The acquirer should reimburse to the seller all property tax relating to the year during which the sale will take place. If the notice has not been delivered by the date the document is signed, the acquirer should pay to the seller an amount determined on the basis of the tax for the preceding year. If applicable, all amounts due for charges and work from co-ownership, executed or not, shall be reimbursed to the seller by the acquirer.

If the LESSEE has not delivered the funds to the notary within the period envisioned above or has not signed the document by the date fixed, the LESSEE shall lose the benefit of exercising the anticipated option mentioned, and the present lease shall then continue to run under the conditions initially envisioned. Also, the LESSEE shall assume all costs that would have been borne by the LESSOR.

Q—EVACUATION OF THE PREMISES AT THE END OF THE LEASE

If the purchase option is not exercised, and if a new lease contract has not been concluded between the parties, the LESSEE should vacate the premises at the latest by the expiration date of the present contract.

In case of a delay in vacating the premises, the LESSEE shall pay to the LESSOR an annual occupation indemnity equal to three times the rent received during the last year of the lease, discounted pro rata month by month, each month started being due.

R—POSSIBLE REGULARIZATION OF THE VAT DEDUCTION

Assuming that, for whatever reason, the LESSOR is called to proceed, in accordance with provisions of the General Tax Code with any regularization of the deduction made by the LESSEE for the value-added tax initially imposed on the construction or acquisition of the property that is the object of the present lease, any amount that the LESSOR would thus be called on to refund to the Tax Administration should be reimbursed to it, when first requested and without delay by the LESSEE in the lease, the future possible acquirer of the property, to which, in exchange, the LESSOR shall deliver the certificate envisioned by the General Tax Code.

Such a reimbursement by the LESSEE shall be payable:

- regardless of the reason that motivates the obligation for the LESSOR to proceed with regularization of the deduction, unless this reason was exclusive of any sale of the property,

- even when the payment of the tax on the value added by the LESSOR would open the way to issuance of the certificate envisioned above,

- likewise, even assuming that the LESSEE, for whatever reason (whether this reason is attributable to it or not, regardless of its will), could not effectively benefit from the right to deduct the value-added tax involved in the certificate that will have been delivered to him by the

LESSOR.

This reimbursement shall not be required from the LESSEE if regularization of the deduction of the value-added tax was due to the occasion of the sale of the property by the LESSOR to a third party that is required to execute the agreements of the lease at the seller's location.

In the case of a sale of the property to the LESSEE by virtue of either the promise to sell stipulated in Title II above or in execution of any other provisions of the present lease contract, especially those involving disasters, the amount of the value-added tax that the LESSOR should be called on to pay as regularization of the deduction should be reimbursed to it by the acquirer at the time the authentic sale document is signed, this reimbursement in no case being able to apply to the term payments.

Moreover, the withdrawal for repayment of the regularization shall be made by priority on the insurance or expropriation indemnities possibly received; this withdrawal shall be compensated for by sending the certificate mentioned above.

The provisions of the present article are and shall be applicable both to the LESSEE and to his creditors or successors, in particular to any transferee of the right to the present lease.

TITLE III

PARTICULAR CONDITIONS

1 — PURPOSE OF THE PREMISES (TITLE I, B)

Building for use as laboratory, workshops, and offices.

2 — BASIS OF FINANCING (ART. I OF THE PRELIMINARY AGREEMENTS)

22,269,500.00 francs, without taxes (TWENTY-TWO MILLION TWO HUNDRED SIXTY-NINE THOUSAND FIVE HUNDRED FRANCS, WITHOUT TAXES), as indicated in the presentation, divided in the following manner:

• share of financing by NATIOCREDIMURS, file leader, or 70 %	15,588,650 francs, without taxes
• share of financing by CICAMUR, or 30 %	6,680,850 francs, without taxes

SUBSIDY AGREED ON THE SALE PRICE OF THE GROUND

By virtue of an agreement concluded between the GENERAL COUNCIL OF VAL d'OISE and the ETABLISSEMENT PUBLIC d'AMENAGEMENT DE LA VILLE NOUVELLE DE CERGY POINTOISE, dated January 23, 1998, the content of which has been included in the sale document for the benefit of the LESSOR, analyzed in the preceding presentation.

The sale price of the ground has been reduced by the amount of the subsidy, an amount of 869,500 francs, allocated to the seller under the conditions reproduced literally below:

ARTICLE I:

The operator undertakes to see that the final beneficiary named in a promise to sell is the same as the one mentioned in the sale document, no matter what the method of financing the operation is, lacking which, the subsidy of the General Council shall not be paid.

In the case of financing operated under the form of a lease, the operator also undertakes to produce the corresponding contract to the General Council of Val d'Oise as a piece of evidence for the granting of the subsidy.

ARTICLE 2:

The operator undertakes to produce the following elements for the General Council of Val d'Oise within a period of 2 years, and at the latest one year after completion of the construction envisioned:

– the number of jobs retained;

– the number of jobs transferred;

– the number of created jobs transferred;

– the provisional amount of the professional tax.

ARTICLE 3:

The operator undertakes to repay the subsidy in the case where the operation of construction is not completed within a period of 5 years and/or in the case where the nature of the operation does not correspond to the nature of the aid from the General Council.

ARTICLE 4:

The present agreement takes effect starting from the date on which it is signed.

A photocopy of this agreement is attached hereto after identification.

IN CONSEQUENCE WHEREOF, it is expressly agreed between the parties that the amount of the subsidy shall be deducted from the amount of the investment for calculation of the pre-rents and lease rents.

The LESSEE shall make all obligations connected with the granting and maintaining of this subsidy its personal business.

[The following paragraph has been crossed out and replaced by an illegible handwritten note:]

In the case where the LESSOR is asked to return all or part of the subsidy in question, the LESSEE will reimburse the LESSOR, as soon as asked, all amounts including principal, interest, charges and penalties asked of the LESOR by the organization having granted said subsidy.

LESSEE ADVANCE

On the day when the present contract takes effect, the LESSEE shall give directly and without the involvement of the undersigned notary, the LESSOR, which accepts it, in the form a deposit that is frozen in its books, a lump-sum deposit of TWO MILLION FRANCS (2,000,000.000 francs), under the conditions and according to the methods defined below.

This advance shall be distributed according to the indivisible shares of each of the lessors.

The LESSOR shall open a special account in its ledgers in the name of the LESSEE corresponding to the above advance that has been granted and accepted, which is intended to cover the relationships between the LESSOR and the LESSEE at the time of this advance.

By express agreement between the parties, this advance shall have a duration of ten (10) years from the date on which the present lease contract takes effect, concurrent with the first 40 quarterly payments calculated in this manner, which are indicated hereafter under the heading of "RENTS."

The LESSEE acknowledges that the LESSOR has the ability to modify the methods of restitution of the advance defined above, especially in the case of default, recovery, or legal liquidation, with the sole reservation of being notified of this.

The LESSOR shall be considered as having fulfilled its obligations by the simple fact of crediting the entire advance defined above at the latest by the date of the contractual expiration of the lease, in a single operation, if applicable.

The LESSEE renounces in advance a claim to restoration of said advance before the entire compensation as indicated above has been made and the invoking of any of the provisions of article 1944 of the Civil Code.

In addition, it is expressly agreed between the parties that if the sum of 2,000,000 francs is not paid as the lessee advance in question, the LESSOR may apply, if this seems good to it, the clause in article L of Title I "Cancellation at the request of the lessor."

3 — PRE-RENTS (ART. 3 OF THE PRELIMINARY AGREEMENTS

Commitment commission: 0.0625 % per quarter or 0.25 % per year, pro rata, starting January 9, 1998, until the date on which the present lease takes effect, calculated on the investment reduced by the amount of the lessee advance and payable in advance.

Interest: (TMM + 1.50) % annually.

TMM = AVERAGE MONTHLY MONEY MARKET RATE.

The TMM considered for calculation of said interest shall be the arithmetic mean of the 3 TMM's published for months M-3 through M-1, M being the month in which the interest is payable.

4 — RATE OF PRE-RENTS DURING THE SUPPLEMENTAL PERIOD (ART. 7 OF THE PRELIMINARY AGREEMENTS)

Commitment commission: 0.25 % annually.

Interest: (TMM + 1.75 %) annually.

TMM = AVERAGE MONTHLY MONEY MARKET RATE.

The TMM considered for calculation of said interest shall be the arithmetic mean of the 3 TMM's published for months M-3 through M-1, M being the month in which the interest is payable.

5 — WITHDRAWAL NOTICE FOR PAYMENT OF PRE-RENTS (ART. 3 OF THE PRELIMINARY AGREEMENTS) AND LEASE RENTS (TITLE I, I)

References to the LESSOR's bank account, according to the R.I.B:

BANQUE NATIONALE DE PARIS
Headquarters: GENNEVILIERS
Account no.: 000220888718

6 — DATE OF START OF THE PROJECT (ART. 5 OF THE PRELIMINARY AGREEMENTS)

currently April 1998.

7 — PRESENTATION OF INVOICES (ART. 6 OF THE PRELIMINARY AGREEMENTS)

a) Monthly presentation date: the 10th of each month.

b) In the case where the LESSEE has already paid, prior to the signing of this document, for certain expenses incumbent on the LESSOR, the latter shall reimburse the LESSEE on presentation of the corresponding invoices and evidence that they have been paid (Art. 2 of the preliminary agreements).

8 — END OF THE PROJECT (ART. Y OF THE PRELIMINARY AGREEMENTS)

a) Completion date: March 31, 1999.

b) Duration of supplemental period: two months, starting from this date.

9 — FINANCING THE VAT PAID BY THE LESSOR

The LESSEE shall pay to the LESSOR interest calculated at the rate of (TMM + 1.50) % annually on the amounts paid as VAT on the amount of the investment that is the object of the present

document, but with a limit of a lump-sum recovery period of 4 months, starting from the date of each payment.

TMM = AVERAGE MONTHLY MONEY MARKET RATE

The TMM considered for calculation of said interest shall be the arithmetic mean of the 3 TMM's published for months M-3 through M-1, M being the month in which the interest is payable.

10 — EFFECTIVE DATE AND DURATION OF THE LEASE (TITLE I, C)

The lease shall take effect starting from the date on which possession is taken of the assets designated above and at the latest on June 1, 1999, for a duration of twelve (12) entire and consecutive years.

11 — RENT (TITLE I, I)

The rent shall be calculated as stated below, depending on the resale price elements listed in the preceding presentation, representing the amounts invested by the LESSOR in the present lease operation and expressed hereafter by the term "investment."

In case the investment is increased or decreased, the present document shall be, after agreement with the LESSOR, the object of an amendment.

The amounts of the annual rents are payable quarterly, in advance, the first starting with date on which the lease takes effect.

The rents shall consist of the following items:

1st) a part of the rent, without interest, increased by the VAT, which shall be payable on the amount of the advance given by the LESSEE to the LESSOR.

2nd) a part of the rent, increased by interest and the VAT, necessary for reimbursement of funds mobilized by the LESSOR.

A) VARIABLE-RATE FORMULA

Each quarterly amount shall include:

a) A capital-reimbursement part, governed by an amortization key such as the one in column two of the following table.

b) An interest part, calculated on the capital remaining due at the start of the period, without deduction of the amortization part associated with said period. The nominal annual rate on the advance serving for calculation of this interest shall result from the following formula:

TNA = NOMINAL ANNUAL RATE ON ADVANCE

The nominal quarterly advance term used for calculation of the interest for each period been determined in consequence.

TIOP: INTER-BANK RATE FOR THREE MONTHS OFFERED IN PARIS

The reference TIOP serving for calculation of each rent payment shall correspond to M-2, M being the month in which each payment is due.

The ratio 365/360 is applied to the 4-month TIOP in order to take into account the payment of funds on the inter-bank market according to the number of real days, the rents being discounted inclusively over 90 days.

As an example, based on a 3-month TIP for the month of November 1997 (or 3.69%) and on an investment of 21,400,000 francs, without taxes, the amount received is:

LINEAR RENTS	RENTS 1 THROUGH 40	RENTS 41 THROUGH 48

LESSEE advance	50,000.00	
(2,000,000)	(compensation)	
lease rents	536,709.25	536,709.25
(19,400,000)	586,709.25	536,709.25

POSSIBILITY OF CONVERSION TO A FIELD RATE

The LESSOR grants to the LESSEE the option, during the first three years of the lease contract, to ask that part of the interest be calculated according to a fixed rate, which shall then be imposed on the parties in a definitive manner through the remaining period of the current contract. This ability can be exercised on a date corresponding to the date on which a quarterly payment is due, with a request formulated by registered letter with return receive, at least one month in advance of said date.

The interest rate retained shall be the following:

TRA = TRMO + 1.55

TRA: NOMINAL ANNUAL ADVANCE RATE

The nominal quarterly advance rate used for calculation of the interest for each period being determined consequently.

TRMO: AVERAGE-YIELD RATE OBSERVED ON THE SECONDARY MARKET FOR PRIVATE FIRST-SIGNATURE OBLIGATIONS.

The reference used for the TRMO is the last TRMO known at the end of the month corresponding to M-1, M being the month that is the object of the fixed-rate consolidation.

This consolidation shall be the object of a commission determined by the following formula:

$$\frac{\text{last rent paid - (capital before payment - capital after payment}}{3}$$

SHARE CORRESPONDING TO THE ADVANCE GRANTED BY THE LESSEE ON AN AMOUNT OF 2,000,000 FRANCS

The repayment of this advance shall be made by compensation on the first 40 rents payable to the LESSOR by the LESSEE under the current lease contract, consisting of 40 quarterly payments of 50,000.00 francs, without taxes.

AMORTIZATION TABLE CONCERNING FORMULA A
VARIABLE RATE)

[column headings:]

Serial number of the quarterly payment

1

Amortization included in the quarterly payment for an investment of 19,400,000 francs

2

Current remaining amount to be financed after the corresponding quarterly payment, used for the calculation of interest

3

[see original for numbers]

D) FIXED-RATE FORMULA

Starting from the date on which the lease takes effect and until its contractual expiration, the annual rents shall be, by express convention between the parties, payable quarterly, in advance.

As an example, for an investment of 21,400,000.00 francs, without taxes, the amount due today, based on the TRMO is:

FIXED-RATE RENTS	RENTS 1 THROUGH 40	RENTS 41 THROUGH 48
LESSEE advance	50,000.00	
(2,000,000)	(compensation)	
lease rents	582,188.16	582,188.16
(19,400,000)	632,188.16	582,188.16

TRMO: AVERAGE-YIELD RATE OBSERVED ON THE SECONDARY MARKET FOR PRIVATE FIRST-SIGNATURE OBLIGATIONS.

The reference used for the TRMO is the last TRMO known at the end of the month corresponding to M-1, M being the month that is the object of the fixed-rate consolidation.

The rent being fixed definitively only at the time when any variation of the TRMO used as the reference index between that of the month of December 1997 (or 5.34) and that of the month preceding the start of the rent takes effect for the contract shall entail a corresponding modification of the rent.

IF THERE IS NO OPTION FOR A FIXED RATE OR A VARIABLE RATE WITHIN ONE MONTH PRECEDING THE EFFECTIVE DATE OF THE LEASE, THE LESSEE SHALL BE CONSIDERED TO HAVE OPTED FOR A VARIABLE RATE WHEN THE LEASE TAKES EFFECT.

SHARE CORRESPONDING TO THE ADVANCE GIVEN BY THE LESSEE, AMOUNTING TO 2,000,000 FRANCS

Repayment of this advance shall be made by compensation on the first 40 rents payments due to the LESSOR by the LESSEE from the lease contract, in 40 equal quarterly amounts of 50,000.00 francs, without taxes.

Replacement or disappearance of the reference rates used by the parties

For the case where the above rates used cease to be published or disappear before the expiration of the lease, the variations shall be established by referring to the rates intended to replace them and by using the continuity factors established by the competent authority.

If there is no replacement or continuity factor, the parties shall agree to substitute another rate of their choice for the missing rate.

Unless otherwise agreed, the replacement rate shall be determined by two experts chosen by mutual agreement or officially appointed on request of the more interested party by the president of the Tribunal de Grande Instance [High Court] of PARIS. In case of disagreement, these experts shall have the ability to add a third expert, again appointed by the president on simple request of the more interested party.

The absence of a reference rate does not authorize the LESSOR to delay payment of rents. They should continue to be paid when due on the basis of the last known rate, with the difficulty been resolved as soon as possible.

The rents shall be paid by withdrawals to the account of the LESSOR indicated above under article 3.

12—RENT INDEXING

None. The provisions of the present lease contract relating to rent indexing have no purpose.

13—CANCELLATION ON REQUEST OF THE LESSOR

The LESSOR has the ability to request cancellation of the present lease contract starting from the end of the sixth year following the date on which it takes effect.

14—RIGHT OF LEASE OR VAT OPTION (TITLE I, M)

The LESSOR declares that it has opted to be subject to the value-added tax, which is expressly accepted by the LESSEE.

15—PROMISE TO SELL (TITLE II, O)

The sale price, in case of realization of the promise to sell at the end of the contract is: one franc.

17—EXERCISE OF ANTICIPATED OPTION (TITLE II, P)

The LESSEE has the ability to acquire the rented assets starting eight year following the date on which the present contract takes effect.

18—INDEMNITIES AND REPURCHASE PRICE FOR THE PROPERTY

a) INDEMNITY IN CASE OF CANCELLATION:

1) WHEN EXPRESSLY REQUESTED BY THE LESSOR: the amount of this indemnity shall be equal to half the remaining capital due.

For the case where the LESSEE cannot provide the LESSOR with the certificate of conformity of the property, this imdemnity shall be equal to three fourths ($^{3}/_{4}$) of the remaining capital due.

2) ON REQUEST OF THE LESSEE, IN CASE OF PARTIAL EXPROPRIATION, DISASTER, OR FULL EXPROPRIATION: the amount of this indemnity shall be equal to the entire remaining capital due.

3) ON REQUEST OF THE LESSOR: the amount of this indemnity shall be the entire remaining capital due.

b) REPURCHASE PRICE DUE WHEN THE OPTION IS EXERCISED, EITHER IN ANTICIPATION, STARTING FROM THE DATE ESTABLISHED IN ARTICLE 16 ABOVE OR IN THE CASE OF DISASTER OR TOTAL EXPROPRIATION:

The amount of the repurchase price, whether agreed on amicably at the request of the LESS as indicated above or due to a disaster or partial expropriation, shall be determined as follows:

1) IN CASE OF A VARIABLE-RATE RENT:

- capital still owed at the item of the exercise of the option (column 2 of the amortization key), increased by 3%, until the end of the 6th year, increased by 2% in the 7th and 8th years, and by 1% in the 10th and 11th years.

2) IN CASE OF A FIXED-RATE RENT:

- the cumulative amount of rents remaining to run through the time of the anticipated repurchase, increased by the amount of the repurchase amount at the end of the contract, after the amounts have been updated on the basis of the contract, reduced by two points.

The contract rate shall itself be updated on the basis of the reference rate (TRMO) in force on the day on which the option was exercised, to the extent that this reference rate is less than that in force on the day when the lease started.

c) IN ADDITION TO THE CANCELLATION INDEMNITIES OR ANTICIPATED REPURCHASE PRICE RESULTING FROM PARAGRAPHS a) AND b) ABOVE

The LESSEE should pay to the LESSOR all the indemnities and contractual modalities that would otherwise have been agreed on.

18—INTEREST RATE ON ARREARS (TITLE I, PARAGRAPHS I AND J)

starting from the due date, the LESSOR shall apply the following rate:

- (TMM + 5) % annually.

TMM = AVERAGE MONTHLY MONEY MARKET RATE.

The TMM considered for calculation of said interest shall be the arithmetic mean of the 3 TMM's published for months M-3 through M-10, M being the month in which the interest is payable.

19—STUDY AND SET-UP COMMISSION

The study and set-up commission is established as:

- 28,000 francs, without taxes, for NATIOCREDIMORS, stipulated as payable on this date,

- 12,000 francs, without taxes, for CICAMUR, stipulated as payable on this date.

20—MANAGEMENT COSTS

The LESSOR shall receive the following costs during the entire period of the property-lease contract:

- management of litigation associated with construction or a disaster: 15,000 francs, without taxes

- collection and management of a subsidy or an outside loan: 20,000 francs, without taxes

- management of fees and taxes: 1,000 francs, without taxes (annually)

- request that generates research, providing a certificate, etc.: 350 francs, without taxes

- cost of reminders on unpaid amounts: 350 francs, without taxes

- exercise of anticipated option: 10,000 francs, without taxes

- cost of termination of contract: 30,000 francs, without taxes

- modification of the request of the LESSEE involving establishment of an advance: 10,000 francs, without taxes

These costs shall be indexed according the variation of the national index of construction costs established by the National Institute of Statistics and Economic Research on the basis of 100 for the 4th quarter of 1953; the reference index taken into consideration is that of the 2nd quarter of 1997, or 1060.

The index of comparison serving for the calculation of costs shall be the index before invoicing; in any case, the comparison index cannot be less than the reference index indicated above.

These amounts, as well as all others dues from the present contract, shall be withdrawn directly by the LESSOR from the bank account of the LESSOR.

21—GUARANTEES

A.—SECURITY ON THE ADVANCE GRANTED BY THE LESSEE

To guarantee all amounts that may be owned to the LESSOR by the LESSEE from the lease contract for principal, interest, commissions,

indemnities of any kind, any costs and accessories, and the execution of all obligations signed by the LESSEE for any reason with respect to the LESSOR, the LESSEE guarantees from this date on a credit that the latter shall hold as an advance of 2,000,000 francs for a period that will end when payment of the fortieth quarterly rent is made, or at the expiration of the present contract in case of a default of the LESSEE, as will be stated below:

In conformity with the provisions of article 2075 of the Civil Code, the LESSOR accepts from this date on the present security.

For this purpose, the LESSEE subrogates to the LESSOR, with proper agreement, in all its rights, actions, and privileges.

The LESSEE declares that as of this date it has not agreed to any delegation, transfer, or security of all or part of the amounts to come from the credit applied to the guarantee for the benefit of the LESSOR.

The LESSOR undertakes not to set up any other delegation or any other security on said credit than those resulting from the present document nor to operate any transfer of the credit applied to guarantee the present terms.

In case of total or partial non-payment of amounts that are due by the LESSEE from the present document, the LESSOR shall be authorized by virtue of the present delegation to directly withdraw the amounts due to it on the amount of the credit that is expressly delegated to it.

In case this guarantee is made operative, the LESSOR shall apply the funds involved to payment of the rents and other amounts due and shall apply to the financing of the property replacement funds mutually agreed on.

Starting from the due date of the first rents following replacement of the substitution funds, the latter shall be command with the rent schedule at a quarterly rate at a quarterly amount forming a supplemental rent, including complete amortization of the capital of the said replacement funds and the interest calculated according to the conditions applied to the shares of the rent of the leasing companies on their own funds and payable according to the same schedule as the rents.

B.—BLOCKING THE CURRENT ACCOUNT

The LESSEE already sent to the LESSOR before this date, a letter dated April 1, 1998, from the company called BIOSPERA INC., which has its headquarters at 111 Locke Drive, Mariborough, Massachusetts, USA, under terms of which said company undertakes, in particular, to pay to a current company account on its books, in the name of the LESSOR, a sum of 3,000,000.00 francs and to maintain this amount in full during the first ten years of the present contract, starting from its effective date.

A photocopy of this document is attached hereto, after identification.

Mrs. BOURDY, who is qualified, declares that BIOSPERA is a 100% shareholder of the LESSEE and undertakes expressly to provide evidence to the LESSOR, at the latest by the effective date of the present contract, that the sum of THREE MILLION FRANCS has been paid by said BIOSPERA INC. as indicated above.

Also, as results from the undertaking assumed under terms of the letter mentioned, it is expressly stipulated that nothing can be made available from the amount thus paid to the blocked current account, in any manner whatever, especially by delegation, security for an increase in capital, except for the benefit of the LESSEE, and that total or partial reimbursement of the sum of 3,000,000.00 cannot be requested before the end of the tenth year, starting from the effective date of the lease.

The LESSEE is obligated to provide evidence, when first requested by the LESSOR, of maintaining the blocked current account if full for the sum paid in this manner, during the first years of the lease contract, starting from its effective date; the corresponding undertaking should be sent by the commissioner of accounts in their report.

Any failure in the preceding obligations and stipulations, respect for which constitutes a critical condition in the present document, may entail, if this seems good to the LESSOR, cancellation of the lease contract according to the provisions of article L—"Cancellation on request of the LESSOR," of Title I above.

22—INSTALLATIONS CLASSIFIED FOR ENVIRONMENTAL PROTECTION

Concerning the activity performed on the site that is the object of the present document, a file for notification of possible classification has been deposited with the prefecture of Val d'Oise, as indicated above in the introduction.

It results from a letter issued by the Office de the Environment—Department of Local Collectives, the Environment, and Management of the prefecture of Val d'Oise, dated October 7, 1967, that after receipt of a supplemental file (surveyed site plan and notice specifying the provisions in case of a disaster), a receipt will be issued with technical prescriptions applicable to the planned activity.

A photocopy of said letter is attached to this document as an annex, after identification.

The LESSEE specifies that the declared activity is the following:

- fine chemicals and biochemicals—manufacture of chromatography media and biochemical reagents.

The LESSEE is obligated, as an essential and critical condition of the LESSOR'S undertaking:

- to keep the LESSOR informed of steps taken at the Administrative Services mentioned above to produce for it all evidence of classification under the regime of the declaration that will be delivered by the prefecture.

- to take all useful steps so that the operation of its activity does not cause any trouble or damage that might prevent or delay good execution of the construction work.

2nd) COMPLYING WITH STANDARDS

The LESSEE should conform, within the framework of both its activity and the operation of the leased property, with the requirements established by the national and European standards, especially in regard to safety and health.

It should assure compatibility of all materials located in the property with these same standards, whether movable goods or fixed assets are intended to be involved.

It cannot demand that the LESSOR make any modification or do any work to comply with property or equipment standards for said property, which is the object of the present lease, even if this compliance with standards results from a legislative or regulatory requirement.

It should assume, at its own cost and without any recourse against the LESSOR, the cost of the work that should be done in order to meet the legal or regulatory requirements.

3rd) RESPONSIBILITIES THAT MAY ARISE FROM BOTH THE USAGE AND THE STRUCTURE OF THE LEASED PROPERTY

All decisions involving the selection of the placement, nature, configuration, and purpose of the property that is the object of the present documents have been made by the LESSEE. The LESSOR has not taken any part in these decisions, and is restricted, on request of the LESSEE, to assuring, within the limit established above, to financing the operations made necessary by the decisions in the case.

During the entire period of the present contract, the LESSEE shall have the use, management, and control of the leased property. It is therefore regarded as the guardian, and this property is placed under its exclusive responsibility, which responsibility it should take care of in full without being able to exercise any recourse whatsoever, for whatever reason, against the LESSOR.

In regard to damages that may be caused, both to the LESSOR and to third parties, by the structure of the leased property itself (and especially from the nature of the soil), it is convenient to recall here that the choice was made by the LESSEE, and they will be handled in full by the latter, and the LESSEE cannot, as in the previous case, exercise any recourse against the LESSOR for whatever reason.

Taking into account the activity performed by the LESSEE in the premises that may involve pollution, especial of the soil and the sub-soil, the following is agreed to as an essential and critical condition of the undertaking of the LESSOR, which the LESSEE expressly accepts them.

- the LESSEE assumes responsibility for strictly respecting current and future legislation applicable to the type of activity performed, elimination of discharges, and recovery of materials so as to avoid any toxic effect,

- the LESSEE shall be considered as the issuer of the discharges and renounces any recourse against the LESSOR in this regard,

undertaking in fact to keep it out of any case in which it may ever be charged in the case of a sale of the property,

- all expenses resulting from the application of all laws and regulations in general of the activities of the LESSEE shall be the responsibility of the LESSEE or of its successors,

- in case of cancellation of the lease for any reason whatever, if the activity performed can be considered as the generator of pollution, an audit shall be performed in order to determine the status of the soil, at the exclusive cost of the LESSEE.

The LESSEE should, when first requested by the LESSOR:

- give evidence that the declarations required by regulations then in force on the cessation of activity on the site concerned have been made,

- take all preventive and restorative steps that may be prescribed, both by the administrative authorities and by the organization that performed the audit, and by the regulations in force,

- obtain from the Administration all certificates or evidence of completion of all formalities connected with cessation of the activity imposed by the regulation in force.

It will be the same under the assumption that the LESSEE has not exercised the purchase option or requested a simple lease within the agreed periods.

All costs and fees that the LESSOR may have been led to assume for that which has just been agreed to in the present article and in order to respect the conditions decided on, as well as any deposit to which the LESSOR may be subject, shall constitute a definitive charge to the LESSEE.

The LESSEE should relieve the LESSOR of any responsibility for damages caused to others.

24—MANAGEMENT MANDATE

Mr. MOTAIS, named above in the capacity of representative of the CICAMUR company, gives power by this document to the NATIOCREDIMURS company for the duration of the present lease, for the purpose of performing all current management and administrative operations relating to said lease, in particular:

- paying all amounts of pre-rents, rents, ordinary and extraordinary charges, cancellation or resolution indemnities, sale price, contributions, and taxes,

- dividing the product of its management between NATIOCREDIMURS and the company it represents in proportion to their participation in the present operation.

The representative of the NATIOCREDIMURS company expressly accepts the mandate thus conferred.

The LESSEE agrees to the above agreements and is obligated:

- to pay to NATIOCREDIMURS all amounts that the LESSOR may be called on to pay for any reason whatever by virtue of the present lease,

- to notify NATIOCREDIMURS of any requests to exercise an option, anticipated or not, or cancellation of the present lease, and to notify it of any transfer or assignment to a company of the right to the present lease.

It is therefore specified:

- that the VAT shall be managed by the NATIOCREDIMURS company,

- that the preliminary agreement on the agent should be obtained for any decision that goes beyond the framework of current management (cancellation, exercise of anticipated option, transfer, expropriation of property, disasters, legal actions, etc.).

TITLE IV

MISCELLANEOUS PROVISIONS

POWERS

The parties, acting by mutual agreement, give all powers to any clerk of the notarial office named at the beginning of the present document for the purpose of drawing up, as needed, all corrective, modifying, or supplementary documents to the present document, bringing them into agreement with the mortgage, survey, and civil-status documents.

DECLARATIONS

The LESSOR and LESSEE each declare concerning themselves:

They are of French nationality, having their headquarters in France.

The are not and have never been the object of any action of invalidity or liquidation.

They have not received any notification for the purpose of expropriation of the property that is the object of the present document.

EVALUATIONS

The parties indicate as follows:

- the investment amounts to the sum of 26,857,017 frances, including taxes

- THE SALE PRICE IN CASE OF CANCELLATION OF THE PROMISE AT THE END OF THE CONTRACT IS ONE FRANC (1.00 FRANC)

- value of the ground is 3,470,000.00 francs.

DECLARATIVE OBLIGATIONS

In order for the obligations envisioned in decree no. 95-617 of May 6, 1995, implementing article 57 of law no. 95-115 of February 4, 1995, on orientation for management of the territory, the LESSOR shall deliver to the LESSEE, at the time the lease takes effect, the following items:

- summary status report conforming to the regulatory provisions stated above;

- a table showing each rent, share of the latter taken into account to determine the possible transfer price of fixed assents at the end of the contract.

SELECTION OF DOMICILE

For execution of the present document and their subsequent documents, the parties elect their company headquarters as their domiciles.

All execution and other documents shall be validly addressed to this selected domicile, even in the case of a transfer of the present lease, in particular the authorization or intervention of the LESSOR in the document.

ASSIGNMENT OF JURISDICTION

It is agreed mutually between the parties, in case of need, that jurisdiction shall be assigned to the competent courts of PARIS, without prejudice to application of the provisions of article 48 of the New Code of Civil Procedure.

COSTS

All costs, fees, taxes, and honorarium from the present document and all those that will be subsequent to them or in consequence of them, including the cost of the executable copy that goes to the LESSOR and will be delivered in the name of the NATIOCREDIMURE company in its capacity as file leader, shall be the responsibility of the LESSEE, which obligates itself to this.

DOCUMENT CONSISTING OF SIXTY PAGES

Established with the participation of Mr. LACOURTE, notary in PARIS, representing the LESSEE.

Done at 15, Boulevard Poissonniere, PARIS (2eme a rondissement).

The present document was read to the parties and the signatures on said document have been collected by Mrs. Claudine BEDUNEAU, head clerk of the notary, empowered and sworn for this purpose in accordance with a document received into the records of the notarial office, which has likewise been signed.

DATE:
ONE THOUSAND NINE HUNDRED NINETY-EIGHT
THE NINTH OF APRIL

And the undersigned notary signed it on the same day.

The following are the signatures of:

Mr. B. DESVAUX
Mr. P. MOTAIS
Mrs. T. BOURDY
Mrs. C. BEDUNEAU
Mr. Pascal DUFOUR, Esq., notary in Paris

In the margin is the notation:

Registered in Paris, 2 Bonne Nouvelle, the 29th of April 1998. Bord No. 2. Received: five hundred francs. Signed, The principal receiver. J. BONJEAN

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EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-53530) of Ciphergen Biosystems, Inc. of our reports dated February 1, 2002 relating to the financial statements and the financial statement schedule which appear in this Form 10-K.

PRICEWATERHOUSECOOPERS LLP

San Jose, California
March 29, 2002

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EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS
