

79500004234

ACCOUNT FILING COVER SHEET

ACCOUNT NUMBER: FCA000000005

REFERENCE: _____
(SUB ACCT.)

DATE: 10-2

000002310488--0

REQUESTER NAME: LEXIS DOCUMENT SERVICES

ADDRESS: P.O. BOX 2969
SPRINGFIELD, ILLINOIS 62708

CONTACT NAME: CYNTHIA WOODYARD (904) 877-7296

CORPORATION NAME: Vivax Medical Services Inc

AUTHORIZATION: Don Woodyard

☒ CERTIFIED COPY (1-9)
☐ CERTIFICATE OF STATUS (1-9)
☐ PLAIN STAMPED COPY

() CALL WHEN READY () CALL IF PROBLEM () AFTER 4:30
☒ WALK IN () WILL WAIT () PICK-UP
() MAIL OUT (IF APPLICABLE)

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

97 OCT -2 AM 11:09

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DIVISION OF REVENUE

P950000/4234

ARTICLES OF MERGER
Merger Sheet

MERGING:

CONCEPT MEDICAL CORPORATION, a Florida corporation P95000014234

INTO

VIVAX MEDICAL SERVICES INC., a Delaware corporation not qualified in
Florida

File date: October 2, 1997

Corporate Specialist: Annette Hogan

Account number: FCA000000005

Account charged: 122.50

97 OCT -2 AM 11:09
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**ARTICLES OF MERGER
OF
VIVAX MEDICAL SERVICES INC.
AND
CONCEPT MEDICAL CORPORATION
INTO
VIVAX MEDICAL SERVICES INC.**

Pursuant to the provisions of §607.1105 of the Florida Business Corporation Act, the undersigned Corporations adopt the following Articles of Merger:

1. **Name.** The name of each constituent corporation is as follows: VIVAX MEDICAL SERVICES INC., a Delaware corporation, and CONCEPT MEDICAL CORPORATION, a Florida corporation. The name of the surviving corporation is VIVAX MEDICAL SERVICES INC., a Delaware corporation.
2. **Plan of Merger.** A copy of the Agreement and Plan of Merger is attached hereto as Exhibit "A."
3. **Effective Date.** The merger shall become effective at 12:01 o'clock A.M. on the date these Articles of Merger are filed with the State of Florida (hereinafter the "Effective Date").
4. **Authorization of Merger.** The merger pursuant to the Agreement and Plan of Merger was authorized on September 30, 1997 by written action of all of the Directors and Shareholders of VIVAX MEDICAL SERVICES INC. and on August 19, 1997 by written action of the sole Director and sole Shareholder eligible to vote of CONCEPT MEDICAL CORPORATION.

IN WITNESS WHEREOF, the undersigned have executed these Articles of Amendment this 30th day of September, 1997.

VIVAX MEDICAL SERVICES INC.

By: 

Stephen M. Fisher, President

CONCEPT MEDICAL CORPORATION

By: 

Kevin Ziganc, President

STATE OF CONNECTICUT)

) Greenwich

COUNTY OF FAIRFIELD)

The foregoing Articles of Merger were acknowledged before me this 30th day of September, 1997, by Stephen M. Fisher, of VIVAX MEDICAL SERVICES INC., a Delaware corporation, on behalf of the Corporation. He is personally known to me or has produced a Connecticut Driver's License as identification.

Joan C. White
Notary Public, State of Connecticut

Print Name: JOAN C. WHITEMy commission expires: JULY 31, 2001

My commission number is _____

STATE OF CONNECTICUT)

) Greenwich

COUNTY OF FAIRFIELD)

The foregoing Articles of Merger were acknowledged before me this 30th day of September, 1997, by Kevin Zigarac, of CONCEPT MEDICAL CORPORATION., a Florida corporation, on behalf of the Corporation. He is personally known to me or has produced a Florida Driver's License as identification.

Joan C. White
Notary Public, State of Connecticut

Print Name: JOAN C. WHITEMy commission expires: JULY 31, 2001

My commission number is _____

AGREEMENT AND PLAN OF MERGER
DATED AUGUST __, 1997
AMONG
VIVAX MEDICAL CORPORATION
VIVAX MEDICAL SERVICES INC.
CONCEPT MEDICAL CORPORATION
AND
KEVIN ZIGARAC

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Exhibit 2.1(d)	-	Note; Security Agreement and Guaranty
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Exhibit 3.2	-	Employment Agreements
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AGREEMENT AND PLAN OF MERGER
dated August __, 1997 (the
"Agreement") among **VIVAX**
MEDICAL CORPORATION, a Delaware
corporation, formerly known as
Nova Technologies, Inc.
("Vivax"), **VIVAX MEDICAL**
SERVICES INC., a Delaware
corporation which is wholly-
owned by Vivax ("Buyer"),
KEVIN ZIGARAC ("K. Zigarac" or
the "Seller") and **CONCEPT**
MEDICAL CORPORATION, a Florida
corporation ("Concept").

Seller is the owner of all the issued and outstanding capital stock (the "Shares") of Concept.

Alternate Medical, Inc., a Florida corporation ("Alternate") was merged with and into Concept effective as of April 3, 1997 (the "Alternate Merger") to create a single combined company incorporated under the laws of the State of Florida. References herein to Concept shall include Concept as a separate corporation and Concept as the Surviving Corporation of the Alternate Merger. The parties desire to merge Concept into Buyer upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants contained herein, the parties, intending to be legally bound, hereby represent, warrant and agree as follows:

I. MERGER

1.1 Transaction. Subject to the terms and conditions herein set forth, and on the basis of the representations and warranties herein set forth, at the Effective Time (as hereinafter defined), Concept shall be merged with and into Buyer (the "Merger"), the separate corporate existence of Concept shall cease and Buyer shall continue as the surviving corporation. Buyer as the surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation." As promptly as practicable after the Closing (as hereinafter defined), the parties hereto shall cause the Merger to be consummated by filing this Agreement or a Certificate of Merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware and the State

of Florida, in such form as required by, and executed in accordance with the relevant provisions of, Delaware and Florida law (the time of the filing being the "Effective Time"). At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Delaware and Florida law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of Concept shall vest in Buyer, and all debts, liabilities and duties of Concept shall become the debts, liabilities and duties of Buyer. At the Effective Time the Certificate of Incorporation of Buyer, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended as provided by law and such Certificate of Incorporation. The By-laws of Buyer, as in effect immediately prior to the Effective Time, shall be the By-laws of the Surviving Corporation until thereafter amended as provided by Delaware law, the Certificate of Incorporation of the Surviving Corporation and such By-laws. The directors of Buyer immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation, and the officers of Buyer immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified. At the Effective Time, by virtue of the Merger and without any action on the part of Concept or the holders of any of the Shares, each of the Shares will be cancelled and extinguished and be converted automatically into the right to receive the Merger Consideration (as hereinafter defined). It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code") and that the transaction contemplated hereby shall qualify, in part, for nonrecognition of gain pursuant to §361 and §368 of the Code. Concept and Buyer each represent that as of the Closing the shareholders and directors of their respective corporations shall have authorized the execution of this Agreement and the Certificate of Merger and agree to provide to the other a copy of such shareholder and director actions. The parties hereto agree to execute all such documents and instruments as the Seller may reasonably request in order to qualify the transaction contemplated hereby, in part, for nonrecognition of gain pursuant to §361 and §368 of the Code.

1.2 Disclosure Schedule. Simultaneously with the execution of this Agreement, Seller shall deliver a schedule (the "Disclosure Schedule") relating to Alternate and Concept which shall include: (i) copies of all leases, vehicle titles, permits and other material agreements or contracts; (ii) insurance contracts and benefit plans, if any; and (iii) each of the other matters required to be set forth in the Disclosure Schedule as described elsewhere in this Agreement. The Disclosure Schedule shall be deemed to be part of this Agreement.

1.3 1377 Election. Each of the parties hereto agrees to make the election provided for in §1377(a)(2) of the Code (the "§1377 Election") effective as of the Closing.

II. CONSIDERATION

2.1 Consideration; Payment. The consideration to be paid by Buyer hereunder (the "Merger Consideration") shall consist of:

(a) 333,333.33 shares of common stock, \$.01 par value, of Vivax (the "Vivax Shares") that, on the basis of a price per share of \$3.00, have a value of one million dollars (\$1,000,000);

(b) \$500,000 minus the amount of the Sub-S Distribution (as defined in Section 11.5) payable by wire transfer or cashier's or certified check;

(c) an amount equal to the Sub-S Distribution, represented by Buyer's promissory note bearing no interest and payable in full on April 1, 1998 substantially in the form of Exhibit 2.1(c) hereto (the "Sub-S Distribution Note"); and

(d) \$500,000, represented by Buyer's promissory note, substantially in the form of Exhibit 2.1(c) hereto (the "Note"), bearing interest at the rate of 8% per annum and payable on September 30, 2001, but subject to prepayment in quarter-annual installments of principal on the 60th day following the end of each calendar quarter (but in the case of the calendar quarter ending December 31, on the 110th day following the end of such quarter), commencing with the calendar quarter ending December 31, 1998, in an amount equal to the sum, if positive, of (i) the greater of (x) twenty-five per cent (25%) of Applicable Operating Income (as hereinafter defined) during the period from October 1, 1998 through the end of the immediately preceding calendar quarter or (y) \$41,666.67 multiplied by the number of calendar quarters from and including the calendar quarter ending December 31, 1998 through the end of the immediately preceding calendar quarter, (ii) minus the sum of all previous principal payments on the Note. The Note and the Sub-S Distribution Note shall be guaranteed by Vivax pursuant to the terms of a Guaranty Agreement (the "Guaranty") and shall be secured pursuant to the terms of a Security Agreement from Buyer to Seller, both in substantially the form of Exhibit 2.1(c) hereto (the "Security Agreement"). Buyer shall be responsible for the payment of all applicable documentary stamp tax due upon the issuance of the Note and the Sub-S Distribution Note and Buyer shall provide evidence reasonably satisfactory to Buyer of Buyer's payment of such documentary stamp tax at closing.

2.2 Determination of Actual Operating Income.

(a) The term "Applicable Operating Income" shall mean the net income, after adjustment for federal, state and local income taxes, of the Concept Medical Division of Buyer for the appropriate period (initially, commencing on October 1, 1998, and ending on December 31, 1998, and thereafter each of the next successive eleven (11) quarter-annual periods, each a "Contingent Release Period"), initially as determined by Vivax but, on an annual basis, subject to adjustment on the basis of the annual audit of Vivax's consolidated financial statements conducted by Vivax's regularly retained independent auditors ("Vivax's Auditors") in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis, adjusted as follows:

(i) the effect of inter-company transactions shall be eliminated;

(ii) interest expense and interest income shall be eliminated; and

(iii) any extraordinary gain or losses as determined by GAAP shall be excluded.

(b) Vivax agrees to use its best efforts to cause Vivax's Auditors to review, in accordance with GAAP applied on a consistent basis adjusted as provided in (a) above, Vivax's determination of Applicable Operating Income for each fiscal year of Vivax and prepare a written report containing such review, to be delivered no later than eighty (80) days after the close of each fiscal year of Buyer. Copies of the report of Vivax's Auditors setting forth the computation of Applicable Operating Income shall be binding on both Vivax and Seller, and shall be submitted to each of Vivax and Seller. Within fifteen (15) days after receipt of such report, Vivax or Seller (as appropriate) shall pay to the other an amount equal to the difference (if any) in the amount due pursuant to the Note based on Applicable Operating Income reflected in Vivax's Auditors' reports and the amount paid pursuant to the Note based on Vivax's initial determination of Applicable Operating Income for the prior fiscal year.

III. CLOSING; TERMINATION

3.1 **Closing.** The closing of the transactions contemplated hereby (the "Closing") shall be held on September 30, 1997 or as soon as practicable thereafter (the "Closing Date") after all conditions precedent to the obligations of Buyer and Seller have been satisfied (or waived in writing) and at a time mutually agreeable to Buyer and Seller. The Closing shall be at

the offices of Buyer's counsel in Greenwich, Connecticut or such other place as may be mutually agreed upon by the parties.

3.2 **Seller's Closing Deliveries.** At the Closing, Seller shall deliver to Buyer and Vivax (duly executed by Seller, Concept or Pam Zigarac where appropriate):

(a) certificates evidencing the Shares and the Transfer Instruments, with signatures thereon notarized;

(b) a certificate, dated as of the Closing Date, to be executed by the Seller, to the effect that the representations and warranties of Seller contained in this Agreement are true and correct in all material respects at and as of the Closing Date and that the Seller has complied with or performed all terms, covenants and conditions to be complied with or performed by such Seller on or prior to the Closing Date;

(c) an opinion of Seller's and Concept's counsel, Gary R. Saslaw, P.A., in form and substance reasonably satisfactory to Buyer and Vivax, substantially in the form of Exhibit 3.2(c) attached hereto;

(d) employment agreements, substantially in the form of Exhibit 3.2(e) hereto, dated as of the Closing Date between each of Pam Zigarac ("P. Zigarac") and Seller and Vivax ("Employment Agreements");

(e) evidence of consummation of the Alternate Merger in form and substance acceptable to Buyer and Vivax and their counsel;

(f) the Certificate of Merger; and

(g) such other documents as may be reasonably requested by Buyer or Vivax from Seller as necessary for the implementation and consummation of this Agreement and the other transactions contemplated hereby.

3.3 **Buyer's Closing Deliveries.** At the Closing, Buyer shall deliver to Seller (duly executed by Buyer or Vivax where appropriate):

(a) certificates evidencing the Vivax Shares;

(b) the Note and the Sub-S Distribution Note payable to Seller;

(c) the Security Agreement, together with appropriate Uniform Commercial Code financing statements relating to the collateral described therein;

(d) a certificate of each of Vivax and Buyer, dated as of the Closing Date, to the effect that the representations and warranties of Vivax and Buyer contained in this Agreement are true and correct in all material respects and that Buyer has complied with or performed all terms, covenants and conditions to be complied with or performed by Buyer on or prior to the Closing Date;

(e) a certificate dated as of the Closing Date, executed by each of Vivax and Buyer, certifying as to the certificate of incorporation, by-laws, the incumbency of Vivax's or Buyer's officers and copies of directors' and/or shareholders' resolutions of Vivax or Buyer, as the case may be, approving and authorizing the execution and delivery of this Agreement, and consummation of the transactions contemplated hereby;

(f) an opinion of Vivax's and Buyer's counsel, Whitman Breed Abbott & Morgan LLP, in form and substance reasonably satisfactory to Seller, substantially in the form of Exhibit 3.3(f) attached hereto;

(g) the Guaranty of Vivax;

(h) the Employment Agreements;

(i) the Certificate of Merger; and

(j) such other documents as may be reasonably requested by Seller from Buyer as necessary for the implementation and consummation of this Agreement and the other transactions contemplated hereby.

IV. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer and Vivax as follows, with the knowledge (as hereinafter defined) and understanding that each of Buyer and Vivax is relying materially upon such representations and warranties:

4.1 Organization and Standing. Concept is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Concept has all requisite corporate power to carry on its business as it is now being conducted. The properties owned, leased and operated by Concept and the nature of the business conducted by Concept do not require it to qualify to do business as a foreign corporation in any jurisdiction, except where the failure to qualify (individually or in the aggregate) will not have any material adverse effect on the business, properties, financial condition, operations or prospects of Concept. The copies of the certificate of incorporation and by-laws of Concept, as amended to date and delivered to Buyer, are

true and complete copies of these documents as now in effect. The minute books of Concept are accurate in all material respects.

4.2 **Capitalization.** The authorized capital stock of Concept (which consists only of shares of common stock), the number of shares of capital stock which are issued and outstanding and the par value and record and beneficial holders thereof are as set forth on Schedule 1.1. All of such shares of capital stock are duly authorized, validly issued and outstanding, fully paid and nonassessable. There are no subscriptions, options, warrants, rights or calls or other commitments or agreements to which Concept or Seller is a party or by which either of them is bound, calling for the issuance, transfer, sale or other disposition of any class of securities of Concept. There are no outstanding securities of Concept convertible or exchangeable, actually or contingently, into shares of Common Stock or any other capital stock of Concept.

4.3 **Subsidiaries.** Concept does not own any capital stock in any other corporation or any interest in any limited liability company, limited liability partnership or similar business entity nor is Concept a partner in any partnership or joint venture.

4.4 **Authority: Effect.** Each of the Seller and Concept has the capacity to enter into this Agreement and carry out his or its obligations hereunder. This Agreement constitutes, and all other agreements contemplated hereby, when executed and delivered by each of Seller and Concept in accordance herewith, will constitute the valid and binding obligations of Seller and Concept, enforceable in accordance with their respective terms. The delivery of the Shares to Buyer at the Closing, pursuant to the provisions of this Agreement, will transfer good and marketable title thereto, free and clear of all liens, charges, encumbrances and claims.

4.5 **Properties.** Concept is, by operation of law, the successor to Concept and Alternate which prior to the Alternate Merger carried out the business of Concept and Alternate. Concept owns all assets used or owned by Concept and Alternate as of the Balance Sheet Date, or acquired thereafter, other than for those items sold or disposed of in the ordinary course of business, as a result of obsolescence or as permitted by this Agreement. Concept has a valid leasehold interest in all material properties of which it is the lessee and each such lease is valid, binding and enforceable against Concept, and, to the knowledge of Seller, the other parties thereto in accordance with its terms. Neither Concept nor to the knowledge of Seller, the other parties thereto are in default in the performance of any material provision thereunder. Neither the whole nor any material portion of the assets of Concept is subject to any governmental decree or order to be sold or is being condemned, expropriated or otherwise taken by any public authority with or without payment of compensation

therefor, nor, to the knowledge of Seller, has any such condemnation, expropriation or taking been proposed. Except as set forth in the Disclosure Schedule, none of the material assets of Concept is subject to any restriction which would prevent continuation of the use currently made thereof or materially adversely affect the value thereof.

4.6 Contracts Listed; No Default. All contracts, agreements, licenses, leases, easements, permits, rights of way, commitments, and understandings, written or oral (individually, a "Contract" and collectively, the "Contracts"), connected with or relating in any respect to the present or proposed future operations of Concept is listed and described in the Disclosure Schedule other than those Contracts which were entered into in the ordinary course of business and (i) do not involve aggregate payments or receipts in excess of \$10,000 or (ii) can be cancelled on 30 days or less notice without penalty or premium or any continuing obligation or liability. Concept is the holder of, or party to, or beneficiary of, all the Contracts. The Contracts are each valid, binding and enforceable by Concept against the other parties thereto in accordance with their respective terms. Except as otherwise set forth in the Disclosure Schedule, the Contracts do not provide for any material change in the rentals, fees or other amounts from the amounts presently being paid or received by Concept thereunder. Except as set forth in the Disclosure Schedule, Concept is not in default or breach of any material provision of the Contracts. Concept's operation of its business has been, are, and will, between the date hereof and the Closing Date, continue to be, consistent with the terms and conditions of the Contracts. The Disclosure Schedule identifies all contracts between Concept and Seller or between Concept and any affiliate of Seller (as the term "affiliate" is defined in Rule 405, promulgated under the Securities Act of 1933, as amended). True, correct and complete copies of all the Contracts were previously delivered to Buyer along with the Disclosure Schedule.

4.7 Litigation. There is no claim, action, proceeding, or investigation pending or, to Seller's knowledge, threatened against or affecting Concept or Concept's properties, assets or business before or by any court, arbitrator or governmental agency or authority where a result adverse to Concept would have a material adverse effect on the business, properties, financial condition, operations or prospects of Concept. There is no strike or unresolved labor dispute relating to Concept's employees which, in Seller's reasonable judgment, could have any material adverse effect on the business, properties, financial condition, operations or prospects of Concept. There are no decrees, injunctions or orders of any court, governmental department, agency or arbitration outstanding against Concept or its properties, assets or business.

4.8 Taxes. For purposes of this Agreement, (A) "Tax" (and, with correlative meaning, Taxes") shall mean any federal,

state, local or foreign, income, alternative or add-on minimum, business, employment, franchise, occupancy, payroll, property, sales, transfer, use, withholding or other tax, levy, impost, fee, imposition, assessment or similar charge together with any related addition to tax, interest, penalty or fine thereon; and (B) "Returns" shall mean all returns (including, without limitation, information returns and other material information) reports and forms relating to Taxes.

Except as set forth on the Disclosure Schedule, each of Concept and Alternate has duly filed all Returns required to be filed by it which are due as of the date hereof. Any Returns for which extensions have been filed are set forth in the Disclosure Schedule. All such Returns were, when filed, and to Seller's knowledge are, accurate and complete in all material respects and were prepared in conformity with applicable laws and regulations. Each of Alternate and Concept has paid or will pay in full or has adequately reserved against (with disclosure of such reserves in the Disclosure Schedule) all Taxes otherwise assessed against it through the Closing Date except for assessments being challenged in good faith and adequately reserved against, as set forth in the Disclosure Schedule.

Neither Concept nor Alternate is a party to any pending action or proceeding by any governmental authority for the assessment of any Tax, and no claim for assessment or collection of any Tax has been asserted against Concept or Alternate that has not been paid. There are no Tax liens upon the assets or properties of Concept (other than the lien of personal property taxes not yet due and payable). To the knowledge of Seller, there is no valid basis for any assessment, deficiency, notice, 30-day letter or similar intention to assess any Tax to be issued to Concept or Alternate by any governmental authority.

4.9 Compliance with Laws and Regulations.

(a) The business, operations, property and assets of Concept and Alternate and, to the knowledge of Seller, the business of any sub-tenant or licensee which is occupying or has occupied any space on Concept's or Alternate's facilities and the activities of which could result in any liability to Concept conform with and have been conducted and operated in material compliance with all, and are not in violation of any, applicable federal, state and local laws, rules and regulations.

(b) To Seller's actual knowledge, without independent investigation, there are no products now being sold or distributed by Concept (excluding from the scope of this representation all products of Buyer and Vivax distributed by Concept) which at the date hereof would require any approval of any governmental body, whether federal, state, local or foreign, prior to distribution of such products, for which such approval has not been obtained.

(c) To Seller's actual knowledge, without independent investigation all products now being distributed by Concept and all products included in the inventories of Concept on the date hereof (excluding from the scope of this representation all products of Buyer and Vivax distributed by Concept) meet, in all material respects, the applicable legal requirements of all jurisdictions in which such products are now being, or are presently proposed to be, manufactured or distributed by Concept.

4.10 **Environmental Matters.** To Seller's knowledge, each of Concept and Alternate is and at all times has been in compliance in all material respects with all applicable requirements of Environmental Laws (as defined below) in connection with the ownership, operation and conditions of the business of Concept and Alternate. To Seller's actual knowledge without independent investigation, there are no PCBs, underground storage tanks (as defined by Environmental Laws), asbestos materials or asbestos containing materials in any real property leased, owned or operated by Concept. Neither Concept nor Alternate has released, transported or arranged for the disposal of any hazardous substance at any facility, location or site except in material compliance with all applicable laws. To Seller's actual knowledge, without independent investigation, no conditions exist or have occurred as a result of which or in connection with which Concept could be held liable for damages, response or remedial costs, fines, penalties, sanctions or equitable relief under any Environmental Laws, except for such damages, costs, fines, penalties, sanctions or relief which, alone or in the aggregate, would not have a material adverse effect on the business, properties, financial condition, operations or prospects of Concept. As used in this Section, "Environmental Laws" means any federal, state or local statute, regulation, ordinance, permit, order, judgment, decree or decision relating to health, safety or the environment. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, active disposal or passive disposal (including the abandonment or discarding of barrels, containers or other closed receptacles containing any hazardous substances). "Hazardous substance" means (a) any "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") and any implementing regulations, (b) any hazardous or toxic substance, waste or material within the meaning of any other federal, state or local statute, regulation, ordinance or decision, (c) any pollutant, contaminant or special waste regulated by any Environmental Laws, or (d) petroleum, crude oil or any fraction thereof.

4.11 **Insurance.** Concept has in force insurance policies, or renewals thereof, as identified and described in the Disclosure Schedule, and will maintain such insurance up to and including the Closing Date. Concept has not received notice from any insurer or agent of such insurer that substantial capital improvements or

other expenditures will have to be made in order to continue such insurance and, so far as known to Seller, no such improvements or expenditures are required. To Seller's knowledge, there is no material liability under any insurance policy in the nature of a retroactive rate adjustment or loss sharing or similar arrangement.

4.12 No Breaches. The making and performance of this Agreement and the other agreements contemplated hereby will not (i) conflict with or violate the certificate of incorporation or the by-laws of any of Concept, (ii) violate any laws, ordinances, rules, or regulations, or any order, writ, injunction or decree to which Concept is a party or by which Concept or any of its material assets, businesses, or operations may be bound or affected or (iii) result in any breach or termination of, or constitute a default under, or constitute an event which, with notice or lapse of time, or both, would become a default under, or result in the creation of any encumbrance upon any material asset of Concept under, or create any rights of termination, cancellation or acceleration in any person under, any Contract.

4.13 Disclosure Schedule Complete. Seller shall promptly supplement the Disclosure Schedule if events occur prior to the Closing that would have been required to be disclosed had they existed at the time of their execution of this Agreement. The Disclosure Schedule, if and as supplemented prior to the Closing, will contain a true, correct and complete list and description of all items required to be set forth therein. An item appearing on the Disclosure Schedule, if and as supplemented, will be deemed disclosed in connection with the specific representation or representations to which it is explicitly referenced and for all purposes of this Agreement. The Disclosure Schedule is expressly incorporated herein by reference. Notwithstanding the foregoing, any such supplement to the Disclosure Schedule following the date hereof shall not in any way affect Buyer's right not to consummate the transactions contemplated hereby as set forth in Article VIII hereof.

4.14 Employees. The Disclosure Schedule lists (individually or by grouping and number in the case of certain production line employees) the employees of Concept (which for the purposes hereof shall include independent contractors and agents) and their monthly compensation (as well as a brief description of all benefits and other perquisites payable to employees). Except as set forth in the Disclosure Schedule, none of such employees is represented by any labor union or collective bargaining unit and, to Seller's knowledge, no discussions are taking place with respect to such representation. No employee is employed pursuant to an employment contract except as listed in the Disclosure Schedule.

4.15 Financial Statements. The Disclosure Schedule contains an audited pro-forma balance sheet of Concept and Alternate on a consolidated post Alternate Merger basis (the

"Balance Sheet") as at December 31, 1996 (the "Balance Sheet Date") and related audited statements of income and cash flow for the years ended December 31, 1995 and December 31, 1996 (collectively the "Financial Statements"). Except as set forth in the Disclosure Schedule the Financial Statements present fairly the financial position and results of operations of Concept and Alternate as of the dates and for the years and periods indicated, prepared in accordance with GAAP on a consistent basis, except as disclosed therein. During the years and periods to which the statements of income relate, the business of Concept and Alternate were conducted in substantially the same manner as it is currently conducted. Except as set forth in the Disclosure Schedule, (i) there is no basis for any assertion against Concept or Alternate as of the Balance Sheet Date of any material debt, liability or obligation of any nature not fully reflected or reserved against in the Financial Statements; (ii) there are no assets of Concept or Alternate, the value of which is materially overstated in the Financial Statements; (iii) the value at which inventories are carried reflects the customary inventory valuation policy consistently applied by Concept and Alternate in accordance with GAAP; and (iv) the fixed assets shown on the Financial Statements are carried at actual cost less depreciation computed on a basis consistent with prior years.

4.16 Absence of Certain Changes or Events. Except as set forth in the Disclosure Schedule, since the Balance Sheet Date there has not been:

(a) any material adverse change in the business, properties, financial condition, operations or prospects of Concept or Alternate;

(b) any material damage, destruction or loss of any properties of Concept or Alternate, whether or not covered by insurance;

(c) any material change in the manner in which the business of Concept or Alternate has been conducted except for the Alternate Merger;

(d) any material change in the treatment and protection of trade secrets or other confidential information of Concept and Alternate;

(e) any material change in Concept's or Alternate's business or Concept's or Alternate's contractual relationship with any customer or supplier which might reasonably be expected to materially and adversely affect the business, properties, financial condition, operations or prospects of Concept;

(f) any occurrence not included in paragraphs (a) through (e) of this Section 4.15 which has resulted, or which Seller has

reason to believe, in his reasonable judgment, might be expected to result, in a material adverse change in the business, properties, financial condition, operations or prospects of Concept.

4.17 Governmental Licenses, Permits, Etc. To Seller's knowledge, Concept has all governmental licenses, permits, authorizations and approvals for the conduct of Concept's business as currently conducted (collectively, "Licenses and Permits"). The Disclosure Schedule includes a list of all Licenses and Permits. All Licenses and Permits are in full force and effect, and no proceedings for the suspension or cancellation of any thereof is pending or to each Seller's knowledge, threatened.

4.18 Employee Benefit Plans: ERISA. (a) Except as set forth in the Disclosure Schedule, at the date hereof Concept does not maintain or contribute to any employee benefit plans, programs, arrangements and practices (such plans, programs, arrangement and practices of Concept being hereinafter collectively referred to as the "Company Plans"), including employee benefit plans within the meaning set forth in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and all regulations promulgated thereunder, as in effect from time to time ("ERISA"), or any written employment contracts providing for an annual base salary in excess of \$50,000 and having a term in excess of one (1) year, which contracts are not immediately terminable without penalty or further liability, or other similar arrangements for the provision of benefits (excluding any "Multiemployer Plan" within the meaning of Section 3(37) of ERISA or a "Multiple Employer Plan" within the meaning of Section 413(c) of the Code, and all regulations promulgated thereunder, as in effect from time to time). Neither Concept nor Alternate maintains or makes contributions to, or has ever maintained or made contributions to any Multiemployer Plans. Concept has no obligation to create any additional such plan or to amend any such plan so as to increase benefits thereunder, except as required under the terms of the Company Plans or to comply with applicable law.

(b) Except as set forth in the Disclosure Schedule, (i) there have been no prohibited transactions within the meaning of Section 406 and 407 of ERISA or Section 4975 of the Code with respect to any of the Company Plans that could result in penalties, taxes or liabilities which, singly or in the aggregate, could have a material adverse effect on the business, operations, properties, financial condition, operations or prospects of Concept, (ii) except for premiums due, there is no outstanding liability in excess of \$10,000, whether measured alone or in the aggregate, under Title IV of ERISA with respect to any of the Company Plans, (iii) none of the Company Plans is subject to Title IV of ERISA (iv) each of the Company Plans has been operated and administered in all material respects in accordance with applicable laws during the period of time covered by the applicable statute of limitations, (v) each of the Company Plans which is intended to be

"qualified" within the meaning of Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and such determination has not been modified, revoked or limited by failure to satisfy any condition thereof or by a subsequent amendment thereto or a failure to amend, except that it may be necessary to make additional amendments retroactively to maintain the "qualified" status of such Company Plans, and the period for making any such necessary retroactive amendments has not expired, and (vi) there are no pending or, to the knowledge of Seller, threatened or anticipated claims involving any of the Company Plans other than claims for benefits in the ordinary course.

4.19 **Brokers.** Seller has not made any agreement or taken any action with any person which would cause any person to be entitled to any agent's, broker's or finder's fee or commission in connection with the transactions contemplated by this Agreement.

4.20 **Real Property.** The Disclosure Schedule sets forth a brief description of all real property leases to which Concept is a party. Concept does not own any real properties. The real property leases described in the Disclosure Schedule are in full force and effect, all amounts payable thereunder have been paid and no party thereto is in material breach of any provision thereof. Except as set forth in the Disclosure Schedule, none of such leases could reasonably be expected to result in a material liability for restoration of premises. All uses of such leased property by Concept conform, in all material respects, to all applicable building, zoning and environmental ordinances, laws, and regulations and to all terms of the leases relating thereto.

4.21 **Intellectual Property.** The Disclosure Schedule lists all patents, trade names, assumed names, trademarks, service marks, trade dress and proprietary names, copyrights (including any registration and pending applications for any such registration for any of them) and all other intellectual property of Concept that is used or useful in its business (collectively, the "Intellectual Property"). Other than as disclosed in the Disclosure Schedule, no person has a right to receive a royalty with respect to any of the Intellectual Property listed in the Disclosure Schedule. Other than as disclosed in the Disclosure Schedule, Concept does not have any licenses granted by or to it or other agreements to which it is a party, relating in whole or in part to any Intellectual Property, whether owned by it or otherwise. No other Intellectual Property is required to permit the conduct of Concept's business as now conducted or presently proposed to be conducted. Except as set forth in the Disclosure Schedule, Concept has good and marketable title to the Intellectual Property, free and clear of any encumbrance. All of the patents, trademarks, trademark registrations, trade names and copyrights listed in the Disclosure Schedule that are owned by Concept are valid and in full force and effect. Concept is not infringing upon, or otherwise violating, the rights of any third party with respect to any Intellectual

Property. No proceedings have been instituted against or claims received by Concept, nor to Seller's knowledge are any proceedings threatened alleging any such violation, nor does Seller know of any valid basis for any such proceeding or claim. To Seller's knowledge, there is no infringement or other adverse claim against any of the Intellectual Property owned or used by Concept.

4.22 Warranties. The Disclosure Schedule sets forth a statement of those express warranties and guaranties, if any, made by Concept to third parties with respect to any products sold or leased, or services rendered by Concept and Alternate. No material claim for any breach of product or service warranty to any customer of Concept or Alternate has been made against Concept or Alternate nor have any product of Concept or Alternate, at any time, been subject to any voluntary or governmental recall nor does Seller know of any presently existing circumstances that would constitute a valid basis therefor.

4.23 Customers and Suppliers. Except as set forth in the Disclosure Schedule, Seller neither knows, nor has any reasonable basis to believe that, either as a result of the transactions contemplated hereby or for any other reason, any present material customer or supplier of Concept (excluding, from the scope of this representation, Buyer) will not continue to conduct business with Concept after the Closing Date in substantially the same manner as it has conducted business with Concept in the past.

4.24 Inventories. Except as otherwise disclosed in the Disclosure Schedule, the inventories reflected on the Balance Sheet, or thereafter acquired by Concept or Alternate, and to be owned by Concept at the Closing, consist in the aggregate in all material respects of items of a quality and quantity usable or salable in the usual and ordinary course of business of Concept at an aggregate value at least equal to the value at which such items are carried on Concept's books.

4.25 Condition of Assets. Except as set forth in the Disclosure Schedule, the equipment, fixtures and other personal property of Concept are and on the Closing Date will be in good operating condition and repair (ordinary wear and tear excepted).

4.26 Governmental Approvals. To Seller's knowledge, no authorization, license, permit, franchise, approval, order or consent of, and no registration, declaration or filing by Concept or Seller with, any governmental authority, domestic or foreign, federal, state or local, is required in connection with Seller's or Concept's execution, delivery and performance of this Agreement or the other agreements contemplated hereby.

4.27 Medicare Reimbursement Claims. To Seller's knowledge, no basis or series of facts exist that would support a claim (and no claims have been asserted) for return or recoupment of amounts paid to Concept or Alternate by Medicare or any other governmental agency or any insurance carrier..

4.28 No Omissions or Untrue Statements. To Seller's knowledge, no representation or warranty made by Seller in this Agreement (including the exhibits hereto) or in any schedule, certificate, or other instrument furnished or to be furnished by or on behalf of Seller to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

V. REPRESENTATIONS AND WARRANTIES OF BUYER AND VIVAX

Each of Buyer and Vivax jointly and severally represents and warrants to Seller as follows, with the knowledge and understanding that Seller is relying materially on such representations and warranties:

5.1 Organization and Standing of Vivax and Buyer. Vivax and Buyer are each corporations duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Vivax and Buyer has all requisite corporate power to carry on its business as it is now being conducted, and each of Vivax and its subsidiaries is duly qualified to do business as a foreign corporation and in good standing in each jurisdiction where such qualification is necessary under applicable law except where the failure to qualify (individually or in the aggregate) does not have any material adverse effect on the business of Vivax and its subsidiaries considered as one enterprise. The copies of the certificate of incorporation and by-laws of Vivax and Buyer as amended to date, delivered to Seller, are true and complete copies of those documents as now in effect.

5.2 Buyer's Authority. This Agreement, the issuance of the Vivax Shares, the Note, the Sub-S Distribution Note, the Security Agreement, the Employment Agreements, the Guaranty, and all related documents and the transactions contemplated hereby have been duly authorized by all necessary action of the directors of Vivax and Buyer. This Agreement constitutes, and all other agreements and documents contemplated hereby will constitute, when executed and delivered by Vivax and/or Buyer (as the case may be) in accordance with the terms of this Agreement, the valid and binding obligations of Vivax or Buyer (as the case may be), enforceable in accordance with their respective terms.

5.3 **No Breaches.** The making and performance of this Agreement by Vivax and Buyer will not (i) conflict with the certificate of incorporation or the bylaws of Vivax or the Articles of Organization of Buyer, (ii) violate any laws, ordinances, rules, or regulations, or any order, writ, injunction, or decree to which Buyer or Vivax is a party or by which Buyer or Vivax or any of their material assets, businesses, or operations may be bound or affected or (iii) result in any breach or termination of, or constitute a default under, or constitute an event which, with notice or lapse of time, or both, would become a default under, or result in the creation of any encumbrance upon any material asset of Buyer or Vivax under, or create any rights of termination, cancellation, or acceleration in any person under, any material agreement, arrangement, or commitment to which Buyer or Vivax is a party or by which Buyer or Vivax or any of its material assets may be bound.

5.4 **Governmental Approval: Consents.** No authorization, license, permit, franchise, approval, order or consent of, and no registration, declaration or filing by Vivax or Buyer with any governmental authority, domestic or foreign, federal, state or local, is required in connection with Buyer's execution, delivery and performance of this Agreement or the other agreements contemplated hereby except for Vivax's periodic and other reporting requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the filings of the UCC financing statements referred to in Section 3.3(c). No consents of any other parties are required to be received by or on the part of Vivax or Buyer to enable Vivax or Buyer to enter into and carry out this Agreement except for the Consent of Vivax's lenders.

5.5 **Litigation.** Except as set forth in Vivax's SEC Reports (as hereinafter defined), there is no claim, action, proceeding or investigation pending or, to Vivax's or Buyer's knowledge, threatened against or affecting Vivax or Buyer, or any of its subsidiaries before or by any court, arbitrator or governmental agency or authority where a result adverse to Vivax or its subsidiaries would have a material adverse effect on the business, properties, financial condition, operations or prospects of Vivax and its subsidiaries considered as one enterprise (a "Vivax Material Adverse Effect"). There is no strike or unresolved labor dispute relating to Vivax or its subsidiaries which, in Vivax's reasonable judgment, could have any material adverse effect on the business, properties, financial condition, operations or prospects of Vivax and its subsidiaries considered as one enterprise. To Vivax's knowledge, no union organization effort with respect to any of Vivax's employees is at present underway. There are no decrees, injunctions or orders of any court, governmental department, agency or arbitration outstanding against Vivax or Buyer which would have a Vivax Material Adverse Effect.

5.6 Compliance with Laws and Regulations. The business, properties and assets of Vivax and each of its subsidiaries (and, to the actual knowledge of Vivax, the business of any sub-tenant or licensee which is occupying or has occupied any space on any premises of Vivax and the activities of which could result in any material liability to Vivax or Buyer) conform with and have been conducted and operated in compliance with all, and are not in violation of any, applicable federal, state and local laws, rules and regulations except for such non-compliance which would not have a Vivax Material Adverse Effect.

5.7 Valid Issuance. The Note, upon issuance in accordance with the terms of this Agreement, shall constitute a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to general principles of equity and bankruptcy or other laws relating to or affecting the rights of creditors generally. The Guaranty, upon issuance in accordance with the terms of this Agreement, shall constitute the valid and binding obligation of Vivax enforceable against Vivax in accordance with its terms, subject to general principles of equity and bankruptcy or other laws relating to or affecting the rights of creditors generally. The Vivax Shares, upon issuance in accordance with the terms of this Agreement, shall constitute duly authorized, validly issued, fully paid and non-assessable shares of common stock of Vivax.

5.8 Brokers. Neither Vivax nor Buyer has made any agreement or taken any action with any person which would cause any person to be entitled to any agent's, broker's or finder's fee or commission in connection with the transactions contemplated by this Agreement.

5.9 SEC Reports. Vivax has previously delivered, or prior to the Closing will deliver, to Seller true and complete copies, including exhibits and, as applicable, amendments thereto, of its Annual Report on Form 10-K, its Quarterly Reports on Form 10-Q, and Reports on Form 8-K or related filings under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act made by Vivax with the Securities and Exchange Commission (the "SEC") since January 1, 1997 (collectively, "Vivax's SEC Reports"). Vivax's SEC Reports do not contain any untrue statement of a material fact, or fail to state any material fact required to be stated therein or necessary to make the statements made therein not materially misleading.

5.10 Adverse Developments. Except as expressly provided or set forth in, or required by, this Agreement, or as set forth in Vivax's SEC Reports, since January 1, 1997 there have been no materially adverse changes in the assets, properties, financial condition, operations or prospects of Vivax and its subsidiaries considered as one enterprise, and no event has occurred other than in the ordinary and usual course of business or as set forth in

Vivax's SEC Reports which could be reasonably expected to have a materially adverse effect upon Vivax and its subsidiaries considered as one enterprise, and Vivax does not know of any development or threatened development of a nature that will, or which could be reasonably expected to, have a materially adverse effect upon Vivax and its subsidiaries considered as one enterprise.

5.11 No Omissions or Untrue Statements. To Vivax's and Buyer's knowledge, no representation or warranty made by Vivax or Buyer in this Agreement (including the exhibits hereto) or in any schedule, certificate, or other instrument furnished or to be furnished by Buyer to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

VI. CONDUCT OF BUSINESS PENDING CLOSING

Each of the Seller and the Buyer covenants that between the date hereof and the Closing:

6.1 Access by Buyer. Seller shall cause Concept to give to Vivax and Buyer and to Vivax's and Buyer's counsel, accountants and other representatives reasonable access, during normal business hours throughout the period prior to the Closing Date (the "Access Period"), to all of Concept's properties, books, contracts, commitments, technical and accounting records and to records pertaining to customers, employees, suppliers and other persons having business relations with Concept and shall furnish Vivax and Buyer during the Access Period with all information concerning Concept that Vivax and Buyer may reasonably request. Seller shall cause Concept to permit Vivax and Buyer and their representatives, agents, employees and independent contractors, reasonable access throughout the Access Period to the properties of Concept in order to conduct engineering, environmental and other inspections at Buyer's expense to determine that each of Concept is operating its business in material compliance with all federal, state and local statutes, rules and regulations, and all building, fire and zoning laws or regulations and that Concept's assets are in the condition and of the capacities represented and warranted in this Agreement and to otherwise confirm the accuracy of the other representations and warranties of the Seller in this Agreement; provided, however, that in every instance, Buyer shall make arrangements in advance in order to avoid interruption and to minimize interference with the normal operations of Concept. Any such investigation or inspection by Vivax or Buyer shall not be deemed a waiver of, or otherwise limit, the representations, warranties and covenants of Seller contained herein. Seller shall cause Concept to remove, cure, correct, and repair prior to the Closing any deficiencies in or to

its assets and properties, any violations under applicable statutes, rules, regulations, or building, fire or zoning laws or regulations and any inaccuracies in the other representations and warranties of the Seller in this Agreement.

6.2 Conduct of Business. During the period from the date hereof to the Closing Date, Seller shall cause the business of Concept to be operated solely in the usual and ordinary course and in compliance with the terms of this Agreement. Without limiting the generality of the foregoing:

(a) Seller will cause Concept to use commercially reasonable efforts to preserve its business and organization so as to (i) keep available the services of the present employees and agents of Concept; (ii) complete or maintain all of the Contracts in full force and effect in accordance with their existing terms, unimpaired by litigation; (iii) maintain the integrity of all confidential information regarding Concept; (iv) maintain in full force and effect the insurance policies (or policies providing substantially the same coverage, copies of which shall be made available to Buyer); and (v) preserve the goodwill of, and the contractual relationship with, suppliers, customers and others having relations with Concept;

(b) Seller shall cause Concept to use commercially reasonable efforts to keep in a normal state of repair and operating efficiency all its tangible personal property, leased property and leasehold improvements, and shall replace any such property that is necessary to its operations that cannot be repaired;

(c) Seller shall cause Concept to continue to collect accounts receivable and pay accounts payable in accordance with present practice or as otherwise agreed upon by Buyer and Seller; provided, however, that Concept may have up to sixty (60) days to pay accounts payable;

(d) Seller shall cause Concept to maintain its consumable materials and supplies and the like at historically customary levels; and

(e) Seller will cause Concept to not sell or transfer any assets or property relating to its business except for sales of inventory in the usual and ordinary course and except for cash applied in payment of liabilities in the usual and ordinary course or make any distribution, whether by dividend or otherwise, to any of its shareholders or employees except for compensation to employees in the usual and ordinary course.

6.3 Consents and Notices. Seller shall, on or prior to the Closing Date, at its expense obtain all governmental and third-party consents and approvals, or give all notices, which are

necessary to authorize and validate the transactions contemplated hereby.

6.4 Exclusivity to Buyer. Seller and his representatives, or agents, as appropriate, shall not, from the date hereof until the Closing, hold discussions with any person other than Vivax and Buyer concerning any of (i) the sale of the Shares, (ii) the sale, lease or other disposition of the assets or business of Concept and (iii) any merger, consolidation, reorganization or other business contribution involving Concept or its business and assets exclusive of the transaction contemplated by this Agreement (collectively, "Disposition Transactions"), solicit, negotiate or entertain any inquiries, proposals or offers for any Disposition Transaction with any person other than Buyer, or disclose, outside of the usual and ordinary course of business of Concept, any information concerning Concept to any person other than Vivax and Buyer.

VII. CONDITIONS TO SELLER'S OBLIGATIONS

The obligations of Seller to consummate the Closing are subject to the following conditions:

7.1 Compliance by Buyer. Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date.

7.2 Accuracy of Vivax's and Buyer's Representations. Nova's and Buyer's representations and warranties contained in this Agreement (including the exhibits hereto) or any schedule, certificate, or other instrument delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true in all material respects at and as of the Closing Date (except for such changes permitted by this Agreement) and shall be deemed to be made again as of the Closing Date.

7.3 Litigation. No litigation seeking to enjoin, condition or burden the transactions contemplated by this Agreement or to obtain damages on account hereof shall be pending or to each Seller's knowledge be threatened.

7.4 Material Adverse Change. Except as set forth in Vivax's SEC Reports filed through July 31, 1997 and which have been provided to Seller, no material adverse change shall have occurred subsequent to December 31, 1996 in the assets, properties, financial condition, operations or prospects of Vivax and its subsidiaries considered as one enterprise nor shall any event have occurred which could be reasonably expected to have a materially

adverse effect upon Vivax and its subsidiaries considered as one enterprise.

7.5 Documents. All documents and instruments delivered by Buyer to each Seller at the Closing shall be in form and substance reasonably satisfactory to the Seller.

VIII. CONDITIONS TO BUYER'S OBLIGATIONS

Buyer's obligation to consummate the Closing is subject to the following conditions:

8.1 Compliance by Seller. The Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by such Seller prior to or on the Closing Date.

8.2 Accuracy of Seller's Representations. The representations and warranties of the Seller contained in this Agreement (including the exhibits hereto and the Disclosure Schedule) or any schedule, certificate, or other instrument delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true in all material respects at and as of the Closing Date (except for changes permitted by this Agreement) and shall be deemed to be made again as of the Closing Date.

8.3 Material Adverse Change. Except as set forth in the Disclosure Schedule, no material adverse change shall have occurred subsequent to the Balance Sheet Date in the assets, properties, financial condition, operations or prospects of Concept nor shall any event have occurred which could be reasonably expected to have a materially adverse effect upon Concept.

8.4 Consents and Notices. Seller shall have obtained or given, and delivered to Buyer, in form and substance reasonably satisfactory to Buyer, the consents and notices required by Section 6.3 hereof.

8.5 Litigation. No litigation seeking to enjoin, condition or burden the transactions contemplated by this Agreement or to obtain damages on account hereof shall be pending or to Buyer's knowledge be threatened.

8.6 Compliance with Laws. Buyer shall have received such additional evidence or assurances as it shall have reasonably requested regarding the operation of the business of Concept being conducted in material compliance with all applicable environmental and employee safety laws, rules and regulations, state and federal (including, without limitation, OSHA), and all approvals required under applicable law shall have been obtained.

8.7 Accountant's Advice. Buyer shall have received a report from Richard A. Eisner & Company, LLP ("Eisner"), its independent auditors, that the Financial Statements can be audited and reported upon without qualification by Eisner within sixty (60) days of the Closing Date in accordance with Regulation S-X of the SEC and, in particular, Rules 1-02 and 3-05 promulgated thereunder.

8.8 Documents. All documents and instruments delivered by Seller to Buyer at the Closing shall be in form and substance reasonably satisfactory to Buyer.

IX. CASUALTIES

9.1 Risk of Loss. The risk of loss by fire, tornado, hurricane, or for any other reason between the date hereof and the Closing Date shall be upon Seller. Seller shall notify Buyer of any material casualty loss prior to the Closing and shall furnish Buyer copies of the insurance policy (if any) applicable to such loss and a written statement of the insurance carrier (if any) as to whether and to what extent such loss is covered by such policy. Within fifteen (15) days of receiving such insurance policy and written statement of the insurance carrier, Buyer may, upon written notice to Seller, terminate this Agreement. If Buyer does not terminate this Agreement, Seller shall cause Concept to promptly restore or replace the damaged facilities using insurance proceeds with any shortfall to be at Seller's expense; provided, however, that Seller, if the cost of such repair, replacement or restoration would exceed the proceeds of the insurance by \$100,000, may elect to terminate this Agreement upon written notice to Buyer.

X. INDEMNIFICATION

10.1 By Seller. Subject to Section 10.4 hereof, Seller, shall indemnify, defend, and hold Buyer and Vivax harmless from and against any and all losses, costs, liabilities, damages, and expenses (including legal and other expenses incident thereto) of every kind, nature, and description, including any undisclosed liabilities (collectively, "Losses"), that result from or arise out of (i) the breach of any representation or warranty of Seller set forth in this Agreement (including the exhibits hereto) or in any certificate, schedule, or other instrument delivered to Buyer or Vivax pursuant hereto; or (ii) the breach of any of the covenants of Seller contained in or arising out of this Agreement or the transactions contemplated hereby.

10.2 By Buyer. Subject to Section 10.4 hereof, Buyer and Vivax, jointly and severally, shall indemnify, defend, and hold Seller harmless from and against any and all losses, costs, liabilities, damages, and expenses (including legal and other expenses incident thereto) of every kind, nature, and description,

including any undisclosed liabilities that arise out of (i) the breach of any representation or warranty of Buyer set forth in this Agreement (including the exhibits hereto) or in any schedule, certificate, or other instrument delivered to Seller pursuant hereto; (ii) the breach of any of the covenants of Buyer contained in or arising out of this Agreement or the transactions contemplated hereby; or (iii) the failure of Buyer to pay the principal and interest due from Concept to Capital Bank as reflected in Concept's Financial Statements.

10.3 Claims Procedure. Should any claim covered by Sections 10.1 or 10.2 be asserted against a party entitled to indemnification under this Article (the "Indemnitee"), the Indemnitee shall promptly notify the party obligated to make indemnification (the "Indemnitor"), provided, however, that any delay or failure in notifying the Indemnitor shall not affect the Indemnitor's liability under this Article if such delay or failure was not prejudicial to the Indemnitor. The Indemnitor upon receipt of such notice shall assume the defense thereof with counsel reasonably satisfactory to the Indemnitee and the Indemnitor and the Indemnitee shall extend reasonable cooperation to the Indemnitor in connection with such defense. No settlement of any such claim shall be made without the consent of the Indemnitor, such consent not to be unreasonably withheld, nor shall any such settlement be made by the Indemnitor which does not provide for the absolute, complete, and unconditional release of the Indemnitee from such claim. In the event that the Indemnitor shall fail, within a reasonable time, to defend a claim, the Indemnitee shall have the right to assume the defense thereof without prejudice to its rights to indemnification hereunder.

10.4 Limitations on Liability. Subject to the next succeeding sentence, neither Seller nor Buyer and Vivax shall be liable hereunder as a result of any misrepresentation or breach of representations, warranties or covenants contained in this Agreement unless and until the Losses incurred by each, as the case may be, as a result of such misrepresentations or breaches under this Agreement shall exceed, on an after-tax basis, in the aggregate, \$25,000. The immediately preceding sentence shall not be applicable with respect to the indemnification obligations of Vivax and Buyer pursuant to Section 10.2(iii), meaning and intending that Vivax and Buyer shall be liable for such indemnification obligations from the first dollar of such losses. The Seller shall not be liable hereunder as a result of any misrepresentation or breach of representations, warranties or covenants contained in this Agreement for an amount in excess of the consideration received by him pursuant to this Agreement. Vivax and Buyer agree to accept the return of Vivax Shares by Seller for cancellation in payment of his liability hereunder. Any Vivax Shares surrendered pursuant to the preceding sentence shall be valued at \$3.00 per share.

10.5 Right of Set-off. Buyer may set-off against and apply as a credit on payments due under the Note any amounts payable by Seller pursuant to Section 10.1 hereof.

XI. COVENANTS

11.1 Mutual Cooperation. The parties hereto will cooperate with each other, and will use all reasonable efforts to cause the fulfillment of the conditions to the parties' obligations hereunder and to obtain as promptly as possible all consents, authorizations, orders or approvals from each and every third party, whether private or governmental, required in connection with the transactions contemplated by this Agreement.

11.2 Changes in Representations and Warranties of Seller. Between the date of this Agreement and the Closing Date, Seller shall not directly or indirectly enter into any transaction, take any action, or by inaction permit an event to occur, which would result in any of his representations and warranties herein contained not being true and correct at and as of (i) the time immediately following the occurrence of such transaction or event or (ii) the Closing Date. Seller shall promptly give written notice to Buyer upon becoming aware of (A) any fact which, if known on the date hereof, would have been required to be set forth or disclosed pursuant to this Agreement and (B) any impending or threatened breach in any material respect of any of their respective representations and warranties contained in this Agreement and with respect to the latter shall use all reasonable efforts to remedy same.

11.3 Changes in Representations and Warranties of Vivax or Buyer. Between the date of this Agreement and the Closing Date, neither Vivax nor Buyer shall, directly or indirectly, enter into any transaction, take any action, or by inaction permit an event to occur, which would result in any of the representations and warranties of Buyer herein contained not being true and correct at and as of (i) the time immediately following the occurrence of such transaction or event or (ii) the Closing Date. Buyer shall promptly give written notice to Seller upon becoming aware of (A) any fact which, if known on the date hereof, would have been required to be set forth or disclosed pursuant to this Agreement and (B) any impending or threatened breach in any material respect of any of Vivax's or Buyer's representations and warranties contained in this Agreement and with respect to the latter shall use all reasonable efforts to remedy same.

11.4 Guaranties to Capital Bank. Vivax and Buyer shall use best efforts to cause Capital Bank to release the guaranties by K. Zigarac and P. Zigarac of the obligations of Concept to Capital Bank as soon as practicable. Best efforts shall include an offer by Vivax and Buyer to guaranty such obligations.

11.5 Distributions to Pay Taxes. Since Concept and Alternate have been, and Concept shall continue to be taxable as Subchapter S corporations until the Closing, (i) Concept and Alternate have distributed to their shareholders since the date of the Financial Statements amounts sufficient to pay their federal and state income on the income of Concept and Alternate for the fiscal year ended December 31, 1996 in an aggregate amount equal to \$100,000 and (ii) Concept shall pay to the shareholders of Concept and Alternate on or before the Closing an amount estimated and agreed to by Seller and Buyer in good faith sufficient to pay such Shareholder's federal and state income taxes on the income of Concept and Alternate for the fiscal year ended as of the Closing minus any previous payments made by Alternate or Concept with respect thereto (the "Sub-S Distribution").

XII. ACQUISITION OF SHARES, THE NOTE AND VIVAX SHARES

12.1 Investment Intent. Buyer represents and warrants to Seller that the Shares are being acquired for its own account for investment purposes, with no present intention of assigning any participation or interest therein.

12.2 Seller's Investment Intent. Seller represents and warrants to Buyer and Vivax that the Vivax Shares and the Note are each being acquired for his own account for investment purposes with no present intention of assigning any participation or interest thereon. Seller consents and agrees that the certificate evidencing the Vivax Shares may have endorsed thereon the following legend, and appropriate "stop transfer" instructions may be given to Buyer's transfer agent:

"THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY BE SOLD, TRANSFERRED OR ENCUMBERED ONLY PURSUANT TO (i) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (ii) AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS UNNECESSARY"

12.3 Ownership of the Business of Concept. Until the Note has been paid in full, Vivax shall conduct the business of Concept through a direct or indirect wholly-owned entity, or a division thereof, with separate books and records for purposes of determining Applicable Operating Income.

12.4 Securities Law Restrictions on Transfers; Registration Rights. (a) The Seller understands that the offer and/or sale of the Vivax Shares (the "Registerable Shares") to the

Seller is not required to be registered under the Securities Act by reason of a private placement exemption for the offer and sale of such shares. The Seller further understand that, except as provided herein, Vivax has not agreed to register such shares for distribution and/or resale in accordance with the provisions of the Securities Act or the Exchange Act, or to register such shares for distribution and/or resale under any applicable state securities laws. Hence, it is the Seller's understanding that by virtue of the provisions of certain rules respecting "restricted securities" promulgated under such federal and/or state laws, unless such secondary distribution and/or resale is registered as provided herein, such shares which the Seller is acquiring by virtue of this Agreement must be held indefinitely and may not be sold, transferred, pledged, hypothecated or otherwise encumbered for value, unless and until such secondary distribution is registered under the Securities Act and/or state or foreign securities laws or unless an exemption from registration is available, in which case the Seller still may be limited as to the amount of such shares that may be sold, transferred, pledged and/or encumbered for value.

(b) Whenever Vivax proposes to register (either on its own behalf or on behalf of holders of its equity securities) any of its equity securities under the Securities Act (other than pursuant to registrations of equity securities to be sold under one or more of Vivax employee benefit plans on Form S-8), and the registration form to be used may be used for a registration of the Registerable Shares, Vivax will give prompt written notice to the Seller of its intention to effect such a registration and will include in such registration all Registerable Shares with respect to which Vivax has received written request by the holders thereof for inclusion therein within 15 days after the mailing of Nova's notice. Any registrations requested pursuant to this Subsection are referred to herein as "Piggyback Registrations."

(1) Priority on Primary Registrations.

If a Piggyback Registration is an underwritten primary registration on behalf of Vivax, and the managing underwriters advise Vivax in writing that, in their opinion, the number of equity securities requested to be included in such registration exceeds the number which can be sold in such offering, Vivax will include in such registration (i) first, the equity securities Vivax proposes to sell and (ii) second, the Registerable Shares and any other equity securities with comparable "piggyback" registration rights requested to be included in such Piggyback Registration, pro rata among the holders of such Registerable Shares and such other equity securities based upon a fraction, with respect to each holder, the numerator of which is the number of shares requested to be sold by such holder, and the denominator of which is the number of Registerable Shares and such other equity securities requested to be included in such Piggyback Registration

and any other equity securities with comparable "Piggyback" rights requested to be included in such registration.

(2) Priority on Secondary Registrations.

If a Piggyback Registration is an underwritten secondary registration on behalf of holders of Vivax's equity securities, and the managing underwriters advise Vivax in writing that, in their opinion, the number of equity securities requested to be included in such registration exceeds the number which can be sold in such offering, Vivax will include in such registration (i) first, the equity securities to be sold in the secondary offering by the holders of Vivax's equity securities and (ii) second, the Registerable Shares and any other equity securities with comparable "piggyback" registration rights requested to be included in such Piggyback Registration, pro rata among the holders of such Registerable Shares and such other equity securities based upon a fraction, with respect to each holder, the numerator of which is the number of shares requested to be sold by such holder, and the denominator of which is the number of Registerable Shares and such other equity securities requested to be included in such Piggyback Registration and any other equity securities with comparable "Piggyback" rights requested to be included in such registration.

(3) Expenses of Piggyback Registrations.

Vivax shall pay all expenses incident to Piggyback Registrations, including, without limitation, all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, and fees and disbursements of counsel for Vivax and all independent, certified public accountants, underwriters (excluding discounts and commissions) and any other persons retained by Vivax in connection with such Piggyback Registrations. The holder of the Registerable Shares requesting the Piggyback Registration(s) will be required to pay their pro rata share of any underwriter and/or brokerage commissions, attributable to the inclusion of the Registerable Shares in the Piggyback Registration(s).

(4) Other Registrations.

If Vivax has previously filed a registration statement with respect to the Registerable Shares pursuant to a Piggyback Registration and if such previous registration has not been withdrawn or abandoned, Vivax will not file or cause to be effective any other registration statement with respect to any of its equity securities or securities convertible or exchangeable into or exercisable for its equity securities under the Securities Act (except with respect to securities to be sold under any of Vivax's employee benefit plans registered on Form S-8), whether on its own behalf or at the request of any holder or holders of such

securities, until a period of at least three months has elapsed from the effective date of such Piggyback Registration.

(5) Holdback Agreement.

(i) Each holder of Registerable Shares agrees not to effect any public sale or distribution of equity securities of Vivax, or any securities convertible into or exchangeable or exercisable for such securities, during the thirty days prior to and the three hundred sixty-five day period beginning on the effective date of any underwritten Piggyback Registration (except as part of such underwritten Registration), unless the underwriters managing the registered Piggyback public offering otherwise agree. This restriction shall not apply in the case of Registerable Shares which have been registered previously in a Piggyback Registration.

(ii) Vivax agrees not to effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the seven days prior to and the ninety day period beginning on the effective date of any underwritten Piggyback Registration (except as part of such underwritten registration or with respect to sale of its securities under any employee benefit plan pursuant to registration on Form S-8), unless the underwriters managing the registered Piggyback public offering otherwise agree.

(c) Scope of Registration Rights; Registration Procedures.

Vivax's registration obligations under this Agreement are "best efforts" obligations only and shall, in no event, obligate Vivax to effectuate a shelf registration of the Registerable Shares under Rule 415. Whenever the holders of Registerable Shares have requested that any Registerable Shares be registered, Vivax will use its best efforts to effect the registration and the sale of such Registerable Shares with the intended method of disposition thereof, and pursuant thereto Vivax will as expeditiously as possible:

(1) Prepare and file with the Securities and Exchange Commission a registration statement (which shall be, to the extent Vivax is permitted to do so under applicable rules promulgated by the Securities and Exchange Commission, a short-form registration statement) with respect to such Registerable Shares and use its best efforts to cause such registration statement to become effective;

(2) Prepare and file with the Securities and Exchange Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a

period of not more than 30 days and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended method of distribution by the sellers thereof set forth in such registration statement;

(3) Furnish to each seller of the Registerable Shares such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus, if any) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registerable Shares owned by such seller;

(4) Use its best efforts to register or qualify such Registerable Shares under such jurisdiction (not to exceed five) as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registerable Shares owned by such seller provided that Vivax will not be required to:

(i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph;

(ii) subject itself to taxation in any jurisdiction where it would not otherwise be subject to taxation but for this subparagraph;

(iii) consent to general service of process in any jurisdiction where it would not otherwise be subject to process but for this subparagraph;

(5) Notify each seller of such Registerable Shares, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statement made therein, in light of the circumstances under which they were made, not misleading, and, at the request of any such seller, Vivax will prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registerable Shares, such prospectus will not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(6) Enter into any such customary agreements (including underwriting agreements in customary form) and take all such other

actions as the holders of the Registerable Shares being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such registered Registerable Shares;

(7) Make available for inspection by any underwriter participating in any disposition pursuant to such registration statement, and any attorney, accountant or other agent retained by such underwriter, all financial and other records, pertinent corporate documents and properties of Vivax, and cause Vivax's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement.

(8) (i) Vivax agrees to indemnify, to the extent permitted by law, each holder of the Registerable Shares, its officers and directors and each person who controls such holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses resulting from any untrue statement of material fact contained in any registration statement, prospectus or preliminary prospectus or any amendment thereto or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading except insofar as the same result from or are contained in any information furnished in writing to Vivax by such holder expressly for use therein or by such holder's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after Vivax has furnished such holder with a sufficient number of copies of the same.

(ii) In connection with any registration statement in which a holder of Registerable Shares is participating, each such holder will furnish to Vivax in writing such information and affidavits as Vivax reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify Vivax, its directors and officers and each person who controls Vivax (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses resulting from any untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any statement thereof or supplement thereto, or any omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such holder; provided that the obligation to indemnify as set forth herein will be several, not joint and several, among such holders of Registerable Shares and the liability of each such holder of Registerable Shares will be in proportion to and limited to the net amount received by such holder

from the sale of the Registerable Shares pursuant to such registration statement.

(iii) Any person entitled to indemnification hereunder will:

(a) give prompt written notice to the indemnifying party of any claim with respect to which such person seeks indemnification, and

(b) unless in such indemnified party's reasonable judgment, a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit the indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent, but such consent will not be unreasonably withheld. An indemnifying party who is not entitled to or elects not to assume the defense of the claim, will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim unless in the reasonable judgment of any indemnified party, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim.

(d) Rule 144

With a view to making available to Seller the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Seller to sell the Vivax Shares to the public without registration ("Rule 144"), Vivax agrees to use best efforts to:

(1) make and keep public information available, as those terms are understood and defined in Rule 144;

(2) file with the SEC in a timely manner all reports and other documents required of Vivax under the Securities Act and the Exchange Act; and

(3) furnish to Seller so long as Seller owns the Vivax Shares, promptly upon request (i) a written statement by Vivax that it has complied with the reporting requirements of the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of Vivax and such other reports and documents so filed by Vivax and (iii) such other information as may be reasonably requested to permit Seller to sell such securities pursuant to Rule 144 without registration.

XIII. TERMINATION

13.1 Termination Prior to Closing.

(a) If the Closing has not occurred by September 30, 1997, any of the parties hereto may terminate this Agreement at any time thereafter by giving written notice of termination to the other parties.

(b) Either the Seller or Buyer may terminate this Agreement following the insolvency or bankruptcy of the other or of Vivax or Concept, respectively, or if one of the conditions to Closing set forth in Article VII or Article VIII shall become incapable of fulfillment and shall not have been waived by the party for whose benefit the condition was established, then either Seller (in the case of a condition specified in Article VII) or Buyer (in the case of a condition specified in Article VIII) may terminate this Agreement.

13.2 Consequences of Termination. Upon termination of this Agreement pursuant to either Section 13.1 or any other express right of termination provided elsewhere in this Agreement, the parties shall be relieved of any further obligation to the others; provided, however, that no termination of this Agreement, pursuant to Section 13.1 hereof or under any other express right of termination provided elsewhere in this Agreement, shall operate to release any party from any liability to any other party incurred before the date of such termination or from any liability resulting from any willful misrepresentation made in connection with this Agreement or willful breach hereof. The provisions of this Section 13.2 shall not be considered as a waiver by Buyer or Seller of the remedy of specific performance, it being agreed that Buyer and Seller shall have the right to specific performance with respect to this Agreement.

XIV. MISCELLANEOUS

14.1 Expenses. (a) Concept shall pay all of Concept's and Seller's reasonable expenses incident to the negotiation, preparation, and carrying out of this Agreement, including all fees

and expenses of their counsel and accountants for all activities of such counsel and accountants undertaken pursuant to this Agreement.

(b) Vivax and Buyer shall pay all of their own expenses incident to the negotiation, preparation, and carrying out of this Agreement, including all fees and expenses of their counsel and accountants for all activities of such counsel and accountants undertaken pursuant to this Agreement.

14.2 Survival of Representations, Warranties and Covenants. All statements contained in this Agreement (including the exhibits hereto) or in any schedule, certificate or other instrument delivered by or on behalf of any of the Seller, Buyer or Vivax pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations, warranties and covenants by Seller, or by Buyer, or by Vivax, as the case may be, hereunder. All representations, warranties, and covenants made by Seller, or by Buyer, or by Vivax in this Agreement, or pursuant hereto, shall survive the Closing for a period of eighteen (18) months; provided, however, that (i) the representations and warranties with respect to Seller's title to the Shares, including those contained in Section 4.2 and 4.3 hereof, and the related indemnities, shall survive the Closing indefinitely; (ii) all representations and warranties made by Seller in Section 4.10 (Environmental Matters) shall survive the Closing indefinitely; and (iii) all representations and warranties made by Seller in Section 4.8 (Taxes) shall survive until the later of (x) the expiration of the statute of limitations (including extensions) applicable to any taxable year and (y) sixty (60) days after the final determination of any Tax liability (including the final administrative or judicial determination therefor) relating to such representation, warranty, or covenant (as the case may be, the applicable "Survival Period"); and provided, further, that all representations and warranties related to any claim asserted in writing prior to the expiration of the applicable Survival Period shall survive until such claim shall be resolved and payment in respect thereof, if any is owing, shall be made.

14.3 Confirmatory Instruments. Seller shall take all such action and execute all such instruments and documents as Buyer may reasonably require in order to carry out the purposes and intents of this Agreement.

14.4 Further Assurances. Seller and Buyer will comply with any and all requirements imposed by applicable federal law or state law which are necessary to authorize and validate the sale, transfer and assignment of the Shares to Buyer and otherwise to effectuate the purposes of this Agreement.

14.5 Nondisclosure. Seller will not at any time after the date of this Agreement divulge, furnish to or make accessible to anyone any knowledge or information with respect to confidential or secret processes, inventions, discoveries, improvements, formulae, plans, material, devices or ideas or know-how, whether patentable or not, with respect to any confidential or secret aspects of Concept (including, without limitation, customer lists, supplier lists and pricing arrangements with customers or suppliers) ("confidential information"); provided, however, that such undertaking shall lapse if the Closing does not take place. In the event that the transactions contemplated hereby are not consummated, none of Buyer, Vivax or any affiliate thereof will utilize (except for purposes of this Agreement), divulge (except as required by law), furnish to or make accessible to anyone any confidential information and copies of all such information in Buyer's or Vivax's possession shall be returned by Buyer or Vivax to Seller.

Any information, which (i) at or prior to the time of disclosure by Buyer or Seller was generally available to the public through no breach of this covenant, (ii) was available to the public on a nonconfidential basis prior to its disclosure by Buyer or Seller or (iii) was made available to the public from a third party provided that such third party did not obtain or disseminate such information in breach of any legal obligation of Buyer, Vivax or Seller, shall not be deemed confidential information for purposes hereof, and the undertakings in this covenant with respect to confidential information shall not apply thereto.

14.6 Succession and Assignments; Third Party Beneficiaries. This Agreement may not be assigned (either voluntarily or involuntarily) by any party hereto without the express written consent of the other parties. Any attempted assignment in violation of this Section shall be void and ineffective for all purposes. In the event of an assignment permitted by this Section, this Agreement shall be binding upon the heirs, successors and assigns of the parties hereto. Except as expressly set forth in this Section, there shall be no third party beneficiaries of this Agreement.

14.7 Notices. All notices, requests, demands, or other communications with respect to this Agreement shall be in writing and shall be personally delivered by a overnight courier service, charges prepaid, by postage prepaid mail or by facsimile transmissions to the following addresses (or such other addresses

as the parties may specify from time to time in accordance with this Section).

(a) To Seller:

Kevin Zigarac
606 N.W. 103rd Avenue
Plantation, Florida 33324
Telecopier:

With a copy to:

Gary R. Saslaw, P.A.
20801 Biscayne Boulevard, Suite 304
Aventura, Florida 33180-1422
Telecopier: (305) 682-1800

(b) To Vivax or Buyer:

Vivax Medical Corporation
545 Middle Street
Bristol, CT 06010
Telecopier: (860) 314-1294

Attn: President

With a copy to:

Whitman Breed Abbott & Morgan
100 Field Point Road
Greenwich, CT 06830
Telecopier: (203) 869-1951

Attn: David P. Tuttle, Esq.

Any such notice shall, when sent in accordance with the preceding sentence, be deemed to have been given and received on the earliest of (i) the day delivered to such address or sent by facsimile transmission, (ii) the fifth business day following the date deposited with the United States Postal Service, or (iii) twenty-four hours after shipment by such courier service.

14.8 Governing Law: Submission to Jurisdiction. This Agreement shall be construed and enforced in accordance with the internal laws of the State of New York without giving effect to the principles of conflicts of law thereof. THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. THE PARTIES HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT OF FLORIDA AND OF ANY FLORIDA STATE COURT SITTING IN DADE OR BROWARD

COUNTY FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.9 Additional Defined Term. The term "knowledge" as used in this Agreement with respect to a party's awareness of the presence or absence of a fact, event or condition shall mean (a) actual knowledge plus, if different, (b) the knowledge that would be obtained if such party conducted himself or herself faithfully and exercised a sound discretion in the management of his or her own affairs.

14.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

14.11 No Implied Waiver; Remedies. No failure or delay on the part of the parties hereto to exercise any right, power, or privilege hereunder or under any instrument executed pursuant hereto shall operate as a waiver nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. All rights, powers, and privileges granted herein shall be in addition to all other rights and remedies to which the parties may be entitled at law or in equity.

14.12 Entire Agreement. This Agreement, including the Exhibits and Schedules and Annexes attached hereto, sets forth the entire understandings of the parties with respect to the subject matter hereof, and it incorporates and merges any and all previous communications, understandings, oral or written, and cannot be amended or changed except in writing signed by the parties.

14.13 Headings. The headings of the Sections of this Agreement, where employed, are for the convenience of reference only and do not form a part hereof and in no way modify, interpret or construe the meanings of the parties.

14.14 Severability. To the extent that any provision of this Agreement shall be invalid or unenforceable, it shall be considered deleted hereof and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

VIVAX MEDICAL CORPORATION

By: 

Name: Stephen M. Fisher
Title: President

VIVAX MEDICAL SERVICES INC.

By: 

Name: Stephen M. Fisher
Title: President


Kevin Ziganac

CONCEPT MEDICAL CORPORATION

By: 

Name: Kevin Ziganac
Title: President