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

FORM 10-K

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

For the fiscal year ended: December 29, 2006

OR

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

For the transition period from to

Commission File Number: 0-30235

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

Delaware	**04-3257395**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification Number)**

170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
(Address of principal executive offices, including zip code)

(650) 837-7000
(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock $.001 Par Value per Share	**The Nasdaq Stock Market LLC**

Securities Registered Pursuant to Section 12(g) of the Act:
None

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):
Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

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

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: $943,289,583

As of February 20, 2007, there were 96,603,127 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A, not later than April 30, 2007, in connection with the registrant's 2007 Annual Meeting of Stockholders are incorporated herein by reference into Part III of this Annual Report on Form 10-K.

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EXELIXIS, INC.

FORM 10-K

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PART I

Some of the statements under the captions "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" and elsewhere in this Annual Report on Form 10-K are forward-looking statements. These statements are based on our current expectations, assumptions, estimates and projections about our business and our industry and involve known and unknown risks, uncertainties and other factors that may cause our company's or our industry's results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied in, or contemplated by, the forward-looking statements. Words such as "believe," "anticipate," "expect," "intend," "plan," "will," "may" "should," "estimate," "predict," "potential," "continue" or the negative of such terms or other similar expressions identify forward-looking statements. Our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include those discussed in "Item 1A. Risk Factors" as well as those discussed elsewhere in this Annual Report on Form 10-K. These and many other factors could affect our future financial and operating results. We undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

ITEM 1. BUSINESS

Overview

We are committed to developing innovative therapies for cancer and other serious diseases. Through our drug discovery and development activities, we are building a portfolio of novel compounds that we believe have the potential to be high-quality, differentiated pharmaceutical products.

Utilizing our library of more than four million compounds, we integrate high-throughput processes, medicinal chemistry, bioinformatics, structural biology, and early *in vivo* testing in parallel to characterize thousands of compounds, a process that is designed to enable us to move with speed in research and development. This approach allows us to select highly qualified drug candidates that meet our extensive list of development criteria from a large pool of compounds.

To date, we have filed 11 investigational new drug applications (INDs). We believe that our deep pool of drug candidates will enable us to continue to file multiple new INDs each year for the foreseeable future. As our compounds advance into clinical development, we expect to generate a critical mass of data that will help us to understand the full clinical and commercial potential of our product candidates. In addition to guiding the potential commercialization of our innovative therapies, these data may contribute to the understanding of disease and help improve treatment outcomes.

Our current pipeline includes the following compounds:

Compound	Principal Targets	Indication	Stage of Development
XL647*	EGFR, HER2, VEGFR2	Cancer	Phase II
XL784*	ADAM10, MMP2	Diabetic nephropathy	Phase II
XL999*[1]	VEGFR2, PDGFR, FGFR, Flt3	Cancer	Phase II
XL880	MET, VEGFR2	Cancer	Phase II
XL820	KIT, VEGFR2, PDGFR	Cancer	Phase I
XL184	MET, VEGFR2	Cancer	Phase I
XL844	CHK1, CHK2	Cancer	Phase I
XL518**	MEK	Cancer	IND
XL418	AKT, S6K	Cancer	IND
XL281	RAF	Cancer	IND
XL228	ABL, SRC, IGF1R	Cancer	IND
XL147	PI3K	Cancer	Preclinical
XL765	PI3K, mTOR	Cancer	Preclinical
XL019	JAK2	Cancer	Preclinical
XL550***	MR	Hypertension	Preclinical
XL335***	FXR	Atherosclerosis	Preclinical

*Out-licensed to Symphony Evolution, Inc. and subject to a repurchase option as described in this report.
**In co-development collaboration with Genentech, Inc.
***XL550 and XL335 are out-licensed to Sankyo and Wyeth Pharmaceuticals, respectively, as described in this report.
[1]Enrollment of new patients was suspended in November 2006 to evaluate safety.

Pursuant to a product development and commercialization agreement between Exelixis and GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by Exelixis, to elect to develop up to three compounds in Exelixis' product pipeline, which may include XL784 and the cancer compounds identified in the table above except XL518, XL147, XL765 and XL019.

We have established collaborations with major pharmaceutical and biotechnology companies based on the strength of our expertise in biology, drug discovery and development that allow us to retain economic participation in compounds and support additional development of our proprietary products. Through these collaborations, we obtain license fees, research funding, a share of the profits and the opportunity to receive milestone payments and royalties (as applicable) from research results and subsequent product development activities. We also have collaborations in which we retain the right to co-promote products in the United States. We have ongoing commercial collaborations with several leading pharmaceutical and biotechnology companies, including GlaxoSmithKline, Bristol-Myers Squibb and Genentech. We expect to continue to use corporate partnering as a strategic tool to cultivate our assets, fund our operations and expand the therapeutic and commercial potential of our pipeline.

As our company has matured and our development efforts have intensified, we have restructured our organization as needed to reallocate resources and enhance the efficiency of our operations. We believe that these efforts have strengthened and enabled us to achieve an appropriate functional balance within our organization.

Areas of Expertise

Integrated Drug Research, Discovery and Development Capabilities

We have built a multidisciplinary, integrated research and development platform that supports the complex, iterative nature of drug research, discovery and clinical development. Our platform has been designed to include all of the critical functions and expertise required to advance from gene to drug in a consistent and streamlined fashion. Our integrated approach supports advancement of candidate compounds from development candidate status to IND in as little as 12 months.

Our organizational structure is designed to create a seamless and flexible research and development process. It is structured to provide one consistent set of goals and objectives to all departments within the research and development organization and to give us the flexibility to allocate and focus our diverse resources to address our most pressing needs. This organizational structure ensures that our earliest discovery activities generate data and information that inform our clinical development strategies, and enables us to apply what we learn about our drug candidates in the clinic to how we discover, assess and select new compounds for future development. We believe that this approach will allow us to align the target inhibition spectrum of a specific compound with the molecular profile of specific cancer types and patient populations. This should strengthen our ability to select appropriate patients for clinical trials, which may allow significant efficacy to be demonstrated using smaller, shorter trials. Similarly, we intend to use biology to identify disease indications that give us a clear and potentially shorter path to the market, which may allow us to decrease our development times and bring drugs to market sooner.

Additionally, we are leveraging what we learn through preclinical pharmacodynamic studies to identify clinical biomarkers that can be utilized to determine early in the development process if the compound is having

the expected effect on the target(s) and pathway(s) of interest and if patients are responding to it. This approach may result in an increased probability that patients receive effective therapies.

Drug Discovery

In addition to establishing an integrated research and development organizational structure, we have built an optimized drug discovery platform. We utilize a variety of high-throughput technologies to enable the rapid discovery, optimization and extensive characterization of lead compounds such that we are able to select development candidates with the best potential for further evaluation and advancement into the clinic. We have combined our ability to identify and validate novel targets with state-of-the-art drug discovery to effectively exploit both the chemical and biological sciences. In addition, we have built critical mass in all key operational areas. We believe that these human and technological resources enable us to: (i) qualify novel targets for high-throughput screening effectively and rapidly; (ii) identify and optimize proprietary lead compounds; (iii) develop extensive preclinical data to guide selection of patient populations, thereby maximizing the opportunity for obtaining significant clinical benefit; and (iv) perform the broad range of preclinical testing required to fuel our pipeline and advance promising compounds through all stages of development. Key capabilities within drug discovery include: high-throughput screening, medicinal and combinatorial chemistry, cell biology, protein biochemistry, structural biology, pharmacology, biotherapeutics and informatics.

Translational Research

Our translational research group is focused on using the knowledge we generate in the discovery process about biological targets and the impact of our compounds on those targets to identify patient populations in which to test our compounds and methods for assessing compound activity. This includes understanding the role of specific targets in disease therapy, identifying gene mutations or gene variants that impact response to therapy and identifying biomarkers that can be used to assess drug responses early on in treatment. Key capabilities within translational research include: nonclinical development (encompassing drug safety, drug metabolism, pharmacokinetics and bioanalytics) and translational medicine.

Development

With the growth of our pipeline, we continue to invest in building our development expertise and resources. Our development group leads the development and implementation of our clinical and regulatory strategies. Working closely with the discovery and translational research groups, the development group prioritizes disease indications in which our compounds may be studied in clinical trials. The development group designs, directs, implements and oversees all areas of clinical operations, including identifying and selecting clinical investigators, recruiting study subjects to participate in our clinical trials, biostatistics, data management, drug safety evaluation and adverse event reporting. The development group also is responsible for assuring that our development programs are conducted in compliance with all regulatory requirements. The group works closely with the cross functional project and clinical teams to facilitate the appropriate and efficient development of our diverse product pipeline. Key capabilities within development include clinical development, clinical operations, regulatory strategy and program management.

Our Strategy

Our business strategy is to leverage our biological expertise and integrated drug discovery capabilities to generate a large pipeline of diverse development compounds with first-in-class or best-in-class potential that fulfill unmet medical needs in the treatment of cancer and other potentially serious diseases.

Because our continued success and growth as a company depend in part on our ability to advance current and future compounds successfully in clinical development, we intend to commit substantial resources to

build a premier clinical development organization to accommodate our expanding pipeline of compounds. We continue to build critical mass of key internal expertise and capabilities to facilitate conducting multiple clinical trial programs with speed and rigor. Specifically, our business strategy includes the following key elements:

Selectively Develop Therapeutic Products with First-In-Class or Best-In-Class Potential

We have invested and plan to continue to make significant investments in discovering and developing proprietary product candidates, particularly in the area of cancer. We have committed substantial resources to building a first-rate drug discovery effort that is integrated with our unique understanding of the biological basis of a disease. Part of our strategy is to generate a large pipeline of diverse product candidates that provides us with the flexibility to select only those compounds that have both clinical and commercial potential. In developing compounds, our strategy is to pursue a variety of clinically validated, novel and proprietary targets. These decisions are data-driven, based on stringent criteria that incorporate intrinsic potency, selectivity, preclinical efficacy and tolerability and commercial viability. Our strategy is to commit resources only to those compounds that are commercially attractive and have the potential to be first-in-class or best-in-class therapeutics.

Target Multiple Pathways

We have extensive expertise and experience in modifying gene function *in vitro* and *in vivo* as a result of our work on model organisms for the discovery of novel targets and pathways relevant to the development, progression and treatment of cancer and other diseases. We believe that the most effective therapies for cancer will target multiple pathways, simultaneously turn off growth signals, increase rates of programmed cell death and reduce the growth of blood vessels necessary to support tumor growth. Many of our first-generation anticancer product candidates in our clinical pipeline are Spectrum Selective Kinase Inhibitors (SSKIs) that have been optimized for balanced potency, specificity, tolerability and pharamacologic parameters. These SSKIs are designed to target multiple members of a family of proteins known as receptor tyrosine kinases (RTKs) in a concerted manner. RTKs are validated targets for drug development, as evidenced by several recent approved cancer therapies. Because interactions among multiple RTKs contribute to the development and progression of disease, SSKIs may provide more effective disease control than compounds that target only one RTK or target multiple non-related RTKs. Additionally, because SSKIs are optimized for key *in vitro* and *in vivo* parameters, these compounds may also provide improved efficacy and enhanced safety profiles compared with combinations of single-target drugs that have not been optimized for use together.

Our second-generation compounds are designed to inhibit kinases that are points of convergence in critical signaling pathways employed by growth factor receptors to transmit their aberrant signals in tumor cells. The targets of several approved therapies transmit their signals through a number of common downstream pathways, such as the RAS/RAF/MEK/ERK, PI3 kinase/AKT/mTOR and JAK/STAT pathways. These pathways also are often mutationally activated in a wide range of tumors. Thus, inhibition of key kinase targets in these pathways may provide superior efficacy, safety and tolerability compared to conventional chemotherapy and may enable entirely new approaches to cancer therapy.

The majority of our compounds target one or more molecular pathways that control critical aspects of cancer cell growth, proliferation, migration or survival. These include:

Cell Growth

In most normal adult tissues, cell growth is tightly controlled. However, cancer cells escape normal growth control and are driven to grow and divide very rapidly. In many cases, this growth is driven by excessive activity of cellular growth factors and/or their receptors. This change in activity may result from mutations that allow the receptor to be active even when no growth factor is present or from expression of abnormally high levels of a growth factor or its receptor. This abnormal activity may also allow cancer cells to survive under conditions that

would usually lead to cell death, which contributes to resistance to chemotherapy or radiation. Inhibition of growth factors or growth factor receptors is a validated approach to treating cancer, and several approved cancer therapies are designed to inhibit the activity of these proteins. Growth factor receptors that play a role in tumor cell growth include the fibroblast growth factor receptor (FGFR), the FMS-like tyrosine kinase type 3, which effects the survival, proliferation and maturation of blood precursor cells (Flt3), the stem cell factor receptor (KIT), the platelet-derived growth factor receptor (PDGFR), the epidermal growth factor receptor (EGFR), the human epidermal growth factor receptor 2 (HER2), the hepatocyte growth factor receptor (MET), and the insulin-like growth factor type 1 receptor (IGF1R). Key kinases in signal transduction pathways downstream of growth factor receptors that promote cell growth include RAF, the MAP-erk kinase (MEK), the cytoplasmic tyrosine janus kinase 2 (JAK2), the phosphoinosotide-3 kinase (PI3K) and the mammalian target of rapamycin (mTOR).

Cell Survival

Normal cells often activate a “self-destruct program” known as programmed cell death or apoptosis under abnormal conditions that include the stresses that arise as a result of nutrient, oxygen or energy deprivation, for example. One of the hallmarks of tumor cells is the ability to survive under such conditions, an attribute that results from the inappropriate activation of survival signaling pathways. These pathways often become activated in tumor cells as a result of genetic alterations that result in either loss of the suppressor genes that negatively regulate such pathways or the activation of positive effectors of the pathway. Many growth factor receptors, including EGFR, HER2, MET, KIT and IGF1R, activate survival signaling pathways. Other key kinases in survival pathways include PI3K, the protein kinase B (AKT), mTOR and the ribosomal protein S6 protein kinase (p70S6K).

Angiogenesis

Angiogenesis, the process by which new blood vessels form, is essential for the growth of tumors beyond a minimum size. In small tumors, cancer cells use existing blood vessels to get oxygen and nutrients needed for growth and to remove waste products. As tumors grow, the existing blood vessels are no longer sufficient to support the rapid pace of cancer cell growth and division, and continued growth and cancer cell survival requires the formation of new blood vessels. Tumor cells send out chemical signals that stimulate nearby blood vessels to grow into the tumor. In addition to providing essential oxygen and nutrients to the tumor, these new blood vessels also facilitate the migration of tumor cells into the blood system where they can travel to other parts of the body and give rise to metastatic disease. Inhibition of angiogenesis is a validated approach to treating cancer, and angiogenesis inhibitors have been approved by the U.S. Food and Drug Administration (FDA) for the treatment of several types of cancer. RTKs that play a role in angiogenesis include the vascular endothelial growth factor receptor 2 (VEGFR2, also known as KDR), PDGFR, the fibroblast growth factor receptor 1 (FGFR1), MET, and the EPH receptor B4 (EphB4).

Migration

Cell migration allows tumors to invade healthy tissue and also allows tumors to spread to disparate parts of the body. Key targets that have been shown to play a role in cell migration include MET and a disintegrin and metalloprotease domain 10 (ADAM10).

Cell Cycle Regulation

In normal cells, the processes of DNA replication and cell division are tightly controlled. These processes work together to enforce cell cycle checkpoints that prevent cells with damaged DNA from progressing through the cell cycle, allowing time for the damage to be repaired. This system reduces the efficacy of a variety of cancer therapies that exert their effects through DNA damage. Inhibition cell cycle check point proteins may

increase the activity of a variety of DNA damaging agents, including radiation and some chemotherapies, and may increase the activity of these agents without increasing systemic toxicity. Cell cycle check point targets include the serine/threonine protein kinases Chk1 and Chk2.

Leverage Strategic Collaborations

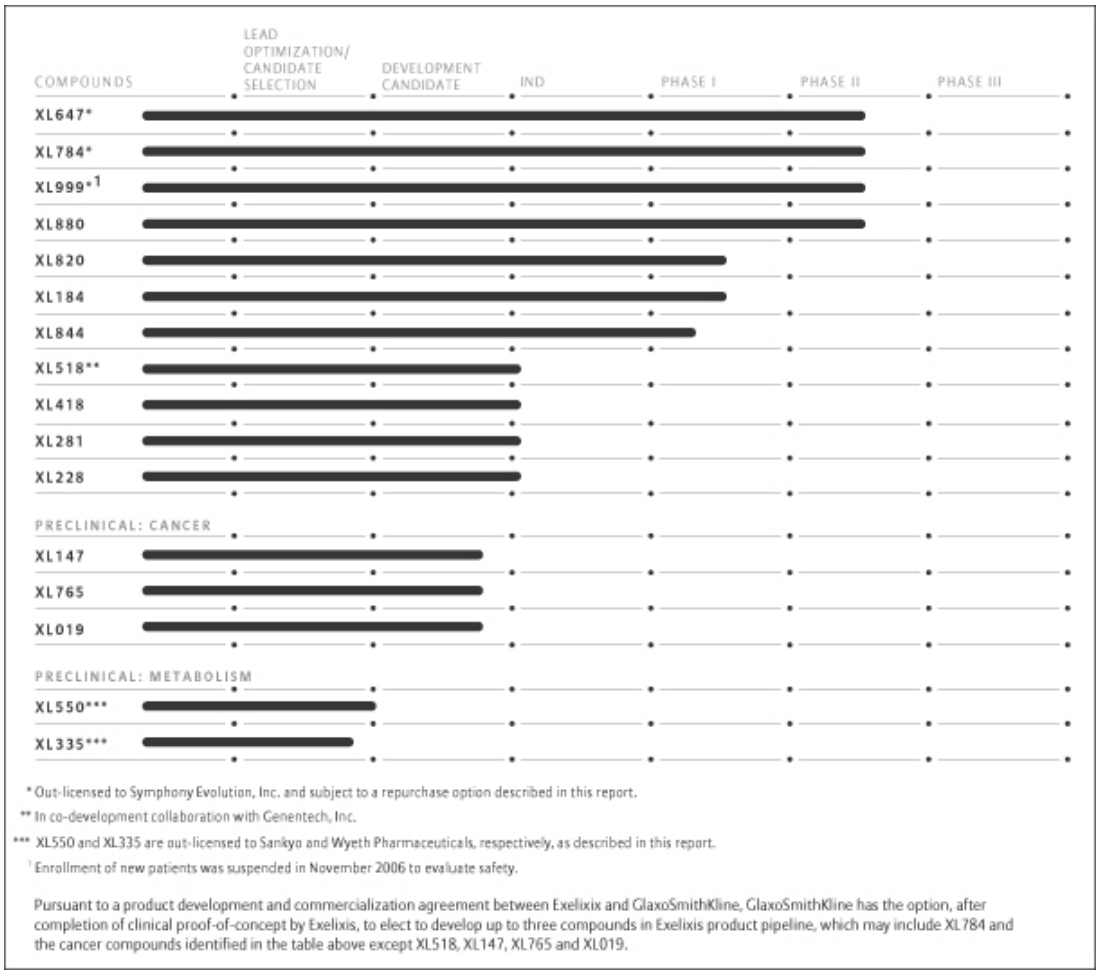
We are committed to retaining significant equity in the value of our pipeline and product candidates. Our strategy is to leverage the strength of our extensive data and the broad potential of our development compounds to establish strategic alliances that create near-term revenue, while reducing our risk of product failure and retaining long-term rights to those compounds that succeed. We have established and intend to continue pursuing commercial relationships and key partnerships with major pharmaceutical and biotechnology companies based on the strength of our biological expertise and drug discovery and development capabilities. Our collaborations to date have provided us with substantial committed funding for our research and development efforts, the potential to earn significant milestones as well as opportunities to receive significant future payments, if our collaborators successfully develop and market products that result from our collaborative work. In addition, many of our strategic relationships provide us with or permit us to obtain co-development, co-promotion or other rights to products identified or developed in such collaborative relationships as a result of our efforts.

Management of Our Financial Resources

Fiscal discipline and pragmatic allocation of our resources are key components of our corporate strategy. We believe that making significant investments in preclinical development enhances our ability to generate multiple new, high-quality INDs and to rapidly advance these new drug candidates through clinical development. We believe the return on this investment will come in the form of higher clinical success rates, funding and partnership terms that allow us to retain increasing equity in the long-term value of our pipeline. We believe that this approach will enhance the quality and growth of our pipeline while maintaining our ability to fulfill obligations to corporate partners. We seek to finance our activities through a blend of funding opportunities, including: executing under our existing partnerships, which potentially triggers substantial milestones; exploring opportunities for new partnerships for our unpartnered assets, which has the potential to bring in near-term cash and defray late-stage development costs; evaluating the suitability of third-party financing vehicles with the aim to off-load a significant portion of our near-term clinical development expense and clinical risks; and opportunistically accessing the capital markets.

Clinical and Preclinical Pipeline

We have an extensive pipeline of compounds in various stages of development that will potentially treat cancer, renal disease and various metabolic and cardiovascular disorders. All of our development compounds were generated through our internal drug discovery efforts. Our oncology program currently is comprised of 13 compounds - ten in clinical development and three in preclinical development. The following table summarizes the status of our clinical and preclinical development pipeline.



Clinical Pipeline

- **XL647** is a potent inhibitor of RTKs that are implicated in driving tumor proliferation and vascularization (blood vessel formation). XL647 inhibits EGFR, HER2 and VEGFR2. The compound has been optimized for high potency and oral bioavailability, demonstrates excellent activity in target-specific cellular functional assays and has shown sustained inhibition of target RTKs *in vivo* following a single oral dose. We have completed an initial Phase I clinical trial of XL647 and the Phase II clinical program in patients with tumors where kinases inhibited by XL647 are known to play a role is ongoing. Preliminary data from the Phase I trial of XL647 were presented in November 2005 at the 17th EORTC-NCI-AACR International Conference on Molecular Targets and Cancer Therapeutics (the 2005 EORTC Conference) and at the American Society of Clinical Oncology annual meeting in June

2006 (the 2006 ASCO Annual Meeting). Updated data were presented in November 2006 at the 18th EORTC-NCI-AACR Symposium on Molecular Targets and Cancer Therapeutics (the 2006 EORTC Symposium). A Phase II trial of XL647 in patients with advanced non small cell lung cancer (NSCLC) who have not previously been treated with chemotherapy was initiated in August 2006.

- **XL784** is being developed for diabetic nephropathy. The compound is a potent inhibitor of metalloproteases including ADAM-10 and the matrixmetalloproteinase 2 (MMP2). XL784 was specifically optimized to spare inhibition of the matrixmetalloproteinase 1 (MMP1), thus potentially enhancing its safety profile compared with other previously studied MMP inhibitors. Results of a single dose Phase I clinical trial of XL784 administered orally to 70 healthy volunteers demonstrated that XL784 has attractive safety and pharmacokinetic profiles. A repeat-dose Phase I clinical trial of a capsule formulation of XL784 was completed in healthy volunteers in 2005 and a Phase II double-blind, placebo-controlled trial in patients with proteinuria (the presence of protein in the urine) associated with diabetic kidney disease was initiated in the first quarter of 2006. The trial is designed to enroll up to 130 patients with Type II diabetes and proteinuria.
- **XL999** is a potent inhibitor of key RTKs implicated in the development and maintenance of tumor vasculature and in the proliferation of some tumor cells. It inhibits FGFR1, the fibroblast growth factor receptor 3 (FGFR3), the ret proto-oncogene (RET), VEGFR2 and PDGFR, and is also a potent inhibitor of Flt3, an important driver of leukemia cell proliferation in some patients with acute myelogenous leukemia (AML). XL999 exhibited excellent activity in target-specific cellular functional assays. Data from a Phase I trial of XL999 in patients with advanced solid tumors dosed every two weeks were presented at the 2005 EORTC Conference and weekly dosing data were presented at the 2006 ASCO meeting. Updated data from both dosing regimens were reported at the 2006 EORTC Symposium. A Phase II clinical program comprising six trials designed to evaluate XL999 in colorectal, ovarian and non-small cell lung cancers, renal cell carcinoma, AML and multiple myeloma was initiated in December 2005. On November 2, 2006, we announced that enrollment in the Phase II program had been suspended pending further review of data relating to cardiovascular adverse events. In December 2006, the FDA put the XL999 clinical trial program on a partial clinical hold thereby formalizing the decision we made in November 2006 to suspend enrollment of new patients into the XL999 program. Also, the FDA agreed with us that patients who are currently on study may continue to receive XL999 so long as they are free of adverse events or disease progression. In December 2006, we presented preliminary data from patients who had participated in the XL999 Phase I and Phase II clinical programs at that time. The available data showed encouraging evidence of clinical activity, particularly in patients with NSCLC, AML and, to a lesser extent, renal cell carcinoma. Clinical activity has not been observed in patients with ovarian cancer or colorectal cancer, and sufficient time has not yet elapsed to assess activity in patients with multiple myeloma. Further development of XL999 will be focused on demonstrating that a reduction in the dose and/or rate of administration of XL999 would reduce the frequency and severity of cardiovascular events while still achieving potentially effective levels of drug exposure. Toward this end, we are working with cardiovascular experts, XL999 clinical investigators and the FDA to develop a plan that will support resumption of a Phase II clinical program.
- **XL880** is a potent inhibitor of MET and VEGFR2, which play synergistic roles in promoting tumor growth and angiogenesis. Activation or overexpression of MET has been documented as a negative prognostic indicator in patients with various carcinomas and in patients with multiple myeloma, glioma and other solid tumors. Interim data from an ongoing Phase I study of XL880 were presented at the 2005 EORTC Conference and at the 2006 ASCO Annual Meeting. Updated data were reported at the 2006 EORTC Symposium. A Phase II clinical development program for XL880 was initiated in patients with hereditary or sporadic papillary renal cell carcinoma in June 2006 and in patients with metastatic, poorly differentiated diffuse gastric cancer in December 2006. A subsequent Phase II trial is planned in head and neck cancer.
- **XL820** inhibits KIT as well as VEGFR2 and PDGFR, clinically validated targets implicated in a variety of human cancers. In tumor models of breast carcinomas, gliomas and leukemia, the compound exhibited dose-dependent growth inhibition and has been shown to cause tumor regression. XL820

demonstrated excellent activity in target-specific cellular functional assays. In biochemical and cellular assays, XL820 potently inhibits mutant forms of KIT that confer resistance to approved KIT inhibitors. XL820 has good oral bioavailability and has shown sustained inhibition of target RTKs *in vivo* following a single oral dose. A Phase I clinical trial of XL820 was initiated in July 2005 in patients with solid tumors for whom there are no other available therapies known to prolong survival. Preliminary data from this trial were reported by investigators at the 2006 EORTC Symposium.

- **XL184** inhibits VEGFR2 and MET, key drivers for tumor formation and growth. The compelling preclinical efficacy of XL880, our first VEGFR2/MET inhibitor, increased our interest in inhibitors of these RTKs and resulted in the discovery and development of XL184 as an additional compound with potent MET/VEGFR2 inhibitory activity. This SSKI has demonstrated dose-dependent tumor growth inhibition and tumor regression in a variety of tumor models including breast, colon, small cell lung cancer and glioblastoma. A Phase I clinical trial in patients with solid tumors for whom there are no other available therapies was initiated in September 2005. Preliminary data from this study were reported by investigators at the 2006 EORTC Symposium.
- **XL844** potently inhibits the checkpoint kinases CHK1 and CHK2, which induce cell cycle arrest in response to a variety of DNA damaging agents. Activation of these checkpoints following DNA damage allows for DNA repair and protects tumor cells from the cytotoxic effects of chemo- and radio-therapy. XL844 abrogates these cell cycle blocks and enhances tumor cell killing by a wide variety of chemotherapeutic agents and radiation in *in vitro* assays. XL844 has good pharmacokinetic properties and oral bioavailability, and in *in vivo* tumor models increases the efficacy of chemotherapeutic agents without increasing systemic toxicity. A Phase I clinical trial of XL844 in patients with chronic lymphocytic leukemia was initiated in September 2005.
- **XL518** is a novel small molecule drug designed to inhibit the activity of MEK, a key component of the RAS/RAF/MEK/ERK signaling pathway. This pathway is frequently activated in human tumors and is required for transmission of growth-promoting signals from numerous receptor tyrosine kinases. Preclinical studies have demonstrated that XL518 is a potent and specific inhibitor of MEK with highly optimized pharmacokinetic and pharmacodynamic properties. XL518 exhibits oral bioavailability in multiple species and induces substantial and durable inhibition of ERK phosphorylation in xenograft tumor models. Administration of XL518 causes tumor regression in multiple xenograft models with mutationally-activated B-RAF or RAS. We filed an IND for XL518 in December 2006 and expect to initiate Phase I clinical trials in the first quarter of 2007. In December 2006, we entered into a worldwide co-development agreement with Genentech for the development and commercialization of XL518.
- **XL418** targets AKT and the S6 kinase (S6K), which are kinases downstream of PI3K. Their activation is a frequent event in human tumors and promotes cell growth, survival and resistance to chemotherapy and radiotherapy. Regulation of the pathway is complex, and inhibition at a single point can result in upregulation in the activity of other pathway components. AKT inhibitors that effectively inactivate the pathway are expected reduce proliferation and to induce apoptosis (programmed cell death) in tumor cells and sensitize them to a wide range of chemotherapy. XL418 is a potent inhibitor that simultaneously targets the kinases AKT and S6K, with oral bioavailability and efficacy in tumor xenograft models. We filed an IND for XL418 in January 2007 and expect to initiate a Phase I clinical program late in the first half of 2007.
- **XL281** specifically targets RAF, which is a cytoplasmic serine/threonine kinase that lies immediately downstream of RAS, and is a key component of the RAS/RAF/MEK/ERK pathway that is frequently activated in human tumors. Activating mutations in B-RAF occur in approximately 60% of melanoma patients indicating a potentially pivotal role for deregulation of this kinase in the progression of melanoma. XL281 is a potent and highly selective inhibitor of RAF kinases, is orally bioavailable and showed efficacy in tumor xenograft models. We filed an IND for XL281 in October 2006 and expect to initiate Phase I clinical trials in the first quarter of 2007.

- **XL228** potently inhibits the T315I mutant form of ABL, which is resistant to inhibition by other targeted therapies approved for chronic myelogenous leukemia. In addition, XL228 also targets IGF1R, which is an RTK that is highly expressed and activated in a broad range of human tumors and is thought to promote tumor growth, survival and resistance to chemotherapeutic agents. XL228 showed efficacy in a variety of solid tumor xenograft models. We filed an IND for XL228 in August 2006. We have subsequently observed formulation stability data resulting in the need for minor changes in formulation. We expect to initiate the Phase I clinical program late in the first half of 2007.

Under the terms of our research and development collaboration with SmithKline Beecham Corporation (which does business as GlaxoSmithKline), GlaxoSmithKline has the right to select, after successful completion of proof-of-concept clinical trials, two (or three if the collaboration is extended) of the compounds in a subset of our pipeline for further development. Compounds subject to selection include XL784, XL647, XL999, XL880, XL844, XL184, XL820, XL281, XL418, XL228 and two earlier stage oncology programs. Selection of any of these compounds would trigger milestone payments and royalties from GlaxoSmithKline and would provide us with co-promotion rights should a compound be successfully commercialized.

With GlaxoSmithKline's consent, we have licensed to Symphony Evolution, Inc. (SEI) our intellectual property rights, including commercialization rights, to XL647, XL999 and XL784 in exchange for an investment of $80.0 million by SEI and its investors to advance the clinical development of these product candidates. We have retained an exclusive option to reacquire XL647, XL999 and XL784 at a specified price as described in this report. We continue to be primarily responsible for the development of these product candidates in accordance with a specified development plan and related development budget.

Preclinical Pipeline

We currently have five compounds in preclinical development that target cancer and metabolic and cardiovascular diseases. Our programs in metabolic and cardiovascular diseases originated from our acquisition of X-Ceptor Therapeutics, Inc. in October 2004.

Cancer Compounds

- **XL147** selectively targets PI3K. Upregulation of PI3K activity is one of the most common characteristics of human tumor cells and can result from activation of growth factor receptors, amplification of the PI3K gene, activating mutations in the PI3K gene, downregulation of the phosphatase and tensin homolog (PTEN) lipid phosphatase or activating mutations in RAS. Activation of PI3K results in stimulation of AKT and mTOR kinases resulting in promotion of tumor cell growth and survival. This survival signal plays a significant role in conferring resistance to chemo- and radio-therapy by inhibiting apoptotic cell death. XL147 is a potent and specific inhibitor of PI3K with excellent pharmacokinetic and pharmacodynamic properties and exhibited compelling efficacy in several preclinical xenograft models both as a single agent and in combination with chemotherapy. XL147 was advanced to development compound status in May 2006 and we anticipate filing an IND in the first half of 2007.
- **XL765** targets both PI3K and mTOR, key kinases in the PI3K signaling pathway. mTOR is a serine/threonine kinase that controls the protein translation machinery and hence cell growth. mTOR is activated by growth factors via PI3K and AKT, but is also activated in a PI3K independent fashion in response to nutrient and energy levels. Hence, in some tumors targeting both PI3K and mTOR may provide additional benefit compared to selectively targeting PI3K. XL765 is a potent inhibitor of PI3K and mTOR with excellent pharmacokinetic and pharmacodynamic properties and exhibited compelling efficacy in several preclinical xenograft models both as a single agent and in combination with chemotherapy. XL765 was advanced to development compound status in June 2006 and we anticipate filing an IND in the first half of 2007.

- **XL019** is a selective inhibitor of the cytoplasmic tyrosine kinase JAK2. JAK2 is activated by cytokine and growth factor receptors and phosphorylates members of the STAT family of inducible transcription factors. Activation of the JAK/STAT pathway promotes cell growth and survival, and is a common feature of human tumors. JAK2 is activated by mutation in the majority of patients with polycythemia vera and essential thrombocytosis and appears to drive the inappropriate growth of blood cells in these conditions. XL019 is a potent and selective JAK2 inhibitor with excellent pharmacodynamic properties and a promising safety profile. XL019 was advanced to development candidate status in July 2006 and we anticipate filing an IND in the first half of 2007.

Compounds for Metabolic and Cardiovascular Disorders

- **XL550** targets the Mineralocorticoid Receptor (MR), antagonists of which are used in the treatment of hypertension and congestive heart failure. We have developed proprietary, potent and selective non-steroidal MR antagonists that are highly effective in animal models of hypertension and congestive heart failure. They also provide protection for the vasculature. Our lead compounds, including XL550, have shown excellent oral bioavailability and drug metabolism and pharmacokinetic properties. In preclinical models, the compounds have exhibited a significantly better pharmacokinetic and pharmacodynamic profile than existing steroid drugs. We believe that these novel proprietary non-steroidal MR antagonists have the potential to offer highly effective and safe therapeutic approaches for the treatment of hypertension. In addition, we believe that these drug candidates should be effective in the treatment of congestive heart failure and for protecting the vasculature during chronic inflammatory insult. In March 2006, we entered into a collaboration agreement with Sankyo Company for the discovery, development and commercialization of novel therapies targeted against MR. Under the terms of the agreement, we granted to Sankyo an exclusive, worldwide license to certain intellectual property primarily relating to compounds that modulate MR.
- **XL335** targets the Farnesoid X Receptor (FXR) which has been shown to function as a bile acid receptor regulating genes involved in lipid, cholesterol and bile acid homeostasis. We have identified proprietary, potent and selective FXR ligands (compounds that bind to a receptor) that have good oral bioavailability and drug metabolism and pharmacokinetic properties. In rodent models of dyslipidemia, these compounds lowered triglycerides by decreasing triglyceride synthesis and secretion. In addition, they improved the high-density lipoprotein (HDL)/low-density lipoprotein (LDL) ratio and are anti-atherogenic (prevent the formation of lipid deposits in the arteries) in animal models of atherosclerosis. XL335 is also effective in models of cholestasis (a condition in which bile excretion from the liver is blocked), cholesterol gallstones and liver fibrosis. These data suggest that small molecule ligands targeting FXR should function as novel therapeutic agents for treating symptoms and disease states associated with metabolic syndrome as well as certain liver disorders. In December 2005, we licensed the FXR program to Wyeth Pharmaceuticals, a division of Wyeth. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds.

Corporate Collaborations

We have established collaborations with major pharmaceutical and biotechnology companies based on the strength of our technologies and biological expertise to support additional development of our proprietary products. Through these collaborations, we obtain license fees, research funding, and the opportunity to receive milestone payments and royalties from research results and subsequent product development activities. Many of our collaborations have been structured strategically to provide us with access to technology that may help to advance our internal programs while at the same time enabling us to retain rights to use these technologies in different industries.

GlaxoSmithKline

In October 2002, we established a collaboration with SmithKlineBeecham Corporation, which does business as GlaxoSmithKline, to discover and develop novel therapeutics in the areas of vascular biology, inflammatory disease and oncology. The collaboration involved three agreements: (i) a Product Development and Commercialization Agreement (PDA); (ii) a Stock Purchase and Stock Issuance Agreement (SPA); and (iii) a Loan and Security Agreement. Under the original PDA, GlaxoSmithKline paid us $30.0 million in an upfront fee and agreed to pay an additional $90.0 million in research and development funding over the first six years of the collaboration.

In January 2005, we amended the terms of our collaboration with GlaxoSmithKline. Under the amended PDA, GlaxoSmithKline selected a modified program election through which the focus of the collaboration is shifted to 12 internal programs at various stages of development (XL784, XL647, XL999, XL880, XL184, XL820, XL844, XL281, XL418, XL228 and two earlier stage oncology programs). Each program centers on compounds that are directed against one or more targets identified in the collaboration. Under the modified program, GlaxoSmithKline has the right to select from these programs up to two compounds at proof-of-concept (completion of Phase IIa clinical trial) or three compounds if GlaxoSmithKline extends the collaboration. If GlaxoSmithKline selects three compounds, we could receive significant acceptance milestones. The actual amount of acceptance milestones that we receive from GlaxoSmithKline will depend on the number of compounds selected and the timing of the selection of the compounds. Delays in obtaining clinical proof-of-concept for compounds subject to GlaxoSmithKline's election rights may decrease the size of any GlaxoSmithKline milestones and negatively impact our financial position. Prior to the end of a specified development term, GlaxoSmithKline retains exclusivity rights to the 32 specified targets that are encompassed by the 12 programs. However, we retain rights to all compounds not encompassed by the 12 programs selected by GlaxoSmithKline and may work on any targets with the exception of the 32 targets subject to GlaxoSmithKline's exclusivity rights.

In May 2005, we filed the third of three INDs required by the amended PDA to achieve a $30.0 million milestone, which we received from GlaxoSmithKline in May 2005. In May 2005, we also submitted two new development candidates to GlaxoSmithKline, thereby triggering an additional $5.0 million milestone, which we received in May 2005. We may also receive additional development related milestones and royalties on product sales and have certain co-promotion rights to products in North America. In addition, under the amended PDA, GlaxoSmithKline agreed to provide research funding of $47.5 million over the remaining three-year term of the collaboration, of which we have received $30.0 million through 2006. To date, we have received $65.0 million in upfront and milestone payments, $67.5 million in research and development funding, and loans in the principal amount of $85.0 million.

The terms of the amended PDA allow us to use third-party financing vehicles to fund the further clinical development of our compounds XL784, XL647 and XL999 but any such compounds developed through clinical financing vehicles continue to be subject to GlaxoSmithKline's compound selection rights. In June 2005, we entered into a transaction to fund the clinical development of XL784, XL647 and XL999 through Symphony Evolution, Inc., a third-party financing vehicle.

Pursuant to the terms of the original SPA and as a result of its modified program election, GlaxoSmithKline purchased an additional 1.0 million shares of our common stock in January 2005 at an aggregate purchase price of $11.1 million, of which $2.2 million was a premium to the then fair value of the shares. We have no further option to sell, and GlaxoSmithKline has no further obligation to purchase, additional shares of our common stock.

Bristol-Myers Squibb

In July 2001, we entered into a cancer collaboration agreement with Bristol-Myers Squibb Company. Under the terms of the collaboration, Bristol-Myers Squibb purchased 600,600 shares of our common stock in a private

placement at a purchase price of $33.30 per share, for cash proceeds to the company of $20.0 million, and paid us a $5.0 million upfront license fee and agreed to provide us with $3.0 million per year in research funding for a minimum of three years. In December 2003, the cancer collaboration was extended until January 2007, at which time Bristol-Myers Squibb elected to continue the collaboration until July 2009. The goal of the extension is to increase the total number and degree of validation of cancer targets that we will deliver to Bristol-Myers Squibb. Each company will maintain the option to obtain exclusive worldwide rights to equal numbers of validated targets arising from the collaboration. Under the terms of the extended collaboration, Bristol-Myers Squibb provided us with an upfront payment and agreed to provide increased annual research funding and milestones on certain cancer targets arising from the collaboration that progress through specified stages of validation. We will also be entitled to receive milestones on compounds in the event of successful clinical and regulatory events and royalties on commercialized products.

In December 2005, we entered into a collaboration agreement with Bristol-Myers Squibb for the discovery, development and commercialization of novel therapies targeted against LXR, a nuclear hormone receptor implicated in a variety of cardiovascular and metabolic disorders. This agreement became effective in January 2006, at which time we granted Bristol-Myers Squibb an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate LXR. During the research term, we expect to jointly identify drug candidates with Bristol-Myers Squibb that are ready for IND-enabling studies. After the selection of a drug candidate for further clinical development by Bristol-Myers Squibb, Bristol-Myers Squibb has agreed to be solely responsible for further preclinical development as well as clinical development, regulatory, manufacturing and sales/marketing activities for the selected drug candidate. After Bristol-Myers Squibb's selection, except in certain termination scenarios described below, we would not have rights to reacquire the selected drug candidate.

Under the LXR collaboration agreement, Bristol-Myers Squibb paid us a nonrefundable upfront payment in the amount of $17.5 million and is obligated to provide research and development funding of $10.0 million per year for an initial research period of two years. Bristol-Myers Squibb has the option to extend the research period for an additional one-year term. Under the agreement, Bristol-Myers Squibb is required to pay us development and regulatory milestones of up to $140.0 million per product for up to two products from the collaboration. In addition, we are also entitled to receive sales milestones and royalties on sales of any products commercialized under the collaboration. Bristol-Myers Squibb has the option to terminate the collaboration agreement starting in January 2008, in which case Bristol-Myers Squibb's payment obligations would cease, its license relating to compounds that modulate LXR would terminate and revert to us, and we would receive, subject to certain terms and conditions, licenses from Bristol-Myers Squibb to research, develop and commercialize certain collaboration compounds that were discovered under the agreement.

In December 2006, we entered into a worldwide collaboration with Bristol-Myers Squibb, which became effective in January 2007, to collaborate in the discovery, development and commercialization of novel targeted therapies for the treatment of cancer. We are responsible for discovery and preclinical development of small molecule drug candidates directed against mutually selected targets. In January 2007, Bristol-Myers Squibb made an upfront payment of $60.0 million to us for which we granted Bristol-Myers Squibb the right to select up to three IND candidates from six future Exelixis compounds.

For each IND candidate selected, we are entitled to receive a $20.0 million selection milestone from Bristol-Myers Squibb. Once selected, Bristol-Myers Squibb will lead the further development and commercialization of the selected IND candidates and we will equally share all development costs and profits in the United States. However, we may opt out of the co-development in which case we would receive milestones and royalties in lieu of profits from sales in the United States. Outside of the United States, Bristol-Myers Squibb will have primary responsibility for development activities and we will be entitled to receive royalties on product sales. After exercising its co-development option, Bristol-Myers Squibb may, upon notice to us, terminate the agreement as to any product containing or comprising the selected candidate. In the event of such termination election, Bristol- Myers Squibb's license relating to such product would terminate and revert to us, and we would receive, subject

to certain terms and conditions, licenses from Bristol-Myers Squibb to research, develop and commercialize certain collaboration compounds that were discovered.

Genentech

In May 2005, we established a collaboration with Genentech, Inc. to discover and develop therapeutics for the treatment of cancer, inflammatory diseases, and tissue growth and repair. Under the terms of the agreement, we granted to Genentech a license to certain intellectual property. Genentech paid us a nonrefundable upfront license payment and is obligated to provide research and development funding over the three-year research term, totaling $16.0 million.

Under the agreement, Genentech will have primary responsibility in the field of cancer for research and development activities as well as rights for commercialization of any products. In the fields of inflammatory disease and in the fields of tissue growth and repair, we will initially have primary responsibility for research activities. After the expiration of the research term, we will have the option to elect to share a portion of the costs and profits associated with the development, manufacturing and commercialization of products in one of the fields. The research term under the agreement is three years and may be extended upon mutual consent for one-year terms. For all products under the agreement that are not elected as cost or profit sharing products, we may receive milestone and royalty payments.

In December 2006, we entered into a worldwide co-development agreement with Genentech for the development and commercialization of XL518, a small-molecule inhibitor of MEK. Genentech paid upfront and milestone payments of $25.0 million in December 2006 and $15.0 million in January 2007 upon signing of the agreement and with the submission of an IND for XL518.

Under the terms of the agreement, we are responsible for developing XL518 through the end of a Phase I clinical study at which point Genentech has the option to co-develop XL518. If Genentech exercises its option to co-develop XL518, we will be entitled to receive an opt-in payment and we will be required to grant to Genentech an exclusive worldwide revenue-bearing license to XL518. Genentech will be responsible for all further development costs of XL518 and we will share equally in the U.S. commercialization costs. On an annual basis we are entitled to an initial equal share of U.S. profits and losses, which will decrease as sales increase, and we are also entitled to royalties on non-U.S. sales. Genentech has the right to terminate the agreement without cause at any time. If Genentech terminates the agreement without cause, all licenses that were granted to Genentech under the agreement terminate and revert to us. Additionally, we would receive, subject to certain conditions, licenses from Genentech to research, develop and commercialize reverted product candidates.

Wyeth Pharmaceuticals

In December 2005, we entered into a license agreement with Wyeth Pharmaceuticals related to compounds targeting FXR, a nuclear hormone receptor implicated in a variety of metabolic and liver disorders. Under the terms of the agreement, we granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. Wyeth paid us a nonrefundable upfront payment in the amount of $10.0 million and we received $4.5 million in November 2006 for achieving a development milestone. Wyeth is obligated to pay additional development and commercialization milestones of up to $143.0 million as well as royalties on sales of any products commercialized by Wyeth under the agreement. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds. Subject to certain terms and conditions, Wyeth has the option to terminate the license agreement.

Helsinn Healthcare

In June 2005, we entered into a license agreement with Helsinn Healthcare S.A. for the development and commercialization of XL119 (becatecarin). Helsinn paid us a nonrefundable upfront payment in the amount of $4.0 million and was obligated to pay development and commercialization milestones as well as royalties on worldwide sales. Helsinn assumed all costs incurred for the ongoing multi-national Phase III clinical trial for XL119 after the execution of the license agreement. In May 2006, we supplied Helsinn with certain clinical trial materials in order for Helsinn to maintain enrollment in the Phase III clinical trial for XL119. Helsinn's acceptance of the clinical trial materials triggered a $4.0 million milestone payment in June 2006. In November 2006, Helsinn discontinued the XL119 Phase III clinical trial program.

Symphony Evolution

On June 9, 2005, we entered into a series of related agreements providing for the financing of the clinical development of XL784, XL647 and XL999. Pursuant to the agreements, Symphony Evolution, Inc. (SEI) and its investors have invested $80.0 million to fund the clinical development of XL784, XL647 and XL999 and we have licensed to SEI our intellectual property rights related to these product candidates. SEI is a wholly owned subsidiary of Symphony Evolution Holdings LLC (Holdings), which provided $40.0 million in funding to SEI on June 9, 2005, and an additional $40.0 million on June 9, 2006. We continue to be primarily responsible for the development of XL784, XL647 and XL999 in accordance with specified development plans and related development budgets.

Pursuant to the agreements, we received an exclusive purchase option that gave us the right to acquire all of the equity of SEI, thereby allowing us to reacquire XL784, XL647 and XL999. In December 2006, we amended the purchase option in connection with the termination of our option to reacquire from SEI one of the three product candidates licensed to SEI. The amended purchase option allows us, at our sole election, to pay up to 100% of the purchase option exercise price in shares of our common stock. Under the original terms of the purchase option, we were only entitled to pay up to 33% of the purchase option exercise price in shares The purchase option is exercisable at any time until the earlier of June 9, 2009 or the 90th day after the date that SEI provides us with financial statements showing cash and cash equivalents of less than $5.0 million at an exercise price equal to the sum of: (i) the total amount of capital invested in SEI by Holdings and (ii) an amount equal to 25% per year on such funded capital (with respect to the initial funded capital, compounded from June 9, 2005 and, with respect to the second draw amount, compounded from June 9, 2006).

Pursuant to the agreements, we issued to Holdings two five-year warrants to purchase 1.5 million shares of our common stock at $8.90 per share. In addition, should the purchase option expire unexercised until the earlier of June 9, 2009, or the 90th day after SEI provides us with financial statements showing cash and cash equivalents of less than $5.0 million, we are obligated to issue to Holdings an additional five-year warrant to purchase 500,000 shares of our common stock at a price per share equal to 125% of the market price of our common stock at the time of expiration of the purchase option.

The product candidates licensed to SEI are subject to our collaboration with GlaxoSmithKline, and GlaxoSmithKline may continue to select at proof-of-concept for further development one or more of the product candidates, in which case we would have to repurchase the product candidates through the exercise of our purchase option. Under the terms of the amended PDA, GlaxoSmithKline has agreed to increase the acceptance milestones for the programs that are funded through SEI.

Sankyo Company

In March 2006, we entered into a collaboration agreement with Sankyo Company for the discovery, development and commercialization of novel therapies targeted against the mineralocorticoid receptor (MR), a

nuclear hormone receptor implicated in a variety of cardiovascular and metabolic diseases. Under the terms of the agreement, we granted to Sankyo an exclusive, worldwide license to certain intellectual property primarily relating to compounds that modulate MR. After completion of the research term, Sankyo will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds and we do not have rights to reacquire such compounds.

Sankyo paid us a nonrefundable upfront payment in the amount of $20.0 million and is obligated to provide research and development funding of $3.8 million over a 15-month research term. The company and Sankyo may mutually agree to extend the research term for an additional two years. For each product from the collaboration, we are also entitled to receive payments upon attainment of pre-specified development, regulatory and commercialization milestones. In addition, we are also entitled to receive royalties on any sales of certain products commercialized under the collaboration. Sankyo may terminate the agreement upon 90 days' written notice in which case Sankyo's payment obligations would cease, its license relating to compounds that modulate MR would terminate and revert to us, and we would receive, subject to certain terms and conditions, licenses from Sankyo to research, develop and commercialize compounds that were discovered under the collaboration.

Artemis Pharmaceuticals

Artemis Pharmaceuticals, based in Cologne, Germany is a wholly owned subsidiary of the company. Its activities are directed toward providing transgenic mouse generation services, tools and related licenses to the industrial and academic community. In addition, it has two internal research programs, one dedicated to the development of transgenic approaches to produce animal-wide *in vivo* RNAi knock down in mice, and the second dedicated to the provision of humanized mouse models for drug testing purposes. The following revenues for Artemis have been derived from external customers. For the years ended December 31, 2006, and 2005, Artemis had total revenues of $7.9 million and $5.8 million, respectively, and net losses of $0.1 million and $0.6 million, respectively. As of December 31, 2006, and 2005, Artemis had total assets of $5.6 million and $2.7 million, respectively.

Manufacturing and Raw Materials

We currently do not have manufacturing capabilities necessary to enable us to produce materials for our clinical trials. Raw materials and supplies required for the production of our product candidates are generally available from multiple suppliers. However, in some instances materials are available only from one supplier. In those cases where raw materials are only available through one supplier, we manage supplies, to the extent feasible, by ordering raw materials well in advance of scheduled needs. However, clinical trial schedules may be delayed due to interruptions of raw material supplies.

Government Regulation

The following section contains some general background information regarding the regulatory environment and processes affecting our industry and is designed to illustrate in general terms the nature of our business and the potential impact of government regulations on our business. It is not intended to be comprehensive or complete. Depending on specific circumstances, the information below may or may not apply to us or any of our product candidates. In addition, the information is not necessarily a description of activities that we have undertaken in the past or will undertake in the future. The regulatory context in which we operate is complex and constantly changing.

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the clinical development, manufacture and marketing of pharmaceutical products. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacture, quality control, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our products.

The process required by the FDA before product candidates may be marketed in the United States generally involves the following:

- preclinical laboratory and animal tests;
- submission of an IND, which must become effective before clinical trials may begin;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed drug candidate for its intended use;
- pre-approval inspection of manufacturing facilities and selected clinical investigators; and
- FDA approval of a New Drug Application (NDA), or NDA supplement, for an approval of a new indication if the product is already approved for another indication.

The testing and approval process requires substantial time, effort and financial resources.

Prior to commencing the first clinical trial with a product candidate, we must submit an IND to the FDA. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions about the conduct of the clinical trial. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Our submission of an IND may not result in FDA authorization to commence a clinical trial. A separate submission to the existing IND must be made for each successive clinical trial conducted during product development, and the FDA must grant permission for each clinical trial to start and continue. Further, an independent institutional review board for each medical center proposing to conduct the clinical trial must review and approve the plan for any clinical trial before it commences at that center. Regulatory authorities or an institutional review board or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

For purposes of NDA approval, human clinical trials are typically conducted in three sequential phases that may overlap.

- Phase I – Studies are initially conducted in a limited patient population to test the product candidate for safety, dosage tolerance, absorption, metabolism, distribution and excretion in healthy humans or patients.
- Phase II – Studies are conducted with groups of patients afflicted with a specified disease in order to provide enough data to evaluate the preliminary efficacy, optimal dosages and expanded evidence of safety. Multiple Phase II clinical trials may be conducted by the sponsor to obtain information prior to beginning larger and more expensive Phase III clinical trials. In some cases, a sponsor may decide to run what is referred to as a “Phase IIb” evaluation, which is a second, confirmatory Phase II trial that could, if positive, serve as a pivotal trial in the approval of a product candidate.
- Phase III – When Phase II evaluations demonstrate that a dosage range of the product is effective and has an acceptable safety profile, Phase III trials are undertaken in large patient populations to further evaluate dosage, to provide statistically significant evidence of clinical efficacy and to further test for safety in an expanded patient population at multiple clinical trial sites.

The FDA may require, or companies may pursue, additional clinical trials after a product is approved. These so-called Phase IV studies may be made a condition to be satisfied after a drug receives approval. The results of Phase IV studies can confirm the effectiveness of a product candidate and can provide important safety information to augment the FDA’s voluntary adverse drug reaction reporting system. The results of product development, preclinical studies and clinical trials are submitted to the FDA as part of an NDA, or as part of an NDA supplement. The FDA may deny approval of an NDA or NDA supplement if the applicable regulatory criteria are not satisfied, or it may require additional clinical data and/or an additional pivotal Phase III clinical trial. Even if such data are submitted, the FDA may ultimately decide that the NDA or NDA supplement does not

satisfy the criteria for approval. Once issued, the FDA may withdraw product approval if ongoing regulatory standards are not met or if safety problems occur after the product reaches the market. In addition, the FDA may require testing and surveillance programs to monitor the effect of approved products which have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs.

Satisfaction of FDA requirements or similar requirements of state, local and foreign regulatory agencies typically takes several years and the actual time required may vary substantially based upon the type, complexity and novelty of the product or disease. Government regulation may delay or prevent marketing of product candidates or new diseases for a considerable period of time and impose costly procedures upon our activities. The FDA or any other regulatory agency may not grant approvals for new indications for our product candidates on a timely basis, if at all. Success in early stage clinical trials does not ensure success in later stage clinical trials. Data obtained from clinical activities is not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. Even if a product candidate receives regulatory approval, the approval may be significantly limited to specific disease states, patient populations and dosages. Further, even after regulatory approval is obtained, later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market.

Any products manufactured or distributed by us pursuant to FDA approvals are subject to continuing regulation by the FDA, including record-keeping requirements and reporting of adverse experiences with the drug. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with good manufacturing practices, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. We cannot be certain that we or our present or future suppliers will be able to comply with the good manufacturing practices regulations and other FDA regulatory requirements. If our present or future suppliers are not able to comply with these requirements, the FDA may halt our clinical trials, require us to recall a drug from distribution, or withdraw approval of the NDA for that drug.

The FDA closely regulates the marketing and promotion of drugs. A company can make only those claims relating to safety and efficacy that are approved by the FDA. Failure to comply with these requirements can result in adverse publicity, warning letters, corrective advertising and potential civil and criminal penalties. Physicians may prescribe legally available drugs for uses that are not described in the product’s labeling and that differ from those tested by us and approved by the FDA. Such off-label uses are common across medical specialties. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, restrict manufacturer’s communications on the subject of off-label use.

The FDA’s policies may change and additional government regulations may be enacted which could prevent or delay regulatory approval of our product candidates or approval of new diseases for our product candidates. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the United States or abroad.

Competition

There are many companies focused on the development of small molecules and antibodies for diseases including cancer and metabolic and cardiovascular disorders. Our potential competitors include major pharmaceutical and biotechnology companies as well as agricultural companies. Many of our potential competitors have significantly more financial, technical and other resources than we do, which may allow them to have a competitive advantage. Any products that we may develop or discover are likely to be in highly competitive markets. Many of our competitors may succeed in developing products that may render our products and those of our collaborators obsolete or noncompetitive.

We believe that our ability to successfully compete will depend on, among other things:

- efficacy, safety and reliability of our product candidates;
- timing and scope of regulatory approval;
- the speed at which we develop product candidates;
- our ability to complete preclinical testing and clinical development and obtaining regulatory approvals for product candidates;
- our ability to manufacture and sell commercial quantities of a product to the market;
- obtaining reimbursement for product use in approved indications;
- product acceptance by physicians and other health care providers;
- quality and breadth of our technology;
- skills of our employees and our ability to recruit and retain skilled employees;
- protection of our intellectual property; and
- availability of substantial capital resources to fund development and commercialization activities.

Research and Development Expenses

Research and development expenses consist primarily of personnel expenses, laboratory supplies, consulting and facilities costs. Research and development expenses were $185.5 million for the year ended December 31, 2006, compared to $141.1 million for 2005 and $137.7 million for 2004.

Revenues from Significant Collaborators

In 2006, we derived 28%, 22%, 15% and 14% of our revenues from GlaxoSmithKline, Bristol-Myers Squibb, Sankyo and Wyeth, respectively.

Proprietary Rights

We have obtained licenses from various parties that give us rights to technologies that we deem to be necessary or desirable for our research and development. These licenses (both exclusive and non-exclusive) may require us to pay royalties as well as upfront and milestone payments.

Patents extend for varying periods according to the date of patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country.

While trade secret protection is an essential element of our business and we have taken security measures to protect our proprietary information and trade secrets, we cannot give assurance that our unpatented proprietary technology will afford us significant commercial protection. We seek to protect our trade secrets by entering into confidentiality agreements with third parties, employees and consultants. Our employees and consultants are also required to sign agreements obligating them to assign to us their interests in intellectual property arising from their work for us. All employees sign an agreement not to engage in any conflicting employment or activity during their employment with us and not to disclose or misuse our confidential information. However, it is possible that these agreements may be breached or invalidated, and if so, there may not be an adequate corrective remedy available. Accordingly, we cannot ensure that employees, consultants or third parties will not breach the

confidentiality provisions in our contracts, infringe or misappropriate our trade secrets and other proprietary rights or that measures we are taking to protect our proprietary rights will be adequate.

In the future, third parties may file claims asserting that our technologies or products infringe on their intellectual property. We cannot predict whether third parties will assert such claims against us or against the licensors of technology licensed to us, or whether those claims will harm our business. If we are forced to defend ourselves against such claims, whether they are with or without merit and whether they are resolved in favor of, or against, our licensors or us, we may face costly litigation and the diversion of management's attention and resources. As a result of such disputes, we may have to develop costly non-infringing technology or enter into licensing agreements. These agreements, if necessary, may be unavailable on terms acceptable to us, or at all.

Employees

As of December 31, 2006, we had 651 full-time employees worldwide, 216 of whom hold Ph.D. and/or M.D. degrees, most of whom were engaged in full-time research and development activities. We plan to hire additional staff and to expand our internal development efforts. Our success will depend upon our ability to attract and retain qualified employees. We face competition in this regard from other companies in the biotechnology, pharmaceutical and high technology industries, as well as research and academic institutions. None of our employees are represented by a labor union, and we consider our employee relations to be good.

Available Information

We were incorporated in Delaware in November 1994 as Exelixis Pharmaceuticals, Inc., and we changed our name to Exelixis, Inc. in February 2000.

We maintain a site on the worldwide web at www.exelixis.com; however, information found on our website is not incorporated by reference into this report. We make available free of charge on or through our website our SEC filings, including our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Further, copies of our filings with the SEC are available at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330. The SEC maintains a site on the worldwide web that contains reports, proxy and information statements and other information regarding our filings at www.sec.gov.

ITEM 1A. RISK FACTORS

In addition to the factors discussed elsewhere in this report and our other reports filed with the SEC, the following are important factors that could cause actual results or events to differ materially from those contained in any forward-looking statements made by or on behalf of us. The risks and uncertainties described below are not the only ones facing the company. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. If any of the following risks or such other risks actually occur, our business could be harmed.

Risks Related to Our Need for Additional Financing and Our Financial Results

If additional capital is not available to us, we would be forced to delay, reduce or eliminate our product development programs or commercialization efforts and we may breach our financial covenants.

We will need to raise additional capital to:

- fund our operations and clinical trials;
- continue our research and development efforts; and
- commercialize our product candidates, if any such candidates receive regulatory approval for commercial sale.

As of December 31, 2006, we had $263.2 million in cash and cash equivalents and short-term and long-term marketable securities, which included investments held by SEI of $55.1 million and restricted cash and investments of $9.6 million. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, investments held by SEI and other funding that we expect to receive from collaborators, which assumes a moderate level of business development activity, will enable us to maintain our operations for a period of at least 12 months following December 31, 2006. However, our future capital requirements will be substantial and will depend on many factors that may require us to consume available capital resources significantly sooner than we currently anticipate. These factors include:

- the timing and progress of the clinical development of our product candidates XL647, XL999 and XL784, which are out-licensed to SEI – If any of the Phase II clinical trials for XL647, XL999 or XL784 show positive results that support our further clinical development of any such product candidate, we must, if we decide to further develop such product candidate(s), reacquire all three product candidates from SEI through the exercise of our exclusive purchase option, which is described in this report. Under our amended purchase option agreement with SEI, we cannot repurchase a single promising product candidate from SEI without also repurchasing the other two product candidates. The purchase price, which may be paid in cash and/or stock, would be equal to the sum of (i) the total amount of capital invested in SEI by its investors (i.e., $80.0 million) and (ii) an amount equal to 25% per year on such funded capital, subject to specified adjustments;
- whether and when GlaxoSmithKline selects at proof-of-concept (i.e., at or around the end of Phase IIa clinical trials) for further development XL647, XL999 or XL784, which would require us to repurchase all three product candidates through the exercise of our purchase option – GlaxoSmithKline has the right to select for further clinical development at proof-of-concept any of the product candidates licensed to SEI. If GlaxoSmithKline selects any of the product candidates licensed to SEI, we would be forced to repurchase all three product candidates licensed to SEI through the exercise of our purchase option in order to satisfy our contractual obligations under the GlaxoSmithKline collaboration agreement;
- the amount of any selection milestones received from GlaxoSmithKline as a result of a product candidate selection by GlaxoSmithKline compared to the amount we are required to pay to reacquire XL647, XL999 and XL784 through the exercise of our purchase option – Under our collaboration

agreement with GlaxoSmithKline, a product candidate selection by GlaxoSmithKline would trigger milestone payments. The size of these milestone payments depends largely on how quickly we can advance product candidates to proof-of-concept. Delays in obtaining clinical proof-of-concept for XL647, XL999 or XL784 may significantly decrease the size of any GlaxoSmithKline milestones, which may therefore cover only a small portion of the SEI repurchase price. In addition, any milestone(s) received from GlaxoSmithKline will be reduced by $36.0 million to account for a milestone that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement;

- whether any milestone payments from GlaxoSmithKline relate to a product candidate licensed to SEI (i.e., XL647, XL999 and XL784) - Under our loan and security agreement with GlaxoSmithKline, any milestone payments relating to product candidates not licensed to SEI must be used to pay down our loan with GlaxoSmithKline as long as the loan is outstanding. As of December 31, 2006, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $95.2 million;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements as well as our ability to enter into new collaboration agreements, licensing agreements and other arrangements that provide for additional payments;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the progress and scope of our collaborative and independent clinical trials and other research and development projects;
- future clinical trial results;
- our need to expand our product and clinical development efforts;
- our ability to share the costs of our clinical development efforts with third parties;
- the cost and timing of regulatory approvals;
- the cost of clinical and research supplies of our product candidates;
- the effect of competing technological and market developments;
- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights;
- the cost of any acquisitions of or investments in businesses, products and technologies; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

One or more of these factors or changes to our current operating plan may require us to consume available capital resources significantly sooner than we expect. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We may be unable to raise sufficient additional capital when we need it, on favorable terms or at all. The sale of equity or convertible debt securities in the future may be dilutive to our existing stockholders, and debt-financing arrangements may require us to pledge certain assets and enter into covenants that would restrict certain business activities or our ability to incur further indebtedness and may contain other terms that are unfavorable to our stockholders or us. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or obtain funds by entering into financing, supply or collaboration agreements on unattractive terms. If we raise additional funds through collaboration arrangements with third parties, it will be necessary to relinquish some rights to our technologies or product candidates, or we may be required to grant licenses on terms that are unfavorable to us.

In addition, we will have to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. For example, as part of our collaboration with GlaxoSmithKline, we entered into a loan and security agreement, dated October 28, 2002, which, as amended,

contains financial covenants pursuant to which our "working capital" (the amount by which our current assets exceed our current liabilities as defined by the agreement) must not be less than $25.0 million and our "cash and investments" (total cash, cash equivalents and investments as defined by the agreement, which excludes restricted cash) must not be less than $50.0 million. As of December 31, 2006, our "working capital" was $150.8 million and our "cash and investments" were $253.5 million. If we were to default on the financial covenants under the loan and security agreement, GlaxoSmithKline may, among other remedies, declare immediately due and payable all obligations under the loan and security agreement. Outstanding borrowings and accrued interest under the loan and security agreement totaled $95.2 million at December 31, 2006.

If we cannot raise additional capital in order to remain in compliance with our financial covenants or if we are unable to renegotiate such covenants and the lender exercises its remedies under the agreement, we would not be able to operate under our current operating plan.

We have a history of net losses. We expect to continue to incur net losses, and we may not achieve or maintain profitability.

We have incurred net losses each year since our inception, including a net loss of $101.5 million for the twelve-month period ended December 31, 2006. As of that date, we had an accumulated deficit of $705.3 million. We expect these losses to continue and anticipate negative operating cash flow for the foreseeable future. We have not yet completed the development, including obtaining regulatory approval, of any of our pharmaceutical product candidates and, consequently, have not generated revenues from the sale of pharmaceutical products. Except for revenues associated with the transgenic mouse business of our German subsidiary, Artemis, our only revenues to date are license revenues and revenues under contracts with our partners. The size of our net losses will depend, in part, on the rate of growth, if any, in our license and contract revenues and on the level of our expenses. These losses have had and will continue to have an adverse effect on our stockholders' equity and working capital. Our research and development expenditures and general and administrative expenses have exceeded our revenues to date, and we expect to spend significant additional amounts to fund research and development in order to enhance our technologies and undertake product development. We currently have numerous product candidates in various stages of clinical development and we anticipate filing additional IND applications for additional product candidates within the next 12 months. As a result, we expect that our operations will continue to increase, and, consequently, we will need to generate significant additional revenues to achieve profitability. Because of the numerous risks and uncertainties associated with developing drugs, we are unable to predict the extent of any future losses or when we will become profitable, if at all. Even if we do increase our revenues and achieve profitability, we may not be able to maintain or increase profitability.

We have licensed the intellectual property, including commercialization rights, to our product candidates XL647, XL999 and XL784 to SEI and will not receive any future royalties or revenues with respect to these product candidates unless we exercise our option to acquire these product candidates in the future. We may not have the financial resources to exercise this option or sufficient clinical data in order to determine whether we should exercise this option.

We have licensed to SEI our intellectual property rights, including commercialization rights, to our product candidates XL647, XL999 and XL784 in exchange for SEI's investment of $80.0 million to advance the clinical development of XL647, XL999 and XL784. In exchange for this investment and for five-year warrants to purchase shares of our common stock, we received an exclusive purchase option to acquire all of the equity of SEI, thereby allowing us to reacquire the product candidates, including any associated intellectual property rights and commercialization rights. We may, at our sole discretion, exercise this purchase option at any time until the earlier of June 9, 2009 or the 90th day after the date that SEI provides us with financial statements showing cash and cash equivalents of less than $5.0 million. The purchase option exercise price is equal to the sum of: (i) the total amount of capital invested in SEI by its investors and (ii) an amount equal to 25% per year on such funded capital, subject to specified adjustments. The option exercise price may be paid in cash and/or common stock, at our sole discretion.

If we elect to exercise the purchase option, we will be required to make a substantial cash payment and/or to issue a substantial number of shares of our common stock, or enter into a financing arrangement or license arrangement with one or more third parties, or some combination of the foregoing. A payment in cash would reduce our capital resources. A payment in shares of our common stock could result in dilution to our stockholders at that time. Other financing or licensing alternatives may be expensive or impossible to obtain. If we do not exercise the purchase option prior to its expiration, our rights to purchase all of the equity in SEI and to reacquire XL647, XL999 and XL784 will terminate. We may not have the financial resources to exercise the option, which may result in our loss of these rights. Additionally, we may not have sufficient clinical data in order to determine whether we should exercise the option.

In addition, under our collaboration with GlaxoSmithKline, GlaxoSmithKline may continue to select at proof-of-concept for further development one or more of the product candidates licensed to SEI, in which case we would be required under our amended purchase option agreement with SEI to repurchase all product candidates licensed to SEI through the exercise of our purchase option. If, after receiving any selection milestones from GlaxoSmithKline, we are unable to pay the repurchase price for the purchase option from cash and/or delivery of our common stock, we could be in breach of our collaboration agreement with GlaxoSmithKline. In the event of such breach, GlaxoSmithKline could terminate the collaboration and, among other remedies, declare all amounts under our loan facility with GlaxoSmithKline immediately due and payable, which would harm our business.

Risks Related to Development of Product Candidates

Clinical testing of our product candidates is a lengthy, costly and uncertain process and may fail to demonstrate safety and efficacy, which could prevent or significantly delay regulatory approval.

Clinical trials are inherently risky and may reveal that our product candidates are ineffective or have unacceptable toxicity or other side effects that may significantly decrease the likelihood of regulatory approval. The results of preliminary studies do not necessarily predict clinical or commercial success, and later-stage clinical trials may fail to confirm the results observed in earlier-stage trials or preliminary studies. Although we have established timelines for manufacturing and clinical development based on existing knowledge of our compounds in development and industry metrics, we may not be able to meet those timelines.

We may experience numerous unforeseen events during, or as a result of, clinical testing that could delay or prevent commercialization of our product candidates, including:

- our product candidates may not prove to be efficacious or may cause harmful side effects;
- negative or inconclusive clinical trial results may require us to conduct further testing or to abandon projects that we had expected to be promising;
- patient registration or enrollment in our clinical testing may be lower than we anticipate, resulting in the delay or cancellation of clinical testing; and
- regulators or institutional review boards may not authorize, delay, suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or their determination that participating patients are being exposed to unacceptable health risks.

If any of these events were to occur and, as a result, we were to have significant delays in or termination of our clinical testing, our expenses could increase and our ability to generate revenue from the affected product candidates could be impaired, which would adversely impact our financial results.

We have limited experience in conducting clinical trials and may not be able to rapidly or effectively continue the further development of our compounds or meet current or future requirements identified based on our discussions with the FDA. We do not know whether our planned clinical trials will begin on time, will be completed on schedule, or at all, will be sufficient for registration of these compounds or will result in approvable products.

Completion of clinical trials may take several years or more, but the length of time generally varies substantially according to the type, complexity, novelty and intended use of a product candidate. The duration and the cost of clinical trials may vary significantly over the life of a project as a result of factors relating to the clinical trial, including, among others:

- the number of patients that ultimately participate in the clinical trial;
- the duration of patient follow-up that is appropriate in view of the results;
- the number of clinical sites included in the trials; and
- the length of time required to enroll suitable patient subjects.

Our research and clinical testing may be delayed or abandoned if we or our competitors subsequently discover other compounds that we believe show significantly improved safety or efficacy compared to our product candidates, which could limit our ability to generate revenues, cause us to incur additional expense and cause the market price of our common stock to decline significantly.

Serious adverse cardiovascular events observed in the XL999 clinical program may result in significant delays or termination of clinical testing, which could cause our stock price to decline.

In November 2006, we suspended enrollment of new patients into the XL999 program after a preliminary review of patient data relating to adverse events for the month of October 2006 showed an increase in the rate of serious cardiovascular events compared to the period prior to October 2006. The FDA concurred with our decision and, on December 1, 2006 placed the XL999 clinical program on partial clinical hold, allowing only enrolled patients to continue to receive XL999. We do not know when or if we will resume enrollment in the Phase II clinical program.

We may experience a number of events that could continue to delay or prevent development of XL999, including:

- the FDA may not lift the partial hold on the XL999 program;
- analysis of data from the XL999 program may show that XL999 cannot be administered safely at a therapeutic dose;
- additional serious adverse events in the XL999 program;
- failure to resume enrollment in the XL999 program in a timely manner or at all;
- regulators or institutional review boards may not authorize or may delay, suspend or terminate the clinical trial program for XL999 due to the observed adverse cardiovascular or other effects; and
- any disagreements between SEI and the company regarding the further clinical development of XL999.

In addition, because the size of acceptance milestones is reduced over time under our agreement with GlaxoSmithKline, delays in the clinical development of XL999 may result in reduced acceptance milestone payments if GlaxoSmithKline selects XL999 for further clinical development. The occurrence of any of the foregoing events could delay or prevent commercialization of XL999 and harm our business and financial condition.

Risks Related to Our Relationships with Third Parties

Disagreements between SEI and us regarding the development of our product candidates XL647, XL999 and XL784 may cause significant delays and other impediments in the development of these product candidates, which could negatively affect the value of these product candidates.

We have licensed to SEI our intellectual property rights, including commercialization rights, to our product candidates XL647, XL999 and XL784 in exchange for SEI's investment of $80.0 million to advance the clinical

development of XL647, XL999 and XL784. We are responsible for developing XL647, XL999 and XL784 in accordance with a specified development plan and related development budget. Our development activities are supervised by SEI's development committee, which is comprised of an equal number of representatives from Exelixis and SEI. If the development committee cannot resolve a particular development issue, the issue will be referred to the chief executive officers of Exelixis and SEI. Any disagreements between SEI and us regarding a development decision may cause significant delays in the development and commercialization of our product candidates XL647, XL999 and XL784 as well as lead to development decisions that do not reflect our interests. Any such delays or development decisions not in our interest could negatively affect the value of XL647, XL999 and XL784.

We are dependent upon our collaborations with major companies. If we are unable to achieve milestones, develop products or renew or enter into new collaborations, our revenues may decrease and our activities may fail to lead to commercialized products.

We have derived substantially all of our revenues to date from collaborative research and development agreements. Revenues from research and development collaborations depend upon continuation of the collaborations, the achievement of milestones and royalties we earn from any future products developed from the collaborative research. If we are unable to successfully achieve milestones or our collaborators fail to develop successful products, we will not earn the revenues contemplated under such collaborative agreements. In addition, some of our collaborations are exclusive and preclude us from entering into additional collaboration arrangements with other parties in the area or field of exclusivity. Future collaborations may require us to relinquish some important rights, such as marketing and distribution rights.

If these agreements or agreements with other partners are not renewed or are terminated early, whether unilaterally or by mutual agreement, or if we are unable to enter into new collaboration agreements on commercially acceptable terms, our revenues and product development efforts could suffer. For example, our agreement with Pharmacia Corporation terminated by mutual agreement in February 2002, which eliminated the opportunity for us to earn approximately $9.0 million in research revenue in 2002 and 2003. Similarly, our collaboration with GlaxoSmithKline is scheduled to expire in October 2008 but became subject to earlier termination at the discretion of GlaxoSmithKline starting in 2005. Our agreements with Bristol-Myers Squibb and Wyeth also contain early termination provisions. In addition, from time to time we review and assess certain aspects of our collaborations, partnerships and agreements and may amend or terminate, either by mutual agreement or pursuant to any applicable early termination provisions, such collaborations, partnerships or agreements if we deem them to be no longer in our economic or strategic interests. For example, in March 2005, we agreed with Bayer CropScience LP to terminate the research term under our collaboration with Bayer CropScience in order to allow us to focus on our core business. We may not be able to enter into new collaboration agreements on similar or superior financial terms to offset the loss of revenue from the termination or expiration of any of our existing arrangements, and the timing of new collaboration agreements may have a material adverse effect on our ability to continue to successfully meet our objectives.

Conflicts with our collaborators could jeopardize the outcome of our collaboration agreements and our ability to commercialize products.

We are conducting proprietary research programs in specific disease, therapeutic modality and agricultural product areas that are not covered by our collaboration agreements. Our pursuit of opportunities in pharmaceutical and agricultural markets could result in conflicts with our collaborators in the event that any of our collaborators takes the position that our internal activities overlap with those areas that are exclusive to our collaboration agreements, and we should be precluded from such internal activities. Moreover, disagreements with our collaborators could develop over rights to our intellectual property. In addition, our collaboration agreements may have provisions that give rise to disputes regarding the respective rights and obligations of the parties, including the rights of collaborators with respect to our internal programs and disease area research. Any conflict with or among our collaborators could lead to the termination of our collaborative agreements, delay

collaborative activities, impair our ability to renew agreements or obtain future collaboration agreements or result in litigation or arbitration and would negatively impact our relationship with existing collaborators. If our collaborators fail to develop or commercialize any of our compounds or product candidates, we would not receive any future royalties or milestone payments for such compounds or product candidates. We have limited or no control over the resources that our collaborators may choose to devote to our joint efforts. Our collaborators may breach or terminate their agreements with us or fail to perform their contractual obligations. Also, our collaboration agreements may be subject to early termination by mutual agreement. Further, our collaborators may elect not to develop products arising out of our collaboration arrangements, may experience financial difficulties, may undertake business combinations or significant changes in business strategy that adversely affect their willingness or ability to complete their obligations under any arrangement with us or may fail to devote sufficient resources to the development, manufacture, marketing or sale of such products. Certain of our collaborators could also become competitors in the future. If our collaborators develop competing products, preclude us from entering into collaborations with their competitors, fail to obtain necessary regulatory approvals, terminate their agreements with us prematurely or fail to devote sufficient resources to the development and commercialization of our products, our product development efforts could be delayed or otherwise adversely effected and may fail to lead to commercialized products.

If third parties upon which we rely do not perform as contractually required or expected, we may not be able to obtain regulatory approval for or commercialize our product candidates.

We do not have the ability to independently conduct clinical trials for our product candidates, and we must rely on third parties we do not control such as contract research organizations, medical institutions, clinical investigators and contract laboratories to conduct our clinical trials. If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, if the third parties need to be replaced or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our preclinical development activities or clinical trials may be extended, delayed, suspended or terminated, and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates.

We lack the capability to manufacture compounds for clinical trials and rely on third parties to manufacture our product candidates, and we may be unable to obtain required material in a timely manner, at an acceptable cost or at a quality level required to receive regulatory approval.

We currently do not have the manufacturing capabilities or experience necessary to enable us to produce materials for our clinical trials. We rely on collaborators and third-party contractors to produce our compounds for preclinical and clinical testing. These suppliers must comply with applicable regulatory requirements, including the FDA's current Good Manufacturing Practices, or GMP. Our current and anticipated future dependence upon these third-party manufacturers may adversely affect our future profit margins and our ability to develop and commercialize product candidates on a timely and competitive basis. These manufacturers may not be able to produce material on a timely basis or manufacture material at the quality level or in the quantity required to meet our development timelines and applicable regulatory requirements. We may not be able to maintain or renew our existing third-party manufacturing arrangements, or enter into new arrangements, on acceptable terms, or at all. Our third-party manufacturers could terminate or decline to renew our manufacturing arrangements based on their own business priorities, at a time that is costly or inconvenient for us. If we are unable to contract for the production of materials in sufficient quantity and of sufficient quality on acceptable terms, our clinical trials may be delayed. Delays in preclinical or clinical testing could delay the filing of our INDs and the initiation of clinical trials.

Our third-party manufacturers may not be able to comply with the GMP regulations, other applicable FDA regulatory requirements or similar regulations applicable outside of the United States. Additionally, if we are required to enter into new supply arrangements, we may not be able to obtain approval from the FDA of any alternate supplier in a timely manner, or at all, which could delay or prevent the clinical development and

commercialization of any related product candidates. Failure of our third-party manufacturers or us to obtain approval from the FDA or to comply with applicable regulations could result in sanctions being imposed on us, including fines, civil penalties, delays in or failure to grant marketing approval of our product candidates, injunctions, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products and compounds, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect our business.

Materials necessary to manufacture some of our compounds currently under development may not be available on commercially reasonable terms, or at all, which may delay our development and commercialization of these compounds.

Some of the materials necessary for the manufacture of our compounds under development may, from time to time, be available either in limited quantities, or from a limited number of manufacturers, or both. Our contract manufacturers need to obtain these materials for our clinical trials and, potentially, for commercial distribution when and if we obtain marketing approval for these compounds. Suppliers may not sell us these materials at the time we need them or on commercially reasonable terms. If we are unable to obtain the materials needed to conduct our clinical trials, product testing and potential regulatory approval could be delayed, adversely affecting our ability to develop the product candidates. Similarly, if we are unable to obtain critical manufacturing materials after regulatory approval has been obtained for a product candidate, the commercial launch of that product candidate could be delayed or there could be a shortage in supply, which could materially affect our ability to generate revenues from that product candidate. If suppliers increase the price of manufacturing materials, the price for one or more of our products may increase, which may make our products less competitive in the marketplace. If it becomes necessary to change suppliers for any of these materials or if any of our suppliers experience a shutdown or disruption at the facilities used to produce these materials, due to technical, regulatory or other reasons, it could harm our ability to manufacture our products.

Risks Related to Regulatory Approval of Our Product Candidates

Our product candidates are subject to a lengthy and uncertain regulatory process that may not result in the necessary regulatory approvals, which could adversely affect our ability to commercialize products.

Our product candidates, as well as the activities associated with their research, development and commercialization, are subject to extensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Failure to obtain regulatory approval for a product candidate would prevent us from commercializing that product candidate. We have not received regulatory approval to market any of our product candidates in any jurisdiction and have only limited experience in preparing and filing the applications necessary to gain regulatory approvals. The process of obtaining regulatory approvals is expensive, and often takes many years, if approval is obtained at all, and can vary substantially based upon the type, complexity and novelty of the product candidates involved. Before a new drug application can be filed with the FDA, the product candidate must undergo extensive clinical trials, which can take many years and may require substantial expenditures. Any clinical trial may fail to produce results satisfactory to the FDA. For example, the FDA could determine that the design of a clinical trial is inadequate to produce reliable results. The regulatory process also requires preclinical testing, and data obtained from preclinical and clinical activities are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review. Changes in regulatory approval policy, regulations or statutes or the process for regulatory review during the development or approval periods of our product candidates may cause delays in the approval or rejection of an application. Even if the FDA or a comparable authority in another country approves a product candidate, the approval may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and/or production of such product and may impose ongoing requirements for post-approval studies, including additional research and development and clinical trials. These agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

Risks Related to Commercialization of Products

The commercial success of any products that we may develop will depend upon the degree of market acceptance of our products among physicians, patients, health care payors, private health insurers and the medical community.

Our ability to commercialize any products that we may develop will be highly dependent upon the extent to which these products gain market acceptance among physicians, patients, health care payors, such as Medicare and Medicaid, private health insurers, including managed care organizations and group purchasing organizations, and the medical community. If these products do not achieve an adequate level of acceptance, we may not generate adequate product revenues, and we may not become profitable. The degree of market acceptance of our product candidates, if approved for commercial sale, will depend upon a number of factors, including:

- the effectiveness, or perceived effectiveness, of our products in comparison to competing products;
- the existence of any significant side effects, as well as their severity in comparison to any competing products;
- potential advantages over alternative treatments;
- the ability to offer our products for sale at competitive prices;
- relative convenience and ease of administration;
- the strength of marketing and distribution support; and
- sufficient third-party coverage or reimbursement.

If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product candidates, we may be unable to generate product revenues.

We have no experience as a company in the sales, marketing and distribution of pharmaceutical products and do not currently have a sales and marketing organization. Developing a sales and marketing force would be expensive and time-consuming, could delay any product launch, and we may never be able to develop this capacity. To the extent that we enter into arrangements with third parties to provide sales, marketing and distribution services, our product revenues are likely to be lower than if we market and sell any products that we develop ourselves. If we are unable to establish adequate sales, marketing and distribution capabilities, independently or with others, we may not be able to generate product revenues.

If we are unable to obtain adequate coverage and reimbursement from third-party payors for any products that we may develop, our revenues and prospects for profitability will suffer.

Our ability to commercialize any products that we may develop will be highly dependent on the extent to which coverage and reimbursement for our products will be available from third-party payors, including governmental payors, such as Medicare and Medicaid, and private health insurers, including managed care organizations and group purchasing organizations. Many patients will not be capable of paying themselves for some or all of the products that we may develop and will rely on third-party payors to pay for, or subsidize, their medical needs. If third-party payors do not provide coverage or reimbursement for any products that we may develop, our revenues and prospects for profitability will suffer. In addition, even if third-party payors provide some coverage or reimbursement for our products, the availability of such coverage or reimbursement for prescription drugs under private health insurance and managed care plans often varies based on the type of contract or plan purchased.

A primary trend in the United States health care industry is toward cost containment. In December 2003, the President signed into law legislation creating a prescription drug benefit program for Medicare recipients. The

new prescription drug program may have the effect of reducing the prices that we are able to charge for products we develop and sell through plans under the program. The new prescription drug program may also cause third-party payors other than the federal government, including the States under the Medicaid program, to discontinue coverage for products we develop or to lower the price that they will pay.

Proponents of drug reimportation may attempt to pass legislation, which would allow direct reimportation under certain circumstances. If legislation or regulations were passed allowing the reimportation of drugs, it could decrease the price we receive for any products that we may develop, thereby negatively affecting our revenues and prospects for profitability.

In addition, in some foreign countries, particularly the countries in the European Union, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, price negotiations with governmental authorities can take six to twelve months or longer after the receipt of regulatory marketing approval for a product. To obtain reimbursement and/or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost effectiveness of our product candidates or products to other available therapies. The conduct of such a clinical trial could be expensive and result in delays in the commercialization of our product candidates. Third-party payors are challenging the prices charged for medical products and services, and many third-party payors limit reimbursement for newly approved health care products. In particular, third-party payors may limit the indications for which they will reimburse patients who use any products that we may develop. Cost-control initiatives could decrease the price we might establish for products that we may develop, which would result in lower product revenues to us.

Our competitors may develop products and technologies that make our products and technologies obsolete.

The biotechnology industry is highly fragmented and is characterized by rapid technological change. In particular, the area of kinase-targeted therapies is a rapidly evolving and competitive field. We face, and will continue to face, intense competition from large biotechnology and pharmaceutical companies, as well as academic research institutions, clinical reference laboratories and government agencies that are pursuing research activities similar to ours. Some of our competitors have entered into collaborations with leading companies within our target markets, including some of our existing collaborators. In addition, significant delays in the development of our product candidates could allow our competitors to bring products to market before us, which would impair our ability to commercialize our product candidates. Our future success will depend upon our ability to maintain a competitive position with respect to technological advances. Any products that are developed through our technologies will compete in highly competitive markets. Further, our competitors may be more effective at using their technologies to develop commercial products. Many of the organizations competing with us have greater capital resources, larger research and development staff and facilities, more experience in obtaining regulatory approvals and more extensive product manufacturing and marketing capabilities. As a result, our competitors may be able to more easily develop technologies and products that would render our technologies and products, and those of our collaborators, obsolete and noncompetitive. In addition, there may be product candidates of which we are not aware at an earlier stage of development that may compete with our product candidates.

We may not be able to manufacture our product candidates in commercial quantities, which would prevent us from commercializing our product candidates.

To date, our product candidates have been manufactured in small quantities for preclinical and clinical trials. If any of these product candidates are approved by the FDA or other regulatory agencies for commercial sale, we will need to manufacture them in larger quantities. We may not be able to successfully increase the manufacturing capacity, whether in collaboration with third-party manufacturers or on our own, for any of our product candidates in a timely or economic manner, or at all. Significant scale-up of manufacturing may require additional validation studies, which the FDA must review and approve. If we are unable to successfully increase the manufacturing capacity for a product candidate, the regulatory approval or commercial launch of that product

candidate may be delayed or there may be a shortage in supply. Our product candidates require precise, high-quality manufacturing. The failure to achieve and maintain these high manufacturing standards, including the incidence of manufacturing errors, could result in patient injury or death, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could seriously hurt our business.

Risks Related to Our Intellectual Property

If we are unable to adequately protect our intellectual property, third parties may be able to use our technology, which could adversely affect our ability to compete in the market.

Our success will depend in part upon our ability to obtain patents and maintain adequate protection of the intellectual property related to our technologies and products. The patent positions of biotechnology companies, including our patent position, are generally uncertain and involve complex legal and factual questions. We will be able to protect our intellectual property rights from unauthorized use by third parties only to the extent that our technologies are covered by valid and enforceable patents or are effectively maintained as trade secrets. We will continue to apply for patents covering our technologies and products as and when we deem appropriate. However, these applications may be challenged or may fail to result in issued patents. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that cover the production, manufacture, commercialization or use of our product candidates. Our existing patents and any future patents we obtain may not be sufficiently broad to prevent others from practicing our technologies or from developing competing products. Furthermore, others may independently develop similar or alternative technologies or design around our patents. In addition, our patents may be challenged or invalidated or may fail to provide us with any competitive advantages, if, for example, others were the first to invent or to file patent applications for these inventions.

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States, and many companies have encountered significant problems in protecting and defending such rights in foreign jurisdictions. Many countries, including certain countries in Europe, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties (for example, the patent owner has failed to “work” the invention in that country or the third party has patented improvements). In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of the patent. Compulsory licensing of life-saving drugs is also becoming increasingly popular in developing countries either through direct legislation or international initiatives. Such compulsory licenses could be extended to include some of our product candidates, which could limit our potential revenue opportunities. Moreover, the legal systems of certain countries, particularly certain developing countries, do not favor the aggressive enforcement of patent and other intellectual property protection, which makes it difficult to stop infringement. We rely on trade secret protection for our confidential and proprietary information. We have taken security measures to protect our proprietary information and trade secrets, but these measures may not provide adequate protection. While we seek to protect our proprietary information by entering into confidentiality agreements with employees, collaborators and consultants, we cannot assure you that our proprietary information will not be disclosed, or that we can meaningfully protect our trade secrets. In addition, our competitors may independently develop substantially equivalent proprietary information or may otherwise gain access to our trade secrets.

Litigation or third-party claims of intellectual property infringement could require us to spend substantial time and money and adversely affect our ability to develop and commercialize products.

Our commercial success depends in part upon our ability to avoid infringing patents and proprietary rights of third parties and not to breach any licenses that we have entered into with regard to our technologies. Other parties have filed, and in the future are likely to file, patent applications covering genes and gene fragments, techniques and methodologies relating to model systems and products and technologies that we have developed or intend to develop. If patents covering technologies required by our operations are issued to others, we may

have to obtain licenses from third parties, which may not be available on commercially reasonable terms, or at all, and may require us to pay substantial royalties, grant a cross-license to some of our patents to another patent holder or redesign the formulation of a product candidate so that we do not infringe third-party patents, which may be impossible to obtain or could require substantial time and expense.

Third parties may accuse us of employing their proprietary technology without authorization. In addition, third parties may obtain patents that relate to our technologies and claim that use of such technologies infringes on their patents. Regardless of their merit, such claims could require us to incur substantial costs, including the diversion of management and technical personnel, in defending ourselves against any such claims or enforcing our patents. In the event that a successful claim of infringement is brought against us, we may be required to pay damages and obtain one or more licenses from third parties. We may not be able to obtain these licenses at a reasonable cost, or at all. Defense of any lawsuit or failure to obtain any of these licenses could adversely affect our ability to develop and commercialize products.

We may be subject to damages resulting from claims that we, our employees or independent contractors have wrongfully used or disclosed alleged trade secrets of their former employers.

Many of our employees and independent contractors were previously employed at universities, other biotechnology or pharmaceutical companies, including our competitors or potential competitors. We may be subject to claims that these employees, independent contractors or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. If we fail in defending such claims, in addition to paying money claims, we may lose valuable intellectual property rights or personnel. A loss of key research personnel and/or their work product could hamper or prevent our ability to commercialize certain product candidates, which could severely harm our business.

Risks Related to Employees, Growth and Location

The loss of key personnel or the inability to attract and retain additional personnel could impair our ability to expand our operations.

We are highly dependent upon the principal members of our management and scientific staff, the loss of whose services might adversely impact the achievement of our objectives and the continuation of existing collaborations. Also, we do not currently have sufficient clinical development personnel to fully execute our business plan. Recruiting and retaining qualified clinical and scientific personnel will be critical to support activities related to advancing our clinical and preclinical development programs, and supporting our collaborative arrangements and our internal proprietary research and development efforts. Competition is intense for experienced clinical personnel, and we may be unable to retain or recruit clinical personnel with the expertise or experience necessary to allow us to pursue collaborations, develop our products and core technologies or expand our operations to the extent otherwise possible. Further, all of our employees are employed “at will” and, therefore, may leave our employment at any time.

Our collaborations with outside scientists may be subject to restriction and change.

We work with scientific and clinical advisors and collaborators at academic and other institutions that assist us in our research and development efforts. These advisors and collaborators are not our employees and may have other commitments that limit their availability to us. Although they generally agree not to do competing work, if a conflict of interest between their work for us and their work for another entity arises, we may lose their services. In addition, although our advisors and collaborators sign agreements not to disclose our confidential information, it is possible that valuable proprietary knowledge may become publicly known through them.

Difficulties we may encounter managing our growth may divert resources and limit our ability to successfully expand our operations.

We have experienced a period of rapid and substantial growth that has placed, and our anticipated growth in the future will continue to place, a strain on our research, administrative and operational infrastructure. As our operations expand, we will need to continue to manage multiple locations and additional relationships with various collaborative partners, suppliers and other third parties. Our ability to manage our operations and growth effectively requires us to continue to improve our reporting systems and procedures as well as our operational, financial and management controls. In addition, SEC rules and regulations have increased the internal control and regulatory requirements under which we operate. We may not be able to successfully implement improvements to our management information and control systems in an efficient or timely manner to meet future requirements.

Our headquarters are located near known earthquake fault zones, and the occurrence of an earthquake or other disaster could damage our facilities and equipment, which could harm our operations.

Given our headquarters' location in South San Francisco, California, our facilities are vulnerable to damage from earthquakes. We currently do not carry earthquake insurance. We are also vulnerable to damage from other types of disasters, including fire, floods, power loss, communications failures, terrorism and similar events since any insurance we may maintain may not be adequate to cover our losses. If any disaster were to occur, our ability to operate our business at our facilities could be seriously, or potentially completely, impaired. In addition, the unique nature of our research activities could cause significant delays in our programs and make it difficult for us to recover from a disaster. Accordingly, an earthquake or other disaster could materially and adversely harm our ability to conduct business.

Security breaches may disrupt our operations and harm our operating results.

Our network security and data recovery measures may not be adequate to protect against computer viruses, break-ins, and similar disruptions from unauthorized tampering with our computer systems. The misappropriation, theft, sabotage or any other type of security breach with respect to any of our proprietary and confidential information that is electronically stored, including research or clinical data, could have a material adverse impact on our business, operating results and financial condition. Additionally, any break-in or trespass of our facilities that results in the misappropriation, theft, sabotage or any other type of security breach with respect to our proprietary and confidential information, including research or clinical data, or that results in damage to our research and development equipment and assets could have a material adverse impact on our business, operating results and financial condition.

Risks Related to Environmental and Product Liability

We use hazardous chemicals and radioactive and biological materials in our business. Any claims relating to improper handling, storage or disposal of these materials could be time consuming and costly.

Our research and development processes involve the controlled use of hazardous materials, including chemicals and radioactive and biological materials. Our operations produce hazardous waste products. We cannot eliminate the risk of accidental contamination or discharge and any resultant injury from these materials. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. We may be sued for any injury or contamination that results from our use or the use by third parties of these materials, and our liability may exceed our insurance coverage and our total assets. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research, development and production efforts.

In addition, our collaborators may use hazardous materials in connection with our collaborative efforts. In the event of a lawsuit or investigation, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials used by these parties. Further, we may be required to indemnify our collaborators against all damages and other liabilities arising out of our development activities or products produced in connection with these collaborations.

We face potential product liability exposure far in excess of our limited insurance coverage.

We may be held liable if any product we or our collaborators develop causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing or sale. Regardless of merit or eventual outcome, product liability claims could result in decreased demand for our product candidates, injury to our reputation, withdrawal of patients from our clinical trials, substantial monetary awards to trial participants and the inability to commercialize any products that we may develop. These claims might be made directly by consumers, health care providers, pharmaceutical companies or others selling or testing our products. We have obtained limited product liability insurance coverage for our clinical trials in the amount of $10.0 million per occurrence and $10.0 million in the aggregate. However, our insurance may not reimburse us or may not be sufficient to reimburse us for expenses or losses we may suffer. Moreover, if insurance coverage becomes more expensive, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. If we obtain marketing approval for any of our product candidates, we intend to expand our insurance coverage to include the sale of commercial products, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, juries have awarded large judgments in class action lawsuits for claims based on drugs that had unanticipated side effects. In addition, the pharmaceutical and biotechnology industries, in general, have been subject to significant medical malpractice litigation. A successful product liability claim or series of claims brought against us would decrease our cash reserves and could cause our stock price to fall.

Risks Related to Our Common Stock

We expect that our quarterly results of operations will fluctuate, and this fluctuation could cause our stock price to decline, causing investor losses.

Our quarterly operating results have fluctuated in the past and are likely to fluctuate in the future. A number of factors, many of which we cannot control, could subject our operating results and stock price to volatility, including:

- recognition of upfront licensing or other fees;
- payments of non-refundable upfront or licensing fees to third parties;
- acceptance of our technologies and platforms;
- the success rate of our discovery efforts leading to milestone payments and royalties;
- the introduction of new technologies or products by our competitors;
- the timing and willingness of collaborators to commercialize our products;
- our ability to enter into new collaborative relationships;
- the termination or non-renewal of existing collaborations;
- the timing and amount of expenses incurred for clinical development and manufacturing of our product candidates;
- the impairment of acquired goodwill and other assets; and
- general and industry-specific economic conditions that may affect our collaborators’ research and development expenditures.

A large portion of our expenses, including expenses for facilities, equipment and personnel, are relatively fixed in the short term. In addition, we expect operating expenses to increase significantly as we move more compounds into clinical development. Accordingly, if our revenues decline or do not grow as anticipated due to the expiration or termination of existing contracts, our failure to obtain new contracts or our inability to meet milestones or because of other factors, we may not be able to correspondingly reduce our operating expenses. Failure to achieve anticipated levels of revenues could therefore significantly harm our operating results for a particular fiscal period.

Due to the possibility of fluctuations in our revenues and expenses, we believe that quarter-to-quarter comparisons of our operating results are not a good indication of our future performance. As a result, in some future quarters, our operating results may not meet the expectations of stock market analysts and investors, which could result in a decline in the price of our common stock.

Our stock price may be extremely volatile.

The trading price of our common stock has been highly volatile, and we believe the trading price of our common stock will remain highly volatile and may fluctuate substantially due to factors such as the following:

- adverse results or delays in clinical trials;
- announcement of FDA approval or non-approval, or delays in the FDA review process, of our or our collaborators' product candidates or those of our competitors or actions taken by regulatory agencies with respect to our, our collaborators' or our competitors' clinical trials;
- the announcement of new products by us or our competitors;
- quarterly variations in our or our competitors' results of operations;
- litigation, including intellectual property infringement lawsuits, involving us;
- failure to achieve operating results projected by securities analysts;
- changes in earnings estimates or recommendations by securities analysts;
- financing transactions;
- developments in the biotechnology or pharmaceutical industry;
- sales of large blocks of our common stock or sales of our common stock by our executive officers, directors and significant stockholders;
- departures of key personnel or board members;
- developments concerning current or future collaborations;
- FDA or international regulatory actions;
- third-party reimbursement policies;
- acquisitions of other companies or technologies;
- disposition of any of our subsidiaries, technologies or compounds; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

These factors, as well as general economic, political and market conditions, may materially adversely affect the market price of our common stock.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. A securities class action suit against us could result in substantial costs and divert management's attention and resources, which could have a material and adverse effect on our business.

We are exposed to risks associated with acquisitions.

We have made, and may in the future make, acquisitions of, or significant investments in, businesses with complementary products, services and/or technologies. Acquisitions involve numerous risks, including, but not limited to:

- difficulties and increased costs in connection with integration of the personnel, operations, technologies and products of acquired companies;
- diversion of management's attention from other operational matters;
- the potential loss of key employees;
- the potential loss of key collaborators;
- lack of synergy, or the inability to realize expected synergies, resulting from the acquisition; and
- acquired intangible assets becoming impaired as a result of technological advancements or worse-than-expected performance of the acquired company.

Mergers and acquisitions are inherently risky, and the inability to effectively manage these risks could materially and adversely affect our business, financial condition and results of operations.

Future sales of our common stock may depress our stock price.

If our stockholders sell substantial amounts of our common stock (including shares issued upon the exercise of options and warrants) in the public market, the market price of our common stock could fall. These sales also might make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate. For example, following an acquisition, a significant number of shares of our common stock held by new stockholders may become freely tradable or holders of registration rights could cause us to register their shares for resale. Sales of these shares of common stock held by existing stockholders could cause the market price of our common stock to decline.

Some of our existing stockholders can exert control over us, and their interests could conflict with the best interests of our other stockholders.

Due to their combined stock holdings, our officers, directors and principal stockholders (stockholders holding more than 5% of our common stock), acting together, may be able to exert significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. In addition, this concentration of ownership may delay or prevent a change in control of our company, even when a change may be in the best interests of our stockholders. In addition, the interests of these stockholders may not always coincide with our interests as a company or the interests of other stockholders. Accordingly, these stockholders could cause us to enter into transactions or agreements that would not be widely viewed as beneficial.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent or deter attempts by our stockholders to replace or remove our current management.

Provisions in our corporate charter and bylaws may discourage, delay or prevent an acquisition of our company, a change in control, or attempts by our stockholders to replace or remove members of our current Board of Directors. Because our Board of Directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. These provisions include:

- a classified Board of Directors;

- a prohibition on actions by our stockholders by written consent;
- the inability of our stockholders to call special meetings of stockholders;
- the ability of our Board of Directors to issue preferred stock without stockholder approval, which could be used to institute a "poison pill" that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our Board of Directors;
- limitations on the removal of directors; and
- advance notice requirements for director nominations and stockholder proposals.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

We lease an aggregate of 367,973 square feet of office and laboratory facilities. In California, we lease 327,980 square feet in our South San Francisco and San Diego locations. The South San Francisco location, which is comprised of five buildings totaling 296,205 square feet, is covered by three lease agreements. The first two leases covering three buildings for a total of 180,967 square feet expire in 2017, with two five-year options to extend their respective terms prior to expiration. The third lease covering two buildings for a total of 115,238 square feet expires in 2018. In our San Diego location, we lease 31,775 square feet under a month-to-month lease, with a nine-month termination notice.

In Portland, Oregon, we lease 17,860 square feet of office and laboratory space. The lease expires in February 2009 but we may terminate it earlier effective March 2008.

In Köln, Germany, we lease an aggregate of 22,133 square feet of office and laboratory space under two leases. These leases expire in 2007 and 2008, with options to renew for an additional term of three to four years.

In addition to our leased facilities, we own a 15-acre farm in Woodburn, Oregon. Greenhouse capacity at the farm currently totals 50,000 square feet.

We believe that our existing facilities, both leased and owned, have sufficient space to accommodate our current needs and also provide for the expansion of our operations for the near term.

ITEM 3. LEGAL PROCEEDINGS

We are not currently a party to any material legal proceedings. We may from time to time become a party to various legal proceedings arising in the ordinary course of business.

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

None.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock has traded on the Nasdaq Global Select Market (formerly the Nasdaq National Market) under the symbol "EXEL" since April 11, 2000. The following table sets forth, for the periods indicated, the high and low intraday sales prices for our common stock as reported by the Nasdaq Global Select Market:

	Common Stock Price	
	High	Low
Quarter ended December 31, 2006	$ 10.65	$ 7.81
Quarter ended September 30, 2006	$ 10.24	$ 7.53
Quarter ended June 30, 2006	$ 12.49	$ 9.00
Quarter ended March 31, 2006	$ 12.21	$ 9.22
Quarter ended December 31, 2005	$ 9.96	$ 6.53
Quarter ended September 30, 2005	$ 9.37	$ 7.10
Quarter ended June 30, 2005	$ 8.57	$ 6.51
Quarter ended March 31, 2005	$ 9.69	$ 6.02

On February 20, 2007, the last reported sale price on the Nasdaq Global Select Market for our common stock was $11.33 per share.

Holders

As of February 20, 2007, there were approximately 688 stockholders of record of Exelixis common stock.

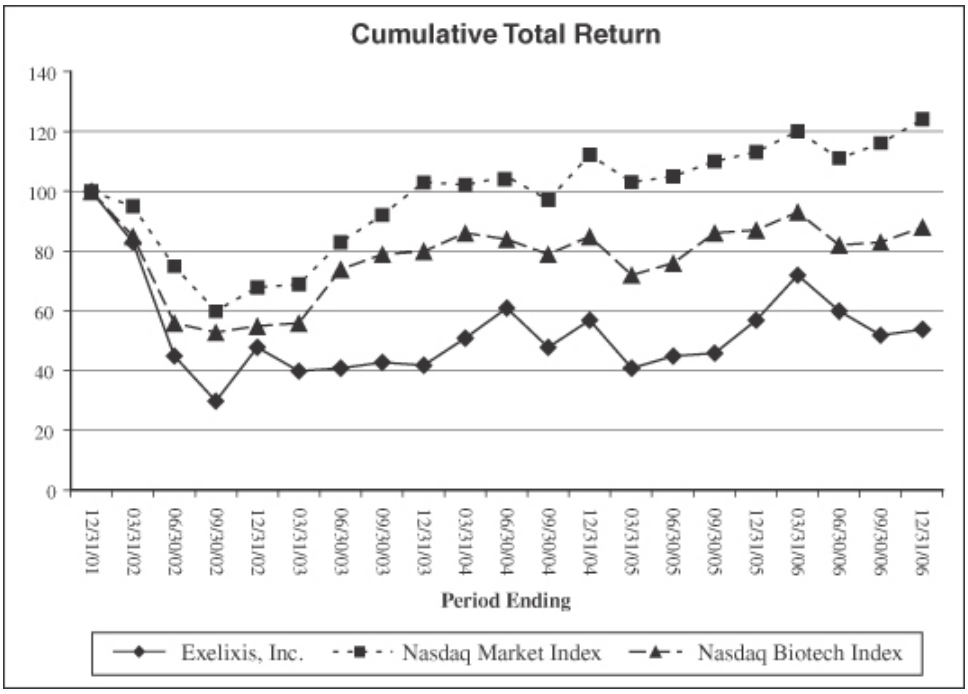
Dividends

Since inception, we have not paid dividends on our common stock. We currently intend to retain all future earnings, if any, for use in our business and currently do not plan to pay any cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our Board of Directors.

Performance Graph

This performance graph shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") or otherwise subject to the liabilities under that Section and shall not be deemed to be incorporated by reference into any filing of the company under the Securities Act of 1933, as amended or the Exchange Act.

The following graph compares, for the five year period ended December 31, 2006, the cumulative total stockholder return for our common stock, the Nasdaq Stock Market (U.S. companies) Index (the "Nasdaq Market Index") and the Nasdaq Biotech Index. The graph assumes that $100 were invested on December 31, 2001 in the common stock of the company, the Nasdaq Market Index and the Nasdaq Biotech Index and assumes reinvestment of any dividends. The stock price performance on the following graph is not necessarily indicative of future stock price performance.



	12/31/01	03/31/02	06/30/02	09/30/02	12/31/02	03/31/03	06/30/03
Exelixis, Inc.	100	83	45	30	48	40	41
Nasdaq Market Index	100	95	75	60	68	69	83
Nasdaq Biotech Index	100	85	56	53	55	56	74

	09/30/03	12/31/03	03/31/04	06/30/04	09/30/04	12/31/04	03/31/05
Exelixis, Inc.	43	42	51	61	48	57	41
Nasdaq Market Index	92	103	102	105	97	112	103
Nasdaq Biotech Index	79	80	86	84	79	85	72

	06/30/05	09/30/05	12/31/05	03/31/06	06/30/06	09/30/06	12/31/06
Exelixis, Inc.	45	46	57	72	60	52	54
Nasdaq Market Index	105	110	113	120	111	116	124
Nasdaq Biotech Index	76	86	87	93	82	83	88

ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial information has been derived from our audited consolidated financial statements. The financial information as of December 31, 2006 and 2005 and for each of the three years in the period ended December 31, 2006 are derived from audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The following Selected Financial Data should be read in conjunction with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Item 8. Financial Statements and Supplementary Data" included elsewhere in this Annual Report on Form 10-K. The historical results are not necessarily indicative of the results of operations to be expected in the future.

	Year Ended December 31,				
	2006	2005	2004	2003	2002
	(In thousands, except per share data)				
Consolidated Statement of Operations Data:					
Total revenues	$ 98,670	$ 75,961	$ 52,857	$ 51,540	$ 44,322
Operating expenses:					
Research and development(1)	185,481	141,135	137,724	127,622	112,014
General and administrative(2)	39,123	27,731	20,905	18,586	18,758
Amortization of goodwill and intangibles	820	1,086	779	666	666
Restructuring charge	—	—	2,275	925	708
Acquired in-process research and development	—	—	26,376	—	—
Total operating expenses	225,424	169,952	188,059	147,799	132,146
Loss from operations	(126,754)	(93,991)	(135,202)	(96,259)	(87,824)
Total other income (expense)	3,565	(819)	(2,043)	1,140	3,290
Loss from continuing operations before income taxes and noncontrolling interest in Symphony Evolution, Inc.	(123,189)	(94,810)	(137,245)	(95,119)	(84,534)
Provision (benefit) for income taxes	—	—	—	(345)	345
Loss from continuing operations before noncontrolling interest in Symphony Evolution, Inc.	(123,189)	(94,810)	(137,245)	(94,774)	(84,879)
Loss attributed to noncontrolling interest in Symphony Evolution, Inc.	21,697	10,406	—	—	—
Loss from continuing operations	(101,492)	(84,404)	(137,245)	(94,774)	(84,879)
Loss from operations of discontinued segment	—	—	—	—	(1,251)
Net loss	$(101,492)	$ (84,404)	$(137,245)	$ (94,774)	$ (86,130)
Loss per share from continuing operations	$ (1.17)	$ (1.07)	$ (1.89)	$ (1.45)	$ (1.50)
Loss per share from discontinued operations	—	—	—	—	(0.02)
Net loss per share, basic and diluted	$ (1.17)	$ (1.07)	$ (1.89)	$ (1.45)	$ (1.52)
Shares used in computing basic and diluted net loss per share	86,602	78,810	72,504	65,387	56,615

(1) Amount for 2006 includes $11.2 million in employee stock-based compensation under Statement of Financial Accounting Standards No. 123 (revised 2004), "Shared-Based Payment" (SFAS 123R).

(2) Amount for 2006 includes $6.3 million in employee stock-based compensation under SFAS 123R.

	December 31,				
	2006	2005	2004	2003	2002
	(In thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents, marketable securities, investments held by Symphony Evolution, Inc. and restricted cash and investments	$ 263,180	$ 210,499	$ 171,223	$ 241,930	$ 221,987
Working capital	150,814	86,463	89,597	179,595	175,209
Total assets	395,417	332,712	291,340	357,794	339,113
Long-term obligations, less current portion	128,565	121,333	144,491	102,411	65,372
Accumulated deficit	(705,269)	(603,777)	(519,373)	(382,128)	(287,354)
Total stockholders' equity	52,540	33,543	50,671	161,482	175,920

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

Overview

We are committed to developing innovative therapies for cancer and other serious diseases. Through our drug discovery and development activities, we are building a portfolio of novel compounds that we believe have the potential to be high-quality, differentiated pharmaceutical products.

Utilizing our library of more than four million compounds, we integrate high-throughput processes, medicinal chemistry, bioinformatics, structural biology, and early *in vivo* testing in parallel to characterize thousands of compounds, a process that is designed to enable us to move with speed in research and development. This approach allows us to select highly qualified drug candidates that meet our extensive list of development criteria from a large pool of compounds.

To date, we have filed 11 investigational new drug applications (INDs). We believe that our deep pool of drug candidates will enable us to continue to file multiple new INDs each year for the foreseeable future. As our compounds advance into clinical development, we expect to generate a critical mass of data that will help us to understand the full clinical and commercial potential of our product candidates. In addition to guiding the potential commercialization of our innovative therapies, these data may contribute to the understanding of disease and help improve treatment outcomes.

Our current pipeline includes the following compounds:

Compound	Principal Targets	Indication	Stage of Development
XL647*	EGFR, HER2, VEGFR2	Cancer	Phase II
XL784*	ADAM10, MMP2	Diabetic nephropathy	Phase II
XL999*[1]	VEGFR2, PDGFR, FGFR, Flt3	Cancer	Phase II
XL880	MET, VEGFR2	Cancer	Phase II
XL820	KIT, VEGFR2, PDGFR	Cancer	Phase I
XL184	MET, VEGFR2	Cancer	Phase I
XL844	CHK1, CHK2	Cancer	Phase I
XL518**	MEK	Cancer	IND
XL418	AKT, S6K	Cancer	IND
XL281	RAF	Cancer	IND
XL228	ABL, SRC, IGF1R	Cancer	IND
XL147	PI3K	Cancer	Preclinical
XL765	PI3K, mTOR	Cancer	Preclinical
XL019	JAK2	Cancer	Preclinical
XL550***	MR	Hypertension	Preclinical
XL335***	FXR	Atherosclerosis	Preclinical

*Out-licensed to Symphony Evolution, Inc. and subject to a repurchase option as described in this report.

**In co-development collaboration with Genentech, Inc.

***XL550 and XL335 are out-licensed to Sankyo and Wyeth Pharmaceuticals, respectively, as described in this report.

[1]Enrollment of new patients was suspended in November 2006 to evaluate safety.

Pursuant to a product development and commercialization agreement between Exelixis and GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by Exelixis, to elect to develop up to three compounds in Exelixis' product pipeline, which may include XL784 and the cancer compounds identified in the table above except XL518, XL147, XL765 and XL019.

We have established collaborations with major pharmaceutical and biotechnology companies based on the strength of our expertise in biology, drug discovery and development that allow us to retain economic participation in compounds and support additional development of our proprietary products. Through these collaborations, we obtain license fees, research funding, a share of the profits and the opportunity to receive milestone payments and royalties from research results and subsequent product development activities. We also have collaborations in which we retain the right to co-promote products in the United States. We have ongoing commercial collaborations with several leading pharmaceutical and biotechnology companies, including GlaxoSmithKline, Bristol-Myers Squibb Company and Genentech. We expect to continue to use corporate partnering as a strategic tool to cultivate our assets, fund our operations and expand the therapeutic and commercial potential of our pipeline.

As our company has matured and our development efforts have intensified, we have restructured our organization as needed to reallocate resources and enhance the efficiency of our operations. We believe that these efforts have strengthened us by enabling us to achieve an appropriate functional balance within our organization.

Certain Factors That May Affect Our Business

Industry-wide Factors

Successful development of drugs is inherently difficult and uncertain. Our business requires significant investments in research and development over many years, often for product candidates that fail during the research and development process. Our long-term prospects depend upon our ability and the ability of our partners to successfully commercialize new therapeutics in highly competitive areas such as cancer treatment.

Company-specific Factors

Our performance is driven by many factors, including:

- *Clinical Trials*. We currently have multiple compounds in clinical testing and expect to continue to advance more compounds into clinical development. Our compounds may fail to show safety or efficacy in clinical testing. Furthermore, predicting the timing of the completion or initiation of clinical trials is exceedingly difficult and our trials may be delayed due to many factors, including factors outside of our control. The future development path of each of our compounds depends upon the results of each stage of clinical development. In general, we will incur increased operating expenses for compounds that advance to the next stage of clinical development, whereas expenses will end for compounds that do not warrant further clinical development.
- *Liquidity*. As of December 31, 2006, we had $263.2 million in cash and cash equivalents and short-term and long-term marketable securities, which included investments held by Symphony Evolution (SEI) of $55.1 million and restricted cash and investments of $9.6 million. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, investments held by SEI and other funding that we expect to receive from collaborators, which assumes a moderate level of business development activity, will enable us to maintain our operations for a period of at least 12 months following December 31, 2006. However, our future capital requirements will be substantial and depend on many factors, including the timing of key events in our agreements with GlaxoSmithKline and SEI that may require us to consume available capital resources significantly sooner than we currently anticipate. We will have to obtain additional funding in order to support our plans for the aggressive development of our broad clinical and preclinical pipelines. Our minimum liquidity needs are also determined by certain financial covenants contained in our loan and security agreement with GlaxoSmithKline, which require us to maintain working capital of at least $25.0 million and cash and investments of at least $50.0 million. Our ability to raise additional funds may be severely impaired if any of our product candidates fails to show safety or efficacy in clinical testing.

- *Reliance on Partners*. We currently have no pharmaceutical products that have received marketing approval, and we have generated no revenues from the sale of such products. We do not expect to generate product revenues from the sale of pharmaceutical products in the near term and expect that all of our revenues, such as milestone and royalty revenues, will be generated from collaboration agreements with our partners. Milestones under these agreements may be tied to factors that are outside of our control, such as significant clinical or regulatory events with respect to compounds that have been licensed to our partners.
- *GlaxoSmithKline Compound Selection*. Pursuant to our product development and commercialization agreement with GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by us, to elect to develop up to three compounds in our product pipeline, which may include XL784, XL647, XL999, XL880, XL184, XL820, XL844, XL281, XL418, XL228 and two earlier stage oncology programs. XL784, XL647 and XL999 have been licensed to SEI, as described below. A compound selection by GlaxoSmithKline would trigger milestone payments to us. The size of these milestone payments depends largely on how quickly we can advance compounds to proof-of-concept. Delays in obtaining clinical proof-of-concept for compounds subject to GlaxoSmithKline's election rights may significantly decrease the size of any GlaxoSmithKline milestones and negatively affect our financial position. Under our loan and security agreement with GlaxoSmithKline, any milestone payments relating to compounds not licensed to SEI (i.e., compounds other than XL647, XL999 and XL784) must be used to pay down our loan with GlaxoSmithKline as long as the loan is outstanding and will therefore not affect our cash balances. In addition, any milestone(s) received from GlaxoSmithKline will be reduced by $36.0 million to account for a milestone that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement.
- *Symphony Evolution*. In 2005, we licensed three of our lead compounds (XL784, XL647 and XL999) to SEI in return for $80.0 million in investment for the clinical development of these compounds. We continue to be primarily responsible for the development of these compounds in accordance with specified development plans and related development budgets. We have retained an exclusive option to reacquire the compounds from SEI's investors at a specified purchase price. We may repurchase the compounds in cash, our common stock or a combination thereof. The repurchase price for the compounds licensed to SEI increases over the length of the option period. If GlaxoSmithKline elects any of the compounds licensed to SEI for further development, we would be forced to repurchase all of the compounds from SEI. If we repurchase the compounds from SEI, we may have to raise additional funds to cover the repurchase price or issue a substantial number of shares to SEI's investors.

Critical Accounting Estimates

Our consolidated financial statements and related notes are prepared in accordance with U.S. generally accepted accounting principles (GAAP), which requires us to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses and related disclosure of contingent assets and liabilities. We have based our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our senior management has discussed the development, selection and disclosure of these estimates with the Audit Committee of our Board of Directors. Actual results may differ from these estimates under different assumptions or conditions.

An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact the financial statements. We believe the following critical accounting

policies reflect the more significant estimates and assumptions used in the preparation of our consolidated financial statements:

Revenue Recognition

Most of our revenues are generated from the terms of our research and licensing arrangements. These research and licensing arrangements may include up-front non-refundable payments. Although these up-front payments are generally non-refundable, under GAAP we defer the revenues under these arrangements and recognize the revenues on a straight-line basis over our expected period of continuing involvement, generally the research term specified in the agreements. Our research and license arrangements may also include milestone payments. Although these milestone payments are generally non-refundable once the milestone is achieved, we recognize the milestone revenues on a straight-line basis over the research term of the arrangement. This typically results in a portion of the milestone being recognized on the date the milestone is achieved, with the balance being recognized over the remaining research term of the agreement. It is our understanding that there is diversity in practice on the recognition of milestone revenue. Other companies have adopted an alternative acceptable milestone revenue recognition policy whereby the full milestone fee is recognized upon completion of the milestone. If we had adopted such a policy, our revenues recorded to date would have increased and our deferred revenues would have decreased by a material amount compared to total revenue recognized.

Some of our research and licensing arrangements have multiple deliverables in order to meet our customer's needs. For example, the arrangements may include a combination of up-front fees, license payments, research and development services, milestone payments and future royalties. Multiple element revenue agreements entered into on or after July 1, 2003 are evaluated under Emerging Issues Task Force No. 00-21, "Revenue Arrangements with Multiple Deliverables," or EITF 00-21, to determine whether the delivered item has value to the customer on a stand-alone basis and whether objective and reliable evidence of the fair value of the undelivered item exists. Deliverables in an arrangement that do not meet the separation criteria in EITF 00-21 must be treated as one unit of accounting for purposes of revenue recognition. Generally, the revenue recognition guidance applicable to the final deliverable is followed for the combined unit of accounting. For certain arrangements, the period of time over which certain deliverables will be provided is not contractually defined. Accordingly, management is required to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. For example, we recognized revenue of approximately $0.3 million in 2006 related to arrangements for which the period of time over which the research and development will be performed was not contractually defined. For this arrangement, if the research and development were delayed, the amount of revenue to be recognized could be different. To date, there has not been a change in an estimate or assumption in the past that had a material impact on revenue recognition.

Goodwill and Intangible Impairment

As of December 31, 2006, our consolidated balance sheet included $70.0 million of goodwill and other intangible assets. Under GAAP, we evaluate goodwill for impairment on an annual basis and on an interim basis if events or changes in circumstances between annual impairment tests indicate that the asset might be impaired. We will also evaluate other intangible assets for impairment when impairment indicators are identified.

The impairment tests for goodwill are performed at the reporting unit level and require us to perform a two-step impairment test. Our reporting units have been determined to be consistent with our operating segments. In the first step, we compare the fair value of our reporting units to their respective carrying values. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired and we are not required to perform further testing. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, we perform the second step of the impairment test in order to determine the implied fair value of the reporting unit's goodwill. If the carrying value of a reporting unit's goodwill exceeds its fair value, then we record an impairment loss equal to the difference.

Determining the fair value of a reporting unit or assessing the recoverability of our other intangible assets is judgmental in nature and involves the use of significant estimates and assumptions. These estimates and assumptions include revenue growth rates and operating margins used to calculate projected future cash flows, risk-adjusted discount rates, future economic and market conditions and determination of appropriate market comparables. We base our fair value estimates on assumptions we believe to be reasonable but that are unpredictable and inherently uncertain. We do not believe other reasonable assumptions would have yielded an impairment of goodwill. Actual future results may differ from those estimates.

Clinical Trial Accruals

Substantial portions of our preclinical studies and all of our clinical trials have been performed by third-party contract research organizations (CROs) and other vendors. We accrue expenses for preclinical studies performed by our vendors based on certain estimates over the term of the service period and adjust our estimates as required. We accrue costs for clinical trial activities performed by CROs based upon the estimated amount of work completed on each study. For clinical trial expenses, the significant factors used in estimating accruals include the number of patients enrolled and the duration for which they will be enrolled in the study. We monitor patient enrollment levels and related activities to the extent possible through internal reviews, correspondence with CROs and review of contractual terms. However, if we have incomplete or inaccurate information, we may underestimate activity levels associated with various studies at a given point in time. In this event, we could record adjustments to research and development expenses in future periods when the actual activity level becomes known. Such costs are charged to research and development expenses as incurred. No material adjustments to preclinical study and clinical trial expenses have been recognized to date.

Stock Option Valuation

Effective January 1, 2006, we adopted the fair value recognition provisions of Statement of Financial Accounting Standards No. 123 (revised 2004), “Shared-Based Payment” (SFAS 123R), using the modified prospective transition method and Black-Scholes option pricing model, and therefore have not restated prior periods’ results. Under this method, we recognize stock-based compensation expense for all share-based payment awards granted after January 1, 2006 and granted prior to but not yet vested as of January 1, 2006, in accordance with SFAS 123R. Under the fair value recognition provisions of SFAS 123R, we recognize stock-based compensation expense net of an estimated forfeiture rate and recognize compensation cost for only those shares expected to vest on a straight-line basis over the requisite service period of the award. Prior to SFAS 123R adoption, we accounted for share-based payment awards under Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” and related interpretations. Accordingly, no compensation expense was recognized in our financial statements for the stock options granted to employees, which had an exercise price equal to the fair value of the underlying common stock on the date of grant.

Under the new standard, our estimate of compensation expense requires us to determine the appropriate fair value model and a number of complex and subjective assumptions including our stock price volatility, employee exercise patterns, future forfeitures and related tax effects. The most significant assumptions are our estimates of the expected volatility and the expected term of the award. We have limited historical information available to support the underlying estimates of certain assumptions required to value stock options. The value of a stock option is derived from its potential for appreciation. The more volatile the stock, the more valuable the option becomes because of the greater possibility of significant changes in stock price. Because there is a market for options on our common stock, we have considered implied volatilities as well as our historical realized volatilities when developing an estimate of expected volatility. The expected option term also has a significant effect on the value of the option. The longer the term, the more time the option holder has to allow the stock price to increase without a cash investment and thus, the more valuable the option. Further, lengthier option terms provide more opportunity to exploit market highs. However, empirical data shows that employees, for a variety of reasons, typically do not wait until the end of the contractual term of a nontransferable option to exercise.

Accordingly, companies are required to estimate the expected term of the option for input to an option-pricing model. As required under the accounting rules, we review our valuation assumptions at each grant date and, as a result, from time to time we will likely change the valuation assumptions we use to value stock based awards granted in future periods. The assumptions used in calculating the fair value of share-based payment awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our stock-based compensation expense could be materially different in the future. In addition, we are required to estimate the expected forfeiture rate and recognize expense only for those shares expected to vest. If our actual forfeiture rate is materially different from our estimate, the stock-based compensation expense could be significantly different from what we have recorded in the current period. As of December 31, 2006, $40.1 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted-average period of 2.9 years. See Note 11 to the Consolidated Financial Statements for a further discussion on stock-based compensation.

Fiscal Year Convention

In 2006, Exelixis adopted a 52- or 53-week fiscal year that ends on the last Friday in December. Fiscal year 2006, a 52-week year, ended on December 29, 2006 and fiscal year 2007, a 52-week year, will end on December 28, 2007. For convenience, references in this report are as of and for the fiscal year ended December 29, 2006 are indicated on a calendar year basis, ending December 31, 2006.

Results of Operations – Comparison of Years Ended December 31, 2006, 2005 and 2004

Revenues

Total revenues by category, as compared to the prior year, were as follows (dollar amounts are presented in millions):

	Year Ended December 31,		
	2006	2005	2004
Contract revenues:			
Research and development funding	$46.3	$46.7	$ 32.2
Milestones	15.6	9.0	4.5
Delivery of compounds under chemistry collaborations	0.5	—	5.6
Other	—	—	0.1
License revenues:			
Amortization of upfront payments, including premiums paid on equity purchases	36.3	20.3	10.5
Total revenues	$98.7	$76.0	$ 52.9

Total revenues, as compared to the prior year, were as follows (dollar amounts are presented in millions):

	Year Ended December 31,		
	2006	2005	2004
Total revenues	$98.7	$76.0	$52.9
Dollar increase	$22.7	$23.1	
Percentage increase	30%	44%	

The decrease in research and development funding from 2005 to 2006 was primarily a result of the conclusion of our Genoptera collaboration in June 2005, which included a one-time termination fee related to

research and development funding totaling $13.4 million. This decrease was partially offset by increases in funding of $9.2 million from Bristol-Myers Squibb, $2.1 million in funding attributable to customers of our German subsidiary and $1.2 million in funding from Genentech. The increase in research and development funding from 2004 to 2005 was driven primarily by increases in funding of $6.3 million from GlaxoSmithKline, $3.4 million in funding from the recognition of an early termination fee associated with the termination of our Genoptera collaboration and $1.8 million in funding from Genentech.

The increase in milestone revenues from 2005 to 2006 was driven primarily by achieving and recognizing as revenue milestones of $4.5 million under our collaboration with Wyeth Pharmaceutical Division and a $4.0 million milestone under our collaboration with Helsinn and $1.2 million in revenues associated with achieving two milestones under one of our collaborations with Bristol-Myers Squibb. This increase was partially offset by a decrease of $2.7 million in milestone revenues related to the conclusion of our Genoptera collaboration in June 2005. The increase in milestone revenues from 2004 to 2005 was driven primarily by $5.1 million in revenues associated with achieving two milestones under our collaboration with GlaxoSmithKline and a $0.9 million acceleration of milestone revenues associated with the termination of our Genoptera collaboration. These increases were partially offset by a decrease of $2.1 million in milestone revenues related to the termination of one of our Bristol-Myers Squibb collaborations.

The increase in revenues from 2005 to 2006 from the delivery of compounds of $0.5 million was related to the delivery of compounds under our chemistry collaboration agreement with Bayer CropScience. The decrease in revenues from 2004 to 2005 from the delivery of compounds was due to the termination of most of our chemistry collaborations effective December 31, 2004. These collaborations included agreements with Cytokintetics, Elan, Schering-Plough, Scios and Merck.

The increase from 2005 to 2006 in the amortization of upfront payments, including premiums paid on equity purchases, was driven primarily by upfront payments from Sankyo, resulting in increased revenues of $12.3 million, Wyeth, resulting in increased revenues of $9.4 million, and Bristol-Myers Squibb, resulting in increased revenues of $5.6 million. These increases were partially offset by a decrease of $7.8 million related to the conclusion of our Genoptera collaboration in June 2005, which included acceleration of upfront payments, and by a decrease of $4.0 million related to the conclusion of our collaboration with Helsinn. The increase from 2004 to 2005 was driven primarily by an additional $5.2 million in revenues from the acceleration of upfront payments associated with the termination of our Genoptera collaboration, upfront payments from Helsinn that resulted in increased revenues of $4.0 million and the upfront payment from Genentech that resulted in increased revenues of $1.4 million. These increases were partially offset by a decrease of $2.1 million related to the termination of one of our Bristol-Myers Squibb collaborations.

The following table sets forth the revenue recognized as a percentage of total revenue from customers that exceeded 10% or more of total revenues during the years ending December 31, 2006, 2005 and 2004:

Collaborator	2006	2005	2004
GlaxoSmithKline	28%	37%	30%
Bristol-Myers Squibb	22%	7%	19%
Sankyo	15%	1%	2%
Wyeth	14%	0%	0%
Genoptera	0%	32%	27%

Research and Development Expenses

Total research and development expenses, as compared to the prior year, were as follows (dollar amounts are presented in millions):

	Year Ended December 31,		
	2006	2005	2004
Research and development expenses(1)	$185.5	$141.1	$137.7
Dollar increase	$ 44.3	$ 3.4	
Percentage increase	31%	2%	

(1) Amount for 2006 includes $11.2 million in employee stock-based compensation under SFAS 123R.

Research and development expenses consist primarily of personnel expenses, clinical trials and consulting, laboratory supplies and facility costs. The change in 2006 compared to 2005 resulted primarily from the following:

- Clinical Trials and Consulting – Clinical trials and consulting expense, which includes services performed by third-party contract research organizations and other vendors, increased by $21.3 million, or 85%, primarily due to an increase in activities associated with advancing our clinical and preclinical development programs. During 2006, these activities included Phase II clinical trial activity for XL999, XL784, XL880 and XL647 and Phase I clinical trial activity for XL844, XL820 and XL184 as well as pre-clinical activity for XL228, XL281, XL418, XL518, XL147, XL765 and XL019.

- Employee Stock-Based Compensation – Employee stock-based compensation expense increased by $11.2 million due to our adoption of SFAS 123R effective January 1, 2006.

- Personnel – Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, increased by $9.2 million, or 19%, primarily due to the expanded workforce supporting drug development operations to advance our clinical and preclinical development programs.

- Lab Supplies – Lab supplies expense increased by $1.3 million, or 9%, primarily due to an increase in our development activities related to our Phase I and Phase II clinical trials.

Changes in research and development expenses in 2005 compared to 2004 resulted primarily from the following costs:

- Clinical Trials and Consulting – Clinical trials and consulting expense, which includes services performed by CROs and other vendors, increased by $5.4 million, or 27%, primarily due to an increase in activities associated with advancing our clinical and preclinical development programs. During 2005, these activities included Phase III clinical trial activity for XL119 (XL119 was out-licensed to Helsinn Healthcare S.A. in June 2005), Phase II clinical trial activity for XL999 and Phase I clinical trial activity for XL647, XL999, XL880, XL784, XL844, XL820 and XL184.

- Personnel – Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, increased by $2.9 million, or 6%, primarily due to the expansion of our drug development operations.

- Facilities – Facilities expense increased by $1.3 million, or 9%, primarily due to our expansion into two additional buildings in South San Francisco, California largely as a result of our expanding development operations. We occupied the first building in July 2004 and the second in July 2005. The increase was also attributable to an additional building lease in San Diego, California, which we assumed in connection with our acquisition of X-Ceptor in October 2004.

- Lab Supplies – Lab supplies expense decreased by $6.4 million, or 29%, primarily due to the termination of most of our combinatorial chemistry collaborations.

We generally estimate that typical Phase I clinical trials last approximately one year, Phase II clinical trials last approximately one to two years and Phase III clinical trials last approximately two to four years. However, the length of time may vary substantially according to factors relating to the specific clinical trial, such as the type and intended use of the product candidate, the clinical trial design and ability to enroll suitable patients. We expect that research and development expenses will continue to increase as we advance our compounds through development.

We currently do not have estimates of total costs to reach the market by a particular drug candidate or in total. Our potential therapeutic products are subject to a lengthy and uncertain regulatory process that may involve unanticipated additional clinical trials and that may not result in the necessary regulatory approvals. Failure to receive the necessary regulatory approvals would prevent us from commercializing the product candidates affected. In addition, clinical trials of our potential products may fail to demonstrate safety and efficacy, which could prevent or significantly delay regulatory approval. We expect to continue to make significant investments in research and development, including the purchase of property and equipment, to support our expanding preclinical and clinical development operations.

General and Administrative Expenses

Total general and administrative expenses, as compared to the prior year, were as follows (dollar amounts are presented in millions):

	Year Ended December 31,		
	2006	2005	2004
General and administrative expenses(2)	$39.1	$27.7	$20.9
Dollar increase	$11.4	$ 6.8	
Percentage increase	41%	33%	

(2) Amount for 2006 includes $6.3 million in employee stock-based compensation under SFAS 123R.

General and administrative expenses consist primarily of personnel expenses to support our general operating activities, facility costs and professional expenses, such as legal and accounting fees. The increase in 2006 from 2005 resulted primarily from an increases in employee stock-based compensation expense of $6.3 million due to our adoption of SFAS 123R. In addition to support our expanding operations, there were increases in personnel expenses of $3.4 million and consulting expenses of $2.5 million, which were partially offset by decreases in legal and accounting expenses of $1.2 million. The increase in 2005 from 2004 resulted primarily from increases in personnel expenses of $1.8 million, legal and accounting expenses of $1.7 million, consulting expenses of $1.3 million as well as facility expenses of $0.5 million.

Amortization of Intangible Assets

Total amortization of intangible assets, as compared to the prior year, were as follows (dollar amounts are presented in millions):

	Year Ended December 31,		
	2006	2005	2004
Amortization of intangible assets	$ 0.8	$1.1	$ 0.8
Dollar increase (decrease)	$(0.3)	$0.3	
Percentage increase (decrease)	(24%)	39%	

Intangible assets result from our acquisitions of X-Ceptor, Genomica, Artemis and Agritope (renamed Exelixis Plant Sciences). These assets are amortized over specified time periods. The decrease in amortization of intangibles expense in 2006 as compared to 2005 was due to the developed technology intangible asset related to our acquisition of Artemis in 2001 becoming fully amortized in October 2006. The increase in amortization expense in 2005 compared to 2004 was due to the partial year amortization in 2004 of the assembled workforce that we acquired as a part of X-Ceptor in October 2004.

Restructuring Charges

During the second quarter of 2004, we implemented a restructuring and consolidation of our research and discovery organizations. The restructuring included a reduction in force of 62 employees, the majority of whom were research personnel located in South San Francisco, California. We recorded a restructuring charge of $1.7 million during the year ended December 31, 2004, comprised of involuntary termination benefits.

During the third quarter of 2003, we implemented a restructuring of our research and development organization that was substantially complete as of March 31, 2004. In connection with this restructuring plan, we recorded a cumulative charge of $1.5 million, of which $0.5 million was recorded during the year ended December 31, 2004. This charge consisted primarily of severance payments, retention bonuses, relocation costs, lease buyout costs and legal and outplacement services fees.

Acquired In-Process Research and Development

In May 2004, we purchased from Bayer CropScience its 50% interest in Agrinomics LLC, our joint venture with Bayer CropScience, in exchange for releasing Bayer CropScience from all future obligations under the joint venture agreement. We recorded the assets acquired and the liabilities assumed based on their estimated fair values at the date of acquisition, as determined by management based on valuation techniques in accordance with GAAP. As a result, we recorded net tangible liabilities of $0.5 million, intangible assets of $0.1 million and expense associated with the purchase of in-process research and development of $0.4 million, representing the fair value of two primary research projects that had not yet reached technological feasibility and had no alternative future use.

In October 2004, we completed the acquisition of X-Ceptor, a company focused on the discovery and development of therapies targeting metabolic and cardiovascular disorders. The transaction was accounted for as a purchase of assets. The total consideration for the acquisition was $25.7 million, which consisted of 2.6 million shares of our common stock, $2.9 million in cash and $2.3 million in transaction costs. The transaction costs included financial advisory, legal, accounting and other fees. As a result, we recorded tangible assets of $2.6 million, liabilities of $3.9 million, assembled workforce of $1.1 million and expense associated with the purchase of in-process research and development of $26.0 million, representing the fair value of three primary research projects that had not yet reached technological feasibility and had no alternative future use due to the early stage of the programs and the significant regulatory requirements remaining. Independent valuation experts assisted us during the valuation of the intangible assets acquired. The valuation of the acquired in-process research and development of $26.0 million was determined using the income approach for each of the three projects in process. The in-process projects relate to the development of programs that are focused on LXR, valued at $9.7 million, FXR, valued at $8.8 million, and MR, valued at $7.5 million, which at the time of the acquisition were expected to be completed over approximately the next seven to ten years. At the time of the acquisition, these programs did not have a development candidate. In December 2005 and March 2006, we entered into license and collaboration agreements under which we granted licenses to Wyeth, Bristol-Myers Squibb and Sankyo to the intellectual property related to FXR, LXR and MR, respectively.

The income approach estimates the value of each acquired project in process based on its expected future cash flows. The valuation analysis considered the percent complete of each in-process research and development

project. The expected present value of the cash flows associated with the in-process research and development projects was computed using a risk adjusted rate of return of 15% which is considered commensurate with the inherent risk and percentage of completion of the in-process projects. The purchased technology was not considered to have reached technological feasibility and since it has no alternative future use due to the early stage of the programs, the considerable complexity and uniqueness of the programs and the significant regulatory requirements remaining, it was recorded as a component of operating expense.

The revenues, expenses, cash flows and other assumptions underlying the estimated fair value of the acquired in-process research and development involve significant risks and uncertainties. The risks and uncertainties associated with completing the acquired in-process projects include obtaining the necessary regulatory approvals in a timely manner and being able to successfully and profitably produce, distribute and sell products.

Total Other Income (Expense)

Total other income (expense), as compared to the prior year, were as follows (dollar amounts are presented in millions):

	Year Ended December 31,		
	2006	2005	2004
Total other income (expense)	$ 3.6	$ (0.8)	$ (2.0)
Dollar increase	$ 4.4	$ 1.2	

Total other income (expense) consists primarily of interest income earned on cash and cash equivalents and marketable securities, offset by interest expense incurred on our notes payable, bank obligations, capital lease obligations and convertible notes and loans. The increase in other income for 2006 compared to 2005 was primarily due to a decrease in the principal balance of our debt as a result of the repayment of our $30.0 convertible note to PDL BioPharma, Inc., in May 2006 as well as higher average interest yields on our investments. The decrease in other expense for 2005 compared to 2004 was primarily due to increases in interest income as a result of an increase in our investment balances and higher average interest rates. These decreases in other expense were partially offset by increases in interest expense as a result of an increase in the principal balance of our convertible loan with GlaxoSmithKline.

Noncontrolling Interest in Symphony Evolution, Inc.

Pursuant to the agreements that we entered into with SEI and certain other parties in June 2005, we consolidate SEI's financial condition and results of operations in accordance with FIN 46R. Accordingly, we have deducted the losses attributable to the noncontrolling interest (SEI's losses) from our net loss in the consolidated statement of operations and we have also reduced the noncontrolling interest holders' ownership interest in SEI in the consolidated balance sheet by SEI's losses. The noncontrolling interest holders' ownership in the consolidated balance sheet was $38.1 million as of December 31, 2006. Once SEI's losses are in excess of the noncontrolling interest holders' ownership, SEI's losses will no longer be deducted from our net losses. For the years ended December 31, 2006, 2005 and 2004, the losses attributed to the noncontrolling interest holders were $21.7 million, $10.4 million and none, respectively. The increase is related to increased development expenses associated with XL999, XL784 and XL647.

Income Taxes

We have incurred net losses since inception and, consequently, have not recorded any U.S. federal or state income taxes. As of December 31, 2006, we had federal and California net operating loss carryforwards of $587.0 million and $329.0 million, respectively. As of December 31, 2006, we had federal and California

research and development credit carryforwards of $31.4 million and $15.8 million, respectively. If not utilized, the net operating loss and credit carryforwards expire at various dates, which began in 2007.

Under the Internal Revenue Code and similar state provisions, certain substantial changes in our ownership could result in an annual limitation on the amount of net operating loss and credit carryforwards that can be utilized in future years to offset future taxable income. Annual limitations may result in the expiration of net operating loss and credit carryforwards before they are used.

Liquidity and Capital Resources

Sources and Uses of Cash

The following table summarizes our cash flow activities for the years ended December 31, 2006, 2005 and 2004 (dollar amounts are presented in thousands):

	Year Ended December 31,		
	2006	2005	2004
Net loss	$(101,492)	$ (84,404)	$(137,245)
Adjustments to reconcile net loss to net cash used in operating activities	13,598	8,121	44,356
Changes in operating assets and liabilities	42,555	29,922	(947)
Net cash used in operating activities	(45,339)	(46,361)	(93,836)
Net cash provided by (used in) investing activities	(21,701)	(40,648)	20,273
Net cash provided by financing activities	109,344	100,933	39,653
Effect of foreign exchange rates on cash and cash equivalents	(263)	(137)	(4)
Net increase (decrease) in cash and cash equivalents	42,041	13,787	(33,914)
Cash and cash equivalents, at beginning of year	81,328	67,541	101,455
Cash and cash equivalents, at end of year	$ 123,369	$ 81,328	$ 67,541

To date, we have financed our operations primarily through the sale of equity, payments and loans from collaborators, equipment financing facilities and interest income. We have also financed certain of our research and development activities under our agreements with SEI. In August 2005, we received net proceeds, after underwriting fees and offering expenses, of $49.6 million from the sale of 6.5 million shares of our common stock under a shelf registration statement. In October 2006, we received net proceeds, after underwriting fees and offering expenses, of $90.5 million from the sale of 11.5 million shares of our common stock under a shelf registration statement. As of December 31, 2006, we had $263.2 million in cash and cash equivalents and marketable securities, which includes restricted cash and investments of $9.6 million and investments held by SEI of $55.1 million.

Operating Activities

Our operating activities used cash of $45.3 million for the year ended December 31, 2006, compared to $46.4 million for 2005 and $93.8 million for 2004. Cash used in operating activities during 2006 related primarily to funding net losses, losses attributed to the noncontrolling interest and receivables. These uses of cash were partially offset by changes in deferred revenues, accrued expenses and non-cash charges related to stock-based compensation expense recognized due to our adoption of SFAS 123R and depreciation and amortization. Cash used in operating activities during 2005 related primarily to funding net losses and losses attributed to the noncontrolling interest, partially offset by changes in deferred revenues from collaborators and non-cash charges related to depreciation and amortization. Cash used in operating activities during 2004 related primarily to funding net losses and changes in deferred revenues from collaborators and accrued merger and acquisition costs, partially offset by non-cash charges related to acquired in-process research and development, depreciation and amortization of intangibles. As of December 31, 2006, we had received cash payments from collaborators leading to most of our $63.5 million in short-term deferred revenue that we expect to recognize as revenue during 2007.

The decrease of $1.0 million in cash used in our operating activities from 2005 as compared to 2006 was primarily driven by increases in deferred revenues, accrued expenses, increased clinical trial activity, and non-cash charges related to stock-based compensation expense recognized due to our adoption of SFAS 123R. These decreases to cash used were partially offset by increases in our net losses, losses attributed to the noncontrolling interest and receivables due to a milestone achieved under a collaboration agreement. The decrease of $47.5 million in cash used in our operating activities for 2005 as compared to 2004 was primarily driven by a $52.8 million decrease in our net losses, losses attributed to the noncontrolling interest and deferred revenue. While cash used in operating activities is primarily driven by our net loss, operating cash flows differ from our net loss as a result of differences in the timing of cash receipts and earnings recognition, expenses related to the noncontrolling interest and non-cash charges. We expect to use cash for operating activities for at least the next several years as we continue to incur net losses associated with our research and development activities, including manufacturing and development expenses for compounds in preclinical and clinical studies.

Investing Activities

Our investing activities used cash of $21.7 million for the year ended December 31, 2006, compared to $40.6 million for 2005 and cash provided by investing activities of $20.3 million for 2004. Cash used in investing activities for 2006 was primarily driven by purchases of marketable securities of $91.7 million, purchases of investments held by SEI of $42.3 million and purchases of property and equipment of $11.6 million. Most of the cash invested in marketable securities and investments was generated by a common stock offering in 2006 and a second capital draw by our consolidated entity SEI in 2006. These uses of cash were partially offset by proceeds of $99.6 million from the maturities of marketable securities and $21.3 million from the sales of investments held by SEI. The proceeds provided by maturities of our marketable securities and the sale of investments by SEI were used to fund our operations. We expect to continue to make significant investments in property and equipment to support our expanding operations.

Cash used in investing activities for 2005 was primarily driven by the purchases of marketable securities of $109.4 million, purchases of investments held by SEI of $40.7 million and purchases of property and equipment of $14.4 million. Most of the cash invested in marketable securities and investments was generated by a common stock offering in 2005 and the first capital draw by our consolidated entity SEI in 2005. These uses of cash were partially offset by proceeds of $113.6 million from the maturities of marketable securities and $6.6 million from the sales of investments held by SEI. The proceeds provided by maturities of our marketable securities and the sale of investments by SEI were used to fund our operations.

Cash provided by investing activities for 2004 was primarily driven by the proceeds of $138.2 million from the maturities of marketable securities which were partially offset by the purchases of marketable securities of $93.7 million, purchases of property and equipment of $12.3 million and an increase in restricted cash of $11.2 million related to the collateralization of notes payable and bank obligations. Purchases of marketable securities were primarily related to the reinvestment of cash from marketable securities that matured in 2004. The net proceeds provided by maturities of our marketable securities were used to fund our operations.

Financing Activities

Our financing activities provided cash of $109.3 million for the year ended December 31, 2006, compared to $100.9 million for 2005 and $39.7 million for 2004. Cash provided by our financing activities for 2006 was primarily due to net proceeds of $90.5 million received through the sale of our common stock, a $40.0 million capital draw by SEI and the related funding by preferred shareholders of SEI and $14.8 million of proceeds from note payable and bank obligations. These increases were partially offset by $41.9 million of principal payments on notes payable and bank obligations, which included the repayment of $30.0 million convertible promissory note to PDL BioPharma. Cash provided by our financing activities for 2005 was primarily driven by net proceeds of $37.0 million associated with the purchase and funding of the noncontrolling interest by preferred

shareholders of SEI and net proceeds of $49.6 million received through the sale of our common stock. In addition, we received $11.1 million in cash from the purchase of 1.0 million shares of our common stock by GlaxoSmithKline, which included a $2.2 million premium.

We finance property and equipment purchases through equipment financing facilities, such as notes and bank obligations. Proceeds from collaboration loans and common stock issuances are used for general working capital purposes, such as research and development activities, merger and acquisition expenses and other general corporate purposes. During 2007, we have the ability to draw up to an additional $12.6 million on an equipment line of credit. Over the next several years, we are required to make certain payments on notes, bank obligations and loans from collaborators.

Cash Requirements

We have incurred net losses since inception, including a net loss of $101.5 million for the 12-month period ended December 31, 2006, and we expect to incur substantial losses for at least the next several years as we continue our research and development activities, including manufacturing and development expenses for compounds in preclinical and clinical studies. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, investments held by SEI and other funding that we expect to receive from collaborators, which assumes a moderate level of business development activity, will enable us to maintain our operations for a period of at least 12 months following December 31, 2006. However, our future capital requirements will be substantial and will depend on many factors that may require us to consume available capital resources significantly sooner than we currently anticipate. These factors include:

- the timing and progress of the clinical development of our product candidates XL647, XL999 and XL784, which are out-licensed to SEI – If any of the Phase II clinical trials for XL647, XL999 or XL784 show positive results that support our further clinical development of any such product candidate, we must, if we decide to further develop such product candidate(s), reacquire all three product candidates from SEI through the exercise of our exclusive purchase option, which is described in this report. Under our amended purchase option agreement with SEI, we cannot repurchase a single promising product candidate from SEI without also repurchasing the other two product candidates. The purchase price, which may be paid in cash and/or stock, would be equal to the sum of (i) the total amount of capital invested in SEI by its investors (i.e., $80.0 million) and (ii) an amount equal to 25% per year on such funded capital, subject to specified adjustments;
- whether and when GlaxoSmithKline selects at proof-of-concept (i.e., at or around the end of Phase IIa clinical trials) for further development XL647, XL999 or XL784, which would require us to repurchase all three product candidates through the exercise of our purchase option – GlaxoSmithKline has the right to select for further clinical development at proof-of-concept any of the product candidates licensed to SEI. If GlaxoSmithKline selects any of the product candidates licensed to SEI, we would be forced to repurchase all three product candidates licensed to SEI through the exercise of our purchase option in order to satisfy our contractual obligations under the GlaxoSmithKline collaboration agreement;
- the amount of any selection milestones received from GlaxoSmithKline as a result of a product candidate selection by GlaxoSmithKline compared to the amount we are required to pay to reacquire XL647, XL999 and XL784 through the exercise of our purchase option – Under our collaboration agreement with GlaxoSmithKline, a product candidate selection by GlaxoSmithKline would trigger milestone payments. The size of these milestone payments depends largely on how quickly we can advance product candidates to proof-of-concept. Delays in obtaining clinical proof-of-concept for XL647, XL999 or XL784 may significantly decrease the size of any GlaxoSmithKline milestones, which may therefore cover only a small portion of the SEI repurchase price. In addition, any milestone(s) received from GlaxoSmithKline will be reduced by $36.0 million to account for a milestone that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement;

- whether any milestone payments from GlaxoSmithKline relate to a product candidate licensed to SEI (i.e., XL647, XL999 and XL784) – Under our loan and security agreement with GlaxoSmithKline, any milestone payments relating to product candidates not licensed to SEI must be used to pay down our loan with GlaxoSmithKline as long as the loan is outstanding. As of December 31, 2006, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $95.2 million;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements as well as our ability to enter into new collaboration agreements, licensing agreements and other arrangements that provide for additional payments;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the progress and scope of our collaborative and independent clinical trials and other research and development projects;
- future clinical trial results;
- our need to expand our product and clinical development efforts;
- our ability to share the costs of our clinical development efforts with third parties;
- the cost and timing of regulatory approvals;
- the cost of clinical and research supplies of our product candidates;
- the effect of competing technological and market developments;
- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights;
- the cost of any acquisitions of or investments in businesses, products and technologies; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

In addition, we will have to obtain additional funding in order to stay in compliance with financial covenants contained in our collaboration with GlaxoSmithKline. Under a loan and security agreement, dated October 28, 2002, which, as amended, contains financial covenants pursuant to which our “working capital” (the amount by which our current assets exceed our current liabilities as defined by the agreement) must not be less than $25.0 million and our “cash and investments” (total cash, cash equivalents and investments as defined by the agreement, which excludes restricted cash) must not be less than $50.0 million. If we were to default on the financial covenants under the loan and security agreement, GlaxoSmithKline may, among other remedies, declare immediately due and payable all outstanding obligations thereunder.

If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We currently have shelf registration statements on file with the SEC that allow us to offer for sale from time to time common stock, preferred stock, debt securities and warrants, either individually or in units. However, we may be unable to raise sufficient additional capital when we need it, on favorable terms or at all. The sale of equity or convertible debt securities in the future may be dilutive to our stockholders, and debt-financing arrangements may require us to pledge certain assets and enter into covenants that would restrict certain business activities or our ability to incur further indebtedness and may contain other terms that are not favorable to our stockholders or us. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or obtain funds by entering into financing, supply or collaboration agreements on unattractive terms or we may be required to relinquish rights to technology or product candidates or to grant licenses on terms that are unfavorable to us.

We have contractual obligations in the form of operating leases, notes payable and licensing agreements. The following chart details our contractual obligations (in thousands):

Contractual Obligations	Payments Due by Period				
	Total	Less than 1 year (2)	1-3 Years (2)	4-5 years	After 5 years
Notes payable and bank obligations	$ 36,653	$ 13,579	$ 19,613	$ 3,461	$ —
Licensing agreements	2,418	1,529	889	—	—
Convertible loans(1)	95,183	—	62,821	32,362	—
Operating leases	149,733	15,559	28,508	27,649	78,017
Total contractual cash obligations	$ 283,987	$ 30,667	$ 111,831	$ 63,472	$ 78,017

(1) Includes interest payable on the convertible loans of $10.2 million. The debt and interest payable can be repaid in cash or common stock at our election. This obligation is described in further detail in Note 9 of the notes to our consolidated financial statements.

(2) If GlaxoSmithKline were to select one of the compounds licensed by us to Symphony Evolution for further clinical development, we would be required to exercise our option to repurchase all three compounds licensed to Symphony Evolution in order to be able to satisfy our obligations under our agreements with GlaxoSmithKline. This obligation is described in further detail in Note 4 of the notes to our consolidated financial statements.

Recent Accounting Pronouncement

In July 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109” (FIN 48). FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006 and is required to be adopted by us in the first quarter of fiscal 2007. As of December 31, 2006, we had federal and state net operating loss and credit carryforwards of approximately $963.2 million that may be subject to annual limitation, due to certain substantial changes in ownership, under the Internal Revenue Code and similar state provisions. The annual limitation may result in the expiration of net operating loss and credit carryforwards before utilization. As of December 31, 2006, all of our deferred tax assets have been fully offset by a valuation allowance because the realization of these assets is dependent upon future earnings. We are currently evaluating the effect that the adoption of FIN 48 will have on our consolidated results of operations and financial condition. Because our deferred tax assets are fully offset by a valuation allowance, we do not expect the adoption of FIN 48 to have a material effect on our results of operations.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements (as defined by applicable SEC regulations) that are reasonably likely to have a current or future material effect on our financial condition, results of operations, liquidity, capital expenditures or capital resources, except warrants and stock options. Our off-balance sheet arrangements are described in further detail in Notes 10 and 11 of the notes to our consolidated financial statements.

Our financing arrangement with Symphony Evolution (SEI) does not qualify as an off-balance sheet arrangement (as defined by applicable SEC regulations). However, if GlaxoSmithKline were to select one of the compounds licensed by us to SEI for further clinical development, we would have to exercise our option to repurchase all of the compounds licensed to SEI in order to be able to satisfy our obligations under our agreements with GlaxoSmithKline. This obligation is described in further detail in Note 4 of the notes to our consolidated financial statements.

ITEM 7A. QUANTITATIVEAND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and our long-term debt. At December 31, 2006 and 2005, we had cash and cash equivalents, marketable securities, investments held by SEI and restricted cash and investments of $263.2 million and $210.5 million, respectively. Our marketable securities and investments are subject to interest rate risk, and our interest income may fluctuate due to changes in U.S. interest rates. By policy, we limit our investments to money market instruments, debt securities of U.S. government agencies and debt obligations of U.S. corporations. These securities are generally classified as available-for-sale and consequently are recorded on the balance sheet at fair value with unrealized gains or losses reported as a separate component of accumulated other comprehensive income (loss), net of estimated income taxes. We manage market risk through diversification requirements mandated by our investment policy, which limits the amount of our portfolio that can be invested in a single issuer. We manage credit risk by limiting our purchases to high-quality issuers. Through our money managers, we maintain risk management control systems to monitor interest rate risk. The risk management control systems use analytical techniques, including sensitivity analysis. At December 31, 2006 and 2005, we had debt and capital leases outstanding of $121.7 million and $148.8 million, respectively. Our payment commitments associated with these debt instruments are fixed during the corresponding terms and are comprised of interest payments, principal payments or a combination thereof. The fair value of our debt will fluctuate with movements of interest rates, increasing in periods of declining rates of interest, and declining in periods of increasing rates of interest.

We have estimated the effects on our interest rate sensitive assets and liabilities based on a one-percentage point hypothetical adverse change in interest rates as of December 31, 2006 and 2005. As of December 31, 2006 and 2005, a decrease in the interest rates of one percentage point would have had a net adverse change in the fair value of interest rate sensitive assets and liabilities of $2.4 million and $3.3 million, respectively. We have assumed that the changes occur immediately and uniformly to each category of instrument containing interest rate risks. Significant variations in market interest rates could produce changes in the timing of repayments due to available prepayment options. The fair value of such instruments could be affected and, therefore, actual results might differ from our estimate.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

EXELIXIS, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Management's Report on Internal Control Over Financial Reporting

Management of Exelixis, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting. The company's internal control over financial reporting is a process designed under the supervision of the company's principal executive and principal financial officers to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the company's financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

As of the end of the company's 2006 fiscal year, management conducted an assessment of the effectiveness of the company's internal control over financial reporting based on the framework established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, management has determined that the company's internal control over financial reporting as of December 29, 2006 was effective.

Our internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and the directors of the company; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on our financial statements.

Management's assessment of the effectiveness of the company's internal control over financial reporting as of December 29, 2006 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report, an attestation report on management's assessment of the company's internal control over financial reporting as of December 29, 2006.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Exelixis, Inc.

We have audited management's assessment, included in the accompanying Management's Report on Internal Control Over Financial Reporting, that Exelixis, Inc. maintained effective internal control over financial reporting as of December 29, 2006, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Exelixis, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, management's assessment that Exelixis, Inc. maintained effective internal control over financial reporting as of December 29, 2006, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Exelixis, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 29, 2006, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Exelixis, Inc. as of December 29, 2006 and December 31, 2005, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 29, 2006 of Exelixis, Inc. and our report dated February 14**,** 2007 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Palo Alto, California
February 14, 2007

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Exelixis, Inc.

We have audited the accompanying consolidated balance sheets of Exelixis, Inc. as of December 29, 2006 and December 31, 2005, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 29, 2006. These financial statements are the responsibility of Exelixis, Inc.'s management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Exelixis, Inc. at December 29, 2006 and December 31, 2005, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 29, 2006, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 1 to the consolidated financial statements, in 2006 Exelixis, Inc. changed its method of accounting of stock-based compensation in accordance with guidance provided in Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment".

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Exelixis, Inc.'s internal control over financial reporting as of December 29, 2006, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 14, 2007 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Palo Alto, California
February14, 2007

EXELIXIS, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2006	December 31, 2005
ASSETS		
Current assets:		
Cash and cash equivalents	$ 123,369	$ 81,328
Marketable securities	55,516	67,307
Investments held by Symphony Evolution, Inc.	55,087	34,039
Other receivables	22,197	7,102
Prepaid expenses and other current assets	6,082	5,442
Total current assets	262,251	195,218
Restricted cash and investments	9,635	12,682
Long-term marketable securities	19,573	15,143
Property and equipment, net	32,294	35,577
Goodwill	67,364	67,364
Other intangibles, net	2,605	3,425
Other assets	1,695	3,303
Total assets	$ 395,417	$ 332,712
LIABILITIES, NONCONTROLLING INTEREST AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 3,699	$ 1,689
Accrued clinical trial liabilities	12,209	4,799
Other accrued liabilities	7,018	8,975
Accrued compensation and benefits	11,456	7,817
Current portion of capital lease obligations	—	98
Current portion of notes payable and bank obligations	13,579	11,893
Convertible promissory note	—	30,000
Deferred revenue	63,476	43,484
Total current liabilities	111,437	108,755
Notes payable and bank obligations	23,074	21,858
Convertible loans	85,000	85,000
Other long-term liabilities	20,491	14,475
Deferred revenue	64,804	45,329
Total liabilities	304,806	275,417
Noncontrolling interest in Symphony Evolution, Inc.	38,071	23,752
Commitments (Note 13)		
Stockholders' equity:		
Preferred stock, $0.001 par value, 10,000,000 shares authorized and no shares issued	—	—
Common stock, $0.001 par value; 200,000,000 shares authorized; issued and outstanding: 95,990,148 and 83,404,722 shares at December 31, 2006 and 2005, respectively	96	84
Additional paid-in-capital	756,568	636,263
Accumulated other comprehensive income	1,145	973
Accumulated deficit	(705,269)	(603,777)
Total stockholders' equity	52,540	33,543
Total liabilities, noncontrolling interest and stockholders' equity	$ 395,417	$ 332,712

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

EXELIXIS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year Ended December 31,		
	2006	2005	2004
Revenues:			
Contract	$ 62,414	$ 55,715	$ 42,340
License	36,256	20,246	10,517
Total revenues	98,670	75,961	52,857
Operating expenses:			
Research and development	185,481	141,135	137,724
General and administrative	39,123	27,731	20,905
Amortization of intangible assets	820	1,086	779
Restructuring charge	—	—	2,275
Acquired in-process research and development	—	—	26,376
Total operating expenses	225,424	169,952	188,059
Loss from operations	(126,754)	(93,991)	(135,202)
Other income (expense):			
Interest income	8,551	5,376	3,232
Interest expense and other, net	(4,986)	(6,195)	(5,275)
Total other income (expense)	3,565	(819)	(2,043)
Loss before noncontrolling interest in Symphony Evolution, Inc.	(123,189)	(94,810)	(137,245)
Loss attributed to noncontrolling interest in Symphony Evolution, Inc.	21,697	10,406	—
Net loss	$(101,492)	$ (84,404)	$(137,245)
Net loss per share, basic and diluted	$ (1.17)	$ (1.07)	$ (1.89)
Shares used in computing basic and diluted loss per share amounts	86,602	78,810	72,504

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

EXELIXIS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share data)

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Notes Receivable From Stock holders	Deferred Stock Compensation	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
Balance at December 31, 2003	71,295,105	$ 71	$ 541,917	$ (53)	$ (33)	$ 1,708	$ (382,128)	$ 161,482
Net loss	—	—	—	—	—	—	(137,245)	(137,245)
Change in unrealized loss on available-for-sale securities	—	—	—	—	—	(737)	—	(737)
Change in accumulated translation adjustment	—	—	—	—	—	(347)	—	(347)
Comprehensive loss								(138,329)
Issuance of common stock under stock plans, net of repurchases	1,139,205	1	6,815	—	—	—	—	6,816
Issuance of common stock for acquisition	2,561,174	3	20,590	—	—	—	—	20,593
Repayment of notes from stockholders for the exercise of stock options	—	—	—	53	—	—	—	53
Amortization of deferred stock compensation, net of cancellations	—	—	23	—	33	—	—	56
Balance at December 31, 2004	74,995,484	75	569,345	—	—	624	(519,373)	50,671
Net loss	—	—	—	—	—	—	(84,404)	(84,404)
Decrease in unrealized loss on available-for-sale securities	—	—	—	—	—	63	—	63
Change in accumulated translation adjustment	—	—	—	—	—	286	—	286
Comprehensive loss								(84,055)
Issuance of common stock under stock plans, net of repurchases	909,238	—	5,505	—	—	—	—	5,505
Issuance of common stock, net of offering costs	6,500,000	8	49,608	—	—	—	—	49,616
Issuance of common stock under the GlaxoSmithKline collaboration	1,000,000	1	8,853	—	—	—	—	8,854
Issuance of warrants to Symphony Evolution Holdings, Inc.	—	—	2,842	—	—	—	—	2,842
Stock-based compensation expense	—	—	110	—	—	—	—	110
Balance at December 31, 2005	83,404,722	84	636,263	—	—	973	(603,777)	33,543
Net loss	—	—	—	—	—	—	(101,492)	(101,492)
Decrease in unrealized loss on available-for-sale securities	—	—	—	—	—	405	—	405
Change in accumulated translation adjustment, net	—	—	—	—	—	(233)	—	(233)
Comprehensive loss								(101,320)
Issuance of common stock under stock plans, net of repurchases	1,013,998	—	8,145	—	—	—	—	8,145
Issuance of common stock, net of offering costs	11,500,000	12	90,482	—	—	—	—	90,494
Issuance of warrants to Symphony Evolution Holdings, Inc.	—	—	3,984	—	—	—	—	3,984
Exercise of Warrant	71,428		81	—	—	—	—	81
Stock-based compensation expense	—	—	17,613	—	—	—	—	17,613
Balance at December 31, 2006	95,990,148	$ 96	$ 756,568	$ —	$ —	$ 1,145	$ (705,269)	$ 52,540

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

EXELIXIS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2006	2005	2004
Cash flows from operating activities:			
Net loss	$(101,492)	$ (84,404)	$(137,245)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	16,090	16,669	16,715
Loss attributed to noncontrolling interest	(21,697)	(10,406)	—
Stock-based compensation expense	17,613	110	56
Acquired in-process research and development	—	—	26,376
Amortization of intangibles	820	1,086	779
Loss on the sale of equipment	18	60	—
Other	754	602	430
Changes in assets and liabilities:			
Other receivables	(15,090)	(2,801)	16
Prepaid expenses and other current assets	(645)	(1,103)	(61)
Other assets	644	(1,022)	(1,403)
Accounts payable and other accrued expenses	12,164	355	764
Other long-term liabilities	6,015	6,479	2,875
Deferred revenue	39,467	28,014	(3,138)
Net cash used in operating activities	(45,339)	(46,361)	(93,836)
Cash flows from investing activities:			
Cash paid for acquisitions, net of cash acquired	—	—	(1,600)
Purchases of investments held by Symphony Evolution, Inc.	(42,338)	(40,681)	—
Proceeds on sale of investments held by Symphony Evolution, Inc.	21,290	6,642	—
Purchases of property and equipment	(11,610)	(14,357)	(12,338)
Proceeds from sale of equipment	10	186	—
Change in restricted cash and investments	3,048	3,358	(11,201)
Proceeds from maturities of marketable securities	99,641	113,598	138,158
Proceeds from sale of marketable securities	—	—	917
Purchases of marketable securities	(91,742)	(109,394)	(93,663)
Net cash provided by (used in) investing activities	(21,701)	(40,648)	20,273
Cash flows from financing activities:			
Proceeds from the issuance of common stock, net of offering costs	90,482	58,468	—
Proceeds from exercise of stock options and warrants, net of repurchases	3,275	1,773	2,915
Proceeds from convertible notes	—	—	30,000
Proceeds from employee stock purchase plan	2,783	2,199	2,144
Repayment of notes from stockholders	—	—	53
Payments on capital lease obligations	(98)	(1,931)	(4,476)
Proceeds from notes payable and bank obligations	14,791	12,725	14,215
Principal payments on notes payable and bank obligations	(41,889)	(9,301)	(5,198)
Proceeds from purchase of noncontrolling interest by preferred shareholders in Symphony Evolution, Inc., net of fees	40,000	37,000	—
Net cash provided by financing activities	109,344	100,933	39,653
Effect of foreign exchange rates on cash and cash equivalents	(263)	(137)	(4)
Net increase (decrease) in cash and cash equivalents	42,041	13,787	(33,914)
Cash and cash equivalents, at beginning of year	81,328	67,541	101,455
Cash and cash equivalents, at end of year	$ 123,369	$ 81,328	$ 67,541
Supplemental cash flow disclosure:			
Cash paid for interest	$ 2,634	$ 2,747	$ 2,886
Warrants issued in conjunction with the Symphony Evolution, Inc. financing	3,984	2,842	—

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

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

Exelixis, Inc. (“Exelixis,” “we,” “our” or “us”) is committed to developing innovative therapies for cancer and other serious diseases. Through our drug discovery and development activities, we are building a portfolio of novel compounds that we believe have the potential to be high-quality, differentiated pharmaceutical products. Our most advanced pharmaceutical programs focus on drug discovery and development of small molecules in cancer. We believe that our proprietary technologies and drug discovery engine are also valuable to other industries whose products can be enhanced by an understanding of DNA or proteins, including the agrochemical and agricultural industries. We also maintain operations in Germany, which are engaged in activities dedicated towards the provision of transgenic mouse generation services, tools and related licenses to the industrial and academic community.

Basis of Consolidation

The consolidated financial statements include the accounts of Exelixis and our wholly owned subsidiaries as well as one variable interest entity, Symphony Evolution, Inc., for which we are the primary beneficiary as defined by Financial Accounting Standards Board (“FASB”) Interpretation No. 46 (revised 2003), *Consolidation of Variable Interest Entities* (“FIN 46R”). All significant intercompany balances and transactions have been eliminated. We have determined that our subsidiary located in Germany, Artemis Pharmaceuticals is an operating segment and it has been aggregated into one reportable segment with Exelixis.

In 2006, Exelixis adopted a 52- or 53-week fiscal year that ends on the last Friday in December. Fiscal year 2006, a 52-week year, ended on December 29, 2006 and fiscal year 2007, a 52-week year, will end on December 28, 2007. For convenience, references in these Consolidated Financial Statements and Notes as of and for the fiscal year ended December 29, 2006 are indicated on a calendar year basis, ending December 31, 2006.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ significantly from those estimates.

Cash and Investments

We consider all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. We invest in high-grade, short-term commercial paper and money market funds, which are subject to minimal credit and market risk.

Investments held by Symphony Evolution, Inc. consist of investments in money market funds. As of December 31, 2006 and 2005, we had investments held by Symphony Evolution, Inc. of $55.1 million and $34.0 million, respectively.

All marketable securities are classified as available-for-sale and are carried at fair value. We view our available-for-sale portfolio as available for use in current operations. Accordingly, we have classified certain

investments as short-term marketable securities, even though the stated maturity date may be one year or more beyond the current balance sheet date. Available-for-sale securities are stated at fair value based upon quoted market prices of the securities. We have classified certain investments as cash and cash equivalents and long-term marketable securities that collateralize loan balances, however they are not restricted to withdrawal, see Note 9 of the Notes to the Consolidated Financial Statements. Unrealized gains and losses on such securities, when material, are reported as a separate component of stockholders' equity. Realized gains and losses, net, on available-for-sale securities are included in interest income. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest income.

The following summarizes available-for-sale securities included in cash and cash equivalents, short-term and long-term marketable securities and restricted cash and investments as of December 31, 2006 and 2005 (in thousands):

December 31, 2006

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$ 79,745	$ —	$ —	$ 79,745
Commercial paper	102,969	24	(25)	102,968
U.S. corporate bonds	6,115	—	(2)	6,113
Government debt	21,776	—	(41)	21,735
Total	$210,605	$ 24	$ (68)	$210,561

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
As reported:				
Cash equivalents	$125,826	$ 24	$ (13)	$125,837
Marketable securities	55,571	—	(55)	55,516
Long-term marketable securities	19,573	—	—	19,573
Restricted cash and investments	9,635	—	—	9,635
Total	$210,605	$ 24	$ (68)	$210,561

December 31, 2005

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$ 67,384	$ —	$ —	$ 67,384
Commercial paper	34,232	7	—	34,239
U.S. corporate bonds	25,964	—	(206)	25,758
Government debt	28,165	—	(250)	27,915
Market auction securities	25,200	—	—	25,200
Total	$180,945	$ 7	$ (456)	$180,496

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
As reported:				
Cash equivalents	$ 85,357	$ 7	$ —	$ 85,364
Marketable securities	67,698	—	(391)	67,307
Long-term marketable securities	15,143	—	—	15,143
Restricted cash and investments	12,747	—	(65)	12,682
Total	$180,945	$ 7	$ (456)	$180,496

The following is a summary of the amortized cost and estimated fair value of marketable securities at December 31, 2006 by contractual maturity (in thousands):

	2006	
	Amortized Cost	Fair Value
Mature in less than one year	$ 200,288	$ 200,244
Mature in one to three years	10,317	10,317
Total	$ 210,605	$ 210,561

The following is a summary of the estimated fair value and aggregate unrealized losses of marketable securities at December 31, 2006 and 2005 by continuous unrealized loss position (in thousands):

December 31, 2006

	Less than 12 months		12 months or longer	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Commercial Paper	$47,027	$ (25)	$ —	$ —
U.S. corporate bonds	1,571	(2)	4,043	—
Government debt	13,524	(41)	6,274	—
Total	$62,122	$ (68)	$10,317	$ —

December 31, 2005

	Less than 12 months		12 months or longer	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
U.S. corporate bonds	$ 6,753	$ (46)	$19,005	$ (159)
Government debt	10,315	(104)	14,800	(147)
Total	$17,068	$ (150)	$33,805	$ (306)

As of December 31, 2006, unrealized losses were primarily due to increases in interest rates. Based on the scheduled maturities of our marketable securities we have concluded that some of the unrealized losses in our investment securities are other-than-temporary. Accordingly, we recorded a non-cash impairment charge of $0.1 million in interest expense and other, net, for the year ended December 31, 2006, to write down the carrying value of these securities to fair value. We have also concluded that the remaining unrealized losses in our investment securities are not other-than-temporary and we have the intent and the ability to hold these investments for a period of time sufficient for a recovery of our cost basis.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Property and Equipment

Property and equipment are recorded at cost and depreciated using the straight-line method over the following estimated useful lives:

Equipment and furniture	5 years
Computer equipment and software	3 years
Leasehold improvements	Shorter of lease life or 7 years

Equipment held under capital lease is stated at the lower of the cost of the related asset or the present value of the minimum lease payments and is amortized on a straight-line basis over the estimated useful life of the related asset. Repairs and maintenance costs are charged to expense as incurred.

Intangible Assets

Goodwill amounts have been recorded as the excess purchase price over tangible assets, liabilities and intangible assets acquired based on their estimated fair value, by applying the purchase method. Under GAAP, we evaluate goodwill for impairment on an annual basis and on an interim basis if events or changes in circumstances between annual impairment tests indicate that the asset might be impaired. When evaluating goodwill for impairment we must determine the reporting units that exist within Exelixis, our reporting units are consistent with our operating segments. We have allocated goodwill to our reporting units based on the relative fair value of the reporting units. We also evaluate other intangible assets for impairment when impairment indicators are identified.

Other intangible assets have been amortized using the straight-line method over the following estimated useful lives:

Developed technology	5 years
Patents/core technology	15 years
Assembled workforce	2 years

Long-lived Assets

The carrying value of our long-lived assets is reviewed for impairment whenever events or changes in circumstances indicate that the asset may not be recoverable. An impairment loss would be recognized when estimated future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. Long-lived assets include property and equipment and identified intangible assets.

Fair Value of Financial Instruments

The carrying amounts of certain of our financial instruments, including cash and cash equivalents and marketable securities, approximate fair value due to their short maturities. We have estimated the fair value of our long-term debt instruments using the net present value of the payments discounted at an interest rate that is consistent with our current borrowing rate for similar long-term debt. Based on borrowing rates currently available to us for loans and capital lease obligations with similar terms, the carrying value of our debt obligations approximates fair value, with the exception of our $85.0 million convertible loan with

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

GlaxoSmithKline and our equipment lines of credit that have an outstanding balance of $15.5 million and $12.4 million as of December 31, 2006. These items are described in further detail in Note 9 of the Notes to the Consolidated Financial Statements. We estimated the fair value of our convertible loan with GlaxoSmithKline to be $71.4 million, $72.7 million and $73.3 million as of December 31, 2006, 2005 and 2004, respectively and we estimated the fair value of our equipment line of credit to be $14.4 million and $16.5 million as of December 31, 2006 and 2005 and our new equipment line of credit to be $11.2 million as of December 31, 2006.

Concentration of Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk are primarily cash and cash equivalents, accounts receivable and investments in marketable securities. Cash equivalents and marketable securities consist of money market funds, taxable commercial paper, corporate bonds with high credit quality and U.S. government agency obligations. Investments held by Symphony Evolution, Inc. consist of investments in money market funds. All cash and cash equivalents, marketable securities and investments held by Symphony Evolution, Inc. are maintained with financial institutions that management believes are creditworthy. Other receivables are typically unsecured and are concentrated in the pharmaceutical and biotechnology industries. Accordingly, we may be exposed to credit risk generally associated with pharmaceutical and biotechnology companies. We have incurred no bad debt expense since inception.

The following table sets forth revenues recognized under our collaboration agreements that exceed 10% of total revenues during the years ending December 31, 2006, 2005 and 2004:

Collaborator	2006	2005	2004
GlaxoSmithKline	28%	37%	30%
Bristol-Myers Squibb	22%	7%	19%
Sankyo	15%	1%	2%
Wyeth	14%	0%	0%
Genoptera	0%	32%	27%

Revenue Recognition

License, research commitment and other non-refundable payments received in connection with research collaboration agreements are deferred and recognized on a straight-line basis over the period of continuing involvement, generally the research term specified in the agreement. Contract research revenues are recognized as services are performed pursuant to the terms of the agreements. Any amounts received in advance of performance are recorded as deferred revenue. Payments are not refundable if research is not successful.

We enter into corporate collaborations under which we may obtain up-front license fees, research funding, and contingent milestone payments and royalties. We evaluate whether the delivered elements under these arrangements have value to our collaboration partner on a stand-alone basis and whether objective and reliable evidence of fair value of the undelivered item exists. Deliverables that do not meet these criteria are not evaluated separately for the purpose of revenue recognition. For a combined unit of accounting, non-refundable up-front fees and milestones are recognized in a manner consistent with the final deliverable, which is generally ratably over the research period.

Milestone payments are non-refundable and recognized as revenues over the period of the research arrangement. This typically results in a portion of the milestone being recognized at the date the milestone is

achieved, which portion is equal to the applicable percentage of the research term that has elapsed at the date the milestone is achieved, and the balance being recognized over the remaining research term of the agreement.

Revenues from chemistry collaborations were generally recognized upon the delivery of accepted compounds.

Research and Development Expenses

Research and development costs are expensed as incurred and include costs associated with research performed pursuant to collaborative agreements. Research and development costs consist of direct and indirect internal costs related to specific projects as well as fees paid to other entities that conduct certain research activities on our behalf.

Substantial portions of our preclinical studies and all of our clinical trials have been performed by third-party contract research organizations (CROs) and other vendors. We accrue expenses for preclinical studies performed by our vendors on a straight-line basis over the term of the service period and adjust our estimates as required. We accrue costs for clinical trial activities performed by CROs based upon the estimated amount of work completed on each study. For clinical trial expenses, the significant factors used in estimating accruals include the number of patients enrolled and the duration for which they will be enrolled in the study. We monitor patient enrollment levels and related activities to the extent possible through internal reviews, correspondence with CROs and review of contractual terms.

Net Loss Per Share

Basic and diluted net loss per share are computed by dividing the net loss for the period by the weighted average number of shares of common stock outstanding during the period. The calculation of diluted net loss per share excludes potential common stock because their effect is antidilutive. Potential common stock consists of incremental common shares issuable upon the exercise of stock options and warrants and shares issuable upon conversion of our convertible loans.

The following table sets forth potential shares of common stock that are not included in the computation of diluted net loss per share because to do so would be antidilutive for the year ended December 31, 2006:

Options to purchase common stock	17,210,626
Conversion of loans	10,769,781
Warrants	1,500,000
	29,480,407

In addition, if we decide to exercise our option to repurchase our product candidates XL784, XL647 and XL999 from Symphony Evolution, we may issue a substantial number of shares in satisfaction of the purchase price. The Symphony Evolution transaction is described in further detail in Note 4 of the Notes to the Consolidated Financial Statements.

Foreign Currency Translation

Exelixis' subsidiary located in Germany operates using the local currency as the functional currency. Accordingly, all assets and liabilities of this subsidiary are translated using exchange rates in effect at the end of

the period, and revenues and expenses are translated using average exchange rates for the period. The resulting translation adjustments are presented as a separate component of accumulated other comprehensive income.

Stock-Based Compensation

We adopted Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, ("SFAS 123R") effective January 1, 2006, which requires the recognition of stock-based compensation at fair value in our consolidated statements of operations. We adopted SFAS 123R under the modified prospective method and therefore we have not restated results for prior periods. Under the modified prospective method, we recorded compensation expense for all awards granted prior to, but not yet vested as of January 1, 2006, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, ("SFAS 123"). Stock-based compensation expense for all stock-based compensation awards granted after January 1, 2006 is based on the grant date fair value estimated using the Black-Scholes option pricing model.

We have limited historical information available to support the underlying estimates of certain assumptions required to value stock options. Because there is a market for options on our common stock, we have considered implied volatilities as well as our historical realized volatilities when developing an estimate of expected volatility. The expected option term also has a significant effect on the value of the option. The longer the term, the more time the option holder has to allow the stock price to increase without a cash investment and thus, the more valuable the option. However, empirical data shows that employees, for a variety of reasons, typically do not wait until the end of the contractual term of a nontransferable option to exercise. Accordingly, companies are required to estimate the expected term of the option for input to an option-pricing model. We estimate the term using historical data and peer data. We recognize compensation expense on a straight-line basis over the requisite service period. We have elected to use the simplified method to calculate the beginning pool of excess tax benefits as described in FASB FSP 123(R)-3.

Prior to the adoption of SFAS 123R, we recognized stock-based compensation expense in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Accordingly, no compensation expense is recognized in our financial statements for the stock options granted to employees, which had an exercise price equal to the fair value of the underlying common stock on the date of grant. We have employee and director stock option plans that are more fully described in Note 10 of the Notes to the Consolidated Financial Statements.

Comprehensive Income (Loss)

Comprehensive income (loss) represents net income (loss) plus the results of certain stockholders' equity changes, which are comprised of unrealized gains and losses on available-for-sale securities and cumulative translation adjustments, not reflected in the consolidated statement of operations.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Comprehensive income (loss) for the years ended December 31, 2006, 2005 and 2004 is as follows (in thousands):

	Year Ended December 31,		
	2006	2005	2004
Net loss	$(101,492)	$(84,404)	$(137,245)
Increase (decrease) in unrealized gains on available-for-sale securities	331	63	(737)
Reclassification for unrealized losses on marketable securities recognized in earnings	74	—	—
Increase (decrease) in cumulative translation adjustment	(233)	286	(575)
Reclassification adjustment for gains from cumulative currency translation	—	—	228
Comprehensive loss	$(101,320)	$(84,055)	$(138,329)

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

	December 31,		
	2006	2005	2004
Unrealized losses on available-for-sale securities	$ (44)	$ (449)	$ (512)
Cumulative translation adjustment	1,189	1,422	1,136
Accumulated other comprehensive income	$1,145	$ 973	$ 624

Reclassification

Certain prior period amounts have been reclassified to conform to the current period presentation. We reclassified certain amounts from cash and cash equivalents to long-term marketable securities related to debt collateralization.

Recent Accounting Pronouncement

In July 2006, the FASB issued FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109” (“FIN 48”). FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006 and is required to be adopted by us in the first quarter of fiscal 2007. As of December 31, 2006, we have federal and state net operating loss and credit carryforwards of approximately $963.2 million that may be subject to annual limitation, due to certain substantial changes in ownership, under the Internal Revenue Code and similar state provisions. The annual limitation may result in the expiration of net operating loss and credit carryforwards before utilization. As of December 31, 2006, all of our deferred tax assets have been fully offset by a valuation allowance because the realization of these assets is dependent upon future earnings. We are currently evaluating the effect that the adoption of FIN 48 will have on our consolidated results of operations and financial condition. Because our deferred tax assets are fully offset by a valuation allowance, we do not expect the adoption of FIN 48 to have a material effect on our results of operations.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 2. ACQUISITIONS

X-Ceptor Therapeutics

In October 2004, we completed the acquisition of X-Ceptor Therapeutics, Inc. ("X-Ceptor"). X-Ceptor, was privately held company located in San Diego, California, focused on the discovery and development of small molecules that modulate nuclear hormone receptors. The transaction was accounted for as an acquisition of assets. The total consideration for the acquisition was $25.7 million, which consisted of 2.6 million shares of our common stock, $2.9 million in cash, and $2.3 million in transaction costs. The transaction costs included financial advisory, legal, accounting and other fees.

We allocated the purchase price to X-Ceptor's tangible assets, liabilities and intangible assets such as assembled workforce and acquired in-process research and development. Independent valuation experts assisted us during the valuation of the intangible assets acquired. The $2.6 million of tangible assets acquired are comprised of $1.2 million of property and equipment, net of accumulated depreciation, $1.0 million of prepaid expenses and other assets and $0.4 million in cash and cash equivalents. The $3.9 million in liabilities assumed as part of the acquisition are comprised of $1.1 million in accounts payable and accrued expenses, $1.8 million in bank obligations and $1.0 million in deferred revenues. The acquired assembled workforce includes the estimated cost to replace existing employees, including recruiting and training costs. We amortized the value assigned to the assembled workforce of $1.1 million on a straight-line basis over an estimated useful life of two years. This asset was fully amortized as of December 31, 2006.

The valuation of the acquired in-process research and development of $26.0 million was determined using the income approach for each of the three projects in process. The in-process projects relate to the development of programs that are focused on the Liver X Receptor ("LXR") valued at $9.7 million, Farnesoid X Receptor ("FXR") valued at $8.8 million and Mineralocorticoid Receptor ("MR") valued at $7.5 million, which at the time of the acquisition were expected to be completed over approximately the next seven to ten years. At the time of the acquisition, these programs did not have a development candidate.

The income approach estimates the value of each acquired project in process based on its expected future cash flows. The valuation analysis considered the percent complete of each in-process research and development project. The expected present value of the cash flows associated with the in-process research and development projects was computed using a risk adjusted rate of return of 15% which is considered commensurate with the inherent risk and percentage of completion of the in-process projects. The purchased technology was not considered to have reached technological feasibility and since it has no alternative future use do to the early stage of the programs, the considerable complexity and uniqueness of the programs and the significant regulatory requirements remaining, it was recorded as a component to operating expense.

The revenues, expenses, cash flows and other assumptions underlying the estimated fair value of the acquired in-process research and development involve significant risks and uncertainties. The risks and uncertainties associated with completing the acquired in-process projects include obtaining the necessary regulatory approvals in a timely manner and being able to successfully and profitably produce, distribute and sell products.

In December 2005, we entered into a license agreement with Wyeth Pharmaceuticals Division ("Wyeth"). We granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. In December 2005, we entered into a collaboration agreement with Bristol-Myers Squibb Company ("Bristol-Myers Squibb" or "BMS") for the discovery, development and commercialization of novel therapies targeted against LXR. Additionally in March 2006, we entered into a

collaboration agreement with Sankyo Company, a wholly owned subsidiary of Daiichi Sankyo Company, Limited ("Sankyo"). These agreements are described in further detail in Note 3 of the Notes to the Consolidated Financial Statements.

Agrinomics

In July 1999, Exelixis Plant Sciences and Bayer CropScience formed Agrinomics LLC to conduct a research, development and commercialization programs in the field of agricultural functional genomics. As a result of our acquisition of Exelixis Plant Sciences in 2000, we owned a 50% interest in Agrinomics, while Bayer CropScience owned the remaining 50% interest. In May 2004, we purchased from Bayer CropScience its 50% interest in Agrinomics in exchange for our release of all future obligations of Bayer CropScience to Agrinomics under the joint venture agreement and we granted license rights to the research, development and commercialization program in the field of agricultural functional genomics held by Agrinomics. The primary reason for the transfer was to allow both Bayer CropScience and us to develop the technology of the joint venture independently. As there is no readily determinable fair market value for Bayer CropScience's 50% interest in Agrinomics or Bayer CropScience's future obligations, if any, under the Agrinomics joint venture agreement, we recorded this acquisition of a business as a non-monetary transaction. Accordingly, for accounting purposes, the purchase price was deemed to be zero.

We recorded the assets acquired and the liabilities assumed based on their estimated fair values at the date of acquisition, as determined by us based on valuation techniques in accordance with GAAP. As a result of this transaction, we recorded net tangible liabilities of $0.5 million, intangible assets of $0.1 million and expense associated with the purchase of in-process research and development of $0.4 million, representing the fair value of two primary research projects that had not yet reached technological feasibility and that have no alternative future use.

NOTE 3. RESEARCH AND COLLABORATION AGREEMENTS

Bristol-Myers Squibb

In September 1999, Exelixis entered into a three-year research and technology transfer agreement with Bristol-Myers Squibb to identify the mechanism of action of compounds delivered to us by BMS. In July 2002, the agreement was extended for an additional two years. Under the terms of the agreement, we received a $0.3 million technology access fee and annual research funding ranging from $1.3 million to $2.5 million over the research term. We can also earn additional amounts under the agreement upon the achievement of certain milestones as well as earn royalties on the future sale by BMS of human products incorporating compounds developed under the agreement. The agreement also includes technology transfer and licensing terms which call for BMS and us to license and share certain core technologies in genomics and lead optimization. In accordance with the terms of the two-year extension, this agreement expired in July 2004.

In July 2001, we entered into a cancer collaboration agreement with BMS. Under the terms of the collaboration, BMS paid Exelixis a $5.0 million upfront license fee and agreed to provide Exelixis with $3.0 million per year in research funding for a minimum of three years. In December 2003, the cancer collaboration was extended until January 2007, at which time BMS elected to continue the collaboration until July 2009. The goal of the extension is to increase the total number and degree of validation of cancer targets that we will deliver to BMS. Each company will maintain the option to obtain exclusive worldwide rights to equal numbers of validated targets arising from the collaboration. Under the terms of the extended collaboration, BMS provided us with an upfront payment and will provide increased annual research funding and milestones on certain cancer

targets arising from the collaboration that progress through specified stages of validation. We will also be entitled to receive milestones on compounds in the event of successful clinical and regulatory events and royalties on commercialized products.

In December 2005, Exelixis entered into a collaboration agreement with BMS, which became effective in January 2006, for the discovery, development and commercialization of novel therapies targeted against LXR, a nuclear hormone receptor implicated in a variety of cardiovascular and metabolic disorders. This agreement became effective in January 2006, at which time Exelixis granted BMS an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate LXR. During the research term, Exelixis and BMS expect to jointly identify drug candidates that are ready for IND-enabling studies. After the selection of a drug candidate for further clinical development by BMS, BMS will be solely responsible for further preclinical development as well as clinical development, regulatory, manufacturing and sales/marketing activities for the selected drug candidate and we do not have rights to reacquire such drug candidates.

Under the LXR collaboration agreement, BMS paid Exelixis a nonrefundable upfront payment in the amount of $17.5 million and is obligated to provide research and development funding of $10.0 million per year for an initial research period of two years. BMS has the option to extend the research period for an additional one-year term. The upfront payment and the research and development funding will be recognized as revenue over the research period. Under the agreement, BMS is required to pay us development and regulatory milestones of up to $140.0 million per product for up to two products from the collaboration. In addition, we are also entitled to receive sales milestones and royalties on any sales of products commercialized under the collaboration.

In December 2006, Exelixis entered into a worldwide collaboration with BMS, which became effective in January 2007. This new collaboration agreement is described in further detail in Note 14 of the Notes to the Consolidated Financial Statements.

Genentech

In May 2005, Exelixis and Genentech, Inc. (“Genentech”) established a collaboration to discover and develop therapeutics for the treatment of cancer, inflammatory diseases, and tissue growth and repair. Under the terms of the agreement, we granted to Genentech a license to certain intellectual property. Genentech paid us a nonrefundable upfront license payment and is obligated to provide research and development funding over the three-year research term, totaling $16.0 million. The upfront license payment and the research and development funding are being recognized as revenue over the research term.

Under the agreement, Genentech will have primary responsibility in the field of cancer for research and development activities as well as rights for commercialization of any products to which we have no contractual reacquisition rights. In the fields of inflammatory disease and in the field of tissue growth and repair, we will initially have primary responsibility for research activities and after the expiration of the research term, we will have the option to elect to share a portion of the costs and profits associated with the development, manufacturing and commercialization of products in one of these fields. The research term under the agreement is three years and may be extended upon mutual consent for one-year terms. For all products under the agreement that are not elected as cost or profit sharing products, we may receive milestone and royalty payments.

In December 2006, Exelixis entered into a worldwide co-development agreement with Genentech for the development and commercialization of XL518, a small-molecule inhibitor of MEK. Genentech paid upfront and milestone payments of $25.0 million in December 2006 and $15.0 million in January 2007 upon signing of the agreement and with the submission of an IND for XL518, respectively. We expect to recognize the upfront and milestone payments as revenue over the estimated research term of three years.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Under the terms of the agreement, we are responsible for developing XL518 through the end of a Phase I clinical study at which point Genentech has the option to co-develop XL518. If Genentech exercises its option to co-develop XL518 we will be entitled to receive an opt-in payment and we will be required to grant to Genentech an exclusive worldwide revenue-bearing license to XL518. Genentech will be responsible for all further development and development costs of XL518 and we will share equally in the U.S. commercialization costs. On an annual basis we are entitled to an initial equal share of U.S. profits and losses, which will decrease as sales increase, and we are also entitled to royalties on non-U.S. sales.

Sankyo Company

In March 2006, Exelixis and Sankyo Company entered into a collaboration agreement for the discovery, development and commercialization of novel therapies targeted against MR, a nuclear hormone receptor implicated in a variety of cardiovascular and metabolic diseases. Under the terms of the agreement, we granted to Sankyo an exclusive, worldwide license to certain intellectual property primarily relating to compounds that modulate MR. After completion of the research term, Sankyo will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds and we do not have rights to reacquire such compounds.

Sankyo paid us a nonrefundable upfront payment in the amount of $20.0 million and is obligated to provide research and development funding of $3.8 million over a 15-month research term. Exelixis and Sankyo may mutually agree to extend the research term for an additional two years. The upfront payment and research and development funding will be recognized as revenue over the initial 15-month research term, which commenced on April 1, 2006. For each product from the collaboration, we are also entitled to receive payments upon attainment of pre-specified development, regulatory and commercialization milestones. In addition, we are also entitled to receive royalties on any sales of certain products commercialized under the collaboration. Sankyo may terminate the agreement upon 90 days' written notice in which case Sankyo's payment obligations will cease, its license relating to compounds that modulate MR will terminate and revert to us, and we will receive, subject to certain terms and conditions, licenses from Sankyo to research, develop and commercialize compounds that were discovered under the agreement.

Wyeth Pharmaceuticals

In December 2005, Exelixis and Wyeth entered into a license agreement related to compounds targeting FXR, a nuclear hormone receptor implicated in a variety of metabolic and liver disorders. Under the terms of the agreement, we have granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. Wyeth paid us a nonrefundable upfront payment in the amount of $10.0 million and we received $4.5 million in November 2006 for achieving a development milestone. Wyeth is obligated to pay additional development and commercialization milestones of up to $143.0 million, as well as royalties on sales of any products commercialized by Wyeth under the agreement. Substantially all the upfront and milestone payments were recognized as revenue in 2006. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds.

Helsinn Healthcare

In June 2005, Exelixis and Helsinn Healthcare S.A. ("Helsinn") entered into a license agreement for the development and commercialization of XL119 (becatecarin). Helsinn paid us a nonrefundable upfront payment in the amount of $4.0 million and was obligated to pay development and commercialization milestones, as well as royalties on worldwide sales. The upfront payment was recognized as revenue during 2005. Helsinn assumed

all costs incurred for the ongoing multi-national Phase III clinical trial for XL119 after the execution of the license agreement.

In May 2006, we supplied Helsinn with certain clinical trial materials in order for Helsinn to maintain enrollment in the Phase III clinical trial for XL119. Helsinn's acceptance of the clinical trial materials triggered a $4.0 million milestone payment, which was received and recognized as revenue in June 2006. In November 2006, Helsinn discontinued the XL119 Phase III clinical trial program.

Bayer

In May 1998, Exelixis entered into a six-year research collaboration agreement with Bayer Corporation ("Bayer") to identify novel screening targets for the development of new pesticides for use in crop protection. We received a $1.2 million license fee upon execution of the agreement that was recognized as revenue over the term of the agreement.

In December 1999, we expanded our relationship with Bayer by forming a joint venture in the form of a new limited liability company, Genoptera LLC ("Genoptera"). Under the terms of the Genoptera operating agreement, Bayer provided 100% of the capital necessary to fund the operations of Genoptera and had the ability to control the entity with a 60% ownership interest and we owned the other 40% interest in Genoptera and we reported our investment in Genoptera using the equity method of accounting. Bayer's initial capital contributions to Genoptera were $10.0 million in January 2000 and another $10.0 million in January 2001. Bayer also contributed cash to Genoptera in amounts necessary to fund its ongoing operating expenses. Genoptera incurred losses since inception. Since the carrying value of the investment remained at zero and we had no obligation to fund future losses, we did not record any equity method losses for Genoptera.

In January 2000, Exelixis, Bayer and Genoptera entered into an exclusive eight-year research collaboration agreement, which superseded the 1998 agreement discussed above. We were required to provide Genoptera with expanded research services focused on developing insecticides and nematicides for crop protection. Under the terms of the collaboration agreement, Genoptera paid us a $10.0 million license fee and a $10.0 million research commitment fee, which we received in January 2000 and January 2001, respectively. Additionally, Genoptera was required to pay us $10.0 million in annual research funding.

In March 2005, Exelixis, Bayer and Genoptera agreed to amend the terms of the collaboration agreement, dated January 1, 2000, among Exelixis, Bayer and Genoptera. The amended agreement provided for an early termination of the research term and required Bayer to acquire our 40% ownership interest in Genoptera, which was acquired in December 2005. The amended agreement also required Bayer to pay us an early termination fee of $10.9 million, which was paid in April 2005.

In June 2005, the final knowledge transfer was completed and we recognized $21.1 million in revenues, which included the early termination fee, paid in April 2005, and accelerated recognition of deferred revenues related to upfront payments and milestones. Pursuant to the terms of the amended agreement, Bayer, through Genoptera, obtained exclusive rights in the field of agriculture to assays, compounds and products developed under the collaboration and we have obtained exclusive rights in all other fields. In addition, the obligations of Bayer to fund further research ceased and we have no further obligations to perform research.

GlaxoSmithKline

In October 2002, Exelixis and SmithKlineBeecham Corporation, which does business as GlaxoSmithKline, established a collaboration to discover and develop novel therapeutics in the areas of vascular biology,

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

inflammatory disease and oncology. The collaboration involved three agreements: (i) a Product Development and Commercialization Agreement ("PDA"); (ii) a Stock Purchase and Stock Issuance Agreement ("SPA"); and (iii) a Loan and Security Agreement ("LSA"). Under the original PDA, GlaxoSmithKline paid us $30.0 million in an upfront fee and $10.0 million in annual research funding, and agreed to pay a minimum of an additional $80.0 million in research and development funding over the first six years of the collaboration.

Under the original SPA, GlaxoSmithKline purchased 2.0 million shares of our common stock in a private placement at a purchase price of $7.00 per share, which represented a premium of approximately 100% to the stock price on the effective date of the agreements. We received cash proceeds of approximately $14.0 million for the purchase of these shares in November 2002. The upfront fee and the premium portion of the equity purchase have been deferred and are being recognized as revenue over the development term. Under the terms of the SPA, we had the option to sell additional common shares to GlaxoSmithKline in the future, as described below.

Under the original LSA, GlaxoSmithKline provided a loan facility of up to $85.0 million for use in our efforts under the collaboration, and we borrowed $25.0 million under that agreement in December 2002, an additional $30.0 million in December 2003, and the remaining $30.0 million in December 2004. All loan amounts bear interest at a rate of 4.0% per annum and are secured by the intellectual property, technology and equipment created or utilized pursuant to the collaboration. Principal and accrued interest becomes due in installments, beginning on or about the sixth anniversary of the collaboration, unless the collaboration is earlier terminated by GlaxoSmithKline. Repayment of all or any of the amounts advanced to us under this agreement may, at our election, be in the form of our common stock at fair market value, subject to certain conditions.

In January 2005, we amended the terms of our collaboration with GlaxoSmithKline. Under the amended PDA, GlaxoSmithKline selected a modified program election through which the focus of the collaboration is shifted to 12 internal programs at various stages of development (XL784, XL647, XL999, XL880, XL184, XL820, XL844, XL281, XL418, XL228 and two earlier stage oncology programs). Each program centers on compounds that are directed against one or more targets identified in the collaboration. Under the modified program, GlaxoSmithKline has the right to select from these programs up to two compounds at proof-of-concept (completion of Phase IIa clinical trial) or three compounds if GlaxoSmithKline extends the collaboration. If GlaxoSmithKline selects three compounds, we could receive significant acceptance milestones. The actual amount of acceptance milestones that we receive from GlaxoSmithKline will depend on the number of compounds selected and the timing of the selection of the compounds. Prior to the end of a specified development term, GlaxoSmithKline retains exclusivity rights to the 32 specified targets that are encompassed by the 12 programs. However, we retain rights to all compounds not encompassed by the 12 programs selected by GlaxoSmithKline and may work on any targets with the exception of the 32 targets subject to GlaxoSmithKline's exclusivity rights.

In May 2005, we filed the third of three INDs required by the amended PDA to achieve a $30.0 million milestone, which we received from GlaxoSmithKline in May 2005. The revenue from this milestone is being recognized over the term of the amended PDA on a straight-line basis from January 2005 to November 2009. In return for the new $30.0 million milestone, GlaxoSmithKline will receive a $30.0 million credit and a specified reduction against the first acceptance milestone as well as a temporary reduction in the royalty rate it owes us on net sales of products developed under the collaboration. In May 2005, we submitted two new development candidates to GlaxoSmithKline, thereby triggering an additional $5.0 million milestone, which we received in May 2005. We may also receive additional development related milestones and royalties on product sales and have certain co-promotion rights to products in North America. In addition, under the amended PDA, GlaxoSmithKline agreed to provide research funding of $47.5 million over the remaining three-year term of the collaboration, of which we have received $30.0 million through 2006.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The terms of the amended PDA allow us to use third-party financing vehicles to fund the further clinical development of our compounds XL784, XL647 and XL999 but any such compounds developed through clinical financing vehicles continue to be subject to GlaxoSmithKline's compound selection rights. In June 2005, we entered into a transaction to fund the clinical development of XL784, XL647 and XL999 through Symphony Evolution, a third-party financing vehicle. This is described in further detail in Note 4 of the Notes to the Consolidated Financial Statements.

Pursuant to the terms of the original SPA and as a result of its modified program election, GlaxoSmithKline purchased an additional 1.0 million shares of our common stock in January 2005 at an aggregate purchase price of $11.1 million, of which $2.2 million was a premium to the then fair value of the shares. We have no further option to sell, and GlaxoSmithKline has no further obligation to purchase, additional shares of our common stock. The premium portion of the equity purchase has been deferred and is being recognized as revenue over the development term.

Compound Collaborations

We entered into collaboration agreements with Cytokinetics, Inc. ("Cytokinetics"), Elan Pharmaceuticals, Inc. ("Elan"), Schering-Plough Research Institute, Inc. ("Schering-Plough"), Scios, Inc. ("Scios"), Merck & Co., Inc. ("Merck") and with Bayer CropScience, to jointly design custom high-throughput screening compound libraries that Exelixis would synthesize and qualify. Each company was required to pay Exelixis a per-compound fee and paid an upfront technology access fee that was creditable towards the future purchase of compounds. The upfront fees were initially deferred. Revenues under these collaboration agreements were generally recognized upon delivery of the accepted compounds. Each party retains the rights to use the compounds in its own unique drug discovery programs and in its collaborative efforts with third parties. During 2004, our collaboration agreement with Elan terminated in accordance with the terms of the agreement.

We entered into amendments to our collaboration agreements with Cytokintetics, Schering-Plough, Scios and Merck to terminate the collaboration agreements effective December 31, 2004. Each of the amendments provided that we had fully satisfied our obligations under the terms of the original agreements. No early termination penalties were incurred in connection with the early termination of these agreements.

NOTE 4. SYMPHONY EVOLUTION

On June 9, 2005 (the "Closing Date"), we entered into a series of related agreements providing for the financing of the clinical development of XL784, XL647 and XL999 (the "Programs"). Pursuant to the agreements, Symphony Evolution, Inc. ("SEI") invested $80.0 million to fund the clinical development of these Programs and we have licensed to SEI our intellectual property rights related to these Programs. SEI is a wholly owned subsidiary of Symphony Evolution Holdings LLC ("Holdings"), which provided $40.0 million in funding to SEI at closing, and an additional $40.0 million in June 2006. We continue to be primarily responsible for the development of the Programs in accordance with specified development plans and related development budgets.

In accordance with FIN 46R, we have determined that SEI is a variable interest entity for which we are the primary beneficiary. As a result, we will include the financial condition and results of operations of SEI in our consolidated financial statements. Accordingly, we have deducted the losses attributable to the noncontrolling interest in SEI from our net loss in the consolidated statement of operations and we have also reduced the noncontrolling interest holders' ownership interest in SEI in the consolidated balance sheet by SEI's losses. For the year ended December 31, 2006 and 2005, the losses attributed to the noncontrolling interest holders were $21.7 million and $10.4 million, respectively. We also reduced the noncontrolling interest holders' ownership

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

interest in SEI in the consolidated balance sheet by: (i) a $3.0 million structuring fee that we incurred in connection with the closing of the SEI transaction, (ii) a $2.8 million value assigned to the warrants that were issued to Holdings upon closing, and (iii) a $4.0 million value assigned to the warrants that were issued to Holdings in June 2006.

Pursuant to the agreements, we have received an exclusive purchase option (the "Purchase Option") that gives us the right to acquire all of the equity of SEI, thereby allowing us to reacquire all of the Programs. The Purchase Option was amended in December 2006 to allow us, at our election, to pay up to 100% of the purchase option exercise price in shares of our common stock. Under the original terms of the purchase option, we were only entitled to pay up to 33% of the purchase option exercise price in shares. This Purchase Option is exercisable at any time, until the earlier of June 9, 2009 or the 90th day after the date that SEI provides us with financial statements showing cash and cash equivalents of less than $5.0 million at an exercise price equal to the sum of: (i) the total amount of capital invested in SEI by Holdings and (ii) an amount equal to 25% per year on such funded capital (with respect to the initial funded capital, compounded from the Closing Date and, with respect to the second draw amount, compounded from the second draw date). The Purchase Option exercise price may be paid in cash, our common stock or in a combination of cash and our common stock, at our sole discretion.

Pursuant to the agreements, we issued to Holdings a five-year warrant to purchase 750,000 shares of our common stock at $8.90 per share in June 2005. We issued an additional five-year warrant to purchase 750,000 shares of our common stock at $8.90 per share in connection with the additional $40.0 million in funding in June 2006. In addition, if the Purchase Option expires unexercised at the four-year anniversary of the Closing Date, we are obligated to issue to Holdings an additional warrant to purchase 500,000 shares of our common stock at a price per share equal to 125% of the market price of our common stock at the time of expiration of the Purchase Option, with a five-year term. The warrants issued upon closing were assigned a value of $2.8 million and the warrants issued in June 2006 were assigned a value of $4.0 million in accordance with the Black-Scholes option valuation methodology and we recorded these values as a reduction to the noncontrolling interest in SEI. Pursuant to the agreements, we have no further obligation beyond the items described above and we have no obligation to the creditors of SEI as a result of our involvement with SEI.

The Programs are subject to our collaboration with GlaxoSmithKline, and GlaxoSmithKline may continue to select at proof-of-concept for further development one or more of the Programs licensed to SEI, in which case we would have to repurchase the Programs through the exercise of our Purchase Option. Under the terms of the amended PDA, GlaxoSmithKline has agreed to increase the acceptance milestones for the programs that are funded through SEI.

NOTE 5. RELATED PARTY TRANSACTIONS

For the years ended, December 31, 2005 and 2004, we recognized revenues of $24.0 million and $14.4 million, respectively, under a collaboration agreement with Bayer through our joint venture with Genoptera. The $24.0 million recognized in 2005 was primarily related to the recognition of $21.1 million in revenues from the acceleration of upfront payments, milestones and a termination payment associated with the termination of our Genoptera collaboration. We also recognized revenues of $0.9 million under the Agrinomics joint venture for the year ended December 31, 2004. In May 2004, we acquired the remaining 50% interest in Agrinomics from Bayer.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 6. PROPERTY AND EQUIPMENT

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

	December 31,	
	2006	2005
Laboratory equipment	$ 63,490	$ 56,572
Computer equipment and software	17,890	14,916
Furniture and fixtures	5,182	4,915
Leasehold improvements	21,817	18,591
Construction-in-progress	1,264	2,617
	109,643	97,611
Less accumulated depreciation and amortization	(77,349)	(62,034)
	$ 32,294	$ 35,577

The equipment under our capital leases collateralizes the related lease obligations. For the years ended December 31, 2006 and 2005, we had equipment under our capital leases and corresponding accumulated amortization of the following (in thousands):

	December 31,	
	2006	2005
Equipment under capital leases	$—	$ 1,545
Less accumulated depreciation and amortization	—	(1,189)
	$—	$ 356

Amortization expense related to the capital leases is included with depreciation expense. For the years ended, December 31, 2006, 2005 and 2004, we recorded depreciation expense of $15.3 million, $13.9 million and $13.6 million, respectively.

NOTE 7. GOODWILL AND OTHER ACQUIRED INTANGIBLES

Our annual goodwill impairment test date is performed at the beginning of the fourth quarter of every year. Following this approach, we monitor asset-carrying values as of October 1 and on an interim basis if events or changes in circumstances occur we assess whether there is a potential impairment and complete the measurement of impairment, if required. To date, our annual impairment tests have not resulted in impairment of recorded goodwill. Intangible asset components listed below have been amortized using the straight-line method over the assets estimated useful life.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The components of our other acquisition-related intangible assets are as follows (in thousands):

	December 31, 2006		
	Gross Carrying Amount	Accumulated Amortization	Net
Developed technology	$ 1,240	$ (1,240)	$ —
Patents and core technology	4,323	(1,718)	2,605
Assembled workforce	1,100	(1,100)	—
Total	$ 6,663	$ (4,058)	$2,605

	December 31, 2005		
	Gross Carrying Amount	Accumulated Amortization	Net
Developed technology	$ 1,240	$ (1,148)	$ 92
Patents and core technology	4,323	(1,429)	2,894
Assembled workforce	1,100	(661)	439
Total	$ 6,663	$ (3,238)	$3,425

The expected future annual amortization expense of the other acquisition-related intangible assets is as follows (in thousands):

Year Ending December 31,	
2007	$ 288
2008	288
2009	288
2010	288
2011	288
Thereafter	1,165
Total expected future amortization	$ 2,605

NOTE 8. RESTRUCTURING CHARGES

2004 Restructuring Charges

During the second quarter of 2004, we implemented a restructuring and consolidation of our research and discovery organizations. We accounted for the restructuring activity in accordance with Statement of Financial Accounting Standards No. 146, *Accounting for Costs Associated with Exit or Disposal Activities* (“SFAS 146”). The restructuring included a reduction in force of 62 employees, the majority of which were research personnel located in South San Francisco, California. We recorded a restructuring charge of $1.7 million during the second quarter of 2004 comprised primarily of involuntary termination benefits. As of December 31, 2005, all amounts under this restructuring liability had been fully paid.

2003 Restructuring Charges

During the third quarter of 2003, we implemented a worldwide restructuring of our research and development organization designed to reallocate resources and enhance the efficiency of our operations. The

restructuring included a reduction in force of 61 research personnel located in South San Francisco, California and Tübingen, Germany, closure of our Tübingen location, and relocation of certain research activities and employees from Tübingen to South San Francisco. We recorded a cumulative charge of $1.5 million in accordance with SFAS 146, of which $0.5 million and $1.0 million was recorded during the years ended December 31, 2004 and 2003, respectively. The restructuring plan was substantially complete as of March 31, 2004. This charge primarily consists of severance payments, retention bonuses, relocation costs, lease buyout costs and legal and outplacement services fees. As of December 31, 2005, all amounts under this restructuring liability had been fully paid.

NOTE 9. DEBT

Our debt consists of the following (in thousands):

	December 31,	
	2006	2005
GlaxoSmithKline convertible loans	$ 85,000	$ 85,000
Bank equipment lines of credit	36,653	33,751
PDL BioPharma convertible promissory note	—	30,000
	121,653	148,751
Less: current portion	(13,579)	(41,893)
Long-term debt	$108,074	$106,858

Under the LSA executed in connection with the GlaxoSmithKline collaboration, GlaxoSmithKline provided a loan facility of up to $85.0 million for use in our efforts under the collaboration. We borrowed $25.0 million under that agreement in December 2002, an additional $30.0 million in December 2003 and the remaining $30.0 million in 2004. All loan amounts bear interest at a rate of 4.0% per annum and are secured by the intellectual property, technology and equipment created or utilized pursuant to the collaboration. Principal and accrued interest becomes due in installments, beginning on or about the sixth anniversary of the collaboration, unless the collaboration is earlier terminated by GlaxoSmithKline. Repayment of all or any of the amounts advanced to us under this agreement may, at our election, be in the form of Exelixis' common stock at fair market value, subject to certain conditions. This loan facility also contains financial covenants pursuant to which our working capital (the amount by which our current assets exceed our current liabilities as defined by the agreement) must not be less than $25.0 million and our cash and investments (total cash and cash equivalents and investments as defined by the agreement, which excludes restricted cash and investments) must not be less than $50.0 million. As of December 31, 2006, we were in compliance with these covenants.

In May 2001, we entered into a two-year collaboration to discover and develop humanized antibodies for the diagnosis, prevention and treatment of cancer with PDL BioPharma, Inc. ("PDL"). This collaboration was successfully completed on schedule in May 2003. In May 2001, we issued a $30.0 million convertible promissory note to PDL in connection with the collaboration agreement. The note bore interest at 5.75% and was payable annually. The note matured and was paid in full in May 2006.

In May 2002, we entered into a loan and security agreement with a bank for an equipment line of credit of up to $16.0 million with a draw down period of one year. Each draw on the line of credit has a payment term of 48 months and bears interest at the bank's published prime rate (7.8% at December 31, 2006). We extended the draw down period on the line-of-credit for an additional year in June 2003 and increased the principal amount of the line of credit from $16.0 million to $19.0 million in September 2003. Pursuant to the terms of this line of credit, we are required to maintain a first priority security interest in the form of a deposit or securities account at

the bank equal to 100% of the outstanding obligation under the line of credit. As of December 31, 2006, the collateral balance was $2.3 million and we recorded this amount in the accompanying consolidated balance sheet as cash and cash equivalents and long-term marketable securities as the securities are not restricted as to withdrawal. This equipment line of credit was fully drawn as of December 31, 2004. The outstanding obligation under the line of credit as of December 31, 2006 and 2005 was $1.6 million and $6.1 million, respectively.

In December 2004, we entered into a loan modification agreement to the loan and security agreement originally entered into in May 2002. The terms associated with the original $16.0 million line of credit under the May 2002 agreement were not modified. The loan modification agreement provides for an additional equipment line of credit in the amount of up to $20.0 million with a draw down period of one year. Pursuant to the terms of the modified agreement, we were required to make interest only payments through February 2006 at an annual rate of 0.70% on all outstanding advances. Beginning in March 2006, we are required to make 48 equal monthly installment payments of principal plus accrued interest, at an annual rate of 0.70%. The loan facility is secured by a non-interest bearing certificate of deposit account with the bank, in an amount equal to at least 100% of the outstanding obligations under the line of credit. As of December 31, 2006, the collateral balance was $16.4 million, and we recorded this amount in the accompanying consolidated balance sheet as cash and cash equivalents and long-term marketable securities as the deposit account is not restricted as to withdrawal. This equipment line of credit was fully drawn as of December 31, 2006. The outstanding obligation under the line of credit as of December 31, 2006 and 2005 was $15.5 million and $17.6 million, respectively.

In December 2006, we entered into a loan modification agreement to the loan and security agreement originally entered into in May 2002. The terms associated with the original line of credit under the May 2002 agreement and December 2004 loan modification agreement were not modified. The December 2006 loan modification agreement provides for an additional equipment line of credit in the amount of up to $25.0 million with a draw down period of approximately one year. Each advance must be repaid in 48 equal, monthly installments of principal, plus accrued interest, at an annual rate of 0.85% fixed and is subject to a prepayment penalty of 1.0%. The loan facility is secured by a non-interest bearing certificate of deposit account with the bank, in an amount equal to at least 100% of the outstanding obligations under the line of credit. We had drawn down $12.4 million from this equipment line as of December 31, 2006. The collateral balance of $12.4 million was recorded in the accompanying consolidated balance sheet as cash and cash equivalents and long-term marketable securities as the deposit account is not restricted as to withdrawal. The outstanding obligation under the line of credit as of December 31, 2006 was $12.4 million.

In December 2003, we entered into a credit agreement with a bank for an equipment line of credit of up to $15.0 million with a draw down period of one year. During the draw down period, we made interest only payments on outstanding balances. At the end of the draw down period, the outstanding balance converted to a 48-month term loan. The outstanding principal balance bears interest at LIBOR plus 0.625% (6.0% at December 31, 2006). This equipment line of credit had been fully drawn as of December 31, 2004. Of the $15.0 million draw down, $1.6 million was in the form of an irrevocable stand by letter of credit. This letter of credit is in lieu of a security deposit for one of our South San Francisco facilities. Pursuant to the terms of the line of credit, we are required to maintain a securities account at the bank equal to at least 100% of the outstanding principal balance. As of December 31, 2006, the collateral balance was $8.6 million, and we recorded this amount in the balance sheet as restricted cash and investments as the securities are restricted as to withdrawal. The outstanding obligation under the line of credit as of December 31, 2006 and 2005 was $7.0 million and $10.1 million, respectively.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Aggregate future principal payments of our total long-term debt as of December 31, 2006 are as follows (in thousands):

Year Ending December 31,	
2007	$ 13,579
2008	39,521
2009	36,192
2010	32,326
2011	35
Thereafter	—
	121,653
Less current portion	(13,579)
	$108,074

NOTE 10. COMMON STOCK AND WARRANTS

Stock Repurchase Agreements

Under the terms of our stock option agreements for options granted to employees before December 9, 2004, options are exercisable when granted, and, if exercised, the related shares are subject to repurchase upon termination of employment. Repurchase rights lapse over the vesting periods, which are generally four years. Should the employment of the holders of common stock subject to repurchase terminate prior to full vesting of the outstanding shares, we may repurchase all unvested shares at a price per share equal to the original exercise price. At December 31, 2006 and 2005 no shares were subject to repurchase terms and as of December 31, 2004 we had 19 shares subject to repurchase terms. On December 9, 2004, Exelixis' Board of Directors adopted a new stock option agreement under our 2000 Equity Incentive Plan pursuant to which we may grant options that may not be exercised early. Stock option grants after December 9, 2004 under our 2000 Equity Incentive Plan are generally made pursuant to the new option agreement and do not permit early exercise of options.

On December 9, 2005, Exelixis' Board of Directors adopted a Change in Control and Severance Benefit Plan (the "Plan") for executives and certain non-executives. Eligible Plan participants includes Exelixis employees with the title of vice president and higher. If a participant's employment with Exelixis is terminated without cause during a period commencing one month before and ending thirteen months following a change in control, then the Plan participant is entitled to have the vesting of all of his stock options accelerated with the exercise period being extended to no more than one year.

In October 2006, we completed a public offering of 11.5 million shares of our common stock under an effective registration statement, at a price of $8.40 per share, for gross proceeds of $96.6 million. We received approximately $90.5 million in net proceeds after deducting underwriting fees of $5.8 million and offering expenses of approximately $0.3 million.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Warrants

We have granted warrants to purchase shares of capital stock to third parties in connection with financing arrangements. At December 31, 2006, the following warrants to purchase common stock were outstanding and exercisable:

Date Issued	Exercise Price per Share	Expiration Date	Number of Shares
June 9, 2005	$ 8.90	June 9, 2010	750,000
June 9, 2006	$ 8.90	June 9, 2011	750,000
			1,500,000

Reserved Shares

At December 31, 2006, common stock reserved for future issuance is as follows:

Outstanding common stock options	17,210,626
Common stock available for grant under our stock option plans	12,104,396
Common stock available for grant under the 401(k) plan	149,152
Common stock issuable upon conversion of loans	10,769,781
Common stock available for grant under the 2000 Employee Stock Purchase Plan	1,493,230
Warrants	1,500,000
	43,227,185

NOTE 11. EMPLOYEE BENEFIT PLANS

Stock Option Plans

We have several stock option plans under which we have granted incentive stock options and non-qualified stock options to employees, directors and consultants. The Board of Directors or a designated Committee of the Board is responsible for administration of our employee stock option plans and determines the term, exercise price and vesting terms of each option. In general, our options have a four-year vesting term, an exercise price equal to the fair market value on the date of grant, and a ten year life from the date of grant (five years for incentive stock options granted to holders of more than 10% of Exelixis' voting stock).

Stock Purchase Plan

In January 2000, we adopted the 2000 Employee Stock Purchase Plan (the "ESPP"). The ESPP allows for qualified employees (as defined in the ESPP) to purchase shares of our common stock at a price equal to the lower of 85% of the closing price at the beginning of the offering period or 85% of the closing price at the end of each six month purchase period. Compensation expense related to our ESPP for 2006 was $0.9 million. As of December 31, 2006, we had 1.5 million shares available for grant under our ESPP. We issued 376,544 shares, 377,322 shares and 312,552 shares of common stock during 2006, 2005 and 2004, respectively, pursuant to the ESPP at an average price per share of $7.42, $5.83 and $6.83, respectively.

Stock-Based Compensation

Prior to January 1, 2006, we accounted for those plans under the recognition and measurement provisions of APB 25. Accordingly, we generally recognized compensation expense only when we granted options with a

discounted exercise price. Any resulting compensation expense was recognized ratably over the associated service period, which was generally the option vesting term. Also, we provided pro forma disclosure amounts in accordance with SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure" ("SFAS 148"), as if the fair value method defined by SFAS 123 had been applied to our stock-based compensation.

The following table illustrates the effect on net loss and loss per share for 2005 and 2004, had we applied the fair value recognition provisions of SFAS 123 (in thousands, except per share amounts):

	Year Ended December 31,	
	2005	2004
Net loss:		
As reported	$(84,404)	$(137,245)
Add: Stock-based employee compensation expense (reversal) included in reported net loss	(5)	56
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards	(11,912)	(16,028)
Pro forma	$(96,321)	$(153,217)
Net loss per share (basic and diluted):		
As reported	$ (1.07)	$ (1.89)
Pro forma	$ (1.22)	$ (2.11)

We adopted Statement SFAS 123R effective January 1, 2006, which requires the recognition of stock-based compensation at fair value in our consolidated statements of operations. We adopted SFAS 123R under the modified prospective method and therefore we have not restated results for prior periods. Under the modified prospective method, we recorded compensation expense for all awards granted prior to, but not yet vested as of January 1, 2006, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123. Stock-based compensation expense for all stock-based compensation awards granted after January 1, 2006 is based on the grant date fair value estimated using the Black-Scholes option pricing model. We recognize compensation expense on a straight-line basis over the requisite service period.

The impact on both basic and diluted earnings per share in fiscal 2006 was $0.20 per share. We recognize stock-based compensation expense net of estimated forfeitures in order to only recognize the expense for the shares expected to vest over the requisite service period of the award, which is generally the option vesting term of four years. We estimated the forfeiture rate for 2006 based on our historical experience, at an annual rate of 3.9%.

Employee stock-based compensation expense under SFAS 123R was allocated as follows (in thousands):

	Year Ended December 31, 2006
Research and development expense	$ 11,170
General and administrative expense	6,278
Total employee stock-based compensation expense	$ 17,448

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We use the Black-Scholes option pricing model to value our stock options. The expected life computation is based on historical exercise patterns and post-vesting termination behavior. However, only for options granted during 2005, we used the "simplified" method to estimate the expected term as outlined in Staff Accounting Bulletin No. 107. The simplified method establishes an estimate of the expected term as the mid-point between the vesting term and the maximum contractual term. We considered implied volatility as well as our historical volatility in developing our estimate of expected volatility. The fair value of employee share-based payments awards was estimated using the following assumptions and weighted average fair values:

	Stock Options		
	2006	2005	2004
Weighted average grant-date fair value	$ 5.26	$ 5.67	$ 4.77
Risk-free interest rate	4.42%	4.25%	3.11%
Dividend yield	0%	0%	0%
Volatility	64%	66%	72%
Expected life	4.7 years	6.2 years	4 years

	ESPP		
	2006	2005	2004
Weighted average grant-date fair value	$ 2.72	$ 2.24	$ 2.46
Risk-free interest rate	4.69%	2.74%	1.11%
Dividend yield	0%	0%	0%
Volatility	53%	56%	63%
Expected life	6 months	6 months	6 months

A summary of all option activity was as follows for the following fiscal years ended December 31:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at December 31, 2003	10,906,742	$ 12.65		
Granted	3,327,405	8.33		
Exercised	(614,865)	4.74		
Cancelled	(2,085,427)	12.64		
Options outstanding at December 31, 2004	11,533,855	11.74		
Granted	3,869,375	8.78		
Exercised	(302,264)	5.80		
Cancelled	(1,943,535)	13.53		
Options outstanding at December 31, 2005	13,157,431	10.73		
Granted	5,441,225	9.40		
Exercised	(426,221)	7.46		
Cancelled	(961,809)	11.73		
Options outstanding at December 31, 2006	17,210,626	$ 10.34	7.4 years	$8,758,832
Exercisable at December 31, 2006	9,245,535	$ 11.35	5.6 years	$8,030,299

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

At December 31, 2006, a total of 12,104,396 shares were available for grant under our stock option plans.

The aggregate intrinsic value in the table above represents the total intrinsic value (the difference between our closing stock price on the last trading day of fiscal 2006 and the exercise prices, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their options on December 31, 2006. Total intrinsic value of options exercised was $1.3 million, $0.4 million and $1.1 million for 2006, 2005 and 2004, respectively. Total fair value of options vested and expensed in 2006 was $16.5 million.

The following table summarizes information about stock options outstanding and exercisable at December 31, 2006:

	Options Outstanding			Options Outstanding and Exercisable	
Exercise Price Range	Number	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number of Exercisable	Weighted Average Exercise Price
$0.27 - $0.40.	66,530	2.4	$ 0.28	66,530	$ 0.28
$1.33 - $1.34	6,114	3.0	1.33	6,114	1.33
$3.35 - $4.95	94,810	4.4	4.88	94,810	4.88
$5.05 - $7.56	2,531,166	6.7	6.67	2,327,707	6.62
$7.65 - $11.47	11,555,279	8.4	9.12	3,847,047	8.93
$11.50 - $16.99	2,121,112	4.7	15.17	2,067,712	15.26
$18.81 - $24.25	479,832	3.9	19.70	479,832	19.70
$29.75 - $40.50	324,483	3.6	37.61	324,483	37.61
$45.00 - $47.00	31,300	3.6	46.60	31,300	46.6
	17,210,626	7.4	$ 10.34	9,245,535	$ 11.35

We had 8.6 million stock options exercisable with a weighted average exercise price of $11.72 at December 31, 2005 and 10.3 million stock options exercisable with a weighted average exercise price of $12.10 at December 31, 2004.

As of December 31, 2006, $40.1 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted-average period of 2.9 years. Cash received from option exercises and purchases under the ESPP in 2006 was $6.0 million.

401(k) Plan

We sponsor a 401(k) Retirement Plan whereby eligible employees may elect to contribute up to the lesser of 20% of their annual compensation or the statutorily prescribed annual limit allowable under Internal Revenue Service regulations. The 401(k) Plan permits Exelixis to make matching contributions on behalf of all participants. Beginning in 2002, we matched 50% of the first 4% of participant contributions into the 401(k) Plan in the form of Exelixis stock. We recorded expense of $0.6 million, $0.6 million and $0.6 million related to the stock match for the years ended December 31, 2006, 2005 and 2004, respectively.

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 12. INCOME TAXES

We have incurred net losses since inception and, consequently, we have not recorded any U.S. federal or state income taxes. We have recorded no income tax provision for the years ended December 31, 2006 and 2005.

Our net loss includes the following components (in thousands):

	December 31,		
	2006	2005	2004
Domestic	$(102,136)	$(83,937)	$(132,883)
Foreign	644	(467)	(4,362)
Total	$(101,492)	$(84,404)	$(137,245)

A reconciliation of income taxes at the statutory federal income tax rate to net income taxes included in the accompanying consolidated statement of operations is as follows (in thousands):

	December 31,		
	2006	2005	2004
U.S. federal taxes (benefit) at statutory rate	$(34,507)	$(28,697)	$(46,663)
Unutilized net operating losses	32,296	27,849	36,916
Stock based compensation	2,717	37	19
Non-deductible purchased intangibles	—	—	9,199
Other	(506)	811	529
Total	$ —	$ —	$ —

Deferred tax assets and liabilities reflect the net tax effects of net operating loss, credit carryforwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes.

Our deferred tax assets and liabilities consist of the following (in thousands):

	December 31,	
	2006	2005
Deferred tax assets:		
Net operating loss carryforwards	$ 213,920	$ 197,050
Tax credit carryforwards	43,860	31,590
Capitalized research and development costs	6,510	7,970
Deferred revenue	18,060	9,960
Accruals and reserves not currently deductible	6,600	4,580
Book over tax depreciation	3,480	30
Amortization of deferred stock compensation – non-qualified	3,830	—
Total deferred tax assets	296,260	251,180
Valuation allowance	(295,220)	(249,810)
Net deferred tax assets	1,040	1,370
Deferred tax liabilities:		
Other identified intangible assets	(1,040)	(1,370)
Net deferred taxes	$ —	$ —

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $45.4 million, $44.8 million and $51.1 million during 2006, 2005 and 2004, respectively.

In addition, approximately $53.7 million of the valuation allowance was attributable to acquisition-related items that if and when realized in future periods, will first reduce the carrying value of goodwill, then other long-lived intangible assets of our acquired subsidiaries and then income tax expense.

At December 31, 2006, we had federal net operating loss carryforwards of approximately $587.0 million, which expire in the years 2007 through 2026 and federal research and development tax credits of approximately $31.4 million which expire in the years 2011 through 2026. We also had net operating loss carryforwards for California of approximately $329.0 million, which expire in the years 2007 through 2016 and California research and development tax credits of approximately $15.8 million which have no expiration.

Under the Internal Revenue Code and similar state provisions, certain substantial changes in our ownership could result in an annual limitation on the amount of net operating loss and credit carryforwards that can be utilized in future years to offset future taxable income. The annual limitation may result in the expiration of net operating losses and credit carryforwards before utilization.

NOTE 13. COMMITMENTS

Leases

We lease office and research space and certain equipment under operating and capital leases that expire at various dates through the year 2018. Certain operating leases contain renewal provisions and require us to pay other expenses. Aggregate future minimum lease payments under operating leases are as follows (in thousands):

Year Ending December 31,	Operating Leases
2007	$ 15,559
2008	14,390
2009	14,118
2010	13,878
2011	13,770
Thereafter	78,018
	$ 149,733

The following is a summary of aggregate future minimum lease payments under operating leases at December 31, 2006 by material operating lease agreements (in thousands):

	Original Term (Expiration)	Renewal Option	Future Minimum Lease Payment
Building Lease #1	May 2017	2 additional periods of 5 years	$ 104,159
Building Lease #2	July 2018	1 additional period of 5 years	42,325
Other Building Leases			3,249
Total			$ 149,733

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Rent expense under operating leases was $16.0 million, $14.9 million and $13.4 million for the years ended December 31, 2006, 2005 and 2004, respectively.

Letter of Credit

We entered into stand by letter of credit in August 2006 and in October 2006 with a bank for a combined value of $1.1 million, which is related to our workers compensation insurance policy. As of December 31, 2006, the full amount of the two letters of credit was still available. As of December 31, 2006, the collateral balance was $1.1 million, and we recorded this amount in the accompanying consolidated balance sheet as restricted cash and investments as the securities are restricted as to withdrawal.

Licensing Agreements

We have entered into several licensing agreements with various universities and institutions under which we obtained exclusive rights to certain patent, patent applications and other technology. Aggregate minimum future payments pursuant to these agreements are as follows (in thousands):

Year Ending December 31,	
2007	$ 1,529
2008	745
2009	144
2010	—
2011	—
Thereafter	—
	$ 2,418

In addition to the payments summarized above, we are required to make royalty payments based upon a percentage of net sales of any products or services developed from certain of the licensed technologies and milestone payments upon the occurrence of certain events as defined by the related agreements. During 2005, we made a royalty payment of $1.8 million as a result of the Genentech collaboration we entered into in May 2005. No such milestone payments have been paid through December 31, 2006.

Indemnification Agreements

We have certain collaboration licensing agreements, which contain standard indemnification clauses. Such clauses typically indemnify the customer or vendor for an adverse judgment in a lawsuit in the event of our misuse or negligence. We consider the likelihood of an adverse judgment related to an indemnification agreement to be remote. Furthermore, in the event of an adverse judgment, any losses under such an adverse judgment may be substantially offset by corporate insurance.

NOTE 14. SUBSEQUENT EVENT

Bristol-Myers Squibb

In December 2006, Exelixis entered into a worldwide collaboration with BMS, which became effective in January 2007, to collaborate in the discovery, development and commercialization of novel targeted therapies for

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

the treatment of cancer. Exelixis is responsible for discovery and preclinical development of small molecule drug candidates directed against mutually selected targets. In January 2007, BMS made an upfront payment of $60.0 million to us for which we granted BMS the right to select up to three IND candidates from six future Exelixis compounds. We expect to recognize the upfront payment as revenue over the estimated research period of four years.

For each IND candidate selected, we are entitled to receive a $20.0 million selection milestone from BMS. Once selected, BMS will be the lead for the further development and commercialization of the selected IND candidates, and we will equally share all development costs and profits in the United States. However, we may opt out of the co-development for which we would receive milestones and royalties in lieu of profit sharing for sales in the United States.

NOTE 15. QUARTERLY FINANCIAL DATA (UNAUDITED)

The following tables summarize the unaudited quarterly financial data for the last two fiscal years (in thousands, except per share data):

	2006 Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
Total revenues	$ 18,119	$ 27,240	$ 23,540	$ 29,771
Loss from operations(2)	(31,057)	(30,383)	(31,561)	(33,753)
Net loss	(27,123)	(23,990)	(25,197)	(25,182)
Basic and diluted net loss per share	$ (0.32)	$ (0.29)	$ (0.30)	$ (0.27)

	2005 Quarter Ended			
	March 31,	June 30,[1]	September 30,	December 31,
Total revenues	$ 12,874	$ 34,310	$ 14,400	$ 14,377
Loss from operations	(26,961)	(9,642)	(27,892)	(29,496)
Net loss	(27,411)	(9,696)	(22,775)	(24,522)
Basic and diluted net loss per share	$ (0.36)	$ (0.13)	$ (0.29)	$ (0.29)

(1) The quarter ended June 30, 2005 included recognition of $21.1 million in revenues related to the termination of our Genoptera collaboration.

(2) Our loss from operations for the 2006 unaudited quarterly financial data includes stock-based compensation expense related to our adoption of SFAS 123R of $4.6 million, $4.4 million, $4.0 million and $4.4 million for our quarters ending March 31, 2006, June 30, 2006, September 30, 2006 and December 31, 2006, respectively.

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

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. Based on the evaluation of our disclosure controls and procedures (as defined in Securities Exchange Act of 1934 Rules 13a-15(e) and 15d-15(e)) required by Securities Exchange Act Rules 13a-15(b) or 15d-15(b), our Chief Executive Officer and our Chief Financial Officer have concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective.

Management's Report on Internal Control Over Financial Reporting. *Reference is made to the report set forth in "Item 8. Consolidated Financial Statements and Supplementary Data," which is incorporated herein by reference.*

Attestation Report of the Registered Public Accounting Firm on Management's Report on Internal Control Over Financial Reporting. *Reference is made to the report set forth in "Item 8. Consolidated Financial Statements and Supplementary Data," which is incorporated herein by reference.*

Changes in Internal Control Over Financial Reporting. There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item, other than with respect to our Code of Ethics, is incorporated by reference to Exelixis' Proxy Statement for its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 29, 2006.

Code of Ethics

We have adopted a Code of Business Conduct and Ethics that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer and principal accounting officer. The Code of Business Conduct and Ethics is posted on our website at www.exelixis.com under the caption "Investors."

We intend to satisfy the disclosure requirement under Item 10 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Business Conduct and Ethics by posting such information on our website, at the address and location specified above and, to the extent required by the listing standards of the Nasdaq Stock Market, by filing a Current Report on Form 8-K with the SEC, disclosing such information.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to Exelixis' Proxy Statement for its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 29, 2006.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item, other than with respect to Equity Compensation Plan Information, is incorporated by reference to Exelixis' Proxy Statement for its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 29, 2006.

Equity Compensation Plan Information

The following table provides certain information as of December 31, 2006 with respect to all of Exelixis' equity compensation plans in effect as of December 31, 2006:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by stockholders:			
2000 Equity Incentive Plan[1]	16,280,983	$ 10.29	10,360,507
2000 Non-Employee Directors' Stock Option Plan[2]	550,000	11.93	1,259,696
2000 Employee Stock Purchase Plan[3]	—	—	1,493,230
1994 & 1997 Equity Incentive Plan[4]	260,788	8.04	23,462
1997 Agritope Stock Award Plan[5]	118,855	14.87	460,731
Equity compensation plans not approved by stockholders:			
None	—	—	—
Total	17,210,626	$ 10.34	13,597,626

The above equity compensation plans were adopted with the approval of our security holders.

1 In January 2000, we adopted the 2000 Equity Incentive Plan (the "2000 Plan") to replace the 1997 Plan (described below in note 4). A total of 3.0 million shares of Exelixis common stock were initially authorized for issuance under the 2000 Plan. On the last day of each year for ten years, starting in 2000, the share reserve will automatically be increased by a number of shares equal to the greater of: (i) 5% of our outstanding shares on a fully-diluted basis and (ii) that number of shares subject to stock awards granted under the 2000 Plan during the prior 12-month period; provided, however, that the share increases shall not exceed 30.0 million shares in the aggregate. The Board of Directors may, however, provide for a lesser number at any time prior to the calculation date.

2 In January 2000, we adopted the 2000 Non-Employee Directors' Stock Option Plan (the "Director Plan"). The Director Plan provides for the automatic grant of options to purchase shares of common stock to non- employee directors. A total of 0.5 million shares of our common stock were initially authorized for issuance under the Director Plan. On the last day of each year for ten years, starting in 2000, the share reserve will automatically be increased by a number of shares equal to the greater of: (i) 0.75% of our outstanding shares on a fully-diluted basis and (ii) that number of shares subject to options granted under the Director Plan during the prior 12-month period. The Board of Directors may, however, provide for a lesser number at any time prior to the calculation date.

3 In January 2000, we adopted the 2000 Employee Stock Purchase Plan (the "ESPP"). The ESPP was amended in April 2005 to increase the total number of shares issuable under the plan. The ESPP allows for qualified employees (as defined in the ESPP) to purchase shares of our common stock at a price equal to the lower of 85% of the closing price at the beginning of the offering period or 85% of the closing price at the end of each purchase period. A total of 0.3 million shares of common stock were initially authorized for issuance under the ESPP. On the last day of each year for ten years, starting in 2000, the share reserve will automatically be increased by a number of shares equal to the greater of: (i) 0.75% of our outstanding shares on a fully-diluted basis and (ii) that number of shares subject to stock awards granted under the plan during the prior 12-month period; provided, however, that the share increases shall not exceed 3.4 million shares in the aggregate. However, the board may provide for a lesser number at any time prior to the calculation date.

4 In January 1995, we adopted the 1994 Employee, Director and Consultant Stock Option Plan (the “1994 Plan”). The 1994 Plan provides for the issuance of incentive stock options, non-qualified stock options and stock purchase rights to key employees, directors, consultants and members of the Scientific Advisory Board. In September 1997, we adopted the 1997 Equity Incentive Plan (the “1997 Plan”). The 1997 Plan amends and supersedes the 1994 Plan. The 1997 Plan was replaced by the 2000 Plan. No further options will be issued under any of the predecessor plans to the 2000 Plan.

5 In November 1997, Agritope adopted the 1997 Stock Award Plan (the “Agritope Plan”). The Agritope Plan provides for the issuance of incentive stock options and non-qualified stock options to key Agritope employees, directors, consultants and members of its Scientific Advisory Board.

In connection with the acquisition of Agritope in December 2000, we assumed all the options granted and outstanding to former directors, consultants and employees of Agritope under the Agritope, Inc. 1997 Stock Award Plan. Each outstanding Agritope stock option was converted into the right to purchase the number of shares of our common stock as determined using the applicable exchange ratio of 0.35. All other terms and conditions of the Agritope stock options did not change and such options will operate in accordance with their terms.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated by reference to Exelixis’ Proxy Statement for its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the fiscal year ended December 29, 2006.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item is incorporated by reference to Exelixis’ Proxy Statement for its 2007 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the fiscal year ended December 29, 2006.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are being filed as part of this report:

(1) The following financial statements and the Reports of Independent Registered Public Accounting Firm are included in Part II, Item 8:

(2) All financial statement schedules are omitted because the information is inapplicable or presented in the Notes to Consolidated Financial Statements.

(3) The items listed on the Index to Exhibits on pages 104 through 108 are incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California, on February 27, 2007.

EXELIXIS, INC.

By: /S/ GEORGE A. SCANGOS, PH.D.
George A. Scangos, Ph.D.
President and Chief Executive Officer

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

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report on Form 10-K has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signatures	Title	Date
/S/ GEORGE A. SCANGOS **George A. Scangos, Ph.D.**	Director, President and Chief Executive Officer (Principal Executive Officer)	February 27, 2007
/S/ FRANK KARBE **Frank Karbe**	Chief Financial Officer (Principal Financial and Accounting Officer)	February 27, 2007
/S/ STELIOS PAPADOPOULOS **Stelios Papadopoulos, Ph.D.**	Chairman of the Board	February 27, 2007
/S/ CHARLES COHEN **Charles Cohen, Ph.D.**	Director	February 27, 2007
/S/ ALAN M. GARBER **Alan M. Garber, M.D., Ph.D.**	Director	February 27, 2007
/S/ CARL B. FELDBAUM **Carl B. Feldbaum, Esq.**	Director	February 27, 2007
/S/ VINCENT MARCHESI **Vincent Marchesi, M.D., Ph.D.**	Director	February 27, 2007

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Signatures	Title	Date
/S/ FRANK MCCORMICK **Frank McCormick, Ph.D.**	Director	February 27, 2007
/S/ GEORGE POSTE **George Poste, D.V.M., Ph.D.**	Director	February 27, 2007
/S/ LANCE WILLSEY **Lance Willsey, M.D.**	Director	February 27, 2007
/S/ JACK L. WYSZOMIERSKI **Jack L. Wyszomierski**	Director	February 27, 2007

INDEX TO EXHIBITS

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated September 27, 2004, by and among Exelixis, Inc., XBO Acquisition Corp., and X-Ceptor Therapeutics, Inc. (1)
3.1	Amended and Restated Certificate of Incorporation of Exelixis, Inc. (2)
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc. (3)
3.3	Amended and Restated Bylaws of Exelixis, Inc. (4)
4.1	Specimen Common Stock Certificate. (2)
4.2	Form of Warrant, dated June 9, 2005, to purchase 750,000 shares of Exelixis, Inc. common stock in favor of Symphony Evolution Holdings LLC (5)
4.3	Form of Warrant, dated June 13, 2006, to purchase 750,000 shares of Exelixis, Inc. common stock in favor of Symphony Evolution Holdings LLC. (6)
4.4*	Warrant Purchase Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC (5)
4.5	Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999, among Exelixis, Inc. and certain Stockholders of Exelixis, Inc. (2)
4.6	Registration Rights Agreement, dated October 18, 2004, by and among Exelixis, Inc., X-Ceptor Therapeutics, Inc., and certain holders of capital stock of X-Ceptor Therapeutics, Inc. listed in Annex I thereto. (7)
4.7	Registration Rights Agreement, dated October 18, 2004, by and among Exelixis, Inc., X-Ceptor Therapeutics, Inc., and certain holders of capital stock of X-Ceptor Therapeutics, Inc. listed in Annex I thereto. (7)
4.8*	Registration Rights Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC. (5)
10.1	Form of Indemnity Agreement. (2)
10.2†	1994 Employee, Director and Consultant Stock Plan. (2)
10.3†	1997 Equity Incentive Plan. (2)
10.4†	2000 Equity Incentive Plan. (2)
10.5†	2000 Non-Employee Directors' Stock Option Plan. (8)
10.6†	2000 Employee Stock Purchase Plan. (9)
10.7†	Agritope, Inc. 1997 Stock Award Plan. (10)
10.8†	Form of Stock Option Agreement under the 2000 Non-Employee Directors' Stock Option Plan. (11)
10.9†	Form of Stock Option Agreement under the 2000 Equity Incentive Plan (early exercise permissible). (11)
10.10†	Form of Stock Option Agreement under the 2000 Equity Incentive Plan (early exercise may be restricted). (4)
10.11†	Employment Agreement, dated September 13, 1996, between George Scangos, Ph.D. and Exelixis, Inc. (2)

Exhibit Number	Description
10.12†	Offer Letter Agreement, dated June 18, 2001, between Jeffrey R. Latts, M.D. and Exelixis, Inc. (3)
10.13†	Consulting Agreement, effective as of January 12, 2007, between Exelixis, Inc. and Jeffrey Latts.
10.14†	Offer Letter Agreement, dated February 3, 2000, between Michael Morrissey, Ph.D., and Exelixis, Inc. (3)
10.15†	Offer Letter Agreement, dated November 20, 2003, between Frank Karbe and Exelixis, Inc. (3)
10.16†	Offer Letter Agreement, dated March 27, 2000, between Pamela Simonton, J.D., L.L.M. and Exelixis, Inc. (12)
10.17†	Offer Letter Agreement, dated June 20, 2006, between Exelixis, Inc. and Gisela M. Schwab, M.D. (13)
10.18†	Compensation Information for the Company's Named Executive Officers. (14)
10.19†	Compensation Information for Non-Employee Directors.
10.20†	Exelixis, Inc. Change in Control and Severance Plan. (15)
10.21*	Amended and Restated Cancer Collaboration Agreement, dated as of December 15, 2003, by and between Exelixis, Inc. and Bristol-Myers Squibb Company. (16)
10.22*	Product Development and Commercialization Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (17)
10.23*	First Amendment to the Product Development and Commercialization Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (12)
10.24*	Stock Purchase and Stock Issuance Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (17)
10.25	First Amendment to the Stock Purchase and Stock Issuance Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (12)
10.26*	Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (17)
10.27	Second Amendment to the Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (18)
10.28*	Third Amendment to the Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (12)
10.29*	Collaboration Agreement, dated May 31, 2005, between Exelixis, Inc. and Genentech, Inc. (5)
10.30	License Agreement, dated June 10, 2005, between Exelixis, Inc. and Helsinn Healthcare, S.A. (5)
10.31*	Novated and Restated Technology License Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution, Inc. (5)
10.32*	Amended and Restated Research and Development Agreement, dated June 9, 2005, among Exelixis, Inc., Symphony Evolution, Inc. and Symphony Evolution Holdings LLC. (5)
10.33*	Purchase Option Agreement, dated June 9, 2005, among Exelixis, Inc., Symphony Evolution Holdings LLC and Symphony Evolution, Inc. (5)
10.34	Amendment No. 1, dated December 14, 2006, to the Purchase Option Agreement, dated June 9, 2005, among Exelixis, Inc., Symphony Evolution Holdings, LLC and Symphony Evolution, Inc. (19)
10.35**	Collaboration Agreement, dated December 5, 2005, between Exelixis, Inc. and Bristol-Myers Squibb Company. (20)

Exhibit Number	Description
10.36**	License Agreement, December 21, 2005, between Exelixis, Inc. and Wyeth Pharmaceuticals Division. (20)
10.37**	Collaboration Agreement, dated March 20, 2006, between Exelixis, Inc. and Sankyo Company, Limited. (21)
10.38**	Collaboration Agreement, dated December 15, 2006, between Exelixis, Inc. and Bristol-Myers Squibb Company.
10.39**	Collaboration Agreement, dated December 22, 2006, between Exelixis, Inc. and Genentech, Inc.
10.40	Lease, dated May 12, 1999, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (2)
10.41	First Amendment to Lease, dated March 29, 2000, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (22)
10.42	Lease Agreement, dated May 24, 2001, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (3)
10.43	Second Amendment to Lease, dated July 20, 2004, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (3)
10.44	Lease agreement, dated May 27, 2005, between Exelixis, Inc. and Britannia Pointe Grand Limited Partnership. (23)
10.45	Loan and Security Agreement, dated May 22, 2002, by and between Silicon Valley Bank and Exelixis, Inc. (3)
10.46	Loan Modification Agreement, dated December 21, 2004, between Silicon Valley Bank and Exelixis, Inc. (24)
10.47	Amendment No. 7, dated December 21, 2006, to the Loan and Security Agreement, dated May 22, 2002, between Silicon Valley Bank and Exelixis, Inc. (25)
21.1	Subsidiaries of Exelixis, Inc. (20)
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (contained on signature page).
31.1	Certification required by Rule 13a-14(a) or Rule 15d-14(a)
31.2	Certification required by Rule 13a-14(a) or Rule 15d-14(a).
32.1‡	Certification by the Chief Executive Officer and the Chief Financial Officer of Exelixis, Inc., as required by Rule 13a-14(b) or 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

† Management contract or compensatory plan.

± The reference to shares has been adjusted to reflect the reverse stock split which occurred in April 2000.

* Confidential treatment granted for certain portions of this exhibit.

** Confidential treatment requested for certain portions of this exhibit.

‡ This certification accompanies this Annual Report on Form 10-K, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Annual Report on Form 10-K), irrespective of any general incorporation language contained in such filing.

1. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 28, 2004 and incorporated herein by reference.
2. Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-1 (File No. 333-96335), as filed with the Securities and Exchange Commission on February 7, 2000, as amended, and incorporated herein by reference.
3. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, filed with the Securities and Exchange Commission on August 5, 2004 and incorporated herein by reference.
4. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 15, 2004 and incorporated herein by reference.
5. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2005, filed with the Securities and Exchange Commission on August 9, 2005 and incorporated herein by reference.
6. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on June 15, 2006 and incorporated herein by reference.
7. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on October 21, 2004 and incorporated herein by reference.
8. Filed as an Appendix to Exelixis, Inc.'s Definitive Proxy Statement on Schedule 14A, as filed with the Securities and Exchange Commission on February 27, 2004 and incorporated herein by reference.
9. Filed as an Appendix to Exelixis, Inc.'s Definitive Proxy Statement on Schedule 14A, as filed with the Securities and Exchange Commission on March 18, 2005 and incorporated herein by reference.
10. Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-8 (File No. 333-52434), as filed with the Securities Exchange Commission on December 21, 2000 and incorporated herein by reference.
11. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2004, filed with the Securities and Exchange Commission on November 8, 2004 and incorporated herein by reference.
12. Filed as an Exhibit to Exelixis, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the Securities and Exchange Commission on March 15, 2005 and incorporated herein by reference.
13. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on June 26, 2006 and incorporated herein by reference.
14. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 14, 2006 and incorporated herein by reference.
15. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 15, 2005 and incorporated herein by reference.
16. Filed as an Exhibit to Exelixis, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 30, 2003, filed with the Securities and Exchange Commission on February 20, 2004, as amended, and incorporated herein by reference.
17. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, filed with the Securities and Exchange Commission on November 8, 2002 and incorporated herein by reference.
18. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 23, 2004 and incorporated herein by reference.

19. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 18, 2006 and incorporated herein by reference.

20. Filed as an Exhibit to Exelixis, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2005, filed with the Securities and Exchange Commission on March 9, 2006 and incorporated herein by reference.

21. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2006, filed with the Securities and Exchange Commission on May 9, 2006 and incorporated herein by reference.

22. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000, filed with the Securities Exchange Commission on May 15, 2000 and incorporated herein by reference.

23. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on May 27, 2005 and incorporated herein by reference.

24. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 23, 2004 and incorporated herein by reference.

25. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 27, 2006 and incorporated herein by reference.

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is made and entered into effective as of January 12, 2007 (the "Effective Date") by and between **EXELIXIS, INC.,** a Delaware corporation located at 170 Harbor Way, P.O. Box 511, South San Francisco, CA 94083-0511 (the "Company"), and **JEFFREY LATTS**, an individual whose address is as set forth on **Exhibit A** ("Consultant").

RECITALS

WHEREAS, Consultant has unique skills and knowledge in the Company's field of endeavor and thus is well suited to advise the Company with respect to its research and development; and

WHEREAS, the Company desires that Consultant be available to advise and consult with the Company in the research, development and analysis of technology relating to the Company's research and product development efforts, and Consultant agrees to make himself available to provide such assistance to the Company through a consulting relationship with the Company;

NOW THEREFORE, in consideration of the mutual obligations specified in this Agreement, the parties agree to the following:

1. CONSULTING SERVICES ENGAGEMENT. The Company hereby engages Consultant, and Consultant hereby accepts such engagement, to perform consulting services for the Company as set forth herein.

1.1 Scope. Consultant shall provide the consulting services specified in **Exhibit A** ("Services"). The specific nature and amount of the Services to be performed shall be determined by the Company during the term of this Agreement.

1.2 Performance and Time Commitment. Consultant shall render the Services at such times, places and through such communications means as may be mutually agreed upon by Consultant and the Company.

1.3 Professional Standards. The manner and means used by Consultant to perform the Services desired by the Company are in the sole discretion and control of Consultant. Consultant's Services, and the results thereof, will be performed with and be the product of the highest degree of professional skill and expertise.

1.4 Independent Contractor Status. It is understood and agreed that Consultant is an independent contractor, is not an agent or employee of the Company, and is not authorized to act on behalf of the Company. Consultant agrees not to hold himself out as, or give any person any reason to believe that he is an employee, agent, joint venturer or partner of the Company. Consultant will not be eligible for any

Company provided employee benefits, nor will the Company make deductions from any amounts payable to Consultant for taxes or insurance. All taxes, insurance, and benefits shall be the sole responsibility of Consultant. Consultant retains the right (as limited in Section 3) to provide services for others during the term of this Agreement and is not required to devote his services exclusively for the Company.

2. COMPENSATION AND EXPENSES. Compensation shall be made in accordance with Exhibit A and pursuant to monthly invoices summarizing in reasonable detail the Services performed as submitted by Consultant in a timely manner and form acceptable to the Company. In the First Year Consulting Period (as defined in Exhibit A), such monthly invoices shall set forth only the Services performed, including hours, but no corresponding consulting fees since Consultant's sole fee during the First year Consulting Period shall be the First Year Consulting Fee (as defined in Exhibit A).

Reasonable expenses actually incurred in connection with the performance of Services shall be reimbursed, subject to presentation of appropriate documentation; provided, however, that Consultant shall obtain written approval from the Company prior to incurring any individual expense in excess of five hundred U.S. dollars ($500.00). All invoices shall be direct to:

For mailing via the U.S. Postal Service:

Exelixis, Inc.
Attn: Accounts Payable
P.O. Box 511
170 Harbor Way
South San Francisco, CA 94083-511

For mailing via UPS, Federal Express or other carrier:

Exelixis, Inc.
Attn: Accounts Payable
220 East Grant Ave.
South San Francisco, CA 94080

3. NO CONFLICTS. Consultant represents that he is not a party to any existing agreement that would prevent him from or conflict with the performance of the Services for the Company as contemplated in this Agreement. Consultant covenants and agrees not to enter into any consulting, employment or other relationship with any third party that could reasonably be expected to conflict with the performance of Services hereunder. In any event, Consultant covenants and agrees that during the term of the Agreement and for a period of one (1) year thereafter, he will not perform any research or development project for any third party that will be competitive with any of the Company's existing or anticipated business. Consultant agrees that he will not improperly use or disclose any proprietary information or trade secrets of third parties in connection with the performance of Services hereunder.

4. NO SOLICITATION. During the term of this Agreement and for a period of one (1) year after its termination, Consultant will not personally or through others recruit, solicit or induce any employee of the Company to terminate his or her employment with the Company.

5. MAINTAINING CONFIDENTIAL INFORMATION.

5.1 Company Information. During the term of this Agreement and in the course of Consultant's performance hereunder, Consultant may receive or otherwise be exposed to confidential and proprietary information relating to the Company's technology, know-how, show-how, data, inventions, developments, plans, business practices, and strategies. Such confidential and proprietary information of the Company (collectively referred to as "Information") may include but not be limited to: (i) confidential and proprietary information supplied to Consultant with the legend "Exelixis Confidential" or equivalent; (ii) the Company's marketing and customer support strategies, financial information (including sales, costs, profits and pricing methods), internal organization, employee information, and customer lists; (iii) the Company's technology, including, but not limited to, discoveries, inventions, research and development efforts, data, software, trade secrets, processes, samples, media and/or cell lines (and procedures and formulations for producing any such samples, media and/or cell lines), vectors, viruses, assays, plasmids, formulas, methods, product and know-how and show-how; (iv) information relating to the Company's development candidates or programs including but not limited to, investigator brochures and clinical protocols, chemical structures, physical and chemical characterization, analytical methods, drug formulation, drug manufacturing, clinical studies, regulatory reviews, isolation methods, analytical and synthetic protocols, toxicology findings, intended clinical uses, strategy development, clinical pharmacology and data; (v) all derivatives, progenies, improvements, additions, modifications, and enhancements to any of the above, including any such information or material created or developed by Consultant under this Agreement; or (vi) information of third parties as to which the Company has an obligation of confidentiality.

Consultant acknowledges and agrees that the Information shall be treated as confidential and as the sole, exclusive and extremely valuable property of the Company. Accordingly, Consultant agrees not to reproduce any of the Information without the applicable prior written consent of the Company, not to use the Information except in the performance of this Agreement, and not to disclose all or any part of the Information in any form to any third party, either during or after the term of this Agreement. In particular but without limiting the generality of the foregoing, Consultant shall not file any patent application containing any claim the subject matter of which is derived from or based upon Information or use the Information in any manner that would constitute a violation of any laws or regulations of the United States. Upon termination of this Agreement for any reason, including expiration of term, Consultant agrees to cease using and to return to the Company all whole and partial copies and derivatives of the Information, whether in Consultant's possession or under Consultant's direct or indirect control.

5.2 Exceptions. Consultant shall not be bound by the obligations of Section 5.1 if the Information: (a) is already known or available to the public or known or available to Consultant; (b) has become known or available to the public through no fault of Consultant; (c) is disclosed to Consultant by a third party without any obligation of confidentiality; (d) is required by law, rule or regulation to be disclosed, provided commercially reasonable measures are taken to preserve its confidentiality; or (e) is independently developed by Consultant as evidenced by written documentation.

5.3 Obligations that Survive Termination. Consultant's obligations under Section 5.1 shall extend for a period of ten (10) years from the date of termination of the Services provided hereunder.

6. INVENTIONS.

6.1 Disclosure of Inventions. Consultant shall promptly and fully disclose to the Company any and all ideas, improvements, inventions, discoveries, trade secrets, know-how, techniques and works of authorship learned, conceived or made by Consultant pursuant to his performance of the Services for the Company or of tasks assigned to him by the Company hereunder (the "Service Product"). Consultant further agrees to keep and maintain adequate and current records (in the form of notes, sketches, drawings or in any other form that may be required by the Company) of all work performed relating to the Services, including all proprietary information developed relating thereto, and such records shall be available to and remain the sole property of the Company at all times.

6.2 Inventions Assigned to the Company. Consultant agrees that any and all Service Product shall be the sole and exclusive property of the Company. Consultant hereby assigns to the Company all his right, title and interest in and to any and all Service Product. Consultant explicitly acknowledges and agrees that all works of authorship contained in the Service Product are "works for hire" under the copyright laws of the United States, and that the Company shall own the copyright in all such works of authorship. Consultant further agrees that the Company is and shall be vested with all rights, title and interests, including patent, copyright, trade secret and trademark rights, in and to all of Consultant's Service Product under this Agreement.

6.3 Obtaining Intellectual Property Protection. Consultant agrees to assist the Company in every proper way to obtain and enforce United States and foreign proprietary rights relating to the Service Product in any and all countries. To that end, Consultant agrees to execute, verify and deliver such documents and perform such other acts (including appearing as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such proprietary rights and the assignment thereof. In addition, Consultant agrees to execute, verify and deliver assignments of such proprietary rights to the Company or its designee. Consultant's obligation to assist the Company with respect to proprietary rights in any and all countries shall continue beyond the termination of his engagement, but the Company shall compensate Consultant at a reasonable rate after such termination for the time actually spent by Consultant at the Company's request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure Consultant's signature on any document needed in connection with the actions specified in the preceding paragraph, Consultant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as his agent and attorney in fact, to act for and on his behalf to execute, verify and file, with the same legal force and effect as if executed by him, any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph. Consultant hereby waives and quitclaims to the Company any and all claims of any nature whatsoever which Consultant now or may hereafter have for infringement of any proprietary rights assigned to the Company.

7. Debarment/Other Sanctions.

7.1 Consultant hereby certifies that he has never been debarred under the Generic Drug Enforcement Act of 1992, 21 U.S.C. Sec. 335a(a) or (b), or sanctioned by a Federal Health Care Program (as defined in 42 U.S.C. § 1320 a-7b(f)), including, but not limited to, the federal Medicare or a state Medicaid program, or debarred, suspended, excluded, or otherwise declared ineligible from any federal agency or program. In the event that during the term of this Agreement Consultant (a) becomes debarred, suspended, excluded, sanctioned, or otherwise declared ineligible; or (b) receives notice of an action or threat of an action with respect to any such debarment, suspension, exclusion, sanction, or ineligibility, Consultant agrees to immediately notify the Company. Consultant also agrees that in the event that he becomes debarred, suspended, excluded, sanctioned, or otherwise declared ineligible, he shall immediately cease all activities relating to this Agreement.

7.2 In the event that (a) Consultant becomes debarred, suspended, excluded, sanctioned, or otherwise declared ineligible or (b) the Company receives notice from Consultant or otherwise becomes aware that either (i) a debarment, suspension, exclusion, sanction, or declaration of ineligibility action has been brought against Consultant, or (ii) Consultant has been threatened with a debarment, suspension, exclusion, sanction, or ineligibility, then the Company shall have the right to terminate this Agreement immediately.

8. TERMINATION. Consultant may terminate this Agreement at any time by giving the Company thirty (30) days written notice. The Company may terminate this Agreement at any time after January 31, 2007, if Consultant has not executed the agreement set forth in **Exhibit B** hereto within the time period prescribed therein or if Consultant has revoked the Agreement. Effective January 12, 2008, the Company may terminate this Agreement at any time by giving the Consultant thirty (30) days written notice. In the event of any termination, Consultant shall cease work immediately after giving or receiving such notice or termination, unless otherwise advised by the Company, shall return to the Company all Information, Service Product, and other materials belonging to the Company, and shall notify the Company of costs incurred up to the

termination date. Sections 3, 4, 5, 6, 8, 13, 14 and 16 of this Agreement shall survive any termination of this Agreement. If this Agreement is terminated before January 11, 2008, then Consultant shall receive a pro rata amount of the First year Consulting Fee (as defined in Exhibit A) based on the actual number of days elapsed during First Year Consulting Period (as defined in Exhibit A) until the day of termination and a three hundred sixty five (365) day year. Any such payment shall be made at the time contemplated under the Payment Schedule (as defined in Exhibit A). Unless earlier terminated as provided herein, this Agreement shall expire two (2) years from the Effective Date.

9. COMPLIANCE WITH APPLICABLE LAWS. Consultant warrants that all material supplied and Services performed under this Agreement complies with or shall be performed in accordance with all applicable United States and foreign laws and regulations. Consultant represents that Consultant is not a party to any existing agreement that would prevent Consultant from performing any Services for the Company as contemplated in this Agreement.

10. ASSIGNMENT; BENEFIT. This Agreement is for the personal services of Consultant based on his unique expertise and may not be assigned by Consultant, nor shall it be assignable by operation of law, without the prior written consent of the Company. This Agreement may be assigned at any time by the Company. The parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors, heirs, executors, and administrators and permitted assigns.

11. INDEMNIFICATION. The Company agrees to indemnify, defend and hold harmless Consultant against any liability, damage, loss or expense (including reasonable attorney fees and expenses of litigation) (each, a "Loss") brought by a third party against Consultant arising out of the actions of the Company, its employees or any third party acting on behalf or under authorization from the Company in the performance of this Agreement or as a result of any products developed or made as a result of information or materials received from Consultant, except for the negligent or willful acts of Consultant. The Company's agreement to indemnify, defend and hold harmless Consultant is conditioned on the Consultant: (a) providing written notice to the Company of any Loss arising out of the indemnified activities within thirty (30) days after the Consultant has knowledge of such Loss; (b) permitting the Company to assume full responsibility to investigate, prepare for and defend against any such Loss; (c) assisting the Company, at the Company's reasonable expense, in the investigation of, preparation for and defense of any Loss; and (d) not compromising or settling such Loss without the Company's written consent.

12. WARRANTIES. Consultant makes no warranties, express or implied, as to any matter whatsoever, including without limitation the ownership, merchantability, or fitness for a particular purpose of the results of the Services provided hereunder. Consultant makes no representation or warranty regarding the actual or potential infringement of patents or copyrights of third parties, and Company acknowledges that the avoidance of such infringement in the use of the results related to the Services shall remain the responsibility of the Company.

13. LEGAL AND EQUITABLE REMEDIES. Consultant hereby acknowledges and agrees that in the event of any breach of this Agreement by Consultant, including, without limitation, the actual or threatened disclosure of Information or Service Product without the prior express written consent of the Company, the Company will suffer an irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, Consultant hereby agrees that the Company shall be entitled to specific performance of Consultant's obligations under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

14. GOVERNING LAW; SEVERABILITY. This Agreement shall be governed by and construed according to the laws of the State of California without regard to its conflict of laws rules. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, that provision shall be severed and the remainder of this Agreement shall continue in full force and effect.

15. COMPLETE UNDERSTANDING; NO AMENDMENT. This Agreement, together with its Exhibits, constitutes the final, exclusive and complete understanding and agreement of the Company and Consultant with respect to the subject matter hereof and supersedes all prior understandings and agreements between the parties relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by an authorized representative of each party.

16. NOTICES. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address or sent by certified or registered mail, three days after the date of mailing.

If to the Company:	If to the Consultant:
Corporate Secretary Exelixis, Inc. 170 Harbor Way P.O. Box 511 South San Francisco, CA 94083-0511	

17. USE OF NAME. Consultant shall not use the Company's name or the names of the Company's employees in any advertising or sales promotional material without the prior written approval of the Company.

18. PUBLICATION. Consultant shall not make any publication or presentation relating to the Services hereunder without the prior written approval of the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

EXELIXIS, INC.

By: _____

Name: _____

Title: _____

Date: _____

JEFFREY LATTS

_____

Social Security No: _____

Date: _____

EXHIBIT A

A. CONSULTANT

Jeffrey Latts
Address:
Tel:
Email:

B. SERVICES.

1. TERM. SERVICES WILL BE PERFORMED FROM JANUARY 12, 2007 TO JANUARY 11, 2009, UNLESS TERMINATED EARLIER.

2. WORK. SERVICES WILL INVOLVE THE FOLLOWING:

Consultant shall provide advice in the specialized field of drug discovery and development, including but not limited to drug formulation, drug manufacturing, clinical studies, regulatory reviews, isolation methods, analytical protocols, and data related to Exelixis' drug development candidates.

3. TIME COMMITMENT.

a. For the period from January 12, 2007 to January 11, 2008 (the "First Year Consulting Period"), Consultant shall provide consulting services not to equal or exceed twenty (20) hours per week (which, shall include any travel time), as requested by the Company.

b. For the period from January 12, 2008 to January 11, 2009 (the "Second Year Consulting Period"), Consultant shall provide consulting services as agreed upon between the parties.

C. COMPENSATION.

As full and complete compensation for Consultant's Services and the discharge of all Consultant's obligations hereunder, the Company shall pay Consultant:

1. in the First Year Consulting Period:

a. compensation in the amount of four hundred thousand U.S. Dollars ($400,000.00) per annum for Services rendered, as requested by the Company (the "First Year Consulting Fee"). The First Year Consulting Fee shall be paid in two equal installments (i.e., $200,000.00 each). The first installment shall be paid on August 1, 2007 and the second installment shall be paid on January 11, 2008 (the "Payment Schedule"). For the avoidance of doubt, except for reimbursements of any expenses pursuant to Section 2 of the Agreement, the First Year Consulting Fee shall be the only compensation payable to Consultant under this Agreement (Exhibit B shall not be considered part of this Agreement for purposes of this clause) during the First Year Consulting Period; and

b. all of Consultant's stock options to buy shares of the Company common stock granted to Consultant under the Company's 2000 Equity Incentive Plan (the "Plan") and held by Consultant as of January 12, 2007 shall continue to vest and be exercisable until December 31, 2007 in accordance with the terms of the Plan. The Company and Consultant agree that all of Consultant's options to buy shares of Company common stock shall terminate on December 31, 2007; provided, however, that if this Agreement is terminated prior to the date that is three (3) months before December 31, 2007, then Consultant's options shall terminate three (3) months following such date of termination in accordance with the terms of the Company's 2000 Equity Incentive Plan. The Company will lift all trading restrictions from Consultant's options promptly following the Effective Date and agrees to impose any new trading restrictions on such options only if required by law or regulation. Consultant understands and acknowledges that the federal securities laws forbid Consultant from buying or selling the Company's securities while in possession of material, nonpublic information about or involving the Company.

2. in the Second Year Consulting Period:

a. compensation in the amount of three hundred fifty U.S. Dollars ($350.00) per hour for Services rendered, as requested by the Company; expressly excluding days spent traveling. All undisputed invoices shall be due and payable thirty (30) days after receipt of invoice by the Company; provided, however, that Consultant shall notify the Chief Executive Officer of the Company, or his designee, if the total compensation accrued during the period from January 12, 2008 to January 11, 2009 exceeds ten thousand U.S. Dollars ($10,000.00) in any monthly period.

In addition, the Company shall reimburse Consultant for reasonable transportation, lodging and other reasonable expenses incurred in connection with the provision of Services; provided that Consultant provides documentation of such expenses and obtains prior written approval from the Company for any such expenses in accordance with Section 2.

D. REPORTING OBLIGATIONS

Consultant will perform Services and provide reports or updates to the Chief Executive Officer (or his designee) as requested by the Company.

EXHIBIT 10.19

COMPENSATION INFORMATION FOR NON-EMPLOYEE DIRECTORS

The tables below provide information regarding the current annual cash compensation amount and equity compensation for Non-Employee Directors of Exelixis, Inc. Directors who are employees of Exelixis do not receive additional compensation for director services.

2007 Cash Compensation for Non-Employee Directors

Board of Directors	Retainer Fee	$ 20,000
	Additional Chair Retainer Fee	$ 20,000
	Regular Meeting Fee	$ 2,500
	Special Meeting Fee[1]	$ 500
Audit Committee	Retainer Fee	$ 6,000
	Additional Chair Retainer Fee	$ 6,000
	Meeting Fee[2]	$ 1,000
Compensation Committee	Retainer Fee	$ 5,000
	Additional Chair Retainer Fee	$ 2,500
	Meeting Fee[2]	$ 1,000
Nominating & Corporate Governance Committee	Retainer Fee	$ 5,000
	Additional Chair Retainer Fee	$ 2,500
	Meeting Fee[2]	$ 1,000
Research & Development Committee	Retainer Fee	$ 10,000
	Additional Chair Retainer Fee	$ 10,000
	Meeting Fee[2]	$ 5,000

1 Meeting at which minutes are generated.
2 In-person meeting or teleconference at which minutes are generated.

2007 Equity Compensation for Non-Employee Directors

Board of Directors	**Initial Option Grant[3]**	Number of Options	25,000
	Annual Option Grant	Number of Options	10,000

3 For new directors only.

Except as provided above, all other terms and conditions regarding compensation for Non-Employee Directors remain as outlined in the Company's Proxy Statement for the 2006 Annual Meeting of Stockholders, filed with the Securities and Exchange Commission on March 29, 2006. Information regarding compensation for Non-Employee Directors will also be provided in the Company's Proxy Statement for the 2007 Annual Meeting of Stockholders which will be filed with the Securities and Exchange Commission in March 2007.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (the "**Agreement**") is made and entered into as of December 15, 2006 (the "**Execution Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **BRISTOL-MYERS SQUIBB COMPANY,** a Delaware corporation headquartered at 345 Park Avenue, New York, New York, 10154 ("**BMS**"). Exelixis and BMS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. BMS is a multinational health care company that has expertise and capability in researching, developing and marketing human pharmaceuticals.

B. Exelixis is a drug discovery company that has expertise and proprietary technology relating to therapeutics that modulate signal transduction pathways involved in oncology and other disease areas.

C. BMS and Exelixis desire to establish a collaboration to apply such Exelixis technology and expertise to the discovery, lead optimization and characterization of small molecule compounds that directly bind and modulate certain targets, with a goal of filing an Investigational New Drug applications for small molecule compounds in **[*]**, and to provide for the development and commercialization of novel therapeutic and prophylactic products based on such compounds.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement (other than the headings of the Sections or Articles) have the following meanings set forth in this **Article 1**, or, if not listed in this **Article 1**, the meanings as designated in the text of this Agreement.

1.1 "Affiliate" means, with respect to a particular Party, a person, corporation, partnership, or other entity that controls, is controlled by or is under common control with such Party. For the purposes of the definition in this **Section 1.1**, the word "**control**" (including, with correlative meaning, the terms "**controlled by**" or "**under the common control with**") means the actual power, either directly or indirectly through one (1) or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

1.2 "Allowable Expenses" means those expenses that are specifically attributable to a Co-Promotion Product in the U.S. and that consist of: **[*]**.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

1.3 "ANDA" means an Abbreviated New Drug Application submitted to the FDA in conformance with applicable laws and regulations, or the foreign equivalent of any such application in any other country.

1.4 "Appealable Matter" means any dispute between the Parties (or their respective designees or Committees) concerning: (a) whether the **[*]** have or may **[*]** have **[*]** the **[*]** of any **[*]**; (b) **[*]** have or may **[*]** have a **[*]** the **[*]** of any **[*]**. For clarity, any dispute regarding whether **[*]** shall be an Appealable Matter.

1.5 "Approved Plan" means, with respect to a Product, any one or more of the Global Development Plans, each Annual Development Plan, the Global Commercialization Strategy, and the U.S. Commercialization Plan, in each case as adopted or approved under the terms of this Agreement.

1.6 "BMS [*]" or "[*]" means **[*]** which the **[*]** (or a successor thereto) (**"[*]"**) **[*]**, including **[*]** (typically, **[*]**) and **[*]** to that effort. At **[*]**, the following have been established: (a) one or more **[*]** (through BMS **[*]**); (b) **[*]** to BMS; (c) **[*]** at **[*]**; (d) **[*]**; (e) assay **[*]** for the **[*]** assays; (f) assays for **[*]**; and (g) **[*]** assays.

1.7 "BMS [*]" or "[*]" means **[*]** which **[*]** for a compound that has **[*]** and a **[*]** made to **[*]**. For clarity, **[*]**.

1.8 "BMS [*]" or "[*]" means **[*]** which **[*]** one or more compounds **[*]** to **[*]**. **[*]**, the **[*]** for **[*]** information needed **[*]**. **[*]** is **[*]**. This **[*]** is typically made about **[*]** prior to **[*]**. At **[*]** there will be evidence of **[*]**, **[*]**, which will include **[*]**. There will be **[*]**, and **[*]**. Not all **[*]** testing (**[*]**) will be **[*]** at **[*]**, but **[*]** be **[*]** reached. The **[*]** will be **[*]**.

1.9 "BMS [*]" or "[*]" means **[*]** which the BMS **[*]** based **[*]**. An **[*]** follows **[*]**. BMS **[*]** once it contains **[*]**.

1.10 "BMS Licensed Know-How" means all Information (other than Patents) Controlled by BMS and its Affiliates, including Information Controlled jointly with Exelixis, as of the Effective Date and during the term of the Agreement that: (a) covers a Collaboration Compound, a composition containing a Collaboration Compound (e.g., a formulation containing a Collaboration Compound), or the manufacture or use of a Collaboration Compound; and (b) is **[*]** for Exelixis to exercise the rights licensed to it under the Agreement or to perform its obligations to the Collaboration under the Agreement.

1.11 "BMS Licensed Patents" means all Patents Controlled by BMS and its Affiliates, including Patents Controlled jointly with Exelixis, as of the Effective Date and during the term of this Agreement that: (a) cover a Collaboration Compound, a composition containing a Collaboration Compound (e.g., a formulation containing a Collaboration Compound), or the manufacture or use of a Collaboration Compound; and (b) are **[*]** for Exelixis to exercise the rights licensed to it under the Agreement or to perform its obligations to the Collaboration under the Agreement.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

1.12 "Change of Control" means any transaction in which a Party: (a) sells, conveys or otherwise disposes of all or substantially all of its property or business; or (b)(i) merges, consolidates with, or is acquired by any other Person (other than a wholly-owned subsidiary of such Party); or (ii) effects any other transaction or series of transactions; in each case of clause (i) or (ii), such that the stockholders of such Party immediately prior thereto, in the aggregate, no longer own, directly or indirectly, beneficially or legally, at least fifty percent (50%) of the outstanding voting securities or capital stock of the surviving Person following the closing of such merger, consolidation, other transaction or series of transactions. As used in this **Section 1.12**, "**Person**" means any corporation, firm, partnership or other legal entity.

1.13 "Clinical Costs" means the costs incurred by a Party or for its account, during the term and pursuant to this Agreement, in connection with clinical studies of a Co-Developed Product in the Co-Development Territory, including the following: (a) the preparation for and conduct of clinical trials (except for related Manufacturing Costs otherwise included in Development Costs); (b) data collection and analysis, and report writing; and (c) clinical laboratory work. The Clinical Costs shall exclude costs incurred in connection with **[*]**.

1.14 "Co-Developed Product" shall mean a Product for which: (a) Exelixis has exercised an Exelixis Co-Development Option; and (b) Exelixis has not opted-out pursuant to **Section 4.7(a)**.

1.15 "Co-Development Territory" shall mean **[*]**.

1.16 "Collaboration" means the collaborative research, development, and commercialization program between the Parties that is contemplated by this Agreement.

1.17 "Collaboration Compounds" means the Lead Compound and Program Backups in each Lead Op Program, Provisional Collaboration Program or Collaboration Program.

1.18 "Commercialize" means to promote, market, distribute, sell (and offer for sale or contract to sell) or provide product support for a Product, including by way of example: (a) detailing and other promotional activities in support of a Product; (b) advertising and public relations in support of a Product, including market research, development and distribution of selling, advertising and promotional materials, field literature, direct-to-consumer advertising campaigns, media/journal advertising, and exhibiting at seminars and conventions; (c) developing reimbursement programs and information and data specifically intended for national accounts, managed care organizations, governmental agencies (e.g., federal, state and local), and other group purchasing organizations, including pull-through activities; (d) co-promotion activities not included in the above; (e) conducting medical education activities and journal advertising; and (f) **[*]**. For clarity, **"Commercializing"** and **"Commercialization"** have a correlative meaning.

1.19 "Committee" means the JEC, JRC, JDC, JCC, or JFC, as the case may be.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

1.20 "Committee-Governed Product" means: (a) any Co-Promotion Product; (b) any Co-Developed Product; and (c) any Product with respect to which Exelixis exercised its Product-Opt-Out option pursuant to **Section 4.7(a) [*]**.

1.21 "**Completed Screening Program**" means a Screening Program for which there exists a lead molecule that has completed the following activities (as applicable to such lead molecule): (a) **[*]**; (b) **[*]**; (c) **[*]**; (d) completion of **[*]**; (e) completion of **[*]**; (f) **[*]**.

1.22 "Controlled" means, with respect to any compound, material, Information or intellectual property right, that the Party owns or has a license to such compound, material, Information or intellectual property right and has the ability to grant to the other Party access, a license or a sublicense (as applicable) to such compound, material, Information or intellectual property right as provided for herein without violating the terms of any agreement or other arrangements with any Third Party existing at the time such Party would be first required hereunder to grant the other Party such access, license or sublicense.

1.23 "Co-Promotion Product" means a Product for which Exelixis has exercised its option to Co-Promote in the U.S. as set forth in **Section 6.4**.

1.24 "Core Program" shall mean, with respect to a Product, **[*]** for which any **[*]** or any **[*]** first **[*]** with respect to such Product.

1.25 "Development" means, with respect to a Product, those activities, including research, pre-clinical development activities, clinical trials, supporting manufacturing activities and related regulatory activities, that are **[*]** to: (a) obtain the approval by the applicable Regulatory Authorities of the Drug Approval Application with respect to such Product in the applicable regulatory jurisdiction, whether alone or for use together, or in combination, with another active agent or pharmaceutical product; (b) maintain such approvals; or (c) obtain or maintain compendia listings with respect to such Product. For clarity, "**Co-Develop**", **"Develop"** and **"Developing"** have a correlative meaning.

1.26 "Development Candidate" means a **[*]** that has met Exelixis' internal developability criteria, which criteria are consistent with Exelixis' internal developability criteria for all Exelixis programs (including programs outside of the Collaboration), and that has been approved by Exelixis to transition from **[*]** to **[*]**.

1.27 "Development Costs" means the costs incurred by a Party or for its account, during the term and pursuant to this Agreement, that are specifically identifiable (or reasonably allocable) to the Development of a Co-Developed Product in the Co-Development Territory and that are directed to achieving or maintaining Regulatory Approval of such Co-Developed Product in the Co-Development Territory. The Development Costs shall include amounts that a Party pays to Third Parties involved in the Development of a Co-Developed Product (**[*]**), and all internal costs incurred by a Party in connection with the Development of such Co-Developed Product. Development Costs include the following: (a) preclinical costs such as toxicology and formulation development, test method development, delivery system development, stability testing and statistical analysis; (b) Clinical Costs; (c) expenses related to adverse event reporting;

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(d) Manufacturing Costs for a Co-Developed Product for use in preclinical and clinical activities including the manufacture, purchase or packaging of comparators or placebo for use in Clinical Trials (with the manufacturing costs for comparators or placebo to be determined in the same manner as Manufacturing Costs are determined for any Product), as well as the direct costs and expenses of disposal of drugs and other supplies used in such Clinical Trials and any associated release testing and QA/QC development costs; (e) **[*]** incurred in connection with **[*]**, to the extent provided therein; and (f) development of the Manufacturing process for a Co-Developed Product (including with respect to any excipients or any active pharmaceutical ingredient included in such Co-Developed Products) and related scale-up, manufacturing process validation, manufacturing process improvements, and qualification and validation of Third Party contract manufacturers; (g) regulatory expenses relating to Development activities for the purpose of obtaining Regulatory Approval for an indication for a Co-Developed Product; (h) costs of real property rented specifically for Development activities (to the extent actually used); and (i) other out-of pocket development expenses including, without limitation institutional and advisory review boards, investigator meetings, quality of life studies, epidemiology and outcomes research.

1.28 "Diligent Efforts" means the carrying out of obligations or tasks in a sustained manner consistent with the efforts a Party devotes to a product or a research, development or marketing project of similar market potential, profit potential or strategic value resulting from its own research efforts, based on conditions then prevailing. Diligent Efforts requires that the Party: (a) **[*]**, (b) **[*]**, and (c) **[*]** with respect to such **[*]**.

1.29 "Distribution Costs" means the costs, **[*]**, incurred by a Party or for its account, during the term and pursuant to the Agreement that are reasonably allocable (as determined by the JFC) to the distribution of a Co-Promotion Product in the U.S., including: (a) handling and transportation to fulfill orders (excluding such costs to the extent they are treated as a deduction in the definition of Net Sales); (b) customer services, including order entry, billing and adjustments, inquiry and credit and collection; and (c) direct costs of storage and distribution of Co-Promotion Products.

1.30 "Dollars" or **"$"** means the legal tender of the United States.

1.31 "Drug Approval Application" or "**DAA**" means: (a) in the United States, an NDA (or a supplemental NDA for following indications), and (b) in any other country or regulatory jurisdiction, an equivalent application for regulatory approval required before commercial sale or use of a Product (or with respect to a subsequent indication) in such country or regulatory jurisdiction.

1.32 "ECN" or **"Early Candidate Nomination"** means a compound or other substance that has been approved **[*]** to transition from **[*]** in a **[*]** to **[*]**.

1.33 "EMEA" means **[*]** commercial territory, consisting of the following countries and regions: **[*]**. The EMEA also includes: (a) **[*]**; and (b) exports from **[*]** not separately identified in the list. For clarity, the specific list of countries and regions may change to align with any corresponding **[*]**.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

1.34 "EU" means the European Union, as its membership may be altered from time to time, and any successor thereto. The member countries of the European Union as of the Execution Date are Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, The Netherlands, Austria, Portugal, Finland, Sweden, the United Kingdom, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Malta, and Cyprus.

1.35 "Executive Officers" means: (a) in the case of Exelixis, the President and Chief Executive Officer of Exelixis; and (b) in the case of BMS, either (i) a direct report of the BMS CSO (for disputes involving development matters) or (ii) the Head of U.S. Operations (for disputes involving commercial matters).

1.36 "Exelixis Licensed Know-How" means all Information (other than Patents) Controlled by Exelixis and its Affiliates, including Information Controlled jointly with BMS, as of the Effective Date and during the term of this Agreement that: (a) covers a Collaboration Compound, a composition containing a Collaboration Compound (e.g., a formulation containing a Collaboration Compound), or the manufacture or use of a Collaboration Compound; and (b) is **[*]** for BMS to exercise the rights licensed to it under the Agreement or to perform its obligations to the Collaboration under the Agreement.

1.37 "Exelixis Licensed Patents" means all Patents controlled by Exelixis and its Affiliates, including patents controlled jointly with BMS, as of the Effective Date and during the term of this Agreement that: (a) cover a Collaboration Compound, a composition containing a Collaboration Compound (e.g., a formulation containing a Collaboration Compound), or the manufacture or use of a Collaboration Compound; and (b) are **[*]** for BMS to exercise the rights licensed to it under the Agreement or to perform its obligations to the Collaboration under the Agreement.

1.38 "FDA" means the U.S. Food and Drug Administration, and any successor thereto.

1.39 "FTE" means the equivalent of the work of one (1) employee full time for one (1) year consisting of a total of **[*]** hours per year (or such other number as may be agreed to by the JFC) directly related to the Development or Commercialization of any Co-Developed Product or Co-Promotion Product, as the case may be, or any other activities contemplated under this Agreement. Any individual who devotes less than **[*]** hours per year (or such other number as may be agreed by the JFC) shall be treated as an FTE on a pro-rata basis upon the actual number of hours worked divided by **[*]** (or such other number as may be agreed by the JFC). Unless modified by the JFC, the **[*]** figure shall be used without regard to the Parties' own internal definition of the number of hours that comprises an FTE.

1.40 "GAAP" means U.S. generally accepted accounting principles, consistently applied.

1.41 "[*]" means, with respect to a particular Product in a country, **[*]** such Product (**[*]**); and (b) is **[*]** or otherwise), whether **[*]** or **[*]**.

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1.42 "HSR Act" means the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended from time to time, and the rules, regulations, guidance and requirements promulgated thereunder as may be in effect from time to time.

1.43 "Identified Target(s)" means the set of one or more Lead Op Targets or Collaboration Targets (as applicable) that the JRC, the JDC or the Parties (as the case may be) reasonably believes **[*]** in such Lead Op Program, Provisional Collaboration Program or Collaboration Program.

1.44 "IND" means an Investigational New Drug Application submitted to the FDA in conformance with applicable laws and regulations, or the foreign equivalent of any such application in any other country.

1.45 "Information" means information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including, databases, practices, methods, techniques, specifications, formulations, formulae, knowledge, know-how, skill, experience, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures. For clarity, Information does not include any Patents.

1.46 "Initial Lead Op Programs" means the **[*]** programs conducted by Exelixis on the initial Lead Op Targets selected by the Parties pursuant to **Section 3.3(a)**.

1.47 "Invention" means any and all inventions and improvements thereto, invented or discovered by or on behalf of a Party (and/or its Affiliates) in the performance of its obligations under this Agreement.

1.48 "Joint Invention" means any Invention invented or discovered jointly by or on behalf of the employee(s), contractor(s) or agent(s) of both Parties (and/or their Affiliates).

1.49 "Joint Commercialization Committee" or **"JCC"** means the committee described in **Section 2.4**.

1.50 "Joint Development and Regulatory Committee" or **"JDC"** means the committee described in **Section 2.3**.

1.51 "Joint Executive Committee" or **"JEC"** means the committee described in **Section 2.2**.

1.52 "Joint Finance Committee" or **"JFC"** means the committee described in **Section 2.6**.

1.53 "Joint Research Committee" or **"JRC"** means the committee described in **Section 2.5**.

1.54 "Knowledge" means, with respect of a Party, the good faith **[*]** facts and information in the possession of an **[*]** of such Party, or any **[*]** of, or **[*]**, such Party or its Affiliates, **[*]** execution of this Agreement. For purposes of this definition, an **"[*]"** means any person in the **[*]** of a Party.

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1.55 "Launch" means, for each Product in each country, the first arm's-length sale to a Third Party for use or consumption by the public of such Product in such country after Regulatory Approval of such Product in such country. A Launch shall not include any Product sold for use in clinical trials, for research or for other non-commercial uses, or that is supplied as part of a compassionate use or similar program**.**

1.56 "Lead Compound" means, with respect to a Provisional Collaboration Program or Collaboration Program: (a) the Program Lead for such Provisional Collaboration Program or Collaboration Program; and (b) any **[*]** compound described in subsection (a).

1.57 "Lead Op Program" has the meaning described in **Section 3.3**. The Lead Op Programs include: (a) Initial Lead Op Programs; and (b) any **[*]** programs that were **[*]** and that were **[*]** programs pursuant to **Section 3.3(c)**.

1.58 "Lead Op Target(s)" means: (a) the initial list of targets identified by the Parties pursuant to **Section 3.3(a)**; and (b) any additional target(s) identified by the Parties pursuant to **Sections 3.2(b)** or **3.3(a)**. The Lead Op Targets shall be listed in **Exhibit 3.3**, which shall be updated periodically by the Parties.

1.59 "Major European Countries" means France, Germany, Spain, Italy, and the United Kingdom.

1.60 "Major Territory" means each of the following territories: (a) **[*]**.

1.61 "Manufacturing" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, inspection, receiving, holding and shipping of Lead Compounds, Program Backups, Collaboration Compounds, Products, or any raw materials or packaging materials with respect thereto, or any intermediate of any of the foregoing, including process and cost optimization, process qualification and validation, commercial manufacture, stability and release testing, quality assurance and quality control. For clarity, "Manufacture" has a correlative meaning.

1.62 "Manufacturing Costs" means costs that relate to a Co-Developed Product or a Co-Promotion Product which is: (a) supplied by a Third Party; or (b) manufactured directly by a Party or its Affiliate, in each case to the extent such costs relate to the development of a Co-Developed Product or the Commercialization of a Co-Promotion Product in the U.S., as further described below and as allocated in accordance with GAAP.

For costs in **subsection (a)**, Manufacturing Costs means: (i) the amount paid to such a Third Party **[*]**; plus (ii) the relevant manufacturing Party's reasonable direct and identifiable internal costs and out-of-pocket costs, incurred or accrued (including any prepayments) by the manufacturing Party in connection with manufacturing process improvements, storage, manufacturing scale-up, manufacturing site qualification, quality assurance and quality control (including testing), supply chain management, capital equipment, similar activities comprising the manufacturing Party's oversight of the manufacturing process of the non-Affiliate Third Party, and any value-added tax or similar tax due for amounts paid to such Third Party.

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For costs in **subsection (b)**, Manufacturing Costs means the "standard cost" per unit, including variances to standard costs and inventory write-offs. This standard cost shall include the cost of raw materials, labor, and other direct and identifiable variable costs incurred or accrued by the manufacturing Party in connection with the manufacture of a Co-Promotion Product, manufacturing process improvements, storage, manufacturing scale-up, manufacturing site qualification, quality assurance and quality control (including testing), supply chain management, and costs of equipment, plant operations and plant support services necessary to produce a Co-Promotion Product. These costs of plant operations and support services shall include **[*]** and other similar activities, including **[*]** charges. Costs that cannot be identified to a specific activity supporting manufacturing of a Co-Promotion Product, such as charges for corporate overhead that are not controllable by the manufacturing plant, shall be **[*]** from the determination of Manufacturing Cost.

Subject to the preceding paragraph, "standard cost" per unit for purposes of ongoing cost accounting purposes shall be calculated in accordance with **[*]**. The Parties shall reconcile the standard cost charges and appropriate credit or payment shall be made to effect such reconciliation as directed by the JFC not less than annually against the above Manufacturing Cost definition.

Manufacturing Costs shall include costs of such activities that are undertaken at any time during the term of this Agreement (including **[*]**).

1.63 "Medical Education Activities" means activities designed to ensure or improve appropriate medical use of, conduct medical education of, or further research regarding, a Co-Promotion Product sold in the U.S., including by way of example: (a) activities of medical sales liaisons; (b) grants to support continuing medical education, symposia, or research related to a Co-Promotion Product in the U.S. (excluding Phase IV Clinical Trials and Development activities conducted for purposes of obtaining an initial Regulatory Approval for an indication for a Co-Promotion Product in the U.S.); (c) development, publication and dissemination of publications relating to Co-Promotion Product in the U.S., as well as medical information services provided in response to inquiries communicated via sales representatives or received by letter, phone call or email; and (d) conducting advisory board meetings or other consultant programs, the purpose of which is to obtain advice and feedback related to the Development or Commercialization of a Co-Promotion Product in the U.S.

1.64 "NDA" means a New Drug Application submitted to the FDA in conformance with applicable laws and regulations.

1.65 "Net Sales" means the amount invoiced or otherwise billed by BMS or its Affiliate or sublicensee for sales or other commercial disposition of a Product to a Third Party purchaser, less the following to the extent included in such billing or otherwise actually allowed or incurred with respect to such sales: (a) discounts, including cash, trade and quantity discounts, price reduction programs, retroactive price adjustments with respect to sales of a product, charge-back payments and rebates granted to managed health care organizations or to federal,

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state and local governments (or their respective agencies, purchasers and reimbursers) or to trade customers, including but not limited to, wholesalers and chain and pharmacy buying groups; (b) credits or allowances actually granted upon rejections or returns of Products, including for recalls or damaged goods; (c) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Products, to the extent billed; (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of a Product; (e) bad debts relating to sales of Products that are actually written off by BMS in accordance with GAAP during the applicable calculation period; (f) costs due to the factoring of receivables; and (g) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Products, including value-added taxes, or other governmental charges otherwise measured by the billing amount, when included in billing, as adjusted for rebates and refunds, but specifically excluding taxes based on net income of the seller; provided that all of the foregoing deductions are calculated in accordance with generally accepted accounting principles consistently applied throughout the Party's organization.

Notwithstanding the foregoing, if any Product is sold under a bundled or capitated arrangement with other BMS products, then, solely for the purpose of calculating Net Sales under this Agreement, any discount on such Products sold under such an arrangement shall be **[*]** for the applicable accounting period. In case of any dispute as to the applicable **[*]** under the preceding sentence, the determination of same shall be calculated and certified by **[*]**, whose decision shall be binding.

A sale of a Product is deemed to occur upon invoicing. **[*]**.

For sake of clarity and avoidance of doubt, sales by BMS, its Affiliates or sublicensees of a Product to **[*]**. Any Products **[*]** considered in determining Net Sales hereunder.

In the event a Product is sold as an end-user product consisting of a combination of active functional elements or as a combined product and/or service, Net Sales, for purposes of determining royalty payments on such Product, shall be calculated by multiplying the Net Sales of the end-user product and/or service by the fraction A over A+B, in which A is the gross selling price of the Product portion of the end-user product and/or service when such Product is sold separately during the applicable accounting period in which the sales of the end-user product were made, and B is the gross selling price of the other active elements and/or service, as the case may be, of the end-user product and/or service sold separately during the accounting period in question. All gross selling prices of the elements of such end-user product and/or service shall be calculated as the average gross selling price of the said elements during the applicable accounting period for which the Net Sales are being calculated. In the event that, in any country or countries, no separate sale of either such above-designated Product or such above designated elements of the end-user product and/or service are made during the accounting period in which the sale was made or if gross retail selling price for an active functional element, component or service, as the case may be, cannot be determined for an accounting period, Net Sales allocable to the Product in each such country shall be determined by mutual agreement reached in good faith by the Parties prior to the end of the accounting period in question based on an equitable method of determining same that takes into account, on a country-by-country basis, variations in potency, the relative contribution of each active agent, component or service, as the

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case may be, in the combination, and relative value to the end user of each active agent, component or service, as the case may be. Notwithstanding the foregoing, the Parties agree that, for purposes of this paragraph, drug delivery vehicles, adjuvants, and excipients shall not be deemed to be "**active ingredients**" or "**active functional elements**".

1.66 "Operating Profit (or Loss)" means Net Sales of Co-Promotion Products in the U.S. less Allowable Expenses in the U.S. For sake of clarity, Operating Profit (or Loss) shall be determined **[*]**, and if such terms are used individually, "**Operating Profit**" shall mean a positive Operating Profit (or Loss), and "**Operating Loss**" shall mean a negative Operating Profit (or Loss).

1.67 "Patent" means all: (a) unexpired letters patent (including inventor's certificates and utility models) which have not been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period (and which have not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, or been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement), including any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof; (b) pending applications for letters patent which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), and/or abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written consent, including any continuation, division or continuation-in-part thereof and any provisional or other priority applications; and (c) any international counterparts, and counterparts in any country, to clauses (a) and (b) above.

1.68 "Phase I Clinical Trial" means a clinical trial of a Product on sufficient numbers of normal volunteers and/or patients that is designed to establish that such Product is safe for its intended use, can be delivered in a dose(s) that is therapeutically useful, and to support its continued testing in Phase II Clinical Trials.

1.69 "Phase II Clinical Trial" means a Phase IIa Clinical Trial or a Phase IIb Clinical Trial.

1.70 "Phase IIa Clinical Trial" means a controlled clinical trial of a Product that utilizes the pharmacokinetic and pharmacodynamic information obtained from one (1) or more previously conducted Phase I Clinical Trial(s) and/or other Phase IIa Clinical Trial(s) in order to confirm the optimal manner of use of such Product (dose and dose regimens) and to better determine safety and efficacy.

1.71 "Phase IIb Clinical Trial" means a clinical trial of a Product on sufficient numbers of patients that is designed to provide a preliminary determination of safety and efficacy of such Product in the target patient population over a range of doses and dose regimens.

1.72 "Phase III Clinical Trial" means a clinical trial of a Product on sufficient numbers of patients that is designed to establish that such Product is safe and efficacious for its

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intended use, and to define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed, and to support Regulatory Approval of such Product or label expansion of such Product.

1.73 "Phase IIIb Clinical Trial" means a clinical trial of a Product, initiated before regulatory approval and is not required for same, but which may provide data that further defines how and where the drug should be used. A Phase IIIb Clinical Trial may include epidemiological studies, modeling and pharmacoeconomic studies, and investigator-sponsored clinical trials that are approved by the JDC and that otherwise fit the foregoing definition.

1.74 "Phase IV Clinical Trial" means a product support clinical trial of a Product commenced after receipt of Regulatory Approval in the country where such trial is conducted. A Phase IV Clinical Trial may include epidemiological studies, modeling and pharmacoeconomic studies, and investigator-sponsored clinical trials studying Product that are approved by the JDC and that otherwise fit the foregoing definition.

1.75 "Product" means any therapeutic or prophylactic product (for use in animals or humans) that contains or comprises a Collaboration Compound for which BMS has exercised its Co-Development Option in accordance with the terms of this Agreement.

1.76 "Program Backups" means, with respect to a Lead Op Program, Provisional Collaboration Program or Collaboration Program any compounds, other than the Program Lead, that: (a) were created by BMS or Exelixis as part of such Lead Op Program, Provisional Collaboration Program or Collaboration Program (or Backup Program pursuant to **Section 3.5**); (b) **[*]** the applicable Lead Op Target(s) or Collaboration Target(s) **[*]**; and (c) **[*]** Lead Op Target(s) or Collaboration Target(s), based on the **[*]**, and any **[*]** of any such compounds described in ((a), (b) and (c)) above.

1.77 "Program Lead" means, for any Lead Op Program, Provisional Collaboration Program or Collaboration Program, a small molecule compound that: (a) was created by Exelixis as part of the relevant Lead Op Program, Provisional Collaboration or Collaboration Program; (b) **[*]** the applicable Lead Op Target(s) or Collaboration Target(s) **[*]**; (c) **[*]** Lead Op Target(s) or Collaboration Target(s), based on the **[*]**; (d) meets Exelixis' internal standards applicable to a Development Candidate; and (e) is **[*]** that would otherwise result in **[*]**.

1.78 "Registrational Trial" means, with respect to a given Product, either (i) a Phase III Clinical Trial with such Product or (ii) a Phase IIb Clinical Trial that, at the time of commencement, is expected to be the basis for initial Regulatory Approval of such Product.

1.79 "Regulatory Approval" means any and all approvals (including Drug Approval Applications, supplements, amendments, pre- and post-approvals, pricing and reimbursement approvals), licenses, registrations or authorizations of any Regulatory Authority, national, supra-national (e.g., the European Commission or the Council of the EU), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, that are necessary for the manufacture, distribution, use or sale of a Product in a regulatory jurisdiction.

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1.80 "Regulatory Authority" means the applicable national (e.g., the FDA), supra-national (e.g., the European Commission or the Council of the EU), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity that, in each case, governs the approval of a Product in such applicable regulatory jurisdiction.

1.81 "Regulatory Expenses" means costs incurred to prepare product regulatory submissions and to obtain and maintain Regulatory Approval in the U.S. and to comply with Regulatory Approvals and requirements of Regulatory Authorities, including FDA user and other fees, reporting and regulatory affairs activities, and recalls and withdrawals for Co-Promotion Product (other than costs for Co-Promotion Product that are deductible from Net Sales or that are included as Development Costs).

1.82 "Reporting-Only Product" means any Product with respect to which Exelixis exercised a Product Opt-Out pursuant to **Section 4.7(a)** prior to **[*]** such Product.

1.83 "Royalty-Bearing Product" means a Product: (a) with respect to which Exelixis failed to make the co-development election contemplated by **Section 3.7(c)**; or (b) with respect to which: (i) Exelixis has notified BMS of a Product Opt-Out; or (ii) with respect to which Exelixis elected not to exercise its Co-Promotion Option or where such Co-Promotion Option expired unexercised.

1.84 "Royalty Territory" means the world, excluding the U.S.

1.85 "Sales and Marketing Costs" means the **[*]** costs that are **[*]** the sales and marketing of a Co-Promotion Product in the U.S., including: (a) activities directed to the advertising and marketing of a Co-Promotion Product; (b) professional education (to the extent not performed by sales representatives), including launch meetings; (c) costs of advertising, public relations and medical education agencies; (d) peer-to-peer activities, such as continuing medical education, grand rounds, and lunch and dinner meetings; (e) speaker programs, including the training of such speakers; (f) grants to support continuing medical education or research (excluding Clinical Costs); (g) development, publication and dissemination of publications relating to a Co-Promotion Product; (h) developing, obtaining and providing training packages of a Co-Promotion Product, promotional literature, promotional materials and other selling materials; (i) developing and performing market research; (j) conducting symposia and opinion leader development activities; (k) development reimbursement programs; (l) developing information and data specifically intended for national accounts, managed care organizations and group purchasing organizations; (m) **[*]** incurred in connection with **[*]**, to the extent provided therein; (n) direct expenses relating to selling by non-Affiliate Third Parties; (o) costs of transporting, housing and maintaining sales representatives for training; (p) conducting Phase IIIb Clinical Trials and Phase IV Clinical Trials, and clinical trials performed for marketing purposes and post-marketing surveillance activities; (q) administration, operation and maintenance of the sales force that promotes a Co-Promotion Product in the U.S., sales bulletins and other communications, sales meetings, specialty sales forces, consultants, call reporting and other monitoring/tracking costs, district and regional sales management, home office personnel who support the sales force; and (r) costs associated with Medical Education Activities, and other ancillary services to the foregoing (to the extent not otherwise falling within

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subsections (a) through (r). Sales and Marketing Costs shall include costs of such activities that are undertaken at any time during the term of this Agreement (including prior to the initial Regulatory Approval of a Co-Promotion Product in the U.S.).

1.86 "Screening Target(s)" means any one or more targets that: (a) the Parties mutually agree becomes part of the Collaboration pursuant to **Section 3.2(a)**; and (b) are not the subject of: (i) a collaboration between Exelixis and a Third Party; or (ii) discussions between Exelixis and a Third Party concerning a *bona fide* collaboration. The Screening Targets shall be listed in **Exhibit 3.2**, which shall be updated periodically by the Parties.

1.87 "Sole Invention" means any Invention invented or discovered solely by or on behalf of a Party (or its Affiliate) and its employees, contractors and/or agents.

1.88 "Specificity Criteria" means, for each Collaboration Compound, that such Collaboration Compound: (a) demonstrates [*] as determined [*]; and (b) has a [*] in such [*].

1.89 "Target Potency Threshold" means, for each Collaboration Compound, that such Collaboration Compound [*].

1.90 "Territory" means the world.

1.91 "Third Party" means any entity other than: (a) Exelixis; (b) BMS; or (c) an Affiliate of either Party.

1.92 "Third Party Royalties" means royalties and other payments payable to a Third Party in consideration for rights **[*]** for the **[*]** of Co-Promotion Product.

1.93 "Trademark Costs" mean the fees and expenses paid to outside counsel and other Third Parties, direct costs of in-house counsel and filing and maintenance expenses, incurred in connection with the establishment and maintenance of rights under trademarks applicable to Co-Promotion Product in the U.S., including costs of filing and registration fees, actions to enforce or maintain a trademark and other proceedings.

1.94 "United States" or **"U.S."** means the United States of America, and its territories, districts and possessions.

1.95 "Unrelated Compound" means, with respect to a Lead Op Program, Provisional Collaboration Program or Collaboration Program, any Program Backups that: (a) were created by BMS or Exelixis as part of such Lead Op Program, Provisional Collaboration Program or Collaboration Program (or Backup Program pursuant to **Section 3.5**); and (b) either: (i) **[*]** applicable Lead Op Target(s) or Collaboration Target(s) **[*]**; or (ii) are **[*]** Lead Op Target(s) or Collaboration Target(s), based on the **[*]**.

1.96 "Valid Claim" means (a) a claim in an issued Patent that has not: (i) expired or been canceled; (ii) been declared invalid by an unreversed and unappealable or unappealed decision of a court or other appropriate body of competent jurisdiction; (iii) been admitted to be

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invalid or unenforceable through reissue, disclaimer or otherwise; or (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement of the Parties; or (b) a claim under an application for a Patent that has been pending for [*] for [*], and, in any case, which has not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), or abandoned.

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Additional Definitions

The following table identifies the location of definitions set forth in various Sections of the Agreement.

Definition	Location (Section)
Alliance Manager	**2.8(a)**
Annual Development Plan	**4.2(a)**
Backup Program	**3.5(b)(i)**
[*]	**[*]**
BMS Rejected Lead Op Target	**3.3(d)**
Co-Development Option	**3.1(b)**
Collaboration Program	**3.4(b)(i)**
Collaboration Target	**3.3(b)**
[*]	**[*]**
[*]	**[*]**
Co-Promotion Agreement	**6.4(a)**
Co-Promotion Notice	**6.4(b)**
Co-Promotion Option	**6.4(a)**
DCP	**3.3(b)**
[*]	**[*]**
Effective Date	**13.6**
Exelixis Co-Development Option	**3.7(c)**
[*]	**[*]**
Global Commercialization Strategy	**6.2(a)**
Global Development Plan	**4.1(a)**
Indication Opt-Out	**4.7(b)**
JAMS	**3.6(b)(iii)**
Lead Op Candidate	**3.2(b)**
[*]	**[*]**
Party Implementation Matter	**2.7(c)(ii)**
Party Vote	**2.7(c)(i)**
Pharmacovigilance Agreement	**5.7**
Product Opt-Out	**4.7(a)**
Provisional Collaboration Program	**3.4(a)**
Rejected Lead Op Target	**3.3(c)**
[*]	**[*]**
Rejected Screening Target	**3.2(b)**
Research Term	**3.10**
ROC	**1.6**
Royalty Term	**9.11**
Screening Program	**3.2**
[*]	**[*]**
[*]	**[*]**
Term	**12.1**
U.S. Commercialization Plan	**6.2(a)**
Working Group	**2.7(f)**

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2. MANAGEMENT OF COLLABORATION

2.1 General.

(a) Role of Committees. Subject to **Section 2.1(b)** and the other terms and conditions of this Agreement, the Parties shall establish: (i) a joint executive committee (the "**Joint Executive Committee**" or "**JEC**") that will oversee the Collaboration and facilitate communications between the Parties with respect to the Development, Regulatory Approval, and Commercialization of Committee-Governed Products hereunder; and (ii) four (4) specialized joint committees consisting of one to focus on each of the following areas arising out of the Collaboration: (A) discovery efforts in connection with Screening Programs, Lead Op Programs, Provisional Collaboration Programs and Collaboration Programs, as described in **Article 3** (such committee, the **"Joint Research Committee"** or **"JRC"**); (B) Development and Regulatory Approval and other regulatory matters (such committee, the "**Joint Development and Regulatory Committee**" or "**JDC**"); (C) Commercialization (such committee, the "**Joint Commercialization Committee**" or "**JCC**"); and (D) financial issues (such committee, the "**Joint Finance Committee**" or "**JFC**"). Each Committee shall have the responsibilities and authority allocated to it in this **Article 2** and elsewhere in this Agreement. It is contemplated that: (X) all significant matters (other than Party Implementation Matters, as defined in **Section 2.7(c)(ii)**) relating to: (I) the discovery and pre-clinical Development of Collaboration Compounds; and (II) the clinical Development of Committee-Governed Products and the Commercialization of Co-Promotion Products, in each case under this Agreement will be addressed by the applicable first-tier Committees (*i.e.*, the JRC, the JDC, the JCC, or the JFC) and, if appropriate, by the JEC, as contemplated by **Section 2.7(c)**; and (Y) the Parties' respective activities under this Agreement (including Party Implementation Matters) will be reported to the relevant Committees in a reasonable and appropriate level of detail. Each of the JRC (to the extent applicable), JDC, JCC, and the JFC shall provide, on a **[*]** basis (unless otherwise requested by the JEC), updates on its activities and achievements to the JEC for review and comment. The Parties intend that their respective organizations will work together to assure the success of the Collaboration.

(b) Limitations on the Authority of Committees. Notwithstanding the Committee structure established pursuant to **Section 2.1(a)** to oversee the Collaboration, each Party shall retain the rights, powers and discretion granted to it under this Agreement, and no such rights, powers, or discretion shall be delegated to or vested in a Committee unless such delegation or vesting of rights is expressly provided for in this Agreement or the Parties expressly so agree in writing. Without limiting the generality of the foregoing, no Committee shall have any authority or jurisdiction to: (i) amend, modify, or waive compliance with this Agreement, any of which shall require mutual written agreement of the Parties; (ii) interpret this Agreement, or determine whether or not a Party has met its diligence or other obligations under the Agreement or whether or not a breach of this Agreement has occurred; (iii) require Exelixis to **[*]** (other than **[*]**, **[*]** that are carried out in accordance with the **[*]**, and any **[*]** obligations with respect to **[*]** that are set forth in the applicable **[*]**) without Exelixis' express written consent (**[*]**); (iv) require Exelixis to **[*]** (other than **[*]**, **[*]** that are carried out in accordance with **[*]**, and any **[*]** with respect to **[*]** that are set forth in the applicable **[*]**)

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without Exelixis' express written consent (which **[*]**); (v) require BMS to **[*]** (other than **[*]**) without BMS' express written consent (which **[*]**); (vi) make any decision on any matter that this Agreement expressly states is an option or election to be made by a Party; (vii) make any retroactive updates, amendments and modifications to, or waivers of provisions of, an Approved Plan, any which shall require the mutual agreement of the Parties; and (viii) such other matters as are reserved to the consent, approval, agreement or other decision-making authority of one or both Parties in this Agreement and that are not required by this Agreement to be considered by one or more Committees prior to the exercise of such consent, approval or other decision-making authority. For clarity, a Party's right to cast a deciding vote on a matter in a Committee pursuant to **Article 2** shall not, in and of itself, subject such matter to the preceding sentence. Notwithstanding the foregoing, neither Party shall be restricted from bringing before any appropriate Committee for discussion any matter relating to the Collaboration that it believes warrants discussion between the Parties through the Committees, *provided* that the consideration of any such matter by any Committee shall not infringe or limit the exercise of a Party's right of consent or approval or other decision-making authority granted to it by this Agreement nor shall any such consideration, as contemplated by this sentence, subject any such right of consent or approval or other decision-making authority to any dispute resolution mechanism provided for in **Section 2.7(c)** or **Article 15** or elsewhere in this Agreement.

2.2 Joint Executive Committee.

(a) Formation and Purpose. Exelixis and BMS shall establish the JEC within **[*]** after the first exercise by BMS of its Co-Development Option pursuant to **Section 3.4(b)**. Subject to **Sections 2.1(b)** and **2.7(c)**, the JEC shall have overall responsibility for the success of the Collaboration, and its general areas of responsibility shall be: (a) to determine the global Development, regulatory, Commercialization, and manufacturing strategy for the Collaboration; (b) to coordinate the Parties' activities hereunder; and (c) as applicable, to review, comment on, approve, and resolve disputes with respect to, plans and budgets for, and the implementation of, the Collaboration, including the specific responsibilities of the JEC outlined below, in each case (clauses (a), (b) and (c) above) solely with respect to Committee-Governed Products. The JEC shall have the membership and shall operate by the procedures set forth in **Section 2.7**.

(b) Specific Responsibilities of the JEC. In addition to its overall responsibility for the Collaboration, but subject to **Sections 2.1(b)** and **2.7(c)**, the JEC shall, in particular, have the following specific responsibilities with respect to Committee-Governed Products:

(i) approve the global development, regulatory and commercialization strategies for the Collaboration;

(ii) coordinate the Parties' activities hereunder;

(iii) approve plans and budgets for the Collaboration proposed by the JDC or JCC;

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(iv) review all significant and strategic issues within the purview of the various Committees;

(v) manage and oversee the development and commercialization of each Product pursuant to the terms of the Agreement;

(vi) review and approve any material amendments to the Approved Plans and any other items submitted to the JEC by the JDC or JCC;

(vii) oversee life cycle management of, and intellectual property protection for, a Product;

(viii) provide a forum for dispute resolution; and

(ix) such other responsibilities as may be assigned to the JEC pursuant to the Agreement or as may be agreed between the Parties from time to time.

2.3 Joint Development and Regulatory Committee.

(a) Formation and Purpose. Exelixis and BMS shall establish the JDC within **[*]** after the earlier of: (i) **[*]**; or (ii) **[*]**. Subject to **Sections 2.1(b) and 2.7(c)**, the JDC shall oversee, coordinate and expedite the Development of, and the making of regulatory filings for, each Committee-Governed Product worldwide in order to obtain Regulatory Approvals (or compendia listings, as applicable). The JDC will also facilitate the flow of information with respect to Development activities being conducted for each Product and oversee Development activities required to support Regulatory Approvals (or compendia listings, as applicable). The JDC shall have the membership and shall operate by the procedures set forth in **Section 2.7**.

(b) Specific Responsibilities of the JDC. In support of its responsibility for overseeing, coordinating and expediting the Development of, and regulatory filings for, each Committee-Governed Product, but subject to **Sections 2.1(b) and 2.7(c)**, the JDC shall, in particular, and solely with respect to Committee Governed Products:

(i) monitor Development activities;

(ii) prepare the Global Development Plan and each Annual Development Plan;

(iii) review all material information generated in the course of implementing the Global Development Plan and the Annual Development Plans;

(iv) assist in coordinating scientific interactions and division of responsibilities with respect to Development Activities, and resolving disagreements during the course of implementing the Global Development Plan and the Annual Development Plans;

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(v) design, in collaboration with the JCC, pharmacoeconomic studies or Phase IV Clinical Trials;

(vi) monitor and coordinate all regulatory actions, communications and submissions for Products, including establishing the schedule and implementation strategy for all regulatory filings for Products;

(vii) provide on a quarterly basis updates on its activities and achievements to the JEC for review and comment;

(viii) pursuant to **Section 3.6(b)**, review and determine whether the definition of Identified Target(s) for each applicable Lead Op Program, Provisional Collaboration Program and Collaboration Program need to be modified; and

(ix) such other responsibilities as may be assigned to the JDC pursuant to the Agreement or as may be agreed between the Parties from time to time.

2.4 Joint Commercialization Committee.

(a) Formation and Purpose. Exelixis and BMS shall establish the JCC within **[*]** after **[*]**, which Committee shall, subject to **Sections 2.1(b) and 2.7(c)**, oversee: (i) the Commercialization strategy of each Co-Promotion Product in the Co-Development Territory; and (ii) the Commercialization of Co-Promotion Products in the U.S. including the marketing, sales and distribution of each Co-Promotion Product in the U.S. The JCC shall have the membership and shall operate by the procedures set forth in **Section 2.7**.

(b) Specific Responsibilities of the JCC. In support of its responsibilities as described in clause (a) above, the JCC shall, subject to **Sections 2.1(b) and 2.7(c)**, perform the following activities solely with respect to Co-Promotion Products:

(i) prepare the Global Commercialization Strategy and the U.S. Commercialization Plan, and any updates thereto;

(ii) review the allocation of Commercialization responsibilities between the Parties to ensure consistency with the terms of this Agreement, the Global Commercialization Strategy, and the U.S. Commercialization Plan;

(iii) coordinate and oversee the Parties' plans for labeling, branding and selecting trademarks for each Product;

(iv) review life cycle management opportunities;

(v) review pricing and reimbursement strategies with respect to Products in the Royalty Territory and

(vi) With respect to Co-Promotion Products in the U.S. only:

(1) review and approve advertising materials and strategies and promotional materials developed by a Party for the Parties' Sales Representatives;

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(2) approve the selection of major or key marketing vendors (e.g., public relations and advertising agencies and medical education agencies) ;

(3) approve pricing and reimbursement, patient assistance, vendor return and co-pay strategies;

(4) design, in collaboration with the JDC, pharmacoeconomic studies or Phase IV Clinical Trials;

(5) approve market research plans;

(6) approve and coordinate all sales force activities, including training, number, proportion of time to be devoted to promotion, and territory alignment;

(7) approve packaging designs, and oversee educational and professional symposia, and speaker and peer-to-peer activity programs;

(8) discuss a range of suggested prices at which a Co-Promotion Product will be sold to unaffiliated Third Parties and any discount strategies for such Co-Promotion Product (it being understood that BMS will determine all pricing and reimbursement terms for Co-Promotion Products sold to customers);

(9) review of each Party's reports pertaining to its Sales and Marketing Costs; and

(10) review early access and compassionate use programs.

(c) Available Resources. Except as otherwise provided in **Article 6** or any applicable Co-Promotion Agreement, the JCC shall, in allocating responsibilities between the Parties with respect to Commercialization activities for Co-Promotion Products under this Agreement in the United States: (i) endeavor to take advantage of the respective resources, capabilities and expertise of Exelixis and BMS; and (ii) endeavor to: (A) maintain, to the extent reasonably practical and commercially appropriate, continuity in functions and commitments of personnel and physical resources of the Parties; (B) avoid duplication of efforts by the Parties; and (C) foster efficient use by the Parties of resources and personnel, consistent with this Agreement and the applicable Global Commercialization Strategy and the applicable U.S. Commercialization Plan. For clarity, BMS shall be solely responsible for the Commercialization of each Product in the Royalty Territory and for each Royalty-Bearing Product in the United States.

2.5 Joint Research Committee. Exelixis and BMS shall establish the JRC within **[*]** after the Effective Date, which Committee shall, subject to **Sections 2.1(b) and 2.7(c)**, oversee the discovery efforts with respect to Screening Programs, Lead Op Programs, Provisional Collaboration Programs and Collaboration Programs, as described in **Article 3**, including work

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performed by BMS on Provisional Collaboration Programs in accordance with **Section 3.4(a)**. The JRC shall have the membership and shall operate by the procedures set forth in **Section 2.7**, and shall disband subsequent to the Research Term or otherwise at the direction of the JEC. Without limiting the generality of the foregoing, the JRC shall have the specific responsibilities set forth below:

(a) provide a forum to allow BMS to review and comment with respect to discovery and pre-clinical Development activities and for Exelixis to report progress with respect to discovery and pre-clinical Development activities;

(b) make decisions with respect to: (i) which targets will become Screening Targets, Lead Op Candidates and Lead-Op Programs; (ii) which Screening Targets, Lead Op Candidates, Lead-Op Targets and Collaboration Candidates will be terminated; and (iii) which compounds will become Program Leads;

(c) review **[*]** proposed by BMS, and discuss the progress of Lead-Op Candidates, Development Candidates and Collaboration Candidates in relation to those **[*]**; and

(d) pursuant to **Section 3.6(b)**, review and determine whether the definition of Identified Target(s) for each applicable Lead Op Program, Provisional Collaboration Program and Collaboration Program need to be modified.

2.6 Joint Finance Committee. Exelixis and BMS shall establish a JFC within forty-[*] subsequent to the [*]. The JFC shall provide support to all other Committees with respect to accounting and financial matters relating to Committee-Governed Products. The JFC shall have the membership and shall operate by the procedures set forth in Section 2.7.

2.7 General Committee Membership and Procedures.

(a) Membership. Each Committee shall be composed of such number of representatives as may be agreed by the Parties. Each of BMS and Exelixis shall designate representatives with appropriate expertise to serve as members of each Committee, and each representative may serve on more than one Committee as appropriate in view of the individual's expertise. Each Party may replace its Committee representatives at any time upon written notice to the other Party. Each Committee shall have co-chairpersons. BMS and Exelixis shall each select from their representatives a co-chairperson for each of the Committees, and each Party may change its designated co-chairpersons from time to time upon written notice to the other Party. The Alliance Managers shall be responsible for calling meetings, preparing and circulating an agenda in advance of each meeting of such Committee, and preparing and issuing minutes of each meeting within **[*]** thereafter; provided that a Committee co-chairperson shall call a meeting of the applicable Committee promptly upon the written request of the other co-chairperson to convene such a meeting. The minutes of each meeting shall, among other things, record all matters acted upon and approved or disapproved by the Committee, actions to be taken, and any matters the Committee failed to resolve. Such minutes will not be finalized until both Alliance Managers review and confirm in writing the accuracy of such minutes.

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(b) Meetings. Each Committee shall hold meetings at such times as it elects to do so, but in no event shall such meetings be held less frequently than once every **[*]** for the JRC and once every **[*]** for the JDC, the JCC, and the JFC, and once every **[*]** for the JEC. Each Committee shall meet alternately at Exelixis' facilities in South San Francisco, California, and BMS' facilities in Princeton, New Jersey, or at such other locations as the Parties may agree. The Alliance Managers shall, and other employees of each Party involved in the Development, Manufacture or Commercialization of any Product may as needed, attend meetings of each Committee (as nonvoting participants unless they are members of such Committee), and consultants, representatives or advisors involved in the Development, Manufacture or Commercialization of any Product may attend meetings of each Committee as nonvoting observers; *provided* that such Third Party representatives are under obligations of confidentiality and non-use applicable to the Confidential Information of each Party that are at least as stringent as those set forth in **Article 11**, and in the case of non-employees of a Party, subject to the consent of the other Party, which shall not be unreasonably withheld or delayed. Each Party shall be responsible for all of its own expenses of participating in any Committee (including in any Working Group). Meetings of any Committee may be held by audio or video teleconference with the consent of each Party, which shall not be unreasonably withheld or delayed; *provided* that at least **[*]** per year of such Committee shall be held in person. No action taken at any meeting of a Committee shall be effective unless a representative of each Party is participating.

(c) Decision-Making.

(i) Voting on Committee Decisions. Subject to **Section 2.1(b)**, each Party's designees on a Committee shall, collectively, have one (1) vote (the "**Party Vote**") on all matters brought before the Committee, which Party Vote shall be determined by **[*]** of such Party's designees present (in person or otherwise) at the meeting. Except as expressly provided in this **Section 2.7(c)** and subject to **Section 2.1(b)**, each Committee shall operate as to matters within its jurisdiction by unanimous Party Vote. All decisions of a Committee shall be documented in writing in the minutes of the applicable Committee meeting by the Alliance Managers, and, to the extent applicable, included on the target status list described in **Section 3.9**.

(ii) Operational Decisions. Before selection by BMS of a Collaboration Program pursuant to exercise of BMS' Co-Development Option, day-to-day operational level decisions concerning the identification, optimization, non-clinical development and clinical development (up through IND submission) of Collaboration Compound shall be made by Exelixis, except as expressly stated in this Agreement. Following selection by BMS of a Collaboration Program pursuant to exercise of BMS' Co-Development Option, day-to-day operational level decisions concerning the Development and Commercialization of Products in such Collaboration Program shall be made by the Party to which responsibility for such decisions has been allocated under the Agreement (each such decision, a "**Party Implementation Matter**"). Unless otherwise directed by the appropriate Committee(s), **[*]** shall be the lead Party, and shall be primarily responsible for, all Development, regulatory activities and Manufacturing and, subject to **[*]**, Commercialization activities with respect to a Product. Any disputes with respect to a Party Implementation Matter shall first be referred to the Alliance Managers, and, if the dispute is not resolved within **[*]** after such referral to the Alliance

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Managers, then it shall, upon written notice by a Party to the other, be referred for resolution as follows: (A) disputes between designees of BMS and Exelixis with respect to Development and Regulatory Approval matters shall be referred to the JDC for resolution; and (B) disputes between designees of BMS and Exelixis with respect to Commercialization shall be referred to the JCC for resolution. In each case, except for Appealable Matters, the Committee to which such matter is referred shall have final decision-making authority with respect to such matter, and **[*]** shall **[*]** with respect to such matter, **[*]**.

(iii) Disagreements on Committees. Except for: (A) matters outside the jurisdiction and authority of the Committees as provided in **Section 2.1(b);** and (B) any Party Implementation Matter (other than Appealable Matters), and in any event without limiting the other rights and obligations of the Parties under this Agreement, any disagreement between the designees of BMS and Exelixis on the JDC, JCC, JRC or JFC as to matters within such Committee's jurisdiction shall, at the election of either Party, be addressed, first, with the Alliance Managers, and, if the dispute is not resolved within **[*]** after such referral to the Alliance Managers, then it shall, upon written notice by a Party to the other, be submitted to the JEC for resolution (except that (1) any disputes arising from the JFC shall be submitted to the Committee to which such dispute relates (i.e., the JRC, JDC, or the JCC), and (2) prior to the creation of the JEC, disputes at the JRC shall be referred to management of the Parties as set forth in the following sentence). If the JEC (or JRC, prior to the creation of the JEC) does not resolve any such matter submitted to it for resolution within **[*]** after such submission, or in the event of any disagreement between the designees of BMS and Exelixis on the JEC (or JRC, prior to the creation of the JEC) with respect to any other matter within its jurisdiction, then, subject to **Section 2.1(b)**, the JEC (or JRC, prior to the creation of the JEC) shall submit the respective positions of the Parties with respect to such matter for discussion in good faith by the Chief Executive Officer of Exelixis and either the Head of R&D or Head of U.S. Operations of BMS (depending on the nature of the dispute). If such individuals are not able to mutually agree upon the resolution to such matter within **[*]** after submission of the matter to them, then: (X) **[*]**, the **[*]**, subject to **Section [*]**; **[*]** (Y) **[*]**, the **[*]**, subject to **Section [*]**.

(iv) [*] Decisions. [*] right to **[*]** pursuant to **Section [*]** (**"[*] Decisions"**) shall be subject to the following limitations:

(1) All **[*]** Decisions shall be made in good faith, with due regard for the impact of such decisions on Collaboration Compounds. No such decision by **[*]** shall violate or breach any term or condition of this Agreement. **[*]** shall make all **[*]** Decisions only after **[*]** (through its JEC or JRC members, as applicable) on such matters and the proposed **[*]** Decision.

(2) [*] shall **[*]**: (A) on matters that would **[*]**; (B) on any decision that would **[*]**; (C) any decision that would **[*]**; (D) on **[*]**; (E) on which **[*]** (F) on **[*]**; (G) on **[*]** for Collaboration Compounds within the associated **[*]**; (H) on **[*]**; (I) to **[*]**; (J) on **[*]** in **[*]**; (K) whether to **[*]**; or (J) decisions described in **Section [*]**. Resolution of disputes relating to the foregoing matters shall **[*]** (except as otherwise expressly set forth in this Agreement).

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(v) [*] Decisions. [*] right to **[*]** (**"[*] Decisions"**) shall be subject to the following limitations:

(1) All **[*]** Decisions shall be made in good faith, with due regard for the impact of such decisions on Products **[*]**, and, consistent in all material respects with the applicable Approved Plan and the terms of this Agreement. No such decision **[*]** shall violate or breach any term or condition of this Agreement. **[*]** shall make all **[*]** Decisions only after **[*]** (through its JEC or JRC members, as applicable) on such matters and **[*]**, and in the case of **[*]** Decision made pursuant to **Section [*],** only after **[*]** and the **[*]** on such matters.

(2) [*] shall **[*]**: (A) on any decision that would **[*]**; (B) any decision that would amend, violate or breach any provision of this Agreement; (C) on which **[*]** within the associated **[*]**; (D) on the decision to **[*]** (except to the extent provided for in **Section [*]**); (E) to adjust the **[*]**; (F) on the **[*]**; (G) on matters related to the determination of **[*]**; or (H) whether **[*]**. Resolution of disputes relating to the foregoing matters shall **[*]** (except as otherwise expressly set forth in this Agreement).

(d) Meeting Agendas and Minutes. Each Party shall disclose to the other proposed agenda items along with appropriate information at least **[*]** in advance of each meeting of the applicable Committee; *provided* that under exigent circumstances requiring Committee input, a Party may provide its agenda items to the other Party within a shorter period of time in advance of the meeting, or may propose that there not be a specific agenda for a particular meeting, so long as such other Party consents to such later addition of such agenda items or the absence of a specific agenda for such Committee meeting.

(e) Multiple JDCs and JCCs at the Discretion of the JEC. The JEC may determine that a separate JDC and/or JCC be formed for each Provisional Collaboration Program or Collaboration Program. In such event, the Parties will appoint representatives to such additional committees and such committees will be subject to the all of the applicable terms and conditions of this Agreement with respect to the JDC and the JCC, in each case, solely with respect to the Provisional Collaboration Program or Collaboration Program to which such Committees relate.

(f) Working Groups. From time to time, the JEC, JDC, JCC, JRC or JFC may establish and delegate duties to other committees, sub-committees or directed teams (each, a "**Working Group**") on an "as-needed" basis to oversee particular projects or activities, which delegation shall be reflected in the minutes of the meetings of the applicable Committee. Each such Working Group shall be constituted and shall operate as the JEC, JDC, JCC, JRC or JFC, as the case may be, determines. The Working Groups may be established on an ad hoc basis for purposes of a specific project, for the life of a Product, or on such other basis as the applicable Committee may determine. Each Working Group and its activities shall be subject to the oversight, review and approval of, and shall report to, the Committee that established such Working Group. In no event shall the authority of the Working Group exceed that specified for the relevant Committee in this **Article 2**. Any disagreement between the designees of BMS and Exelixis on a Working Group shall be referred to the applicable Committee for resolution.

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(g) Interactions Between Committees and Internal Teams. The Parties recognize that each Party possesses an internal structure (including various committees, teams and review boards) that will be involved in administering such Party's activities under this Agreement. Each Committee shall establish procedures to facilitate communications between such Committee or Working Group and the relevant internal committee, team or board of each of the Parties in order to maximize the efficiency of the Collaboration, including by requiring appropriate members of such Committee to be available at reasonable times and places and upon reasonable prior notice for making appropriate oral reports to, and responding to reasonable inquiries from, the relevant internal committee, team or board.

2.8 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint a single individual to act as a single point of contact between the Parties to assure a successful Collaboration (each, an "**Alliance Manager**"). Each Party may change its designated Alliance Manager from time to time upon written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by written notice to the other Party.

(b) Responsibilities. The Alliance Managers shall use good faith efforts to attend all Committee meetings and support the co-chairpersons of each Committee in the discharge of their responsibilities. Alliance Managers shall be nonvoting participants in such Committee meetings, unless they are also appointed members of such Committee pursuant to **Section 2.7(a)**. An Alliance Manager may bring any matter to the attention of any Committee if such Alliance Manager reasonably believes that such matter warrants such attention. Each Alliance Manager shall be charged with creating and maintaining a collaborative work environment within and among the Committees. In addition, each Alliance Manager: (i) will be the point of first referral in all matters of conflict resolution; (ii) will coordinate the relevant functional representatives of the Parties in developing and executing strategies and plans for the Products in an effort to ensure consistency and efficiency throughout the world; (iii) will provide a single point of communication for seeking consensus both internally within the respective Parties' organizations and between the Parties regarding key strategy and plan issues; (iv) will identify and bring disputes to the attention of the appropriate Committee in a timely manner; (v) will plan and coordinate cooperative efforts and internal and external communications (including the preparation of the target status list described in **Section 3.9**); and (vi) will take responsibility for ensuring that governance activities, such as the conduct of required Committee meetings and production of meeting minutes, occur as set forth in this Agreement, and that relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

2.9 Collaboration Guidelines.

(a) General. Each Party, in working with the other to Develop and Commercialize each Product and otherwise as set forth herein, shall assign responsibilities for the various operational aspects of the Collaboration to those portions of its organization that have the appropriate resources, expertise and responsibility for such functions and, consistent with this Agreement, treat each Product as if it were a proprietary product solely of its own organization. In all matters related to the Collaboration, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to realize the full economic potential of each Product (taking into account the risks and costs of further Development and Commercialization).

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(b) Independence. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between Exelixis and BMS is that of independent contractors and neither Party shall have the power to bind or obligate the other Party in any manner.

2.10 Reports Relating to Reporting-Only Products. Beginning **[*]** after the first existence of a Reporting-Only Product or a Royalty-Bearing Product, and every **[*]** thereafter during the term of the Agreement, BMS shall submit to Exelixis a written progress report **[*]** the research and development performed by BMS on Reporting-Only Products. If reasonably **[*]** for Exelixis to exercise its rights under this Agreement, Exelixis may request that BMS provide more detailed information and data regarding such reports by BMS, and BMS shall promptly provide Exelixis with information and data as is reasonably related to such request, at Exelixis' expense. All such reports shall be considered Confidential Information of BMS.

2.11 Overview of Accounting.

(a) Development Costs and Allowable Expenses. For purposes of determining Development Costs and Allowable Expenses, any expense allocated by either Party to a particular category under Development Costs or Allowable Expenses for a particular Co-Promotion Product shall not be allocated to another category under Development Costs or Allowable Expenses for such Co-Promotion Product. Each Party agrees to determine Development Costs and Allowable Expenses for Co-Promotion Products using its standard accounting procedures, consistently applied, to the maximum extent practical as if such Co-Promotion Product were a solely owned Product of such Party, except as specifically provided in this Agreement. The Parties also recognize that such procedures may change from time to time and that any such changes may affect the definition of Development Costs or Allowable Expenses. The Parties agree that, where such changes are economically material to either Party, and consistent with GAAP, adjustments shall be made to compensate the affected Party to preserve the same economics as reflected under this Agreement under such Party's accounting procedures in effect as of the date on which the activity in question (e.g., Development, Commercialization or Manufacturing) first commences under this Agreement. Where the change is or would be material to the other Party, the Party proposing to make the change shall provide the other Party with an explanation for the proposed change and an accounting of the effect of the change on the relevant expense category. Should the Parties disagree on the adjustment, the matter shall be placed before the JFC to resolve. Transfers between a Party and its Affiliates (or between its Affiliates) shall not have effect for purposes of calculating revenues, costs, profits, royalties or other payments or expenses under this Agreement.

(b) Affiliates. If either Party enters into any agreement with any of its Affiliates for the provision of materials or services pursuant to this Agreement, all costs incurred for the provision of such materials or services that are shared by the Parties under this Agreement shall be accounted for on the basis of the cost thereof to such Affiliate and not on the basis of any higher transfer price in effect between such Party and such Affiliate.

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2.12 Compliance with Law. Each Party hereby covenants and agrees to comply with applicable law in performing its activities connected with the Development, manufacture and Commercialization (as applicable) of each Product.

2.13 Records. Each Party shall maintain complete and accurate records of all work conducted under the Collaboration and all results, data and developments made pursuant to its efforts under the Collaboration. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of the Collaboration in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each Party shall maintain such records for a period of **[*]** after such records are created; provided that the following records may be maintained for a longer period, in accordance with each Party's internal policies on record retention, provided that in no case shall such period be shorter than **[*]** from the date of creation of such records: (a) scientific notebooks; and (b) any other records that the other Party reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Either Party shall have the right to review and copy such records of the other Party at reasonable times to the extent **[*]** for it to conduct its obligations or enforce its rights under this Agreement

3. DISCOVERY PROGRAM

3.1 Overview.

(a) Programs. During the Research Term, Exelixis shall be responsible for conducting the **[*]**. Exelixis will devote to each program similar resources (including comparably qualified and experienced personnel) and funding as it does to internal programs at a similar stage of discovery or pre-clinical development, with the goal of delivering not less than six (6) Provisional Collaboration Programs for possible exercise by BMS of up to three (3) of its Co-Development Options.

(b) BMS Co-Development Option. BMS shall have the **[*]** option to select each Provisional Collaboration Program as a Collaboration Program for collaborative Development and Commercialization under this Agreement (the **"Co-Development Option"**); *provided*, *however*, that in no event would BMS be permitted to select more than three (3) Collaboration Programs pursuant to this Co-Development Option. The Co-Development Option shall be exercisable solely in accordance with the remainder of this **Article 3**.

3.2 Screening Programs.

(a) In General. During each year of the Research Term, as described in more detail below, Exelixis shall conduct programs as part of the Collaboration ("**Screening Programs**") in which Exelixis will **[*]**. As of the Execution Date, the Parties shall mutually agree to the initial prioritized list of up to **[*]** Screening Targets for the **[*]** Research Term, which shall be listed in **Exhibit 3.2**. No later than at the last JRC meeting prior to the **[*]**,

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Exelixis will share its list of planned screening targets for the **[*]** Research Term and, within **[*]** subsequent to the date upon which such planned screening targets are shared, BMS shall select up to **[*]** such prioritized targets as Screening Targets for the **[*]** Research Term, which shall be added to the table described in **Section 3.9**; provided that BMS may **[*]** Screening Targets and up to **[*]** such targets **[*]** Screening Targets by mutual agreement of the Parties. If at the start of the **[*]** Research Term, or during any quarter thereafter, and subject to **Section 3.2(c)**, the number of Lead Op Candidates has dropped below **[*]**, then Exelixis shall conduct at least **[*]** Screening Programs in each subsequent calendar quarter, with the Screening Targets for such new Screening Programs **[*]** or, **[*]** added to the table described in **Section 3.9**. Such **[*]** shall continue until such time as either: (A) **[*]**; or (B) there **[*]**. Each quarter during the **[*]** Research Term, the JRC (by mutual agreement) may **[*]**, in which case the Alliance Managers shall reflect such **[*]** pursuant to **Section 3.9**.

(b) Completion of Screening; Lead Op Candidates. After a given Screening Program has become a Completed Screening Program, **[*]** (such Completed Screening Program, if **[*]**, becomes a "**Lead Op Candidate**"). If the **[*]**, then the target(s) associated with such Lead Op Program shall become a "**Lead Op Target(s)**." If the **[*]**, not to maintain such Lead Op Candidate(s) within the Collaboration, then the Screening Target(s) associated with such advanced Screening Program shall no longer be Screening Target(s) but shall instead be "**Rejected Screening Target(s)**", subject to **Section 8.6(b)**. Otherwise, such Lead Op Candidate(s) shall remain Lead Op Candidate(s) (pending a future decision by: (i) **[*]**. For clarity, Exelixis may, **[*]**, **[*]**(s) into a **[*]**, provided that: (I) Exelixis will maintain an **[*]** (by mutual agreement) **[*]**; and (II) **[*]** will remain subject to the terms and conditions of this Agreement, including without limitation **Section [*]**; provided that BMS may **[*]** at any time prior to the **[*]**, and (for clarity) **[*]** be deemed to be either (1) **[*]** a Lead Op Program pursuant to **Section [*]**, or (2) **[*]** with respect to such Lead Op Program for purposes of **Section [*]** and or **Section [*]**.

(c) Removal of Lead Op Candidates. Notwithstanding the Parties designation of a Screening Program as a Lead Op Candidate, **[*]** may, at any time after the number of Lead Op Candidates becomes greater than **[*]**, designate a Lead Op Candidate as Rejected Screening Target, except if such designation would reduce the number of Lead Op Candidates below **[*]**.

3.3 Lead Op Programs.

(a) In General. During each **[*]** Research Term, as described in more detail below, Exelixis shall conduct programs as part of the Collaboration ("**Lead Op Programs**") in which Exelixis will optimize lead compounds that were identified in Screening Programs for the purpose of advancing a lead compound to Development Candidate status. As of the Execution Date, the initial list of the **[*]** Lead Op Targets for the first year of the Research Term is set forth in **Exhibit 3.3**. These initial Lead Op Targets shall serve as the targets for the Initial Lead Op Programs. Additional Lead Op Targets shall be added to the table described in **Section 3.9**, which shall be updated by the Alliance Managers pursuant to **Section 3.9**. Exelixis shall use Diligent Efforts to maintain and advance, **[*]** Lead Op Programs on behalf of the Collaboration during the Research Term **[*]** Lead Op Programs **[*]** Exelixis shall use Diligent Efforts to

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maintain and advance **[*]** during the **[*]** Research Term (such minimum Lead Op Programs, **"[*]"**). For clarity, Exelixis may, **[*]**, advance **[*]** Lead Op Candidate(s) into lead optimization programs other than **[*]**, provided that such lead optimization programs will remain subject to the terms and conditions of this Agreement (as described in the last sentence of **Section 3.2(b)**).

(b) Completion of Lead Op Programs. Once Exelixis determines that a compound in any Lead Op Program has completed lead optimization and has met the criteria of a Program Lead, Exelixis will so notify BMS in writing and provide BMS with the Development Candidate proposal including such information as included in **[*]** and documenting the properties of such Program Lead as per **[*]** (the "**DCP**"). Within **[*]** of receiving the DCP, BMS shall notify Exelixis in writing if BMS will **[*]** with respect to the Lead Op Program that generated such Program Lead. If Exelixis receives BMS' notice stating that **[*]**, then the provisions of **Section [*]** shall apply. Otherwise, Exelixis will advance such Lead Op Program into preclinical development as a Provisional Collaboration Program, and **[*]** on **[*]**. The target(s) associated with each such Provisional Collaboration Program shall no longer be Lead Op Target(s) but shall instead automatically be a "**Collaboration Target(s)**."

(c) Termination of Lead Op Programs. If the JRC (by mutual agreement) elects to terminate a Lead Op Program before the lead compound in such Lead Op Program has completed lead optimization, then, **[*]**. If no such **[*]**, or if **[*]**, then Exelixis will **[*]** (subject to Exelixis' obligations to a Third Party that would **[*]**), which program shall be **[*]**; or (ii) in the event that **[*]**. In any case, any such Lead Op Target(s) associated with such a terminated Lead Op Program shall no longer be Lead Op Target(s) but shall instead automatically be a "**Rejected Lead Op Target(s)**", subject to **Section 8.6(e)**.

(d) Limited Replacement of Lead Op Programs. At any time prior to the date which is **[*]** subsequent to the delivery by Exelixis of the DCP with respect to a given Lead Op Program in accordance with **Section 3.3(b)**, **[*]** replace such Lead Op Program, **[*]**, with any of the following: (i) **[*]** for which Exelixis **[*]**; (ii) **[*]**; or (iii) a **[*]**. **[*]** shall cease after **[*]**. The target(s) associated with each such former Lead Op Program shall no longer be Lead Op Target(s) but shall instead automatically be "**Rejected Lead Op Target(s)**", subject to **Section 8.6(e)**.

3.4 Provisional Collaboration Programs; Exercise of BMS' Co-Development Option.

(a) In General. Exelixis shall conduct programs as part of the Collaboration in which Exelixis pre-clinically develops compounds (that were identified as Program Leads in Lead Op Programs) with the goal of submitting an IND on such compound where such IND meets the criteria for clinical development that is consistent with Exelixis' internal criteria for all Exelixis programs (including programs outside of the Collaboration) and, where reasonably possible, takes into account the **[*]** (such programs, **"Provisional Collaboration Programs**"). BMS **[*]** activities (for purposes of **[*]**) that were **[*]**, including one or more of the following: **[*]** as needed to help **[*]** for Provisional Collaboration Programs **[*]**. **[*]** solely for use **[*]** described in this **Section 3.4(a)**.

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(b) Exercise of BMS' Co-Development Option. Once Exelixis determines that **[*]**, Exelixis will provide to BMS written notice and a data package (containing data not already in BMS' possession) with sufficient detail regarding such Collaboration Compound (and any Program Backups) as per Exelixis' internal standards and incorporating data applicable to the **[*]**. Upon receipt of each such data package, BMS will have **[*]** to notify Exelixis in writing whether BMS exercised its Co-Development Option with respect to the Provisional Collaboration Program to which such Collaboration Compound relates; provided that such **[*]**. For clarity, BMS may exercise its Co-Development Option at any time prior to such date, including **[*]**.

(i) Acceptance. If Exelixis receives BMS' notice (within the applicable **[*]** period) stating that BMS exercised its Co-Development Option for a given Provisional Collaboration Program, then such Provisional Collaboration Program shall become a **"Collaboration Program"**, and the provisions of **Section 3.7** shall apply, and BMS shall be responsible for submitting the IND for such Collaboration Program's Lead Compound (and other applicable regulatory and clinical documents).

(ii) Rejection. If Exelixis receives BMS' notice (within the applicable **[*]** period) stating that BMS did not exercise its Co-Development Option for a given Provisional Collaboration Program, or if Exelixis did not receive BMS' notice within the applicable **[*]** period, then in either case, the provisions of **Section 3.8** shall apply, and BMS shall not be responsible for submitting the IND for such Provisional Collaboration Program's Lead Compound (and other applicable regulatory and clinical documents).

(iii) [*]. If Exelixis receives BMS' notice (within the applicable **[*]** period) stating that **[*]** its Co-Development Option for a given Provisional Collaboration Program, **[*]** set forth in such notice, then Exelixis may **[*]**. Alternatively, Exelixis may **[*]**. If the **[*]** for such Lead Compound, then Exelixis may elect to either (i) **[*]** or (ii) **[*]**. If the **[*]** for such Provisional Collaboration Program's Lead Compound, then Exelixis will so notify BMS in writing. BMS will **[*]**. Upon receipt of such notice from BMS, the provisions of **Section [*]** shall apply if Exelixis received BMS' notice (within the applicable **[*]** period) stating that **[*]**, or **Section [*]** shall apply if either (A) **[*]**, or (B) **[*]**.

3.5 Backup Compounds.

(a) Provisions Relating to BMS' Exercise of its Co-Development Option. If BMS does not exercise its Co-Development Option with respect to a Provisional Collaboration Program by the applicable deadline, then Exelixis shall retain all right, title and interest in all compounds generated for such Provisional Collaboration Program, subject to **[*]**. If BMS does exercise its Co-Development Option with respect to a Provisional Collaboration Program, then any compounds generated for such Provisional Collaboration Program (or Lead Op Program that became such Provisional Collaboration Program) that satisfy the definition of a Program Backup shall become part of the Collaboration Program, and, subject to **Section 8.1(d)**, neither Party shall use any such compounds for any purpose outside of the Collaboration without the prior written consent of the other Party. The compounds generated for such Provisional Collaboration Program (or Lead Op Program that became such Provisional Collaboration Program) that do not

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satisfy the definition of Program Backups shall become Unrelated Compounds, and Exelixis shall be free to use such Unrelated Compounds outside of the Collaboration, subject to **Section 8.6.** For clarity, BMS shall pay Exelixis the milestone payments described in **Section 9.5** for Program Backups that are Royalty-Bearing Products and that meet the applicable milestone events.

(b) Provisions Relating to Exercise of the Exelixis Co-Development Option. In the event that Exelixis has exercised the Exelixis Co-Development Option with respect to a Collaboration Program, then the following terms shall apply with respect to Backup Programs:

(i) Commencement of a Backup Program. The Parties shall determine, via the JDC, whether or not to commence a backup program (a **"Backup Program"**) with respect to some or all of the Collaboration Programs, as well as the appropriate timing for such Backup Program(s). The Backup Program(s) shall be subject JDC oversight and decision making and to a Backup Research Plan to be established by the JDC prior to the start of backup work.

(ii) Exelixis Conduct of Backup Programs. Exelixis shall have the first right to conduct such backup work up until designation of a backup compound as a Development Candidate and shall promptly notify the JDC in writing whether Exelixis will conduct such Backup Program. Upon designation of a backup compound as a Development Candidate, the JDC shall determine **[*]** (with **[*]**, in any case, having the right to perform **[*]**. In the event that **[*]** work on Backup Programs for Collaboration Programs shall be **[*]**, to the extent such work is incurred and with reimbursement on a quarterly basis, up to **[*]** Dollars ($**[*]**) per Backup Program (such amount, the "**[*] Backup Funding**"); *provided, however*, that: (A) such **[*]** Backup Funding shall not be deemed to be **[*]** (except as set forth below); and (B) any costs associated with such Backup Program that are in excess of **[*]** shall be **[*]**. Notwithstanding clause (A) above, **[*]**, then the **[*]** Backup Funding **[*]**.

(iii) BMS Conduct of Backup Programs. If Exelixis notifies BMS that Exelixis will not conduct such Backup Program, or in the event that Exelixis opts-out of co-Development with respect to such Collaboration Program, then BMS may conduct such Backup Program and such any costs associated with such Backup Program shall be **[*]** and shall be **[*]**. Exelixis will transition to BMS any necessary **[*]** and other know-how necessary or reasonably useful for BMS to conduct such Backup Program.

(iv) Reporting and Accounting. Except as set forth in paragraph (ii) above, reporting and accounting of shared costs for the Backup Programs shall be as set forth in **Section 4.6** for Development Costs.

3.6 Information Exchange; [*]; and Identified Targets.

(a) Information Exchange and [*]. BMS, through the JRC, shall be allowed to review data from Screening Programs, Lead Op Programs and Provisional Collaboration Programs on a **[*]** basis, excluding any **[*]** relating to any compounds in any

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such Screening Programs, Lead Op Programs or Provisional Collaboration Programs (unless the Parties expressly agree in writing to disclosure of such **[*]**; **[*]**). Once a Lead Op Program or Provisional Collaboration Program contains a Program Lead, BMS shall be notified and may at any time (or from time to time) thereafter (with reasonable prior written notice) request that Exelixis provide**[*]** with the following information solely for the purpose of **[*]**: (i) a summary describing the **[*]** such Program Lead; (ii) the **[*]**; (iii) a list of **[*]**; and (iv) any other information reasonably requested by BMS and in the possession of Exelixis. In the event that BMS has not provided written request for disclosure, or has only made written request for disclosure **[*]**, then Exelixis shall at all times **[*]**. BMS may make suggestions with respect to the direction or conduct of a Screening Program, Lead Op Program or Provisional Collaboration Program, but Exelixis shall retain all authority over the conduct of such program (subject to **Sections 3.2(b), 3.3(c), 3.3(d), 3.4(a) and 3.5**). To maximize the probability that a Provisional Collaboration Program will be ultimately accepted by BMS, Exelixis shall give good faith consideration to the **[*]** (the **"[*]"**) and shall endeavor through the JRC to work with BMS to **[*]**; provided, however, that Exelixis shall not be required to **[*]**. It is expected that both Parties will work closely together through the JRC to discuss and to endeavor to jointly establish the **[*]**.

(b) Identified Targets, Potency Threshold and Specificity Criteria.

(i) Determination. For each Lead Op Program, Provisional Collaboration Program and Collaboration Program (as applicable), the JRC or the JDC (or the Parties in the case of a Collaboration Program with respect to which Exelixis has exercised a Product Opt-Out) shall determine: (A) whether the definition of Identified Target(s) for each applicable Lead Op Program, Provisional Collaboration Program and Collaboration Program need to be **[*]**; and/or (B) whether the definition of the Target Potency Threshold and/or Specificity Criteria need to be **[*]**. If so, the Parties shall do so by mutual agreement and in writing through a separate side letter. The JRC, JDC or the Parties (as the case may be) shall also specify **[*]** If the Parties mutually agree that the definitions of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable) **[*]**. If the Parties mutually agree that the definitions of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable) **[*]**, then Exelixis may **[*]** the Collaboration as **[*]** to the extent such **[*]** (as applicable), and subject to **[*]**.

(ii) Party Resolution of Disputes. If the JRC or JDC (or the Parties, as the case may be) is unable to agree on the definition of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable) at the applicable JRC or JDC meeting (or other meetings and correspondence between the Parties), including as to whether such definition(s) need revision, then the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Party's respective Executive Officers. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within [*] after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within [*] of their first meeting for such negotiations, then the Parties shall proceed to dispute resolution pursuant to Section 3.6(c)(iii).

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(iii) Arbitration of Disputes. Any dispute not resolved internally by the Parties pursuant to Section 3.6(b)(ii) must be finally resolved through binding arbitration by JAMS (formerly, the Judicial Arbitration and Mediation Service) ("JAMS") in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the dispute arises, except as modified in this Agreement and applying the substantive law specified in Section 15.2. Either Party may initiate arbitration under this Section 3.6(b)(iii) by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (A) each Party shall submit to the arbitrator its proposal for resolving such dispute, such proposal based on the applicable scientific factors, and shall provide a copy of such proposal to the other Party; (B) each Party may, within [*] of receipt of the other Party's proposal, provide a rebuttal to such other Party's proposal to the arbitrator (which rebuttal shall be limited to responding to arguments or scientific evidence presented in such other Party's proposal), and shall provide a copy of such rebuttal to the other Party; (C) the arbitrator shall select the proposal that is the most scientifically reasonable; and (D) such proposal shall become the new definition of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable). Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The determination of the arbitrator shall be final. The arbitration proceedings shall be conducted in such location as determined by the arbitrator. The Parties agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each Party shall bear its own attorneys' fees and associated costs and expenses.

3.7 Acceptance of Collaboration Programs. In the event that BMS timely exercises its Co-Development Option with respect to a Provisional Collaboration Program, then such Provisional Collaboration Program shall become a Collaboration Program, and each of the following shall apply:

(a) Payment. BMS shall pay the fee set forth in **Section 9.2**.

(b) [*] CMC Responsibilities. If not already completed (i.e., **[*]**), **[*]** shall: (i) complete the Chemistry, Manufacturing and Control ("**CMC**") portion of an IND submission package for each Collaboration Compound approved for IND submission (as well as such other sections of the IND submission package as may be reasonably required of it); and (ii) complete any pre-IND toxicity testing and other testing reasonably required to file an IND for the applicable Collaboration Compound.

(c) Exelixis Co-Development Option. Exelixis shall provide written notice to BMS, within **[*]** after the acceptance of such Collaboration Program by BMS, as to whether or not Exelixis will exercise its option to Co-Develop with BMS the Lead Compound arising from such Collaboration Program (the "**Exelixis Co-Development Option**"). In the event Exelixis declines to exercise its right to Co-Develop such Lead Compound, Exelixis shall lose any right to Co-Develop and Co-Promote any Product containing such Lead Compound and any subsequent Products or Related Products generated from such Collaboration Program.

(d) Transfer. Exelixis shall use Diligent Efforts to transfer to BMS within **[*]** of BMS' exercise of its Co-Development Option: (i) reasonable quantities of the relevant Lead

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Compound; (ii) all Information reasonably necessary for the further development and commercialization of such Collaboration Program's Lead Compound; (iii) all regulatory filings (including any INDs, drug dossiers, and drug master files) in Exelixis' name for such Lead Compound; (iv) any agreements with Third Parties necessary for the further development and commercialization of such Collaboration Program's Lead Compound (including any agreements relating to the conduct of the Phase I Clinical Studies of such Lead Compound); and (v) any trademark rights Controlled by Exelixis covering such Collaboration Program's Lead Compound, that in each case ((i) through (v)) are existing, in Exelixis' Control, and specifically relate to such Lead Compound. The costs and expenses incurred by Exelixis in carrying out such transfer shall be either: (A) treated as Development Expenses in the event that such expenses relate to a Co-Developed Product, or (B) reimbursed one hundred percent (100%) by BMS in the in the event that such expenses relate to a Royalty-Bearing Product. For clarity, Exelixis' transfer of Manufacturing-related rights and materials shall be governed by **Section 7.3**.

3.8 Rejection of Provisional Collaboration Programs. In the event that BMS declines to exercise its Co-Development Option with respect to a Provisional Collaboration Program, or if Exelixis does not receive BMS' notice of exercising its Co-Development Option with respect to a Provisional Collaboration Program, then each of the following shall apply:

(a) Reversion of Rights. All rights with respect to such Provisional Collaboration Program shall automatically revert to Exelixis, and BMS shall have no further rights with respect to the Development or Commercialization of any compounds (including Program Backups) by Exelixis under such Provisional Collaboration Program **([*]**.

(b) Expiration of Rights. Without limiting the generality of **Section 3.8(a)**, Exelixis' obligations, and BMS rights, under **Sections 3.1, 3.4(a)** (to the extent applicable), and **3.6** shall expire with respect to such Provisional Collaboration Program.

(c) Phase I Clinical Trial Requirement. [*] shall be required to use Diligent Efforts to commence a Phase I Clinical Trial with respect to such Provisional Collaboration Program within **[*]** subsequent to acceptance of an IND with respect to such Provisional Collaboration Program. For purposes of this **Section 3.8(c)**, "**commence a Phase I Clinical Trial**" means that the first site at which such clinical trial will be conducted has received approval from the appropriate investigational review board ("**IRB**") and is ready to enroll patients.

(d) Transfer & Transition. If BMS conducted any work on such Provisional Collaboration Program pursuant to **Section 3.4(a)**, then BMS shall: (i) provide to Exelixis all data generated by BMS with respect to the studies undertaken by it; (ii) grant to Exelixis the license set forth in **Section 8.2(c)**; and (iii) transition over to Exelixis any ongoing studies then being conducted by BMS (with Exelixis to assume the cost therefore from and after the date that BMS transfers such studies). With the prior written agreement of the Parties, BMS may complete any of the ongoing studies described in the foregoing clause (iii) at Exelixis' expense.

(e) [*]. For any compound arising out of a Provisional Collaboration Program that **[*]** (a "**[*]**"), if Exelixis decides to **[*]** prior to **[*]** (whichever occurs first) for such **[*]**, then **[*]**. During the **[*]**, **[*]**. If **[*]** at or before the end of such **[*]** (or at such earlier time that **[*]**), then **[*]**.

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Nothing herein shall preclude **[*]**, including with the goal of **[*]**, and any such work shall not **[*]**, unless otherwise agreed by the Parties in writing. Additionally, if BMS declines to exercise its Co-Development Option with respect to a Provisional Collaboration Program, then any **[*]** as the Provisional Collaboration Program **[*]** shall not **[*]**.

3.9 Target Status List. Based on the applicable minutes from each JRC and JDC meeting, the respective Alliance Managers shall prepare a list that is substantially in the form of **Exhibit 3.9** and that shall reflect the status of each target that is active (or was at one time) within the Collaboration. Each target shall be labeled with one of the following: Screening Target (chosen-awaiting-screening); Screening Target (screen-in-progress); Rejected Screening Target; Lead Op Candidate; Lead Op Target; Rejected Lead Op Target; or Collaboration Target. The updated target list shall be attached to all JRC and JDC minutes with written confirmation provided in a timely manner by the Alliance Managers.

3.10 Research Term. The "**Research Term**" shall commence on the Effective Date and continue until the earliest to occur of the following: (a) **[*]**; or (b) delivery to BMS of the **[*]** for possible exercise of its Co-Development Option. The Parties may extend the Research Term upon their mutual written agreement. Following the end of the Research Term, Exelixis shall have no obligation to conduct any work under any Screening Programs, Lead Op Programs, Provisional Collaboration Programs and Collaboration Programs (other than Exelixis' responsibilities, as set forth in the remainder of this Agreement, with respect to Co-Developed Products and Backup Programs for Collaboration Targets), and all rights with respect to Lead Op Candidates, Lead Op Targets and Collaboration Compounds, other than Collaboration Compounds included in a Collaboration Program for which BMS has exercised its Co-Development Option under **Section 3.4**, and in any case subject to **Section 3.8(e)**, shall revert to Exelixis.

3.11 Record of Discovery Efforts; Inspection. Exelixis shall keep complete, true and accurate books of accounts and records for the purpose of determining the resources and funding that Exelixis provides pursuant to **Section 3.1**. All such books, records and accounts shall be retained by Exelixis for a period of **[*]** after the end of the period to which such books, records and accounts pertain or such longer period as may be required by applicable law. BMS shall have the right to have an independent certified public accountant, reasonably acceptable to Exelixis, have access during normal business hours, and upon reasonable prior written notice, to examine only those records of Exelixis as may be reasonably necessary to determine, with respect to any calendar year ending not more than **[*]** prior to such Party's request, Exelixis' compliance with the requirements of **Section 3.1**. The foregoing right of review may be exercised only once per year and only once with respect to any given period. Results of any such examination shall be: (i) limited to information relating to the applicable Screening Program, Lead Op Program, Provisional Collaboration Program or Collaboration Program; (ii) made available to both Parties; and (iii) subject to **Article 11**. In general, BMS shall bear the full cost of the performance of any such audit. However, if such audit discloses a **[*]** to the applicable Screening Program, Lead Op Program, Provisional Collaboration Program or Collaboration Program, **[*]** (as determined by the auditor(s)), then Exelixis shall bear the full cost of the performance of such audit. The results of such audit shall be final, absent manifest error.

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4. DEVELOPMENT OF PRODUCTS

4.1 Global Development Plans.

(a) Scope. The Development of each Co-Developed Product shall be governed by a comprehensive, multi-year, worldwide plan (each, a **"Global Development Plan"**) covering the Development of such Product for use in the U.S., Canada, each of the Major European Countries and Europe as a whole, and, broken out on a region-by-region or country-by-country basis only to the extent BMS does so for its own internal oncology products, the remaining countries in the Co-Development Territory. Each Global Development Plan shall: (i) provide a planned Development program that is designed to generate the non-clinical, clinical and regulatory information required for submitting Drug Approval Applications and to obtain Regulatory Approvals for the relevant indications in the U.S.; (ii) provide a planned Development program that is designed to generate the non-clinical, clinical and regulatory information required for submitting Drug Approval Applications and to achieve Regulatory Approvals for the relevant indications in the Royalty Territory, (iii) indicate the Core Program **[*]**, (iv) set forth those obligations assigned to each Party with respect to the performance of the Development activities contemplated by such Global Development Plan; and (v) provide an expected forecast, based on the information available at the time, including patient estimates and cost forecasts (and methodology, if available).

(b) Initial Global Development Plan. As soon as practicable following designation of a Collaboration Program in accordance with **Article 3** (and consistent with BMS' internal **[*]** process), the JDC shall prepare, and submit to the JEC for its approval, a Global Development Plan, or an amendment to an existing Global Development Plan, that meets the requirements set forth in **Section 4.1(a)**.

(c) Updates to the Global Development Plan. Following approval by the JEC of an initial Global Development Plan pursuant to **Section 4.1(b),** any material update, amendment or modification to, or waiver of, any provisions of such Global Development Plan shall require the approval of the JEC.

4.2 Annual Development Plans.

(a) Scope. The Development of each Co-Developed Product in the Co-Development Territory for a given calendar year shall be governed by a detailed and specific worldwide Development plan (each, an **"Annual Development Plan"**) covering all material Development activities to be performed for such Co-Developed Product for such year, and budgets covering all Development Costs for those Development activities for such Co-Developed Product conducted in support of Regulatory Approvals in the Co-Development Territory. Each Annual Development Plan and Budget shall be proposed by the JDC for approval by the JEC. Each Annual Development Plan for a Co-Developed Product, and any modifications thereto, shall cover, and be consistent in all material respects with, all the Development activities and budgets in the then-current Global Development Plan for such Co-Developed Product that are to be performed in that particular calendar year.

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(b) Procedure. Within **[*]** after the date on which a Global Development Plan (or an amendment to an existing Global Development Plan, as the case may be) is first approved with respect to a particular Co-Developed Product, the JDC shall submit for approval by the JEC an Annual Development Plan for such Co-Developed Product, covering the activities contemplated by the Global Development Plan with respect thereto for the remainder of such calendar year and the next subsequent calendar year. Thereafter, the JDC shall submit on an annual basis an Annual Development Plan for such Co-Developed Product to the JEC for its review, comment, and approval. Each such submission shall be no later than **[*]** calendar year immediately preceding the year covered by such Annual Development Plan, with a goal of having the Annual Development Plan approved, and any disputes resolved, by **[*]** of such immediately preceding calendar year.

4.3 Lead Development Party. It is expected that BMS would act as the lead development Party for each Product, although the Annual Development Plan may specify that outside contractors (and/or, in the case of Co-Promotion Products, Exelixis) will have responsibility to direct and conduct any additional pre-clinical activities and applicable clinical trials in any country. The JDC shall make such determinations in the best interests of the Collaboration. In the event Exelixis files an IND on a Provisional Collaboration Program's Lead Compound, and BMS exercises its Co-Development Option for such Provisional Collaboration Program pursuant to **Section 3.4(b)(iii)**, then any Phase I Clinical Study agreements that were entered into between Exelixis and a clinical site before the effective date of BMS' exercise of its Co-Development Option and that specifically relate to such Lead Compound, shall become part of the initial Global Development Plan and initial Annual Development Plan.

4.4 Diligence. Each Party shall use Diligent Efforts to carry out its responsibilities under the Global Development Plan and the then-applicable Annual Development Plan.

4.5 Limitations on Development. After the Effective Date and during the term of this Agreement, neither Party nor any of its Affiliates shall, directly or through any Third Party, sponsor, conduct or cause to be conducted, otherwise assist in, supply any Product for use in connection with, or otherwise fund, any clinical trial or clinical study of any Product outside of the Global Development Plan or any Annual Development Plan, without the prior written consent of the other Party.

4.6 Development Costs.

(a) In general. Subject to **Section 4.6(e)**, any Development Costs incurred by either Party shall be borne by the Parties as follows:

(i) BMS shall bear **[*]** percent (**[*]**%) of all Development Costs, and Exelixis shall bear **[*]** (**[*]**%) of all Development Costs; and,

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(ii) for clarity, all costs relating to Development activities undertaken solely for the purposes of seeking Regulatory Approval(s) in **[*]**, BMS shall bear one hundred percent (100%) of such costs.

(b) FTE Records and Calculations; Adjustments to FTE Rate. Each Party shall record and account for its FTE effort for the Development of each Product to the extent that such FTE efforts are included in Development Costs or Allowable Expenses that are, or may in the future be, shared under this Agreement, and shall report such FTE effort to the JDC on a quarterly basis, in each case in a manner that allocates such FTE effort to the extent practicable to each applicable indication. Except to the extent provided herein, each Party shall calculate and maintain records of FTE effort incurred by it in the same manner as used for other products developed by such Party. The JFC shall facilitate any reporting hereunder. The FTE rate shall initially be **[*]** for FTEs associated with activities prior to IND submission with respect to a Collaboration Program and **[*]** for all other FTEs and shall be adjusted annually, with each annual adjustment effective as of January 1 of each Year, with the first such annual adjustment to be made as of January 1, 2008, by mutual agreement of the JRC or the JFC.

(c) Other Expenses. Any expenses incurred by a Party for Development activities that do not fall within the definitions of Development Costs shall be borne solely by such Party unless the JDC determines otherwise.

(d) Reports. Each Party shall report to the other Party within **[*]** after the end of each quarter with regard to the Development Costs incurred by it during such quarter. Such report shall specify in reasonable detail (as agreed by the JFC) all expenses included in such Development Costs during such quarter and shall be accompanied by invoices, and/or such other appropriate supporting documentation as may be required by the JFC. Within **[*]** after the end of each of the first three quarters and, for the last quarter in a year, within **[*]** after the end of such quarter, the Party that has incurred less than its share of such Development Costs shall make a reconciling payment to the other Party to achieve the appropriate allocation of Development Costs provided for in **Section 4.6(a)**. Each Party shall report to the other Development Costs incurred by it for comparison against the Annual Development Plan, on a line item basis (e.g., budgeted FTE costs and actual out-of-pocket cost). The Parties shall seek to resolve any questions related to such accounting statements within **[*]** following receipt by each Party of the other Party's report hereunder. The JFC shall facilitate the reporting of Development Costs hereunder and the resolution of any questions concerning such reports. Each Party shall have the right at reasonable times and upon reasonable prior notice to audit the other Party's records as provided in **Section 9.19** to confirm the accuracy of the other Party's costs and reports with respect to Development Costs that are shared under this Agreement.

(e) Exelixis' Development Cost Obligations. If the Development Costs in a particular calendar quarter cause Exelixis' aggregate share of the Development Costs with respect to a particular Collaboration Program to exceed **[*]**), then Exelixis may elect to defer payment of its share of such Development Costs that are in excess of **[*]** with respect to such Collaboration Program in accordance with the remainder of this **Section 4.6(e)**. Such election may be made in writing anytime during the **[*]** following the end of such calendar quarter. If Exelixis does not make such election, then Exelixis would continue to pay its share of the

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Development Costs with respect to such Collaboration Program in accordance with **Section 4.6(a)**. If Exelixis does make such election, then Exelixis' shall have no obligation to pay its share of such Development Costs, to the extent such share exceeds **[*]** (such excess amount, the **"Deferred Development Costs"**) until **[*]** first Product arising from such Collaboration Program. Until such **[*]**, BMS shall bear **[*]** Development Costs with respect to such Collaboration Program, and after such Regulatory Approval, Exelixis shall make a payment to BMS in an amount equal to **[*]** Deferred Development Costs (the **"Development Cost Mechanism Amount"**), which payment shall be paid by Exelixis as an offset: (i) against Exelixis' share of the **[*]** from such Product, up to a maximum of **[*]** of such **[*]** in any given quarter (in the case where Exelixis has not exercised its Product Opt-Out for such Product); or (ii) **[*]** with respect to such Product, up to a maximum of **[*]** in any given quarter. Once the Development Cost Mechanism Amount is fully paid to BMS, Exelixis shall receive **[*]** consistent with **Article 9**. For clarity, Exelixis will continue to fund its share of Development Costs for indications outside of the Core Program with respect to a Collaboration Program for which Exelixis has not opted out pursuant to **Section 4.7**.

(f) Records. Each Party shall keep detailed records of the Development Costs it incurs, including all supporting documentation for such expenses. Each Party shall keep such records for at least **[*]** after the date that such expense was incurred.

4.7 Exelixis' Opt-Out Rights.

(a) Entire Product. Within **[*]** after the completion of any Phase I Clinical Trial, Phase II Clinical Trial or Phase III Clinical Trial for a particular Co-Promotion Product, the Party primarily responsible for the conduct of such clinical trial shall prepare and deliver to the other Party a data package detailing the clinical outcome of such trial. Exelixis shall have the right to cease its involvement in the Development and Commercialization of such Product (a **"Product Opt-Out"**), upon written notice to BMS within **[*]** after the delivery of such data package. Commencing on the date that Exelixis provides BMS with written notice of a Product Opt-Out, Exelixis shall have no further responsibility for conducting new activities or funding new Development or Commercialization activities with respect to the applicable Product, and shall complete any ongoing activities with respect to such Product subject to reimbursement by BMS of one hundred percent (100%) of any costs associated with such continuing activities unless such work is transferred to BMS at the discretion of the JDC.

(b) [*]. Before **[*]**, Exelixis **[*]** the right to **[*]** the Development and Commercialization of such Product **[*]**. After **[*]**, Exelixis shall have the right to **[*]** as follows. Within **[*]** after **[*]**, for a Product **[*]** for such Product (as specified in the Global Development Plan for such Product), BMS shall prepare and deliver to Exelixis: (i) **[*]**; or (ii) **[*]**. Exelixis shall **[*]** BMS within **[*]** after **[*]** (as appropriate). For purposes of this **Section 4.7(b)**, **[*]** shall not include **[*]**. Notwithstanding the foregoing, if Exelixis exercises its Co-Promotion Option with respect to a Product, it will be required to **[*]**. Commencing the date that Exelixis **[*]**, Exelixis shall **[*]**, and shall **[*]** thereto. For clarity, Exelixis may **[*]**, and in the event that Exelixis decides to **[*]**, it **[*]**.

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5. REGULATORY

5.1 Regulatory Lead Party. BMS shall be the lead Party for all regulatory activities regarding a Product. However, Exelixis shall have a participatory role in all **[*]** that **[*]** All **[*]** would be made and implemented after conferring with the JDC. **[*]** Regulatory Authorities as well as **[*]** will be **[*]** through the JDC. BMS shall be the lead Party for worldwide pharmacovigilance. Notwithstanding any other provision of this Agreement, in the event any dispute with respect to the content of any regulatory filing or dossier, pharmacovigilance reports, patient risk management strategies and plans, Core Data Sheet, Product labeling, safety, and the decision to file any DAA is not resolved by the JEC, **[*]** with respect to such matters at the JEC **[*]** referring such dispute to the Designated Officers or submitting such dispute to any other dispute resolution procedures provided for in **Section 15.1**.

5.2 Ownership of Regulatory Dossier. BMS will own all regulatory filings for Products in order to facilitate BMS' interactions with Regulatory Authorities. For any Collaboration Program for which Exelixis filed the IND for such Collaboration Program's Lead Compound and for which BMS exercised its Co-Development Option pursuant to **Section 3.4(b)(iii)**, Exelixis hereby agrees to transfer and assign to BMS, and BMS hereby agrees to receive from Exelixis, all of Exelixis' right, title and interest to such IND. Additionally, Exelixis shall notify the applicable Regulatory Authorities in writing that it is transferring such IND for the applicable Lead Compound to BMS, and BMS shall notify the applicable Regulatory Authorities in writing that it is accepting such IND and all responsibilities associated therewith, including without limitation, the responsibility for reporting adverse events.

5.3 Regulatory Matters Relating to Co-Promotion Products in the United States. With respect to Co-Promotion Products in the United States:

(a) Regulatory Filings. Through their members on the JDC, Exelixis and BMS shall cooperate in the drafting and review of all submissions (including any supplements or modifications thereto, but excluding routine adverse event filings (i.e., not relating to serious adverse events as defined by applicable law) to the FDA (including the preparation of an electronic submission of a Drug Approval Application to the FDA, with BMS having primary responsibility for preparing the electronic dossier for each indication). Each Party shall have a right to review and approve (through its members of the appropriate Committee), the content and subject matter of, and strategy for, each Drug Approval Application to be filed in the United States, all correspondence submitted to the FDA related to clinical trial design, all proposed Product labeling (including the final FDA-approved labeling) and post-Regulatory Approval labeling changes. Each Party shall promptly provide the other with copies of all written or electronic communications received by it from, or sent by it to, the FDA with respect to obtaining and maintaining, Regulatory Approvals for a Product in the United States (it being understood that routine adverse event filings (i.e., not relating to serious adverse events as defined by applicable law) shall not fall within the meaning of maintenance) and copies of all contact reports produced by such Party. BMS shall be the **[*]** point of contact with any Regulatory Authorities (except as provided in **Section [*]**).

(b) Notice of Regulatory Filing Requirements. BMS shall provide to Exelixis, within **[*]** of discovery by BMS, notice of any event with respect to any Co-

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Promotion Product that triggers any FDA filing requirement that is subject to a deadline imposed by applicable law of less than twenty-one (21) days after the discovery of such an event. The co-chairpersons of the JDC shall discuss in good faith and on a timely basis determine the most effective and expeditious means of responding to such FDA filing requirement.

(c) Notice of Changed Regulatory Requirements. BMS shall provide notice to Exelixis of any additional requirements which the FDA may impose with respect to obtaining or maintaining Regulatory Approval for a Co-Promotion Product (including additional clinical trials), and of all FDA inquiries with respect to a Co-Promotion Product requiring a response within **[*]** of receipt thereof by BMS.

(d) Regulatory Meetings. BMS shall provide Exelixis with notice of all meetings, conferences, and discussions (including FDA advisory committee meetings and any other meeting of experts convened by the FDA concerning any topic relevant to a Co-Promotion Product, as well as Product labeling and post-Regulatory Approval Product labeling discussions with the FDA) scheduled with the FDA concerning any pending Drug Approval Application or any material regulatory matters relating to a Co-Promotion Product within **[*]** after BMS receives notice of the scheduling of such meeting, conference, or discussion (or within such shorter period as may be necessary in order to give Exelixis a reasonable opportunity to participate in such meetings, conferences and discussions). Exelixis shall be entitled to be present at, and to participate in, all such meetings, conferences or discussions. Exelixis' and BMS' respective members of the JDC shall use reasonable efforts to agree in advance on the scheduling of such meetings and on the objectives to be accomplished at such meetings, conferences, and discussions and the agenda for the meetings, conferences, and discussions with the FDA. BMS shall also include Exelixis in any unscheduled, ad-hoc meetings, conferences and discussions with the FDA concerning any pending IND, Drug Approval Application or any material regulatory matters relating to a Product.

(e) Regulatory Data. Each Party shall provide to the other Party on a timely basis copies of all material pre-clinical and clinical data compiled in support of a Drug Approval Application or other regulatory filings in the United States with respect to each Product (via electronic copies of such data in a form that may be analyzed and manipulated by the other Party).

(f) Common Database. If deemed appropriate by the JDC, the Parties will establish a common database to be controlled, maintained and administered by BMS for the receipt, investigation, recordation, communication, and exchange (as between the Parties) of data arising from clinical trials for Products. The Parties shall agree upon guidelines and procedures for such common database that shall be in accordance with, and enable the Parties and their Affiliates to fulfill their reporting obligations under applicable law. Furthermore, such guidelines and procedures shall be consistent with relevant International Council for Harmonisation ("**ICH**") guidelines. The Parties' costs incurred in connection with receiving, investigating, recording, reviewing, communicating, and exchanging such efficacy data shall be included as an element of Development Costs or as Allowable Expenses (to the extent specifically identifiable to or reasonably allocable to the Development or Commercialization of Products for the United States), calculated on a FTE cost and direct out-of-pocket cost basis.

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(g) Rights of Reference. Each Party shall have the right to cross reference, file or incorporate by reference any regulatory filing or drug master file (as defined in the Code of Federal Regulations) (and any data contained therein) for any Product, or any component thereof, made in any country in the Territory (including all Approvals) in order to support regulatory filings that such Party is permitted to make under this Agreement for any Product in the United States and to enable either Party to fulfill its obligations under this Agreement to Develop or manufacture (anywhere in the world) any such Product for use in the United States or Commercialize any such Product in the United States. Each Party shall support the other, as may be reasonably necessary, in obtaining Regulatory Approvals for each Product in the United States, including providing necessary documents, or other materials required by applicable law to obtain Regulatory Approvals, in each case in accordance with the terms and conditions of this Agreement.

5.4 Recalls in the United States. Any decision to initiate a recall or withdrawal of a Co-Developed or Co-Promotion Product in the United States shall be **[*]**, **[*]**; provided, however, that if, as a result of patient safety concerns, there is not **[*]**, and in any event before **[*]**, the Parties shall promptly and in good faith discuss the reasons therefor and the strategy for implementing any such recall or withdrawal. The costs of any such recall or withdrawal relating to: (i) the Development of a Co-Developed Product for an indication prior to the approval of the Drug Approval Application (or compendia listing, as the case may be) for such indication (other than with respect to a recall related to a **[*]**); or (ii) the Commercialization of a Co-Promotion Product shall each be included in Regulatory Expenses. The costs of any such recall or withdrawal relating to the Development of a Co-Developed Product for a **[*]** or the Commercialization of a Royalty-Bearing Product, each shall be borne solely by BMS and shall be excluded from Development Costs and Allowable Expenses. Notwithstanding the preceding two (2) sentences, to the extent that any such recall or withdrawal is attributable to the negligence of a Party, such Party shall bear such costs, and such costs shall be excluded from Development Costs and Allowable Expenses. Under no circumstances shall either Party unreasonably object to a recall or withdrawal requested by the other Party, and with respect to Co-Developed and Co-Promotion Products, neither Party shall have any right to object to a recall or withdrawal requested by the other Party for failure of a Product to meet the Specifications, for material safety concerns, for the manufacture of such Product in a manner that does not comply with applicable law or as requested by Regulatory Authorities. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from Exelixis as reasonably requested.

5.5 Regulatory Matters Relating to Royalty-Bearing Products in the United States and Products in the Royalty Territory. With respect to Royalty-Bearing Products in the United States and Products in the Royalty Territory:

(a) Preparation of Regulatory Filings. BMS shall prepare and draft all filings (including any supplements or modifications thereto and including the preparation of any electronic submission of a Drug Approval Application) to Regulatory Authorities in each such

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country. BMS shall keep Exelixis informed with respect to, and shall promptly provide to Exelixis copies of, all material written or electronic communications received by it from, or sent by it to: (a) a Regulatory Authority in the U.S., Japan, a Major European Country or for the EU; and (b) a Regulatory Authority outside the Major European Countries to the extent that the substance of such communications: (i) vary materially from what BMS has already disclosed to Exelixis with respect to the U.S., Japan, a Major European Country or for the EU under this **Section 5.4(a)**; and (ii) **[*]**.

(b) Pricing and Reimbursement Approvals. [*] in all pricing and reimbursement approval proceedings relating to each Product in the Royalty Territory.

(c) Rights of Reference. BMS shall have the right to cross reference, file or incorporate by reference any regulatory filing or drug master file (as defined in the Code of Federal Regulations) (and any data contained therein) for any Product made in any country in the Territory (including all Approvals) in order to support regulatory filings that BMS is permitted to make under this Agreement for any such Product in the Royalty Territory and to enable BMS to fulfill its obligations under this Agreement to Develop, Manufacture (anywhere in the world), or Commercialize any such Product for use in the Royalty Territory.

5.6 Recalls in the Royalty Territory. Any decision to initiate a recall or withdrawal of a Product in the Royalty Territory shall be made by BMS. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from the non-lead Party as reasonably requested by BMS. The costs of any such recall or withdrawal in the Royalty Territory shall be borne solely by BMS, except to the extent that the recall or withdrawal is attributable to: (a) the negligence of Exelixis, in which event Exelixis shall bear such costs; or (b) the negligence of both Parties, in which event each Party shall bear such costs to the extent of its respective responsibility, and in either case ((a) or (b)), such costs shall be excluded from Development Costs and Allowable Expenses.

5.7 Pharmacovigilance Agreement. Subject to the terms of this Agreement, and within **[*]** after the **[*]** with respect to a Collaboration Program, BMS and Exelixis (under the guidance of their respective Pharmacovigilance Departments, or equivalent thereof) shall define and finalize the responsibilities the Parties shall employ to protect patients and promote their well-being in a written Agreement (hereafter referred to as the "**Pharmacovigilance Agreement**"). These responsibilities shall include mutually acceptable guidelines and procedures for the receipt, investigation, recordation, communication, and exchange (as between the Parties) of adverse event reports, pregnancy reports, and any other information concerning the safety of any Product. Such guidelines and procedures shall be in accordance with, and enable the Parties and their Affiliates to fulfill, local and national regulatory reporting obligations to government authorities. Furthermore, such agreed procedures shall be consistent with relevant International Council for Harmonisation (ICH) guidelines, except where said guidelines may conflict with existing local regulatory safety reporting requirements, in which case local reporting requirements shall prevail. The Pharmacovigilance Agreement will provide for a worldwide safety database to be maintained by BMS. Each Party hereby agrees to comply with its respective obligations under such Pharmacovigilance Agreement (as the Parties may agree to modify it from time to time) and to cause its Affiliates and Sublicensees to comply with such obligations.

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6. COMMERCIALIZATION

6.1 Overview. As between the Parties, BMS shall be the lead Party for all Commercialization activities throughout the world, and BMS shall book sales of all Products in all countries.

6.2 Commercialization Plans.

(a) Commercialization Plans. For each Product, the JCC shall be responsible for creating a global strategy for the Commercialization of each Product pursuant to a comprehensive, rolling, three-year commercialization plan (the **"Global Commercialization Strategy"**), along with creating a comprehensive, rolling, three-year commercialization plan setting forth the anticipated Commercialization activities in the U.S. (including without limitation market research, launch plans, product positioning, and detailing activities) and timelines for such activities (the **"U.S. Commercialization Plan"**). The U.S. Commercialization Plan shall, in the case of Co-Promotion Products, allocate responsibility for carrying out such activities between BMS and Exelixis, and shall include a detailed and specific budget for all such activities. Each U.S. Commercialization Plan shall be consistent with the then-current Global Commercialization Strategy and the Co-Promotion Agreement, and the U.S. Commercialization Plan may be included as a part of the Global Commercialization Strategy.

(b) No later than **[*]** after commencement of the **[*]** for a particular Product, and on an annual basis thereafter, the JCC shall prepare, and submit to the JEC for its approval, a U.S. Commercialization Plan that meets the requirements of **Section 6.2(a)**. Each updated U.S. Commercialization Plan for a particular Product, once approved by the JEC, shall become effective and supersede the previous U.S. Commercialization Plan for such Product as of the date of such approval or at such other time decided by the JEC. The JEC shall not approve a U.S. Commercialization Plan that is inconsistent with or contradicts the terms of this Agreement or the Co-Promotion Agreement without the written consent of the Parties, and in the event of any inconsistency between the U.S. Commercialization Plan, on the one hand, and this Agreement or the Co-Promotion Agreement, on the other hand, the terms of this Agreement or the Co-Promotion Agreement, as the case may be, shall prevail.

6.3 Diligent Commercialization. BMS (and Exelixis with respect to Co-Promotion Products in the U.S.) shall use Diligent Efforts to Commercialize each Product in each country in the Major Territory for each indication for which it receives Regulatory Approval.

6.4 Option to Co-Promote.

(a) In General. BMS hereby grants to Exelixis the first and exclusive option (a **"Co-Promotion Option"**) to co-promote each Co-Developed Product in the U.S. in accordance with a co-promotion agreement (a **"Co-Promotion Agreement"**) to be negotiated in good faith by the Parties following Exelixis' exercise of the Co-Promotion Option with respect to a particular Co-Developed Product.

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(b) Exercise. BMS shall give Exelixis prompt written notice (the **"Co-Promotion Notice"**) of the **[*]** for each Co-Developed Product, and shall provide with such notice: (i) the anticipated date of Launch of the applicable Product in the U.S.; and (ii) any material updates to the budget for the then-current U.S. Commercialization Plan. Exelixis may exercise its Co-Promotion Option with respect to such Co-Developed Product by written notice to BMS no later than **[*]** after Exelixis receives a Co-Promotion Notice. If Exelixis timely exercises its Co-Promotion Option with respect to such Co-Developed Product, then such Co-Developed Product shall become a Co-Promotion Product, and the Parties shall share Operating Profits (or Losses) in accordance with **Sections 6.5 and 9.3**. If Exelixis does not timely exercise its Co-Promotion Option with respect to such Co-Developed Product, then such Co-Developed Product shall become a Royalty-Bearing Product. Exelixis' exercise or failure to exercise its Co-Promotion Option with respect to a particular Co-Developed Product shall not have any effect on its Co-Promotion Options for other Co-Developed Products.

(c) Co-Promotion Agreement. The Co-Promotion Agreement will include the specific terms set forth in **Exhibit 6.4(c)**, along with additional terms and conditions customary in the industry for an agreement of this type. In the event of any inconsistency between the terms of this Agreement and the terms of the Co-Promotion Agreement, the terms of this Agreement shall prevail.

6.5 Commercialization Costs. All costs and expenses incurred by the Parties in connection with the Commercialization of Co-Promotion Products in the U.S. shall be included in the calculation of Operating Profit (or Losses), and shall be allocated between the Parties, in accordance with **Sections 9.3 and 9.4**. BMS shall bear all costs and expenses incurred by the Parties in connection with the Commercialization of: (a) all Products in the Royalty Territory; and (b) all Royalty-Bearing Products in the U.S.

6.6 Commercialization Reports. BMS shall keep the JCC fully informed regarding the progress and results of its Commercialization activities and those of its Affiliates, sublicensees, and Third Party contractors in the Royalty Territory. On a **[*]** basis, BMS shall provide the JCC with a written report that summarizes, in reasonable detail, all Commercialization activities performed during the preceding **[*]** period, and compares such performance with the goals and timelines set forth in the Global Commercialization Strategy and (as appropriate) the U.S. Commercialization Plan. BMS shall also promptly provide any additional Information regarding the Commercialization of Products reasonably requested by the JCC or by Exelixis. For clarity, each Party will provide **[*]** updates to the JCC with respect to its Commercialization activities relating to Co-Promotion Products in the U.S.

6.7 Standards of Conduct. BMS shall perform, or shall ensure that its Affiliates, sublicensees and Third Party contractors perform, all Commercialization activities in a good scientific and ethical business manner and in compliance with applicable laws, rules and regulations.

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6.8 Sales Force Training. BMS shall develop and conduct training programs specifically relating to the Products for its sales representatives. BMS agrees to utilize such training programs on an ongoing basis to assure a consistent, focused promotional strategy.

7. MANUFACTURING

7.1 Research Supply. Exelixis shall Manufacture, or arrange with Third Parties for the Manufacture of, Lead Compounds and Program Backups for the purpose of Exelixis' research and Development activities to be performed under Article 3 prior to BMS' exercise of its Co-Development Option with respect to such compounds and for BMS' research activities under Section 3.4(a).

7.2 Clinical and Commercial Supply. After BMS' selection of a Collaboration Program and prior to the completion of Exelixis' transfer under **Section 7.3** of the Manufacturing technology for the Collaboration Compounds in such Collaboration Program, Exelixis shall Manufacture, or arrange with Third Parties for the Manufacture of, the Lead Compound in such Collaboration Program for the purpose of transitional supply of Lead Compound for the first Phase I Clinical Trial of such Lead Compound. As part of such Phase I Clinical Trial supply, Exelixis will enable BMS' regulatory function to test and release all supplies of such Lead Compound for such Phase I Clinical Trial (if applicable). The costs and expenses incurred by Exelixis in carrying out such Manufacturing shall be either: (a) treated as Development Expenses in the event that such expenses relate to a Co-Developed Product; or (b) reimbursed one hundred percent (100%) by BMS in the in the event that such expenses relate to a Royalty-Bearing Product. After the completion of Exelixis' transfer under **Section 7.3** of the Manufacturing technology for the Collaboration Compounds in such Collaboration Program, BMS shall Manufacture, or arrange with Third Parties for the Manufacture of, Collaboration Compounds and Products (in bulk and finished form) for use in Development and for commercial sale.

7.3 Transfer of Manufacturing Right.

(a) Promptly following **[*]**, Exelixis shall transfer the Manufacturing technology for the Collaboration Compounds in such Collaboration Program to either (i) BMS or (ii) a Third Party manufacturer reasonably acceptable to Exelixis, which election shall be made by BMS. As soon as is practicable after its receipt of such request, Exelixis shall transfer to BMS or such Third Party manufacturer, as the case may be, all Information Controlled by Exelixis that is related to the Manufacturing of such Collaboration Compounds and is reasonably **[*]** to enable BMS or such Third Party manufacturer (as appropriate) to Manufacture such Collaboration Compounds. The costs and expenses incurred by Exelixis in carrying out such transfer shall be either: (i) treated as Development Expenses in the event that such expenses relate to a Co-Developed Product; or (ii) reimbursed one hundred percent (100%) by BMS in the in the event that such expenses relate to a Royalty-Bearing Product.

(b) BMS and/or its Third Party manufacturer shall use any Information transferred pursuant to **Section 7.3(a)** solely for the purpose of Manufacturing Products containing such Collaboration Compounds for use by Exelixis or BMS under this Agreement, and for no other purpose.

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(c) BMS acknowledges and agrees that Exelixis may condition its agreement to transfer of any Manufacturing technology or Information to a Third Party manufacturer on the execution of a confidentiality agreement between such Third Party manufacturer and Exelixis that contains terms substantially equivalent to those of **Article 11** of this Agreement.

8. LICENSES; EXCLUSIVITY

8.1 Licenses to BMS. Subject to the terms of this Agreement:

(a) Research. Exelixis hereby grants to BMS a non-exclusive, worldwide, royalty-free license (without the right to sublicense except with prior written consent of Exelixis) under the Exelixis Licensed Patents and the Exelixis Licensed Know-How solely to **[*]** in accordance **[*]**.

(b) Clinical Development and Commercialization.

(i) Exelixis hereby grants to BMS a co-exclusive, revenue-bearing license under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import Co-Promotion Products in the U.S.

(ii) Exelixis hereby grants to BMS an exclusive, royalty-bearing license under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import (A) Royalty-Bearing Products in the U.S. and (B) Products in the Royalty Territory.

(c) Sublicensing. The licenses granted to BMS in **Sections 8.1(a)** and **8.1(b)(i)** are, subject to **Section 8.5(b)**, sublicensable solely with the prior written consent of Exelixis, which consent shall not be unreasonably withheld. The license granted to BMS in **Section 8.1(b)(ii)** shall be freely sublicensable by BMS.

(d) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Licensed Know-How and Exelixis Patents except those expressly granted to BMS on an exclusive basis under the terms of this Agreement. In addition, notwithstanding the exclusive licenses granted to BMS pursuant to **Section 8.1(b)**, Exelixis retains the right under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to make, have made, use, and test Collaboration Compounds solely for internal research purposes.

8.2 Licenses to Exelixis.

(a) Research. Subject to the terms of this Agreement, BMS hereby grants to Exelixis a non-exclusive, worldwide, royalty-free license under the BMS Licensed Know-How and BMS Patents, solely to perform its obligations with respect to Screening Programs, Lead Op Programs and Collaboration Programs, as contemplated by **Article 3**.

(b) Clinical Development and Commercialization. Subject to the terms of this Agreement, BMS hereby grants to Exelixis a co-exclusive, revenue-bearing license under the BMS Licensed Patents and the BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import Co-Promotion Products in the U.S.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(c) Other Licenses. In the event that BMS declines to exercise its Co-Development Option with respect to a Collaboration Program that was a Provisional Collaboration Program, then BMS shall grant to Exelixis:

(i) a non-exclusive, worldwide, fully paid-up, sublicensable license under all Patents and Information that: (A) **[*]**, in each case, to use and practice such Patents and Information for any purpose; and

(ii) a worldwide, fully paid-up, sublicensable license under all Patents and Information that: (A) **[*]** to continue to develop, make, use, sell, offer for sale and import Products comprising the applicable Collaboration Compound(s). The license described in this **Section 8.2(c)(ii)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Collaboration Compound(s), and shall be limited to the use and practice of such Patents and Information for the development, manufacture, use, sale, offer for sale or import of the applicable Collaboration Compound(s).

(d) Sublicensing. The licenses granted to Exelixis in **Sections 8.2(a)** and **8.2(b)** are, subject to **Section 8.5(b)**, sublicensable solely with the prior written consent of BMS, which consent shall not be unreasonably withheld. The license granted to Exelixis in **Section 8.2(c)(i)** shall be freely sublicensable solely in connection with the development, manufacture, use, sale, offer for sale or import of a pharmaceutical product discovered or created by Exelixis, and the license granted to Exelixis in **Section 8.2(c)(ii)** shall be freely sublicensable solely in connection with the development, manufacture, use, sale, offer for sale or import of the applicable Collaboration Compound.

(e) BMS Retained Rights. BMS retains all rights to use the BMS Licensed Know-How and BMS Patents except those expressly granted to Exelixis on an exclusive basis under the terms of this Agreement.

8.3 Mutual Covenants.

(a) BMS hereby covenants that BMS shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Licensed Know-How or Exelixis Licensed Patents for a purpose other than that expressly permitted in **Section 8.1**.

(b) Exelixis hereby covenants that Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any BMS Licensed Know-How or BMS Patents for a purpose other than that expressly permitted in **Section 8.2**.

8.4 No Additional Licenses. Except as expressly provided in **Sections 8.1, 8.2**, and **Article 12**, nothing in this Agreement grants either Party any right, title or interest in and to the intellectual property rights of the other Party (either expressly or by implication or estoppel).

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8.5 Sublicensing.

(a) In General. Each Party shall provide the other Party with the name of each permitted sublicensee of its rights under this **Article 8** and a copy of the applicable sublicense agreement; provided that each Party may redact confidential or proprietary terms from such copy, including financial terms. The sublicensing Party shall remain responsible for each permitted sublicensee's compliance with the applicable terms and conditions of this Agreement.

(b) Right of First Refusal for Sublicense of Co-Promotion Rights. During the Term, should Exelixis decide to sublicense its rights under **Section 8.2(b)** to any Third Party, or should BMS decide to sublicense its rights under **Section 8.1(b)** to any Third Party, then the Party desiring to grant such sublicense (the "**Sublicensing Party**") shall promptly notify the other Party (the "**Other Party**") in writing. The Other Party shall have a first and exclusive right of negotiation to obtain from the Sublicensing Party such sublicense on commercially reasonable terms. If the Other Party exercises this right by so notifying the Sublicensing Party in writing within **[*]** receipt of the Sublicensing Party's notice, the Parties shall negotiate in good faith for **[*]** (the **"Negotiation Period"**) from the date the Sublicensing Party receives such notice from the Other Party to arrive at commercially reasonable terms (including any applicable royalty rate or other consideration) of an agreement for such a sublicense. If mutual agreement is not reached during the Negotiation Period, then the Sublicensing Party shall be free to pursue a Third Party sublicensee, subject to **Section 8.2(d)**; *provided*, *however*, that the Sublicensing Party may not grant a sublicense to such Third Party on terms more favorable to such Third Party (taking into consideration the overall aggregate of economic factors) than those which the Sublicensing Party last offered to the Other Party; and provided further that in the event that no such sublicense to a Third Party occurs for a period of **[*]** subsequent to the expiration of the Negotiation Period described above, then the terms of this **Section 8.5(b)** shall once again apply to any proposed sublicense by the Sublicensing Party (i.e., as if the Negotiation Period had never occurred).

8.6 Exclusivity. The Collaboration will be exclusive with respect to the research, development, manufacture, and commercialization of **[*]** that are intended to **[*]** the targets that are part of the Collaboration, as described below.

(a) Screening Targets. Following the designation of a target as a Screening Target and until such time as such Screening Target becomes a Rejected Screening Target (in which case the terms of **Section 8.6(b)** shall apply) or a Lead Op Candidate (in which case the terms of **Section 8.6(c)** shall apply), **[*]** conduct (directly or indirectly, and either with or without a *bona fide* collaborator), **[*]** such Screening Target.

(b) Rejected Screening Targets. [*] conduct (directly or indirectly, and either with or without a *bona fide* collaborator) programs outside the scope of this Collaboration to identify, optimize, develop and commercialize compounds that **[*]** Rejected Screening Target **[*]**, except as follows. If: (i) **[*]**, then **[*]** the Collaboration, directly or indirectly and either with or without a *bona fide* collaborator, in programs: (A) that are intended to research, develop and/or commercialize compounds that **[*]**; or (B) where such program's compounds **[*]**, in either case ((A) or (B)) **[*]** Rejected Screening Target.

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(c) Lead Op Candidates. Subsequent to the designation of a target as a Lead Op Candidate and until such time as such Lead Op Candidate becomes a **[*]** (in which case the terms of **Section 8.6(d)** shall apply) or a Rejected Lead Op Candidate (in which case the terms of **Section 8.6(e)** shall apply), **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs: (A) that are intended to identify, optimize, develop and commercialize compounds that **[*]** such Lead Op Candidate; or (B) (i) **[*]** as such Lead Op Candidate **[*]**, and (ii) **[*]** such program's compounds **[*]** the same Identified Target(s) as such Lead Op Candidate **[*]**.

(d) Lead Op Targets. Following the designation of a Lead Op Program's Identified Target(s) and until such time as such Identified Target(s) become Collaboration Target(s) (in which case the terms of **Section 8.6(f)** shall apply), **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs: (i) that are intended to identify, optimize, develop and commercialize compounds that **[*]**; or (ii) (I) **[*]** Lead Op Target **[*]**, and (II) **[*]** such program's compounds **[*]** Lead Op Target **[*]**.

(e) Rejected Lead Op Targets. Each Party shall be free to conduct (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration programs to identify, optimize, develop and commercialize compounds that **[*]** a Rejected Lead Op Target without any further obligation to the other Party, except as follows. If: (i) **[*]** the Collaboration (directly or indirectly, and either with or without a *bona fide* collaborator), in any programs: (A) that are intended to research, develop and/or commercialize compounds that **[*]**; or (B) where **[*]**, in either case ((A) or (B)) **[*]** after the designation of such Rejected Lead Op Target.

(f) Collaboration Targets.

(i) Prior to Commercialization. Subsequent to **[*]** and until the initial Commercialization of a Product within the Collaboration Program to which such Identified Target(s) relates (**[*]** with respect to such Collaboration Program, in which case this clause (i) **[*]**, **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs: (I) that are intended to identify, optimize, develop and commercialize compounds that **[*]** such Identified Target(s); or (II) (x) **[*]**, and (y) **[*]** such program's compounds **[*]** Identified Target(s) **[*]** where the **[*]**.

(1) [*] Termination of a Collaboration Program. Upon either (A) the **[*]** termination of a Provisional Collaboration Program or a Collaboration Program **[*]**; (B) the **[*]** pursuant to **Section [*]**; or (C) the**[*]** pursuant to **Section [*]**; **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration programs to identify, optimize, develop and commercialize compounds that **[*]** (subject, where applicable, to **[*]**).

(2) [*] Termination of a Provisional Collaboration Program. In the event that a **[*]** is discontinued prior to **[*]** and where: (A) **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs to identify, optimize, develop and commercialize compounds that **[*]** Identified Targets **[*]** after the termination of the Provisional Collaboration Program.

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(ii) Subsequent to Commercialization. Subsequent to the initial Commercialization of a Product within the Collaboration Program to which Identified Targets relate **[*]**), **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs to identify, optimize and develop compounds that **[*]** such Identified Targets **[*]**, subject to the following terms and conditions:

(1) Commercial Launch of [*]. [*] commercialize [*] the Collaboration, [*] such Identified Targets; or (B) where [*] (any such product, a "[*]"), [*] within such Collaboration Program; or (Y) [*] within such Collaboration Program.

(2) [*]. In the event of any [*] that is permitted under Section 8.6(f)(ii)(1), the Party [*] the other Party [*]: (A) [*] subsequent to [*] within such Collaboration Program and [*].

(iii) Upon Conclusion of the Research Term. Upon the end of the Research Term as set forth in **Section 3.10**, either Party shall be free to conduct (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs to identify, optimize, develop and commercialize compounds that **[*]** that exist as of the end of the Research Term.

(g) [*]. Notwithstanding anything to the contrary set forth in this **Article 8**, if a Party is engaged in research of a program **[*]**, and compounds in such program **[*]** Collaboration Program, such Party shall **[*]**. For clarity, the exclusivity associated with a Lead Op Program, Provisional Collaboration Program or a Collaboration Program containing multiple Identified Targets **[*]** Lead Op Program, Provisional Collaboration Program or Collaboration Program.

(h) Not Applicable to [*]. The restrictions in this **Section 8.6** shall not apply with respect to either Party for compounds that are **[*]**.

(i) [*]. In the event that, **[*]**, a Party is either (A) **[*]** (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs **[*]** that: (1) that are intended to identify, optimize, develop and commercialize compounds that **[*]** Identified Target(s) as a Lead Op Program, a Provisional Collaboration Program or a Collaboration Program; or (2) where the conducting Party **[*]** Identified Target(s) as a Lead Op Program, a Provisional Collaboration Program or a Collaboration Program **[*]** (**[*]**); or (B) commercializing **[*]**, then the following terms and conditions shall apply:

(i) In the event that a Party controls **[*]**, such Party **[*]** (or Lead Op Programs, Provisional Collaboration Programs or Collaboration Programs, as applicable) using **[*]**; and (b) **[*]**, either:

(1)(A) in the case of **[*]**, or (B) in the case of **[*]**;

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(2) [*]; or

(3) [*];

and in any case ((1), (2) or (3) above), provide written notice to the other Party of its decision with respect to subsection (b) above and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than **[*]** subsequent to such written notice.

(ii) In the event that a Party **[*]**, where the **[*]**, solely with respect to **[*]**, either:

(1)(A) in the case of **[*]**, or (B) in the case of **[*]**; or

(2) [*];

and in either case ((1) or (2) above), provide written notice to the other Party of its decision with respect to this **Section 8.6(i)((ii)** and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than **[*]** subsequent to such written notice.

(iii) In the event that a Party **[*]**, where the **[*]**, the terms of **Section 8.6(f)(ii)(2)** shall apply as if **[*]**.

9. COMPENSATION

9.1 Upfront Payment. BMS shall pay Exelixis a one-time fee of sixty million dollars ($60,000,000) within **[*]** after the Effective Date. Such fee shall be noncreditable and nonrefundable.

9.2 Achievement Payments. For each Collaboration Compound selected by BMS pursuant to Section 3.7 (up to a maximum of three (3) such Collaboration Compounds selected), BMS shall pay Exelixis twenty million dollars ($20,000,000) million within [*] of Exelixis' receipt of written notice describing such selection. Each such payment shall be noncreditable and nonrefundable.

9.3 Profit Sharing the U.S. The terms and conditions of this **Section 9.3** shall govern each Party's rights and obligations with respect to Operating Profits (or Losses) relating to each Co-Promotion Product in the U.S. For clarity, Exelixis shall have no right to share Operating Profits, and, except as set forth in **Section 9.4(a)(iii)** below, no obligation to bear any Operating Losses, in each case pursuant to this **Section 9.3**, with respect to (x) any Product in the U.S. other than a Co-Promotion Product; or (y) any Product in the Royalty Territory, and in each case Exelixis shall instead be entitled to receive from BMS royalties pursuant to **Section 9.6**.

(a) Basic Concept. The Parties shall share equally all Operating Profits and all Operating Losses (as applicable) for each Co-Promotion Product in the U.S. Specifically, the Net Sales of Co-Promotion Product in the U.S. shall be allocated first to reimburse each Party for

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fifty percent (50%) of its Allowable Expenses for Co-Promotion Product in the U.S., and any remaining sums, shall be Operating Profit or Operating Loss (as applicable), which shall be shared fifty percent (50%) by each Party. The JFC will determine future financial flows regarding the sharing of Operating Profits and Allowable Expenses consistent with the first sentence of this **Section 9.3(a)** and with each partner's then existing tax and transfer pricing policies.

(b) [*]. If Exelixis elects [*] Co-Promotion Product (a "[*]"), then, solely during the period in which BMS is actually promoting the Co-Promotion Product [*], BMS shall receive [*] (such [*], the "[*]") of Operating Profits (or Losses) for such Co-Promoted Product (resulting in [*] for such Co-Promoted Product [*] during such period). The Parties agree that the Co-Promotion Agreement shall contain a mechanism by which the Parties shall [*]. The Co-Promotion Agreement shall also contain a mechanism, similar to that described in **Section 9.12(b)**, for arbitrating any disputes if the Parties are unable to mutually agree on [*] Co-Promotion Product.

(c) Commercialization Overruns. If the Allowable Expenses for Commercialization activities exceed the amounts budgeted for all such activities in the applicable Annual Commercialization Plan (and taking into account any amendments to such Annual Commercialization Plan and Budget that may be approved during a calendar year) by more than **[*]** (calculated for all costs incurred over such calendar year for all budgeted activities), such excess Allowable Expenses (each, a **"Commercialization Overrun"**) shall be borne by **[*]** and such excess Allowable Expenses shall be **[*]**. Notwithstanding the foregoing, in the event and to the extent that such Commercialization Overrun was **[*]**, or did not **[*]**, then such Commercialization Overrun shall be **[*]**, as the case may be.

9.4 Calculation and Payment of Profit or Loss Share.

(a) Reports and Payments in General. With respect to a Co-Promotion Product, or a Co-Developed Product for which Exelixis has not yet elected whether to exercise its Co-Promotion Option, each Party shall report to the other Party, within **[*]** after the end of each quarter, with regard to Net Sales and Allowable Expenses incurred by such Party (including any Allowable Expenses incurred by a Party prior to Regulatory Approval of such Product) for such Product during such quarter in the U.S. Each such report shall specify in reasonable detail all deductions allowed in the calculation of such Net Sales and all expenses included in Allowable Expenses, and, if requested by a Party, any invoices or other supporting documentation for any payments to a Third Party that individually exceed **[*]** (or such other amount approved by the JFC) shall be promptly provided. Within **[*]** after the end of each quarter (or for the last quarter in a year, **[*]** after the end of such quarter), the Parties shall reconcile all Net Sales and Allowable Expenses to ascertain whether there is an Operating Profit or an Operating Loss and payments shall be made as set forth in paragraphs (i) and (ii) below, as applicable.

(i) If there is an Operating Profit for such quarter, then BMS shall reimburse Exelixis for Allowable Expenses incurred by Exelixis in such quarter and shall pay to Exelixis, subject to **Section 4.6(e) and 9.3(b)**, an amount equal to fifty percent (50%) of the Operating Profit for such quarter; or

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(ii) If there is an Operating Loss for such quarter, then the Party that has borne less than its share of the Operating Loss in such quarter shall make a reconciling payment to the other Party to assure that each Party bears its share of such Operating Loss during such quarter.

(iii) In the event that Exelixis has borne Allowable Expenses, or has made reconciling payments to BMS relating to Allowable Expenses pursuant to clause (ii) above, with respect to a Co-Developed Product for which Exelixis does not elect to Co-Promote, then BMS shall reimburse Exelixis for such Allowable Expenses during the calendar quarter in which Exelixis elects not to Co-Promote such Product.

(b) Last Calendar Quarter. No separate payment shall be made for the last quarter in any year. Instead, at the end of each such year, a final reconciliation shall be conducted by comparing the share of Operating Profit (or Loss) to which a Party is otherwise entitled for such year pursuant to **Section 9.3** against the sum of all amounts (if any) previously paid or retained by such Party for prior quarters during such year, and the Parties shall make reconciling payments to one another no later than **[*]** after the end of such quarter, if and as necessary to ensure that each Party receives for such year its share of Operating Profits and bears its share of Operating Losses in accordance with **Section 9.3**.

9.5 Milestone Payments to Exelixis.

(a) For each Royalty-Bearing Product, BMS shall make the milestone payments set forth below to Exelixis within **[*]** after the first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to such Royalty-Bearing Product. All milestone payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable.

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Event	Milestone Payment
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**
[*]	**[*]**

* **[*]**.

(b) Milestone Payment Restrictions. Each milestone payment set forth in **Section 9.5(a)** shall be paid **[*]**.

(c) Milestone Payments with Respect to Program Backups. Milestone payments for a Program Backup within a Collaboration Program shall **[*]** such Collaboration Program has **[*]** and, in such event, will be payable **[*]**. For clarity, in the event that a **[*]** development milestones set forth above, and **[*]**, then: (i) such **[*]** milestones shall be due and payable with respect to such Program Backup **[*]**; and (ii) in the event that the **[*]** that were paid with respect to the **[*]**, such milestones shall be **[*]** (or **[*]**, if applicable) has **[*]** and will be payable **[*]**.

(d) Where milestones are payable for the achievement of **[*]** with respect to a Royalty-Bearing Product, such **[*]** such milestone payment **[*]**.

9.6 Royalty Payments to Exelixis.

(a) Sales of Products in the Royalty Territory. For each Product, BMS shall pay to Exelixis royalties on Net Sales of such Product by BMS (or its Affiliates or sublicensees) in the Royalty Territory at a royalty rate determined by aggregate Net Sales in the Royalty Territory of such Product in a calendar year as follows:

Calendar year Net Sales of Product in Royalty Territory	Royalty Rate
First $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]**	**[*]**%

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

For clarity, Net Sales shall be **[*]**. All royalty payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable, except in the event that an audit pursuant to Section 9.19 confirms that BMS had overpaid royalties to Exelixis, in which case such overpayment shall be credited against future royalties due to Exelixis (or, in the event that such audit takes place subsequent to the Royalty Term, such overpayment shall be refunded to BMS).

(b) Sales of Royalty-Bearing Products in the United States. For each Royalty-Bearing Product during the applicable Royalty Term, BMS shall pay to Exelixis royalties on Net Sales in the U.S. of such Royalty-Bearing Product by BMS (or its Affiliates or sublicensees) at a royalty rate determined by aggregate Net Sales in the U.S. of such Royalty-Bearing Product in a calendar year as follows:

(i) If Exelixis elected not to co-Develop such Royalty-Bearing Product by failing to "opt-in" pursuant to **Section 3.7(c)** or if Exelixis opted-out of the Development of such Royalty-Bearing Product prior to **[*]** with respect to such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	**Royalty Rate**
First $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]**	**[*]**%

(ii) If Exelixis opted-out of the Development of such Royalty-Bearing Product after **[*]** but prior to **[*]** with respect to such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	**Royalty Rate**
First $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]**	**[*]**%

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(iii) If Exelixis opted-out of the Development of such Royalty-Bearing Product after **[*]** but prior to the completion of **[*]** with respect to such Royalty-Bearing Product or prior to **[*]** for such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	Royalty Rate
First $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]**	**[*]**%

(iv) If Exelixis opted-out of the Development of such Royalty-Bearing Product after **[*]** or **[*]** with respect to such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	Royalty Rate
First $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]** and up to and including $**[*]**	**[*]**%
Portion above $**[*]**	**[*]**%

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

9.7 Third Party Royalties for Products in the Royalty Territory and Royalty-Bearing Products in the U.S.

(a) [*] Third Party milestones and royalties owed with respect to either a Product in the Royalty Territory or a Royalty-Bearing Product in the U.S., on intellectual property that: (i) **[*]**; or (ii) is intellectual property that: (A) **[*]** from a Third Party prior to the Effective Date and **[*]**; and (B) **[*]**. Subject to **Section 9.7(b)** and **Section 9.8**, **[*]** Third Party milestones and royalties owed on intellectual property in connection with the development and commercialization of a Product **[*]**; provided that each Party shall bear all Third Party royalties arising from any infringing activities by such Party prior to the Effective Date.

(b) BMS may deduct from the royalties it would otherwise owe to Exelixis pursuant to **Section 9.6** for a particular Product, an amount equal to **[*]** of all royalties and other payments payable to a Third Party in consideration for rights **[*]** for the manufacture, use or sale of such Product, up to a maximum deduction of **[*]** royalties due Exelixis for such Product.

9.8 [*]. During the applicable Royalty Term for a particular Royalty-Bearing Product, if any Third Parties are: (a) **[*]** in any given country in any year; and (b) such **[*]** in such country for such year are, **[*]**:

(i) [*], but **[*]** of the **[*]** in such country, then **[*]**; or

(ii) [*], **[*]**.

9.9 Limitation on Deductions. Notwithstanding anything to the contrary in this Agreement, the operation of **Section 9.7** and **Section 9.8** for a given Product, whether singularly or in combination with each other, shall not **[*]**.

9.10 Quarterly Payments and Reports. All royalties due under **Section 9.6** shall be paid quarterly, on a country-by-country basis, within **[*]** end of the relevant quarter for which royalties are due. BMS shall provide to Exelixis within **[*]** after the end of each quarter a report that summarizes the Net Sales of a Royalty-Bearing Product during such quarter, provided that to the extent additional information is reasonably required by Exelixis to comply with its obligations to any of its licensors, the Parties shall work together in good faith to timely compile and produce such additional information. Such reports shall also include detailed information regarding the calculation of royalties due pursuant to **Section 9.6**, including allowable deductions in the calculation of Net Sales of each Royalty-Bearing Product on which royalties are paid, and, to the extent **Section 9.8** is applicable, the calculation of sales and market share (by volume) of Generic Products.

9.11 Term of Royalties. Exelixis' right to receive royalties under **Section 9.6** shall expire on a country-by-country and Royalty-Bearing Product-by-Royalty-Bearing Product basis upon the later of: (a) **[*]**; or (b) **[*]** (the "**Royalty Term**"). Upon the expiration of the Royalty Term with respect to a Royalty-Bearing-Product in a country, BMS shall have a fully-paid-up perpetual license under **Section 8.1** for the making, using, selling, offering for sale and importing of such Royalty-Bearing-Product in such country.

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9.12 Sales of [*] Product Against [*].

(a) In General. The Parties recognize that the exclusivity provisions set forth in **Section 8.6** may allow for situations where a Party is **[*]** and such product **[*]** (each such product, a "**[*]**"). If a Party asks the JEC to determine whether **[*]**, the JEC shall determine whether **[*]** using **[*]** (or any other **[*]** reasonably acceptable to the Parties). If such **[*]** are **[*]** then the JEC shall determine if the **[*]** of such **[*]** is due to the **[*]** or if such **[*]** is due to the **[*]**. If the **[*]** of such **[*]**, then the JEC shall determine the extent to which sales of such **[*]**. The Party commercializing such **[*]** at: (i) a **[*]** (as determined by the JEC); and (ii) (A) in the case of BMS **[*]**, and (B) in the case of Exelixis **[*]**. **[*]** would be **[*]**.

(b) Disputes. If the JEC cannot agree: (i) whether **[*]**; (ii) on the **[*]**; (iii) whether such **[*]**; (iv) if the **[*]** is due to the **[*]** (or a combination thereof); (v) the degree to **[*]**; or (vi) on the **[*]** as if such Party were **[*]** with respect to any **[*]** Product in the U.S., then, in each case, at the election of either Party, such dispute must be finally resolved through binding arbitration by JAMS in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the failure arises, except as modified in this Agreement and applying the substantive law specified in **Section 15.2**. Either Party may initiate arbitration under this **Section 9.12(b)** by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (A) each Party shall submit to the arbitrator its proposal for resolving such dispute, with such proposal based on the applicable commercial and scientific factors discussed by the JEC; (B) the arbitrator shall select the proposal that is the most commercially and scientifically reasonable; and (C) such proposal shall become the applicable JEC determination. Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The award of the arbitrator shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted at such location as shall be determined by the Arbitrator. The Parties agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each Party shall bear its own attorneys' fees and associated costs and expenses.

9.13 Payment Method. All payments due under this Agreement to Exelixis shall be made by bank wire transfer in immediately available funds to an account designated by Exelixis. All payments hereunder shall be made in Dollars.

9.14 Taxes. Exelixis shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, BMS shall: (a) deduct those taxes from the remittable payment; (b) pay the taxes to the proper taxing authority; and (c) send evidence of the obligation together with proof of tax payment to Exelixis within **[*]** following that tax payment. The JFC shall discuss appropriate mechanisms for minimizing such taxes to the extent possible in compliance with applicable law.

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9.15 Blocked Currency. In each country where the local currency is blocked and cannot be removed from the country, royalties accrued in that country shall be paid to Exelixis in Dollars based on the Dollar reported sales for the quarter (translated for such country per Statement of Financial Standards No. 52), unless otherwise mutually agreed.

9.16 Sublicenses. In the event BMS grants any permitted licenses or sublicenses to Third Parties to sell Products that are subject to royalty payments under **Section 9.6**, BMS shall have the responsibility to account for and report sales of any Product by a licensee or a sublicensee on the same basis as if such sales were Net Sales by BMS. BMS shall pay to Exelixis (or cause the licensee or sublicensee to pay to Exelixis, with BMS remaining responsible for any failure of the licensee or sublicensee to pay amounts when due under this Agreement): (a) royalties on such sales as if such sales of the licensee or sublicensee were Net Sales of BMS or any of its Affiliates; and (b) milestones payments pursuant to **Section 9.5** based on the achievement by such licensee or sublicensee of any milestone event contemplated in such Sections as if such milestone event had been achieved by BMS or any of its Affiliates hereunder.

9.17 Foreign Exchange. Conversion of sales recorded in local currencies to Dollars shall be performed in a manner consistent with BMS' normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a widely accepted source of published exchange rates.

9.18 Records. Each Party shall keep (and shall ensure that its Affiliates and sublicensees shall keep) such records as are required to determine, in a manner consistent with GAAP and this Agreement, the sums or credits due under this Agreement, including Development Costs, Allowable Expenses and Net Sales. All such books, records and accounts shall be retained by such Party until the later of (a) **[*]** after the end of the period to which such books, records and accounts pertain and (b) the **[*]** (or any extensions thereof), or for such longer period as may be required by applicable law. Each Party shall require its sublicensees to provide to it a report detailing the foregoing expenses and calculations incurred or made by such sublicensee, which report shall be made available to the other Party in connection with any audit conducted by such other Party pursuant to this **Section 9.18**.

9.19 Audits. Each Party shall have the right to have an independent certified public accountant, reasonably acceptable to the audited Party, to have access during normal business hours, and upon reasonable prior written notice, to examine only those records of the audited Party (and its Affiliates and sublicensees) as may be reasonably necessary to determine, with respect to any calendar year ending not more than **[*]** prior to such Party's request, the correctness or completeness of any report or payment made under this Agreement. The foregoing right of review may be exercised **[*]**. Results of any such examination shall be (a) limited to information relating to the Products, (b) made available to both Parties and (c) subject to **Article 11**. The Party requesting the audit shall bear the full cost of the performance of any such audit, unless such audit discloses a variance to the detriment of the auditing Party of more than **[*]** from the amount of the original report, royalty or payment calculation, in which case the audited Party shall bear the full cost of the performance of such audit. The results of such audit shall be **[*]**.

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9.20 Interest. Any payments or portions thereof due hereunder that are not paid on the date such payments are due under this Agreement shall bear interest at a rate equal to the lesser of: (a) **[*]** Rate as published by Citibank, N.A., New York, New York, or any successor thereto, at 12:01 a.m. on the first day of each quarter in which such payments are overdue; or (b) the maximum rate permitted by law, in each case calculated on the number of days such payment is delinquent, compounded monthly.

9.21 Non-Monetary Consideration. Neither Party shall sell a Product for any consideration other than cash except on terms specified in the then approved Annual Commercialization Plan. In the event a Party receives any non-monetary consideration in connection with the sale of a Product, such Party's payment obligations under this **Article 9** shall be based on the fair market value of such other consideration. In such case, the selling Party shall disclose the terms of such arrangement to the other Party and the Parties shall endeavor in good faith to agree on such fair market value.

9.22 Cross Border Transactions.

(a) In General. The Parties recognize that in certain territories, and in particular in free trade regions, customers or other Third Parties may import Product(s) purchased in one country for commercial sale or use in another. If Exelixis asks the JEC to determine whether Products purchased outside the U.S. are being imported into the U.S. for such purpose, the JEC shall determine the level that such importation is occurring using data obtained from a source reasonably acceptable to Exelixis and BMS. If such importation is **[*]** (i.e., **[*]**, for **[*]**) then the JEC shall **[*]**.

(b) Disputes. If the JEC cannot agree whether such importation has **[*]**, then, at the election of either Party, such dispute must be finally resolved through binding arbitration by JAMS in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the failure arises, except as modified in this Agreement and applying the substantive law specified in **Section 15.2**. Either Party may initiate arbitration under this **Section 9.22(b)** by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (i) each Party shall submit to the arbitrator its proposal for resolving such dispute (i.e., the final form of the equitable mechanism to adjust the compensation of the Parties hereunder to offset the economic effect of cross border transactions described in **Section 9.22(a)**), such proposal based on the applicable business factors discussed by the JEC; (ii) the arbitrator shall select the proposal that is the most commercially reasonable; and (iii) such proposal shall become such equitable mechanism. Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The award of the arbitrator shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted in such location as shall be determined by the arbitrator. The Parties agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each Party shall bear its own attorneys' fees and associated costs and expenses.

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9.23 Payments to or Reports by Affiliates. Any payment required under any provision of this Agreement to be made to either Party or any report required to be made by any Party shall be made to or by an Affiliate of that Party if designated in writing by that Party as the appropriate recipient or reporting entity.

10. INTELLECTUAL PROPERTY

10.1 Ownership.

(a) The inventorship of all Sole Inventions and Joint Inventions shall be determined under the U.S. patent laws.

(b) Each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents claiming only such Sole Inventions (and no Joint Inventions) (**"Sole Invention Patents"**). BMS and Exelixis shall be joint owners in and to any and all Joint Inventions and Patents claiming such Joint Inventions (**"Joint Invention Patents"**). BMS and Exelixis as joint owners each shall have the right to exploit and to grant licenses under such Joint Inventions, and where exercise of such rights require, under the laws of a country, the consent of the other Party, with the consent of the other Party (such consent to not be unreasonably withheld, delayed or conditioned) unless otherwise specified in this Agreement.

(c) All employees, agents and contractors of each Party shall be under written obligation to assign any inventions and related intellectual property to the Party for whom they are employed or are providing services.

(d) The Parties acknowledge and agree that this Agreement shall be deemed to be a **"Joint Research Agreement"** as defined under 35 U.S.C. 103(c).

10.2 Disclosure. Subject to **Section 3.6**, Each Party shall submit a written report to the JRC no less frequently than within **[*]** end of each **[*]** describing any Sole Invention or Joint Invention arising during the prior **[*]** in the course of the Collaboration or thereafter in accordance with this Agreement which it believes may be patentable or at such earlier time as may be necessary to preserve patentability of such invention. Each Party shall provide to the other Party such assistance and execute such documents as are reasonably necessary to permit the filing and prosecution of such patent application to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension of any resulting Patent.

10.3 Patent Prosecution and Maintenance; Abandonment.

(a) Prosecution Prior to BMS' Exercise of its Co-Development Option. Prior to BMS' exercise of its Co-Development Option for a given Collaboration Program, Exelixis shall (1) prepare, file, prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto), all Exelixis Licensed Patents (other than Joint Patents) in **[*]** (the "**Primary Prosecution Countries**"), and (2) make a corresponding PCT filing (designating all countries) no later than twelve (12) months subsequent to initial filing, and a corresponding EPO application (designating all EPO countries/extension countries). no later than thirty (30) months subsequent

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to initial filing, **[*]**; provided that such responsibilities shall be **[*]**, and provided further that, in each case, **[*]**. If BMS requests that Exelixis prepare, file, prosecute or maintain an Exelixis Licensed Patent in a country other than a Primary Prosecution Country, BMS shall **[*]** Exelixis in connection with preparing, filing, prosecuting or maintaining such Exelixis Licensed Patent in such non-Primary Prosecution Country. Exelixis shall: (i) keep **[*]** as to the status of filing, prosecution, maintenance and extension of such Exelixis Licensed Patents, such that there is reasonable time to review, comment upon and approve (as set forth in this **Section 10.3(a)**) any documents intended for submission to any patent office; (ii) furnish to **[*]** copies of documents relevant to any such filing, prosecution, maintenance and extension including copies of any Patent Office, foreign associate, and outside counsel correspondence; and (iii) reasonably **[*]** on documents filed with any patent office with respect to Exelixis Licensed Patent claims that Cover Collaboration Compounds or Products. For the purpose of this **Section 10.3(a)**, such **[*]** shall only have the right to review any such documents provided by Exelixis if such **[*]** agrees in writing **[*]** or other structural information disclosed in such documents **[*]**.

(b) Prosecution After BMS' Exercise of its Co-Development Option.

(i) Filing, Prosecution and Maintenance of Invention Patents Controlled by Exelixis. Subject to **Sections 10.3(b)(ii) and (v)** below, **[*]** shall be responsible for the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Joint Invention Patents, Sole Invention Patents Controlled by Exelixis, and Exelixis Licensed Patents that in each case are co-owned, or co-exclusively or exclusively licensed to BMS under **Section 8.1** (the **"Exelixis Prosecuted Patents"**), provided that such responsibilities shall be carried out by **[*]**, and provided further that, in each case, **[*]**. **[*]**, or its **[*]**, shall provide **[*]** with an update of the filing, prosecution and maintenance status for each of the Exelixis Prosecuted Patents on a periodic basis, and shall use commercially reasonable efforts to consult with and cooperate with **[*]** with respect to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents, including **[*]** of proposed filings to allow BMS a reasonable opportunity for review and comment before such filings are due. **[*]** shall provide to **[*]** copies of any papers relating to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents promptly upon their being filed and received.

(ii) Abandonment. In no event shall **[*]** knowingly permit any of the Exelixis Prosecuted Patents to be abandoned in any country, or elect not to file a new patent application claiming priority to a patent application within the Exelixis Prosecuted Patents either before such patent application's issuance or within the time period required for the filing of an international (i.e., Patent Cooperation Treaty), regional (including European Patent Office) or national application, without **[*]** written consent (such consent to not be unreasonably withheld, delayed or conditioned) or **[*]** otherwise first being given an opportunity to assume full responsibility **[*]** for the continued prosecution and maintenance of such Exelixis Prosecuted Patents or the filing of such new patent application. Accordingly, **[*]**, shall provide **[*]** with notice of the allowance and expected issuance date of any patent within the Exelixis Prosecuted Patents, or any of the aforementioned filing deadlines, and **[*]** shall provide **[*]** with prompt notice as to whether **[*]** desires **[*]** to file such new patent application. In the event that **[*]** decides either: (A) not to continue the prosecution or maintenance of a patent application or

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patent within the Exelixis Prosecuted Patents in any country; or (B) not to file such new patent application requested to be filed by **[*]**, **[*]** shall provide **[*]** with notice of this decision at least **[*]** prior to any pending lapse or abandonment thereof, and **[*]** shall thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such patent or patent application. In the event that **[*]** assumes such responsibility for such filing, prosecution and maintenance, **[*]** shall have the right to transfer the responsibility for such filing, prosecution and maintenance of such patent applications and patents to patent counsel (outside or internal) selected by **[*]**, and **[*]** shall cooperate as reasonably requested by **[*]** to facilitate control of such filing, prosecution and maintenance by **[*]**. In the case where **[*]** takes over the filing, prosecution or maintenance of any patent or patent application as set forth above, **[*]** to **[*]** in any way with respect to its handling of, or the results obtained from, the filing, prosecution, issuance, extension or maintenance of any such application or any resulting patent or any failure by it to so file, prosecute, extend or maintain. In addition, **[*]** shall, **[*]**, provide such assistance and execute such documents as are reasonably necessary to continue or permit the filing, prosecution or maintenance of such patent or patent application or the issuance, maintenance or extension of any resulting patent or permit enforcement of such patent application or any such patent, including assignment of same to **[*]** in accordance with **Section 10.3(f)**.

(iii) Filing, Prosecution and Maintenance of Sole Invention Patents Controlled by BMS. In accordance with this **Section 10.3(a)(iii)**, BMS shall be responsible for the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Sole Invention Patents Controlled by BMS.

(iv) Patent Term Extension. Exelixis and BMS shall each cooperate with each another and shall use commercially reasonable efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to patent rights covering the Products. If elections with respect to obtaining such patent term extensions are to be made, BMS shall have the right to make the election to seek patent term extension or supplemental protection.

(v) Exelixis Right to Separate Claims. To the extent that any Sole Invention Patent of Exelixis contains claims that cover compounds that are not Collaboration Compounds, Exelixis shall have the right to separate any claims that cover such compounds and to file such claims in a separate application (e.g., a continuation, continuation-in-part, or divisional application). Exelixis shall notify BMS in writing prior to separating such claims, and such separation shall be at Exelixis' sole expense.

(c) Payment of Prosecution Costs. BMS shall bear the out-of-pocket expenses (including reasonable fees for any outside counsel, but not Exelixis' inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of: (X) **[*]**; and (Y) the **[*]**, provided that:

(i) if Exelixis or a Third Party licensee of Exelixis is practicing (A) a particular **[*]**, or (B) a particular **[*]**, or (C) a particular **[*]** (where expressly permitted by

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this Agreement), and such Invention is covered by a Patent for which BMS would otherwise bear the out-of-pocket patent expenses pursuant to **Section 10.3(c)** above, then, subject to **Section 10.3(c)(ii)** below, Exelixis shall provide written notice to BMS and the Parties shall mutually agree on the percentage of such expenses that each Party shall bear (which, in the absence of any other agreement between the Parties, shall be **[*]**); and

(ii) if any **[*]** covered by clause (b) above is part of a patent application or patent that covers other inventions that are not subject to clause (b) above and that are not **[*]**, then the Parties shall mutually agree upon an appropriate allocation of the expenses so that BMS does not bear any portion of the **[*]** attributable to such other inventions.

(d) Exelixis and BMS shall mutually agree on the percentage of expenses that each Party shall bear with respect to Joint Inventions for which the cost of filing, prosecuting or maintaining such Joint Invention is not the responsibility of a Party under **Sections 10.3(c)** hereof (which, in the absence of any other agreement between the Parties, shall be divided **[*]**).

(e) Non-payment of Expenses.

(i) If a Party elects not to pay its share of any expenses with respect to a Patent covering a Joint Invention in a given country under any of **Sections 10.3(c)** or **(d)** (each, a "**Joint Patent**"), such Party shall inform the other Party in writing not less than **[*]** before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable), and, if the other Party assumes the expenses associated with the Joint Patent, then the assuming Party **[*]** and the other Party shall **[*]**.

(ii) If a Party is the assignee or owner of a Patent (other than a Joint Patent) that is licensed to the other Party under any of **Sections 8.1 or 8.2**, and such owning Party elects not to pay its share of expenses pursuant to **Sections 10.3(c)** or **10.3(d)** in a given country, such owning Party shall inform the other Party in writing not less than **[*]** before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable). If the other Party assumes the expenses associated with the Patent in such country, then the assuming Party **[*]** and the owning Party shall **[*]**.

(iii) If a Party is the licensee of a Patent (other than a Joint Patent) under any of **Sections 8.1** or **8.2**, and such Party elects not to pay its share of expenses pursuant to **Sections 10.3(c)** or **10.3(d)** in a given country, such Party shall inform the other Party in writing not less than **[*]** before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable) (such Patent(s) in such countries, as identified in such notice, being a **"[*] Right"**), and **[*]** under such **Sections 8.1** or **8.2**, as applicable, with respect to the relevant Patent in such country, provided that **[*]**. It is also understood that such licensee shall be offered the opportunity to assume its share of the responsibility for the costs of filing, prosecution and maintenance of any Patent(s) claiming priority directly or indirectly from any such **[*]** Right, and that where such expenses are assumed by such licensee, it shall be afforded all the rights and licenses as provided under this Agreement for the licensed Patents (other than the **[*]** Right) with respect to such Patent(s) claiming priority directly or indirectly from any such **[*]** Right.

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(f) Notwithstanding **Sections 10.3(c), (d) and (e),** , any costs incurred by the Parties associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of a U.S. Patent in the Exelixis Prosecuted Patents or the BMS Licensed Patents shall, solely to the extent such Patent claims the use, manufacture, or sale of a Co-Promoted Product, shall be included as an element of Allowable Expenses.

(g) Each Party shall provide to the other Party, on a **[*]** basis, a patent report that includes the serial number, docket number and status of each Patent for which, pursuant to **Section 10.3(b)**, such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention (in the case of **[*]**) or Joint Invention. The Parties through their patent counsel shall discuss as appropriate (but not more than **[*]**) ways in which to allocate such out-of-pocket expenses in an appropriate, cost-effective manner consistent with the purposes of this Agreement and Exelixis' obligations to Third Parties.

10.4 Enforcement of Patent Rights.

(a) Enforcement of Exelixis Sole Patents.

(i) Enforcement by BMS. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement, by a Third Party of a Patent claiming a Sole Invention of Exelixis that claims the composition of matter (including formulation), manufacture or use of one or more Products that is being Developed or Commercialized using Diligent Efforts and which is co-exclusively or exclusively licensed to BMS under **Section 8.1** (for purposes of this **Section 10.4(a)(i)** only, an "**Exelixis Sole Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of an Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a small molecule product directed against a target in a Collaboration Program, **[*]** shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. **[*]** shall reasonably assist **[*]** (at **[*]**' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by **[*]** or required by law, and **[*]** shall hold **[*]** harmless from any liability incurred by **[*]** arising out of any such proceedings or actions at **[*]** request. **[*]** shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of any such **[*]** Sole Patent may be entered into by **[*]** without the prior consent of **[*]** (such consent to not be unreasonably withheld, delayed or conditioned).

(ii) Enforcement by [*]. If **[*]** elects not to bring any action for infringement or to defend any proceeding described in **Section 10.4(a)(i)** and so notifies **[*]**, or where **[*]** (or any other party other than **[*]** who is licensed under such **[*]** Sole Patent) otherwise desires to bring an action or to defend any proceeding directly involving an **[*]** Sole

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Patent, then **[*]** may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that **[*]** must confer with **[*]** with respect to any such action or proceeding and obtain the prior written consent of **[*]** to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any **[*]** Sole Patent that is a Patent listed or listable in the FDA's Orange Book (or foreign equivalent(s) of such Patent or the FDA's Orange Book) by **[*]** (a **"Listable Patent"**), if **[*]** fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such **[*]** Sole Patent shall in no event be diminished by any failure to enforce such **[*]** Sole Patent. **[*]** shall reasonably assist **[*]** (at **[*]**' expense) in any action or proceeding being prosecuted or defended by **[*]**, if so requested by **[*]** or required by law, and **[*]** shall hold **[*]** harmless from any liability incurred by **[*]** arising out of any such proceedings or actions. **[*]** shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a Listed Patent with respect to small molecules, may be entered into by **[*]** without the prior consent of **[*]** (such consent to not be unreasonably withheld, delayed or conditioned).

(b) Enforcement of Joint Patents.

(i) Joint Product Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter (including formulation), manufacture or use of one or more Products that is being developed or commercialized using Diligent Efforts and which is co-exclusively or exclusively licensed to BMS under **Section 8.1** (a "**Joint Product Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of a Joint Product Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. **[*]** shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. **[*]** shall reasonably assist **[*]** (at **[*]**' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by **[*]** or required by law, and **[*]** shall hold **[*]** harmless from any liability incurred by **[*]** arising out of any such proceedings or actions. **[*]** shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by **[*]** without the prior consent of **[*]** (such consent to not be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If **[*]** elects not to bring any action for infringement or to defend any proceeding described in **Section 10.4(b)(i)(1)** and so notifies **[*]**, or for any other enforcement by **[*]** of a Joint Product Patent which is co-exclusively or exclusively licensed to **[*]** under **Section 8.1**, then **[*]** may bring such action or defend such

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proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that **[*]** must confer with **[*]** with respect to any such action or proceeding and obtain the prior written consent of **[*]** to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Joint Product Patent that is a Listable Patent, if **[*]** fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such Joint Product Patent shall in no event be diminished by any failure to enforce such Joint Product Patent. **[*]** shall reasonably assist **[*]** (at **[*]**' expense) in any action or proceeding being prosecuted or defended by **[*]**, if so requested by **[*]** or required by law, and **[*]** shall hold **[*]** harmless from any liability incurred by **[*]** arising out of any such proceedings or actions. **[*]** shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by **[*]** without the prior consent of **[*]** (such consent to not be unreasonably withheld, delayed or conditioned).

(ii) Other Joint Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent that claims a Joint Invention but is not a Joint Product Patent (an "**Other Joint Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of an Other Joint Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. **[*]** shall have the right, but shall not be obligated, to prosecute an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. **[*]** shall reasonably assist **[*]** (at **[*]**' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by **[*]** or required by law, and **[*]** shall hold **[*]** harmless from any liability incurred by **[*]** arising out of any such proceedings or actions. **[*]** shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by **[*]** without the prior consent of **[*]** (such consent to not be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If **[*]** elects not to bring any action for infringement or to defend any proceeding described in **Section 10.4(b)(ii)(1)** and so notifies **[*]**, then **[*]** may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that **[*]** must confer with **[*]** with respect to any such action or proceeding and obtain the prior written consent of **[*]** to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Other Joint Patent that is a Listable Patent, if **[*]** fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such Other Joint Patent shall in no event be diminished by any failure to enforce such Other Joint Patent. **[*]** shall reasonably assist **[*]** (at **[*]**' expense) in any action or

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proceeding being prosecuted or defended by **[*]**, if so requested by **[*]** or required by law, and **[*]** shall hold **[*]** harmless from any liability incurred by **[*]** arising out of any such proceedings or actions. **[*]** shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by **[*]** without the prior consent of **[*]** (such consent to not be unreasonably withheld, delayed or conditioned).

(c) General Provisions Relating to Enforcement of Patents.

(i) Withdrawal. If either Party brings such an action or defends such a proceeding under this **Section 10.4** and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify the other Party and the other Party may substitute itself for the withdrawing Party under the terms of this **Section 10.4** (including such prior written consent as provided for under this **Section 10.4**) at its own expense.

(ii) Recoveries. In the event either Party exercises the rights conferred in this **Section 10.4** and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be **[*]**.

(iii) Patent Enforcement in the U.S. Notwithstanding any cost allocations set forth in **Sections 10.4(a)** and **(b),** and notwithstanding the allocation of recoveries set forth in **Section 10.4(c)(ii)**: (A) any costs incurred by either Party in connection with actions taken under this **Section 10.4** against suspected infringement by a Third Party in the U.S. that involves such Third Party's development, manufacture, use or sale of a small molecule product reasonably likely to materially affect sales of a Co-Promoted Product shall constitute Patent Costs and shall be **[*]**; and (B) any recoveries received by either Party in connection with such actions shall, **[*]**.

(d) Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (such as those periods listed in the FDA's Orange Book (including any available pediatric extensions) or periods under national implementations of Article 10.1(a)(iii) of Directive 2001/EC/83, and all international equivalents), BMS shall use commercially reasonable efforts consistent with its obligations under applicable law (including any applicable consent order) to seek, maintain and enforce all such data exclusivity periods available for the Products. With respect to filings in the FDA Orange Book (and foreign equivalents) for issued patents for a Product, upon request by BMS (and at BMS' expense), Exelixis shall provide reasonable cooperation to BMS in filing and maintaining such Orange Book (and foreign equivalent) listings.

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(e) No Action in Violation of Law. Neither Party shall be required to take any action pursuant to this **Section 10.4** that such Party reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree applicable to such Party.

(f) Notification of Patent Certification. **[*]** shall notify and provide **[*]** with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of an Patent licensed to **[*]** hereunder pursuant to a Paragraph IV Patent Certification by a third party filing an Abbreviated New Drug Application, an application under §505(b)(2) or other similar patent certification by a third party, and any foreign equivalent thereof. Such notification and copies shall be provided to **[*]** by **[*]** as soon as practicable and at least within **[*]** after **[*]** receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below:

[*]

10.5 Defense of Third Party Claims. If a claim is brought by a Third Party that any activity related to work performed by a Party under the Collaboration infringes the intellectual property rights of such Third Party, each Party shall give prompt written notice to the other Party of such claim, and following such notification, the Parties shall confer on how to respond.

10.6 Copyright Registrations. Copyrights and copyright registrations on copyrightable subject matter shall be filed, prosecuted, defended, and maintained, and the Parties shall have the right to pursue infringers of any copyrights owned or Controlled by it, in substantially the same manner as the Parties have allocated such responsibilities, and the expenses therefor, for patent rights under this **Article 10.**

11. CONFIDENTIALITY

11.1 Nondisclosure of Confidential Information. All Information disclosed by one Party to the other Party pursuant to this Agreement, and, subject to **Section 11.6**, Information that is generated in furtherance of the Collaboration pursuant to this Agreement with respect to Collaboration Compounds or Products (for so long as such Collaboration Compound or Product is not removed from the Collaboration), shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during the term of this Agreement and for a period of **[*]** thereafter, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party (such consent to not be unreasonably withheld, delayed or conditioned), except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (b) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement (it being understood that this **Section 11.1** shall not create or imply any rights or licenses not expressly granted under **Article 8** hereof).

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11.2 Exceptions. The obligations in **Section 11.1** shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(a) Subject to the last sentence in **Section 11.1**, is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

(b) Was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party; or

(c) Is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without obligation to keep it confidential; or

(d) Is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement; or

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of the disclosing Party's Confidential Information.

11.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances; provided that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products, in each case pursuant to activities under this Agreement;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental laws and regulations; and

(e) Disclosure, in connection with the performance of this Agreement, to Affiliates, potential collaborators, partners, and actual and potential licensees (including potential co-marketing and co-promotion contractors, research contractors and manufacturing contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, in each case to the extent permitted by this Agreement, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 11**.

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to individuals or entities covered by **Section 11.3(e)** above, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this

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Article 11. In addition, a copy of this Agreement may be filed by either Party with the Securities and Exchange Commission in connection with any public offering of such Party's securities or as otherwise necessary under applicable law or regulations. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic, competitively sensitive, and trade secret information.

In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

11.4 Termination of Prior Agreements. This Agreement supersedes the Confidential Disclosure Agreement between Exelixis and BMS effective as of September 22, 2005, and amended on November 9, 2005 and November 10, 2006 (such confidential disclosure agreement, as amended, the "**Prior CDA**"). All Information exchanged between the Parties under the Prior CDA shall be deemed Confidential Information and shall be subject to the terms of this **Article 11**.

11.5 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as **Exhibit 11.5**. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; *provided*, *however*, that any disclosure which is required by law, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded, as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

11.6 Publications.

(a) [*] shall publish or present the results of studies performed in connection with Provisional Collaboration Programs prior to **[*]**. Subsequent to **[*]**, publication decisions regarding the results of studies performed in connection with Co-Developed Products shall be made by the JDC or JCC, as appropriate, and, in all cases, in accordance with **[*]** with respect to the disclosure of **[*]**.

(b) Subject to paragraph (a) above and **Section 11.3**, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which contains Confidential Information of the other Party and would or may constitute an oral, written or electronic public disclosure if made (including the full content of proposed abstracts, manuscripts or presentations) which relate to any Inventions, or which otherwise may contain Confidential Information, at least **[*]** prior to its intended submission for publication and agrees, upon request, not to submit any such abstract or manuscript for publication until the other Party is given a reasonable period of time to secure patent protection for any material in such publication which it believes to be patentable. Both Parties understand that a reasonable commercial strategy may require delay of publication of information or filing of patent

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applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JRC, JDC or JCC (or the Parties), as appropriate, shall review such requests and recommend subsequent action. Subject to paragraph (a) above and **Section 11.3,** neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to **Section 11.1**. Nothing contained in this **Section 11.6** shall prohibit the inclusion of Confidential Information of the non-filing Party necessary for a patent application, provided the non-filing Party is given a reasonable opportunity to review the extent and necessity for its Confidential Information to be included prior to submission of such patent application related to the Collaboration. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JRC, JDC or JCC (or the Parties), as appropriate.

12. TERM AND TERMINATION

12.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with **Sections 12.2 or 12.3** or by mutual written agreement, or until the expiration of all payment obligations under **Article 9** (the **"Term"**).

12.2 BMS' Right to Terminate With respect to **[*]** pursuant to the terms of this Agreement, BMS shall have the right to terminate this Agreement **[*]** upon: (a) **[*]**, in the event that such termination is **[*]** or (b) **[*]**, in the event that such termination is **[*]**. In any termination under this **Section 12.2**, BMS shall remain responsible for its share of all Development Costs and Allowable Expenses during the applicable **[*]** or **[*]** period.

12.3 Termination for Material Breach.

(a) If either Party believes that the other is in material breach of this Agreement (including any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in **Article 9**, the allegedly breaching Party shall have **[*]** to cure such breach. For any breach arising from a failure to make a payment set forth in **Article 9**, the allegedly breaching Party shall have **[*]** to cure such breach.

(b) Subject to **Section 12.3(c)**, if the Party receiving notice of breach fails to cure such breach within the **[*]** or **[*]** period (as applicable), or the Party providing the notice reasonably determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon **[*]** advance written notice, provided, that if the breach applies only to a given Product or to a given country, the non-breaching Party may only terminate the breaching Party's rights with respect to such Product or such country.

(c) If a Party gives notice of termination under **Section 12.3(a)** and the other Party **[*]**, or if a Party determines under **Section 12.3(b)** that **[*]**, then the issues of: (i) **[*]**; or (ii) **[*]**, shall in any case **[*]**. If **[*]** it is **[*]**, then such termination shall be **[*]** if the

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breaching Party fails thereafter to cure such breach in accordance with the **[*]** within the time period set forth in **Section 12.3(a)** for the applicable breach following such **[*]**. If as a result of such **[*]** it is **[*]**, then **[*]**.

12.4 Survival; Effect of Termination.

(a) In the event of termination of this Agreement, the following provisions of this Agreement shall survive: [*].

(b) In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

12.5 Licenses and Payments on Termination.

(a) Termination by BMS (Section 12.2). Subject to **Section 12.5(e)**, if BMS terminates this Agreement pursuant to **Section 12.2** with respect to a particular Product in any country, then the license granted to BMS under **Section 8.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to Exelixis a royalty-free license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country**.** The license described in this **Section 12.5(a)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Products.

(b) Termination by Exelixis (Section 12.3). If this Agreement terminates pursuant to **Section 12.3** with respect to a particular Product in any country, and BMS is the breaching Party, then the license granted to BMS under **Section 8.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to Exelixis a license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country or Major Territory. The license described in this **Section 12.5(b)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Product. For Products **[*]** prior to termination, the license described in this **Section 12.5(b)** shall be fully-paid and royalty-free. For Products **[*]** prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(b)** shall bear a royalty of **[*]** of Exelixis' Net Sales of such Product. For Products **[*]** prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(b)** shall bear a royalty of **[*]** of Exelixis' Net Sales of such Product. BMS' right to receive royalties under this **Section 12.5(b)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) **[*]**; or (ii) **[*]**, in either case, **[*]**.

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(c) Termination by BMS (Section 12.3). If this Agreement terminates pursuant to **Section 12.3** with respect to a particular Product in any country, and Exelixis is the breaching Party, then the license granted to Exelixis under **Section 8.2** shall automatically terminate solely with respect to such Product in such country, and Exelixis shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Patents and Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country or Major Territory. The license described in this **Section 12.5(c)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Product. For Products **[*]** prior to termination, the license described in this **Section 12.5(c)** shall be fully-paid and royalty-free. For Products **[*]** prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(c)** shall bear a royalty of **[*]** of BMS' Net Sales of such Product. For Products **[*]** prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(c)** shall bear a royalty of **[*]** of BMS' Net Sales of such Product. Exelixis' right to receive royalties under this **Section 12.5(c)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) **[*]**; or (ii) **[*]**, in either case, **[*]**.

(d) Transfers Related to Licenses. For each license granted under **Sections 12.5(a) – 12.5(c)**, the licensing Party shall transfer via assignment, license or sublicense to the licensee Party: (i) all Information reasonably necessary for the development and commercialization of the Product to which such license relates; (ii) **[*]** that specifically relate to such Product and that are in the name of the licensing Party; (iii) **[*]** that specifically relate to such Product; (iv) **[*]** by the licensing Party that specifically relate to such Product; and (v) supplies of such Product (including any intermediates, retained samples and reference standards), that, in each case ((i) through (v)) are existing and in the Control of the licensing Party. Any such transfer(s) shall be **[*]** licensee Party.

(e) Exception for Termination for Safety Reasons. The license granted to **[*]** under **Section 12.5(a)** shall be of no force or effect with respect to any given Product where **[*]** termination of Development and/or Commercialization of such Product was due to **[*]**. For purposes of this **Section 12.5(e)**, "**[*]**" means it is **[*]**' or **[*]** there **[*]**: (i) **[*]**; or (ii) the **[*]**, such as during **[*]** a Product. Notwithstanding anything to the contrary, this **Section 12.5(e)** shall not prevent **[*]** from using its license in **Section 12.5(a)** to **[*]** that was terminated for **[*]**. **[*]** shall provide **[*]** with all relevant data for such **[*]** but **[*]** to **[*]** any **[*]** relating to such **[*]**.

(f) Additional Effects of Termination.

(i) In the event of any termination pursuant to **Section 12.2**, **[*]**: (i) all Information relating to the Product, and all **[*]** with respect to Product in **[*]** name; (ii) all **[*]** related to the Product, to the extent that they may be **[*]**; (iii) all **[*]**related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in **[*]** Control and that relate to the Product. **[*]** shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to Exelixis.

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(ii) In the event of any termination pursuant to **Section 12.3**, the breaching Party shall transfer and assign to the non-breaching Party: (i) all Information relating to the Product, and all **[*]** with respect to Product in the breaching Party's name; (ii) all **[*]** related to the Product, to the extent that they may be **[*]**; (iii) all **[*]** related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in the breaching Party's Control and that relate to the Product. The breaching Party shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to the non-breaching Party.

13. REPRESENTATIONS AND WARRANTIES AND COVENANTS

13.1 Mutual Authority. Exelixis and BMS each represents and warrants to the other as of the Execution Date that: (a) it has the authority and right to enter into and perform this Agreement, (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (c) its execution, delivery and performance of this Agreement shall not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

13.2 Rights in Technology.

(a) During the term of this Agreement, each Party shall use commercially reasonable efforts to maintain (but without an obligation to renew) and not to breach any agreements with Third Parties that provide a grant of rights from such Third Party to a Party that are Controlled by such Party and are licensed or become subject to a license from such Party to the other Party under **Article 8**. Each Party agrees to provide promptly the other Party with notice of any such alleged breach or obligation to renew. As of the Execution Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

(b) Each Party represents and warrants that it: (i) has the ability to grant the licenses contained in or required by this Agreement; and (ii) is not currently subject to any agreement with any Third Party or to any outstanding order, judgment or decree of any court or administrative agency that restricts it in any way from granting to the other Party such licenses or the right to exercise its rights hereunder.

(c) Each Party represents and warrants that: (i) it has not granted, and covenants that it shall not grant after the Execution Date and during the term of this Agreement, any right, license or interest in or to, or an option to acquire any of the foregoing with respect to, the intellectual property rights licensed to the other Party hereunder (including the Exelixis Licensed Patents and the BMS Licensed Patents, as the case may be) that is in conflict with the

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rights (including the rights set forth in **Article 10**) or licenses granted or to be granted (including any conditional license rights) to the other Party under this Agreement; and (ii) it has not granted any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to the other Party hereunder that would prevent it from performing its obligations under this Agreement, or permitted such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to the other Party hereunder.

13.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates; *provided*, *however*, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates under this Agreement with respect to Collaboration Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Collaboration Compounds shall apply equally to the activities of such Affiliate; and (b) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in **Article 8**) as if such intellectual property had been developed by the Party.

13.4 Third Party Rights. Each Party represents and warrants to the other Party that, to its Knowledge as of the Execution Date, its performance of work under the Collaboration as contemplated by this Agreement shall not infringe the valid patent, trade secret or other intellectual property rights of any Third Party. Each Party represents and warrants to the other Party that, to its Knowledge as of the Execution Date, it will not violate a contractual or fiduciary obligation owed to such Third Party (including misappropriation of trade secrets) by performing its work under the Collaboration as contemplated by this Agreement.

13.5 Notice of Infringement or Misappropriation. Each Party represents and warrants to the other Party that, as of the Execution Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any Third Party in relation to any technology that such Party intends, as of the Execution Date, to use in connection with the Collaboration.

13.6 HSR Act Filing; Effective Date. The Parties shall each, prior to or as promptly as practicable after the Execution Date of this Agreement, file or cause to be filed with the U.S. Federal Trade Commission and the U.S. Department of Justice and any relevant foreign governmental authority any notifications required to be filed under the HSR Act and any applicable foreign equivalent thereof with respect to the transactions contemplated hereby; *provided* that the Parties shall each file the notifications required to be filed under the HSR Act no later than **[*]** after the Execution Date of this Agreement. Each Party shall be responsible for its own costs in connection with such filing, except that BMS shall be **[*]**. The Parties shall use commercially reasonable efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act and any applicable foreign equivalent thereof to terminate or expire at the earliest possible date after the date of filing. Each Party shall use its commercially reasonable efforts to ensure

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that its representations and warranties set forth in this Agreement remain true and correct at and as of the Effective Date as if such representations and warranties were made at and as of the Effective Date. Notwithstanding anything in this Agreement to the contrary, this Agreement (other than **Article 11** and this **Section 13.6**) **[*]** under the HSR Act in the U.S., the expiration or earlier termination of any applicable waiting period under the antitrust or competition laws of any other jurisdiction, and the approval or clearance of the transactions contemplated by this Agreement in any jurisdiction requiring advance approval or clearance (the **"Effective Date"**).

14. INDEMNIFICATION AND LIMITATION OF LIABILITY

14.1 Mutual Indemnification. Subject to **Section 14.4**, each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, employees and agents from and against any and all Third Party suits, claims, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and reasonable attorneys' fees ("**Losses**") to the extent such Losses result from any: (a) breach of warranty by the indemnifying Party contained in the Agreement; (b) breach of the Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of the indemnifying Party, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including misappropriation of trade secrets).

14.2 Indemnification by BMS. Subject to **Section 14.4**, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from **[*]** by BMS or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by Exelixis contained in the Agreement; (b) breach of the Agreement or applicable law by Exelixis; (c) negligence or willful misconduct by Exelixis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by Exelixis to a Third Party (including misappropriation of trade secrets).

14.3 Certain Losses. Any Losses resulting from **[*]** by a Party or its Affiliates, agents or sublicensees with respect to which neither Party owes an indemnification obligation under **Section 14.1** shall be **[*]**, if incurred prior to **[*]** to which such Loss relates; or (b) **[*]**, if incurred after such **[*]** to which such Loss relates.

14.4 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of **Sections 14.1 or 14.2**. A condition precedent to each Indemnitee's right to seek indemnification under such **Sections 14.1 or 14.2** is that such Indemnitee shall:

(a) inform the indemnifying Party under such applicable Section of a Loss as soon as reasonably practicable after it receives notice of the Loss;

(b) if the indemnifying Party acknowledges that such Loss falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume

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direction and control of the defense, litigation, settlement, appeal or other disposition of the Loss (including the right to settle the claim solely for monetary consideration); provided, that the indemnifying Party shall seek the prior written consent (such consent to not be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(c) fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Loss.

Provided that an Indemnitee has complied with all of the conditions described in subsections (a) – (c), as applicable, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Loss. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Loss using attorneys of the Indemnitee's choice and at the Indemnitee's expense. In no event may an Indemnitee settle or compromise any Loss for which the Indemnitee intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party (such consent to not be unreasonably withheld, delayed or conditioned), or the indemnification provided under such **Section 14.1 or 14.2** as to such Loss shall be null and void.

14.5 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO **SECTIONS 14.1 AND 14.2**, AND EXCEPT FOR BREACH OF **SECTION 11.1** HEREOF, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THE AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY (INCLUDING GROSS NEGLIGENCE OR WILLFUL BREACH WITH RESPECT TO A PARTY'S REPRESENTATIONS AND WARRANTIES IN **ARTICLE 13**).

14.6 Collaboration Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 13 ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY COMPOUNDS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY BMS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO

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EXELIXIS PURSUANT TO THE TERMS OF THE AGREEMENT. EXCEPT AS PROVIDED IN ARTICLE 13 ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY COMPOUNDS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THE AGREEMENT.

15. MISCELLANEOUS

15.1 Dispute Resolution. Unless otherwise set forth in this Agreement and excluding in particular any dispute described in **Section 15.3** (which will be handled exclusively in accordance with **Section 15.3**), any dispute over matters within the authority of the JEC pursuant to **Article 2** (which will be handled exclusively in accordance with **Section 2.7(c)**), and any dispute handled pursuant to **Section 3.6(c)(iii), Section 8.5(b)(i), Section 9.12(b)** or **Section 9.22(b)**, in the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Party's respective Executive Officers. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within **[*]** after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within **[*]** of their first meeting for such negotiations, either Party may seek to have such dispute resolved in any U.S. federal or state court of competent jurisdiction and appropriate venue, provided, that if such suit includes a Third Party claimant or defendant, and jurisdiction and venue with respect to such Third Party appropriately resides outside the U.S., then in any other jurisdiction or venue permitted by applicable law.

15.2 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, without regard to conflicts of law rules.

15.3 Patents and Trademarks; Equitable Relief.

(a) Any dispute, controversy or claim arising out of, relating to or in connection with: (i) the scope, validity, enforceability or infringement of any Patent rights covering the research, development, manufacture, use or sale of any Product; or (ii) any trademark rights related to any Product, shall in each case be submitted to a court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

(b) Any dispute, controversy or claim arising out of, relating to or in connection with the need to seek preliminary or injunctive measures or other equitable relief

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(e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in **Article 11**) need not be resolved through the procedure described in **Section 15.1** but may be immediately brought in a court of competent jurisdiction.

15.4 Entire Agreement; Amendments. This Agreement sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto and supersedes and terminates all prior agreements and understandings between the Parties. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

15.5 Export Control. This Agreement is made subject to any restrictions concerning the export of products or technical information from the U.S. or other countries which may be imposed upon or related to Exelixis or BMS from time to time. Each Party agrees that it shall not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity.

15.6 Bankruptcy.

(a) All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("**Title 11**"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "**Bankrupt Party**") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall, at the election of the Bankrupt Party made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party including, where applicable, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held

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by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this **Section 15.6**, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of licensed products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this **Section 15.6** shall be subject to the licenses set forth elsewhere in this Agreement and the payment obligations of this Agreement, which shall be deemed to be royalties for purposes of Title 11.

15.7 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, acts of terrorism, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

15.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Party confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

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For Exelixis:	Exelixis, Inc. 170 Harbor Way P.O. Box 511 South San Francisco, CA 94083 Attention: SVP, Patents and Licensing
With a copy to:	Cooley Godward Kronish LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Robert L. Jones, Esq.
For BMS:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Senior Vice President, Corporate and Business Development Phone: 609-252-3413 Fax: 609-252-6880
With a copy to:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Vice President and Senior Counsel, Corporate and Business Development Phone: 609-252-5328 Fax: 609-252-4232

Furthermore, a copy of any notices required or given under **Article 10** of this Agreement shall also be addressed to the Vice President and Chief Intellectual Property Counsel of BMS at the address set forth in **Section 10.4(f)**.

15.9 Maintenance of Records Required by Law or Regulation. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Party upon request.

15.10 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other (such consent to not be unreasonably withheld, delayed or conditioned), except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to all or substantially all of the business of such Party to which this Agreement relates, whether in a

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merger, sale of stock, sale of assets or other transaction; provided that any such permitted successor or assignee of rights and/or obligations hereunder is obligated, by reason of operation of law or pursuant to a written agreement with the other Party, to assume performance of this Agreement or such rights and/or obligations; and provided, further, that if assigned to an Affiliate, the assigning Party shall remain jointly and severally responsible for the performance of this Agreement by such Affiliate. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this **Section 15.10** shall be null and void and of no legal effect.

15.11 Electronic Data Interchange. If both Parties elect to facilitate business activities hereunder by electronically sending and receiving data in agreed formats (also referred to as Electronic Data Interchange or "**EDI**") in substitution for conventional paper-based documents, the terms and conditions of this Agreement shall apply to such EDI activities.

15.12 Non-Solicitation of Employees. After the Effective Date and during the term of this Agreement, each Party agrees that neither it nor any of its divisions, operating groups or Affiliates shall recruit, solicit or induce any employee of the other Party directly involved in the activities conducted pursuant to this Agreement to terminate his or her employment with such other Party and become employed by or consult for such Party, whether or not such employee is a full-time employee of such other Party, and whether or not such employment is pursuant to a written agreement or is at-will. For purposes of the foregoing, **"recruit"**, **"solicit"** or **"induce"** shall not be deemed to mean: (a) circumstances where an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (b) general solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

15.13 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

15.14 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

15.15 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

15.16 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" are used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of

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that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

15.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, each of which shall be binding when sent.

Signature page follows.

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IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers as of the Effective Date.

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Elliott Sigal, MD, PhD.
Title: Chief Scientific Officer
Date: December 15, 2006

EXELIXIS, INC.

By: /s/ George Scangos
Title: President and CEO
Date: December 15, 2006

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Exhibit 3.2
LIST OF INITIAL SCREENING TARGETS

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Exhibit 3.3
LIST OF INITIAL LEAD OP TARGETS

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Exhibit 3.9

FORM OF TARGET STATUS LIST

Instructions for use:

- The name of each target will be added to the Target column.
- Under the Status column, each target shall be labeled with one of the following: Screening Target (chosen-awaiting-screening); Screening Target (screen-in-progress); Rejected Screening Target; Lead Op Candidate; Lead Op Target; Rejected Lead Op Target; or Collaboration Target.
- For the Other Identified Target column, the name of any other target(s) that is part of the set of Identified Targets will be listed and updated as appropriate.
- The applicable Specificity Criteria and Target Potency Threshold will be added and updated in the appropriate columns.
- The applicable dates for adding and withdrawing any target will be added to the last two columns.

TARGET	STATUS	OTHER IDENTIFIED TARGETS	SPECIFICITY CRITERIA	TARGET POTENCY THRESHOLD	DATE ADDED	DATE WITHDRAWN

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Exhibit 6.4(c)

TERMS OF CO-PROMOTION AGREEMENT

Without limiting the generality of either Party's rights and obligations contained in the Agreement, the Co-Promotion Agreement shall, in addition to such other terms as the Parties may agree and as are customary in an agreement of that type, include the following terms and conditions, unless otherwise agreed upon by the Parties:

Allocation of Sales and Marketing Responsibilities

By [*] of each year, the JCC shall decide the [*]to be performed by both Parties during the Fiscal year commencing on January 1 of that year for the promotion of the Product in the U.S. based on indication(s) then available and expected to be available during the forthcoming year for Commercialization of the Product in the U.S. The [*] shall be reviewed and may be modified or adjusted during such year if both Parties so agree. (For each year, the [*] for that year.)

As a fundamental principle of the Co-Promotion in the U.S., Exelixis shall perform [*] [*] in each year. Exelixis may phase-in its required number of representatives by recruiting, hiring and training such representatives over a period of [*] so long as Exelixis maintains, from the time estimated by the JDC to be [*] prior to anticipated approval as set forth in the then-current U.S. Commercialization Plan, the greater of (x) [*] required total representatives (determined by the JCC) as Exelixis representatives or (y) [*] Exelixis representatives. [*] to make up the difference between the above minimum requirement and Exelixis' share of the [*] during such [*] period, subject to [*] to perform such [*] with any costs associated with such performance by [*], (with such approval not to be unreasonably withheld). All Exelixis sales representatives who will be performing sales calls shall [*] Additionally, all Exelixis sales representatives, prior to being assigned by Exelixis to a Collaboration Product, [*] shall be set forth in the Co-Promotion Agreement), and [*] in accordance with applicable U.S. laws and regulations. All sales representatives shall be [*] relevant to the Product.

Pre-approval, BMS shall provide initial sales training on the Product for the Exelixis sales representatives who will be performing sales calls in the U.S. Following such initial training, any subsequent training of Exelixis sales representatives shall be made available by [*] on the Product.

With respect to marketing activities in the Profit-Share markets, the Parties shall work via the JCC to discuss positioning, branding, core messaging, distribution channel strategy, development strategy, competitive strategy, target selection, opinion leader development and investor and press relations.

Co-Promotion Agreement

The Co-Promotion Agreement will be negotiated **[*]**. The parties recognize that a **[*]**. The Co-Promotion agreement shall be limited to commercialization in the Profit Share Market and shall be consistent with the Agreement and rights granted to the JCC, JDC, JFC and JEC in the Agreement.

In the Co-Promotion Agreement, the Parties shall jointly establish detailing thresholds, measures of sales performance consistent with internal company metrics and Net Sales and through a well established third party sales reporting entity, value of each detail for profit calculation purposes, and shortfall provisions (e.g., [*], etc.) in the definitive Co-Promotion Agreement. The Parties shall decide in the Co-Promotion agreement on the general [*] for each Party to [*].

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Breach	The Parties shall jointly establish standards and consequences for material breach of the co-promotion obligations (*e.g.*, the threshold of material breach and remedies therefor, including without limitation the possibility of termination of the breaching Party's co-promotion right, etc.) set forth in the definitive Co-Promotion Agreement. Without limiting the foregoing, in the event that a Party does not provide at least **[*]** for any **[*]** with respect to a Co-Promotion Product, then the other Party shall have the right to assume all Commercialization responsibilities with respect to such Co-Promotion Product, and (i) in the case of any such failure by Exelixis, such Co-Promotion Product shall become a Royalty-Bearing Product (with royalties payable to Exelixis as set forth in Section 9.6(b)(iv)), or (ii) in the case of any such failure by BMS, Exelixis will pay to BMS royalties on net sales of such Product in the U.S. at the rates set forth in Section 9.6(b)(iv). The preceding remedy for a Party's failure to provide **[*]**, and such failure **[*]** Agreement.
Use of Contractors	Only during the first **[*]** post **[*]**, in order to reach Exelixis' **[*]** threshold of representatives. Also, if such other Party **[*]**, then a contract sales organization may be used and the expenses incurred by such other Party for such activities shall be **[*]**.

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Exhibit 11.5

Press Release

For Immediate Release

Contact:
Charles Butler
Director,
Corporate Communications
Exelixis, Inc.
(650) 837-7277
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EXELIXIS AND BRISTOL-MYERS SQUIBB SIGN NEW COLLABORATION AGREEMENT TO DISCOVER AND DEVELOP NOVEL ONCOLOGY COMPOUNDS

South San Francisco, CA and New York, NY – December 18, 2006 – Exelixis, Inc. (Nasdaq:EXEL) and Bristol-Myers Squibb Company (NYSE:BMY) today announced a worldwide collaboration to discover, develop and commercialize novel targeted therapies for the treatment of cancer.

Under the collaboration, which will become effective upon antitrust clearance, Exelixis will deploy its drug discovery platform and be fully responsible for the identification and pre-clinical development of small molecule drug candidates directed against mutually selected targets. Bristol-Myers Squibb will have the right to select up to three Investigational New Drug (INDs) candidates against three different targets. Following selection by BMS, Bristol-Myers Squibb will lead all global activities, although the parties will co-develop and co-commercialize the programs in the United States.

Under the terms of the agreement, Bristol-Myers Squibb will pay to Exelixis an upfront payment of $60 million in cash. Exelixis will also receive $20 million for each of up to three different drug candidates selected by Bristol-Myers Squibb at IND. The parties plan to equally share development costs, commercial profits and co-promotion responsibilities in the United States. Exelixis will also receive royalties on product sales outside of the United States. For each program selected by BMS, Exelixis may opt out of the co-development or co-promotion in the United States, in which case Exelixis would receive milestones and royalties in lieu of a U.S. profit share.

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

"We are very pleased to collaborate with BMS on the discovery and development of novel treatments for cancer." said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. "This collaboration will capitalize on the power of Exelixis' drug discovery engine and on the breadth and depth of BMS' expertise in oncology. We have had excellent, productive collaborations with BMS in oncology since 2000, and I am confident that this new collaboration will build on the excellent relationship between the companies and on the knowledge that we have generated during those years."

"Bristol-Myers Squibb is dedicated to addressing areas of serious medical need, and oncology remains one of the cornerstones of our research and development efforts," said Francis Cuss, M.D., senior vice president of Drug Discovery for Bristol-Myers Squibb. "We have a long-standing and productive history of collaboration with Exelixis and are pleased to expand our partnership to include the discovery and development of novel, targeted oncology therapies."

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company is leveraging its fully integrated drug discovery platform to fuel the growth of its development pipeline, which is primarily focused on cancer. For more information, please visit the company's web site at www.exelixis.com.

ABOUT BRISTOL-MYERS SQUIBB

Bristol-Myers Squibb is a global pharmaceutical and related health care products company whose mission is to extend and enhance human life. Visit Bristol-Myers Squibb on the World Wide Web at www.bms.com.

Exelixis Forward-Looking Statement

This press release contains forward-looking statements, including, without limitation, all statements related to the discovery, development and commercialization of therapies targeting the treatment of cancer under the collaboration as well as related costs and payments, including milestones, profits and royalties. Words such as "believes," "anticipates," "plans," "expects," "intends," "will," and similar expressions are intended to identify forward-looking statements. These forward-looking statements are based upon Exelixis' current expectations. Forward-looking statements involve risks and uncertainties and past performance is not indicative of future results. Exelixis' actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, the risk that products candidates that appeared promising in early research do not demonstrate safety or efficacy in clinical trials; the ability of the company to advance preclinical compounds into clinical development; the uncertainty of the FDA approval process; and the therapeutic and commercial value of the company's compounds. These and other risk factors are discussed under "Risk Factors" and elsewhere in Exelixis' quarterly report on Form 10-Q for the quarter ended September 30, 2006 and other filings with the Securities and Exchange Commission. Exelixis expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

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Bristol-Myers Squibb Forward-Looking Statement

This press release contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995, regarding the development and commercialization of products. Such forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes and results to differ materially from current expectations. No forward-looking statement can be guaranteed. Among other risks, there can be no guarantee that the research collaboration agreement described in this release will result in the discovery, development and commercialization of products. Forward-looking statements in the press release should be evaluated together with the many uncertainties that affect Bristol-Myers Squibb's business, particularly those identified in the cautionary factors discussion in Bristol-Myers Squibb's Annual Report on Form 10-K for the year ended December 31, 2005, its Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. Bristol-Myers Squibb undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise.

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COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (this "**Agreement**") is made and entered into as of December 22, 2006 (the "**Effective Date**") by and between **EXELIXIS, INC.**, a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **GENENTECH, INC.,** a Delaware corporation having its principal place of business at 1 DNA Way, South San Francisco, California 94080 ("**Genentech**"). Exelixis and Genentech are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Genentech is a health care company that has expertise and capability in researching, developing and marketing human pharmaceuticals.

B. Exelixis is a drug discovery company that has expertise and proprietary technology relating to therapeutics that modulate signal transduction pathways involved in oncology and other disease areas.

C. Genentech and Exelixis desire to establish a collaborative development and commercialization program under which Genentech would sponsor certain programs at Exelixis for the generation, screening and research validation of therapeutics directed against a signal transduction pathway target important to oncology. In return, Genentech would have the ability to jointly develop such therapeutics with Exelixis, and to commercialize such therapeutics either on its own or, in the United States, through a co-promotion arrangement with Exelixis.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Agreement (other than the headings of the Sections or Articles) shall have the following meaning set forth in this Article 1, or, if not listed in this Article 1, the meaning as designated in the text of this Agreement.

1.1 "Actual Sales" has the meaning set forth in **Exhibit A**.

1.2 "Affiliate" means, with respect to a Party, any person, corporation, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with such Party. For purposes of this definition, the term "control" (including, with correlative meaning, the terms "controlled by" or "under common control with") means the actual power,

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either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of fifty percent (50%) or more of the voting stock of such entity, or by contract or otherwise. In the case of Genentech, for purposes of this Agreement, the term "Affiliate" shall not include Roche Holdings Ltd., Roche Holdings Inc., F. Hoffman-La Roche Ltd., F. Hoffman-La Roche Inc. or any of their Affiliates that is not a Genentech Affiliate.

1.3 "Back-Up Compound" means each of the following: (a) the Existing Back-Ups; and (b) any Program Back-Ups.

1.4 "Back-Up Period" means the period of time beginning on the Effective Date and ending on the later of: (a) **[*]** after the **[*]** (as defined in Section **[*]**; or (b) **[*]** after the **[*]**; provided, however, if **[*]**, then such Back-Up Period shall be **[*]** after the **[*]**.

1.5 "Back-Up Set" has the meaning set forth in Section 3.3(c).

1.6 "Collaboration" means the program established under this Agreement, which includes collaborative research and certain collaborative development of Collaboration Compounds and Licensed Products, and which may include co-promotion of Licensed Products containing those Collaboration Compounds.

1.7 "Collaboration Compounds" means: (a) the Existing Compound (such Existing Compound shall cease to be a Collaboration Compound if and when Genentech fails to exercise its Opt-In rights with respect to such Existing Compound pursuant to Section 3.4(b)); and (b) Back-Up Compounds (such Back-Up Compounds shall cease to be Collaboration Compounds if and when Genentech fails to exercise its Opt-In rights with respect to such Back-Up Compound pursuant to Section 3.4(c)).

1.8 "Collaborative Development Period" means the period of time beginning as of the Effective Date and ending on the latest to occur of: (a) Genentech's Opt-In under Section 3.4; (b) the end of the Back-Up Period; and (c) Exelixis' completion or cessation of all activities under any Exelixis Work Plan.

1.9 "Competing Product" means any product that contains, as its active ingredient, **[*]** identified or optimized **[*]**.

1.10 "Competing Program" has the meaning set forth in Section 3.7.

1.11 "Confidential Information" has the meaning set forth in Section 10.1.

1.12 "Control" means ownership or other legal authority or right of a Party or any of its Affiliates to grant a license or sublicense of intellectual property rights to another Party or its Affiliates, without the grant or such license or sublicense alone constituting a material breach of an agreement between that Party (or its Affiliates) and a Third Party.

1.13 "Cover" means, with respect to a particular Patent and a particular Licensed Product (or a Collaboration Compound, as applicable), that the manufacture, use, sale, offer for sale or importation of such Licensed Product (or Collaboration Compound, as applicable) in a country would infringe a Valid Claim of such Patent in that country.

1.14 "DC" or **"Development Criteria"** means the set of characteristics agreed upon by the Parties prior to the Effective Date and attached to this Agreement as **Exhibit B**.

1.15 "Derived Inventions" has the meaning set forth in Section 8.5(b).

1.16 "Derived Patents" has the meaning set forth in Section 8.5(b).

1.17 "Development Costs" means the costs actually incurred by or on behalf of a Party for **[*]**.

1.18 "Development End-Point" means a set of characteristics agreed upon by the Parties prior to the Effective Date and attached to this Agreement as Exhibit D.

1.19 "Development Plan" has the meaning set forth in Section 3.5.

1.20 "Diagnostic Product" means a product or service, including analysis of human blood or tissue samples, developed or used for the purpose **[*]**.

1.21 "Diligent Efforts" means: (a) where applied to carrying out specific tasks and obligations under this Agreement, means deploying appropriate resources **[*]**; and (b) where applied to development or commercialization of a product, the use of efforts and deployment of resources, **[*]**.

1.22 "Excluded Compound" means (a) EXEL-5518 and **[*]** of EXEL-5518 if and when Genentech fails to exercise its Opt-In rights with respect to the Existing Compound pursuant to Section 3.4(b), and (b) the Back-Up Compounds (for clarity, including **[*]** thereto) if and when Genentech fails to exercise its Opt-In rights with respect to such Back-Up Compounds pursuant to Section 3.4(c).

1.23 "Exelixis [*] Patents" means all Exelixis Licensed Patents that do not Cover **[*]**, but that do Cover **[*]**: (a) **[*]** that is **[*]**; or (b) **[*]** that is **[*]** and does not involve the use of a **[*]**, where, for purposes of this Section 1.21, **[*]** means that the **[*]** was **[*]**, or is otherwise **[*]**. For clarity, an Exelixis Licensed Patent Covering **[*]** shall not be considered an Exelixis Licensed Patent Covering **[*]**.

1.24 "Exelixis Diagnostic IP" means either or both: (a) all Information (excluding any Patents) Controlled by Exelixis, including Information Controlled jointly with Genentech, as of the Effective Date or during the term of this Agreement, that (i) **[*]** for Genentech to develop, manufacture or commercialize a Diagnostic Product and (ii) was developed by Exelixis prior to the Effective Date or pursuant to this Agreement; and (b) all Patents that are Controlled by Exelixis, including Patents Controlled jointly with Genentech, as of the Effective Date or at any time during the term of this Agreement, to the extent such Patents (i) claim an invention made by Exelixis prior to the Effective Date or pursuant to this Agreement and (ii) (1) Cover a Diagnostic Product; **[*]** for Genentech to develop, manufacture or commercialize any Diagnostic Product.

1.25 "Exelixis Licensed Know-How" means all proprietary Information (excluding any Patents) and all proprietary Material Controlled by Exelixis, including proprietary Information and proprietary Material Controlled jointly with Genentech, as of the Effective Date or at any time during the term of this Agreement, that is (a) related to a Collaboration Compound (or a composition containing that Collaboration Compound or the manufacturing or use of that Collaboration Compound) **[*]** for Genentech to exercise the rights licensed to it under this Agreement or to perform its obligations under this Agreement.

1.26 "Exelixis Licensed IP" means the Exelixis Licensed Know-How and the Exelixis Licensed Patents.

1.27 "Exelixis Licensed Patents" means all Patents that are Controlled by Exelixis, including Patents Controlled jointly with Genentech, as of the Effective Date or at any time during the term of this Agreement, that: (a) Cover a Collaboration Compound; **[*]** for Genentech exercise the rights licensed to it under this Agreement or to perform its obligations under the Agreement.

1.28 "Exelixis Work Plan" means any written plan agreed by the Parties with respect to, or used by the Parties as the basis of engaging in, any of the following activities: (a) pre-clinical studies and Phase I Clinical Trials of the Existing Compound; and (b) identification, discovery, optimization, research, pre-clinical studies or Phase I Clinical Trials of or related to Back-Up Compounds pursuant to Section 3.3.

1.29 "Existing Back-Ups" means **[*]**, and **[*]**.

1.30 "Existing Compound" means any or all of the following: (a) EXEL-5518 (or XL-518); and (b) all **[*]** of EXEL-5518 (or XL-518).

1.31 "FDA" means the U.S. Food and Drug Administration, or any successor entity thereto.

1.32 "Field" means all human prophylactic and therapeutic uses.

1.33 "Financial Appendix" means **Exhibit A** to this Agreement, which sets forth certain terms and conditions related to sharing of costs, expenses and profits for Licensed Product(s) in the Profit-Share Territory.

1.34 "First Commercial Sale" means, for any Licensed Product, and on a country-by-country basis in each country in which that Licensed Product is sold, the first arm's-length sale to a Third Party for use or consumption by an end-user of that Licensed Product in that country, after obtaining Regulatory Approval for sale of that Licensed Product in that country. A First Commercial Sale shall not include a sale of any Licensed Product for use in clinical trials, for research or for other non-commercial uses, or supply of a Licensed Product as part of a compassionate use or similar program.

1.35 "FTE" means the equivalent of a full-time employee's work time over a twelve (12) month period (including normal vacations, sick days and holidays). **[*]**.

1.36 "GAAP" means United States generally accepted accounting principles, consistently applied.

1.37 "Genentech Know-How" means all proprietary Information (excluding any Patents) and any proprietary Material Controlled by Genentech, including proprietary Information and proprietary Material Controlled jointly with Exelixis, as of the Effective Date or at any time during the term of this Agreement that is: (a) related to an Excluded Compound or Collaboration Compound (or a composition containing that Excluded Compound or Collaboration Compound, or the manufacturing or use of that Excluded Compound or Collaboration Compound); **[*]** for Exelixis to exercise the rights licensed to it under this Agreement or to perform its obligations under this Agreement, but only to the extent such Information is created, or such Material is synthesized or first produced, by or on behalf of Genentech (solely or jointly with Exelixis) pursuant to performing Genentech's obligations or exercising Genentech's rights under the Agreement (including performing Genentech Research).

1.38 "Genentech Licensed IP" means the Genentech Know-How and the Genentech Licensed Patents.

1.39 "Genentech Licensed Patents" means any and all Patents that are Controlled by Genentech, including Patents Controlled jointly with Exelixis, as of the Effective Date or at any time during the term of this Agreement, that: (a) Cover a Collaboration Compound or an Excluded Compound; **[*]** for Exelixis to exercise the rights licensed to it under the Agreement or to perform its obligations under the Agreement, but only, under each of (a) and (b), such Patents claiming inventions conceived and reduced to practice by or on behalf of Genentech pursuant to performing Genentech's obligations or exercising Genentech's rights under the Agreement (including performing Genentech Research).

1.40 "Genentech Research IP" means any and all: (a) Patents that are Controlled by Genentech, including Patents Controlled jointly with Exelixis, as of the Effective Date or at any time during the Collaborative Development Period that are **[*]** for Exelixis to perform its obligations under Article 3 or Section 4.1 or the Co-Promotion Agreement, and (b) Information and Materials provided by Genentech to Exelixis for the purpose of Exelixis performing its obligations under Article 3 or Section 4.1 or the Co-Promotion Agreement.

1.41 "Genentech Research" has the meaning set forth in Section 3.2(c).

1.42 "[*]" has the meaning set forth in Section **[*]**.

1.43 "IND" means an Investigational New Drug Application filed with the FDA or the equivalent application in any country outside the U.S. where a regulatory filing is required or obtained to conduct a clinical trial.

1.44 "Information" means information (including results and data), in any tangible or intangible form, including without limitation, inventions, databases, methods, techniques, assays, processes, specifications, formulations, formulae, skills, experience, manufacturing information, financial data, test data including pharmacological, biological, models, designs, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, quality assurance data, stability data, studies and procedures, and legal information or descriptions.

1.45 "Joint Patent" has the meaning set forth in Section 9.1.

1.46 "Joint Project Team" or **"JPT"** means the subcommittee described in Section 2.2.

1.47 "Joint Promotion Plan" has the meaning set forth in Section 2.3(b).

1.48 "Joint Steering Committee" or **"JSC"** means the committee described in Section 2.1.

1.49 "Licensed Product" means any product that contains a Collaboration Compound.

1.50 "Major Market Countries" means Germany, France, United Kingdom, Spain, Italy and Japan.

1.51 "Manufacture" means the development of manufacturing process for, and the manufacture and supply (including formulation, packaging and finishing when applicable) of, active pharmaceutical ingredient, bulk drug substance, drug product and/or placebos to support pre-clinical or clinical development or commercialization, as the case may be.

1.52 "Material" means physical and biological material of any type, including excipients, active pharmaceutical ingredient, bulk drug substance, drug product and/or placebos, cell media, cell lines, chemical compounds and reagents.

1.53 "MEK" means the gene for the mitogen-activated protein kinase kinase 1 (also known as MAP2K1) for any mammalian species, and the protein (or fragment or epitope thereof) encoded by such gene, and naturally occurring variants and fragments thereof.

1.54 "MEK Compound" means any small molecule compound that inhibits the Program Target at or below the Target Potency Threshold.

1.55 "NDA" means a New Drug Application filed pursuant to the requirements of the FDA, or the equivalent application or filing in country other than the United States (as applicable).

1.56 "Net Sales" means, with respect to a particular time period, the gross amount invoiced by Genentech, its Affiliates and its sublicensees for sales of Licensed Products (such products being in final form intended for use by the end user) in arms length transactions with Third Parties during such time period, less the following charges or expenses, to the extent each is actually incurred and included in the invoiced gross sales price: (a) trade, cash and quantity discounts; (b) credits or allowances given or made for rejection or return of previously sold Licensed Products or for retroactive price reductions (including rebates similar to Medicare and/or Medicaid); (c) sales tax, VAT taxes, and other taxes, duties or other governmental charges levied on or measured by the billing amount, as adjusted for rebates or refunds, that are borne by the seller thereof and that are not refundable and to the extent noncreditable; (d) charges for

freight and insurance directly related to the distribution of the Licensed Products (to the extent not paid by the Third Party customer); and (e) discounts pursuant to indigent patient programs and patient discount programs, including the impact of price caps and patient assistance programs. Sales between Genentech and its Affiliates or sublicensees shall be disregarded for purposes of calculating Net Sales, so long as each sale of a Licensed Product in final form intended for use by the end user is otherwise included in "Net Sales." Notwithstanding anything herein to the contrary, in all cases Net Sales shall be determined in accordance with GAAP.

In the event a Licensed Product is sold in combination with one or more other active pharmaceutical ingredients (as used in this definition of Net Sales, a **"Combination"**), then Net Sales shall be calculated by multiplying the Net Sales of such Combination by the fraction A/B, where A is the gross selling price of the Licensed Product sold separately and B is the gross selling price of the Combination. In the event that no such separate sales are made, Net Sales for royalty determination shall be made by the Parties in good faith, based on the market price (or if the market price is not available, the relative value) for each component of the Combination.

Genentech and Exelixis agree that for purposes of this definition, **[*]** shall not be deemed to be **"active pharmaceutical ingredients"**, the presence of which in a Licensed Product would be deemed to create a Combination subject to the terms of the preceding paragraph.

If a Licensed Product is sold under a bundled or capitated arrangement with other products of a Party and its sublicensees, then, solely for the purpose of calculating Net Sales, any **[*]** shall be **[*]**, than **[*]**.

1.57 "Operating Profit (Loss)" has the meaning set forth in the Financial Appendix.

1.58 "Other Territory" means worldwide, excluding the Profit-Share Territory.

1.59 "Patents" means all: (a) U.S. issued patents, re-examinations, reissues, renewals, extensions and term restorations, inventors' certificates and foreign counterparts thereof; (b) pending applications for U.S. patents, including provisional applications, continuations, continuations-in-part, continued prosecution, divisional and substitute applications; and (c) non-U.S. counterparts or equivalents of the foregoing in subsection (a) and (b).

1.60 "Phase I Clinical Trial" means a human clinical trial with a principal purpose of preliminarily determining the safety of a pharmaceutical product in healthy individuals or patients as required in 21 C.F.R. §312.21(a), or similar clinical study in a country other than the United States, and for which there are no primary endpoints related to efficacy.

1.61 "Phase II Clinical Trial" means a human clinical trial with a principal purpose of determining efficacy and dosing of a pharmaceutical products in patients with the disease being studied as described in 21 C.F.R. §312.21(b), or similar clinical study in a country other than the United States.

1.62 "Phase III Clinical Trial" means a human clinical trial with a principal purpose of establishing safety and efficacy of a pharmaceutical product in patients with the disease being

studied as required in 21 C.F.R. §312.21(c) or similar clinical study in a country other than the United States. A Phase III Clinical Trial shall also include any other human clinical trial intended as a pivotal trial for Regulatory Approval purposes, or that results in data actually used to support the filing of a Marketing Approval Application, whether or not such trial is a traditional Phase III Clinical Trial.

1.63 "Profit-Share Territory" means the fifty (50) states of the United States, Puerto Rico, and the District of Columbia.

1.64 "Program Back-Up" means each small molecule compound that: (a) is identified, optimized and/or developed by Exelixis pursuant to Article 3 of this Agreement; and (b) is a MEK Compound, including all of such MEK Compound.

1.65 "Program Target" means MEK.

1.66 "Regulatory Approval" means all necessary approvals (including supplements, amendments, pre- and post-approvals, pricing and reimbursement approvals), licenses, registrations or authorizations of any national, supra-national (e.g., the European Medicines Evaluation Agency), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, have been obtained for the manufacture, distribution, use or sale of that product in a regulatory jurisdiction.

1.67 "[*]" has the meaning set forth in Section **[*]**.

1.68 "Subsequent Opt-In Expiration Date" has the meaning set forth in Section 3.4(c)(ii).

1.69 "Target Potency Threshold" means, if a compound is "at or below the Target Potency Threshold," the compound in question **[*]** the **[*]** of the Program Target with **[*]** in **[*]** TPT Assays.

1.70 "Target Candidate Profile" or **"TCP"** means a set of characteristics agreed upon by the Parties prior to the Effective Date and attached to this Agreement as **Exhibit C**.

1.71 "Third Party" means any entity other than a Party or a Party's Affiliate.

1.72 "TPT Assays" means: (a) the **[*]** Assay as described on **[*]** for EXEL-5518 dated **[*]** Assay as described on **[*]**.

1.73 "Transfer Plan" has the meaning set forth in Section 3.5(c).

1.74 "Valid Claim" means any claim of an issued Patent that has not: (a) expired or been abandoned: (b) been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period: or (c) **[*]**.

ARTICLE 2

GOVERNANCE

2.1 Joint Steering Committee.

(a) Membership. Within **[*]** after the Effective Date, the Parties shall establish a Joint Steering Committee, or JSC, to coordinate activities on which the Parties collaborate under this Agreement with respect to Licensed Product(s) in the Profit-Share Territory. The JSC shall consist of two (2) representatives from each Party. Each Party shall designate one (1) of its representatives as the co-chairperson of the JSC. Each Party may replace its appointed JSC representatives or co-chairperson at any time upon reasonable written notice to the other Party.

(b) Responsibilities. The responsibilities of the JSC shall be:

(i) to communicate regarding the overall strategy for the development and commercialization of Licensed Product(s) in the Profit-Share Territory and in the Field;

(ii) to facilitate the exchange of Information between the Parties with respect to the activities hereunder and to establish procedures for the efficient sharing of Information and Materials necessary for development and commercialization of the Licensed Product(s) hereunder;

(iii) to share and discuss the Parties' performance against the Development End-Point, Exelixis' performance on an Exelixis Work Plan, and Genentech's progress on a Development Plan, in each case at least on a **[*]** basis;

(iv) to share and discuss the data generated by or on behalf of the Parties in the course of performance (1) towards the Development End-Point, (2) under the Development Plan or any Exelixis Work Plan, and (3) of Genentech Research;

(v) to create subcommittees as the JSC may find necessary or desirable from time to time for implementation of the research, development and commercialization hereunder, including without limitation the JPT and the JCC;

(vi) to oversee the activities of subcommittees created under this Agreement, and to seek to resolve any issues that such subcommittees cannot resolve, including without limitation issues referred to it from the JPT or the JCC; and

(vii) to perform such other functions as appropriate to further the purposes of this Agreement, as determined by the Parties.

(c) Guiding Principles. The JSC shall perform its responsibilities under this Agreement based on the principles of diligence, prudence and good scientific and business judgment. The JSC shall have only the powers assigned expressly to it under this Article 2 and elsewhere in this Agreement, and the JSC shall not have any power to amend, modify or waive compliance under this Agreement.

(d) Decision Making. The JSC shall make decisions unanimously, with each Party's representatives collectively having one (1) vote and at least one (1) representative from each Party present. In the event the JSC cannot reach an agreement regarding a decision within the JSC's authority for a period of **[*]**, then, for the Collaboration: (i) Exelixis shall make the final determination in its sole discretion if such decision is regarding the **[*]** of Collaboration Compound(s) **[*]**, provided that Genentech shall make the final determination in its sole discretion if such decision is regarding whether Exelixis **[*]** with respect to **[*]**; and (ii) Genentech shall make the final determination in its sole discretion if such decision is regarding the **[*]** of Licensed Product(s) **[*]** (although notwithstanding Genentech's sole discretion under this Section, Genentech continues to be subject to **[*]**). When either Party makes final determinations under this Section, that final determination shall be consistent with the terms of this Agreement. Disputes regarding matters not within the responsibilities of the JSC shall be resolved pursuant to Section 15.3.

(e) JSC Meetings. JSC meetings shall be held **[*]**, or on another schedule agreed by the Parties, with ad hoc meetings as necessary, particularly to address issues described in Section 3.2(d). With the consent of the representatives of each Party serving on the JSC, other representatives of each Party may attend meetings as nonvoting observers (provided such nonvoting observers have confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement). A JSC meeting may be held by audio, video or internet teleconference with the consent of each Party, but at least half (1/2) of the minimum number of meetings shall be held in person, in South San Francisco, California. Meetings of the JSC shall be effective only if at least one (1) representative of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the JSC meetings. The Parties will alternate hosting the meeting, and the Party hosting is responsible for preparing and circulating the minutes of the JSC meetings.

(f) No Decisions. Notwithstanding anything to the contrary in this Agreement, no decision by either Party would be effective if such decision requires the other Party to breach any obligation or agreement with a Third Party, or to perform any activities that are materially different or greater in scope than those provided for specifically under this Agreement.

2.2 Joint Project Team.

(a) Membership. The JSC shall establish a JPT as a subcommittee to coordinate activities to be performed by Exelixis, or jointly by Exelixis and Genentech during the Collaborative Development Period. The JPT shall consist of two (2) representatives from each Party. Each Party may replace its appointed JPT representatives at any time upon reasonable written notice to the other Party. Each Party shall designate one (1) of its representatives as the co-chairpersons of the JPT.

(b) Responsibilities. The responsibilities of the JPT shall include:

(i) to serve as the ongoing liaison between the Parties during the Collaborative Development Period;

(ii) to collect the data generated by the Parties in the course of activities during the Collaborative Development Period;

(iii) to coordinate efforts related to research and development during the Collaborative Development Period; and

(iv) to perform such other functions as appropriate to further the purposes of this Agreement as directed by the JSC.

The JPT shall not have the right to amend this Agreement.

(c) Decision Making. The JPT shall make decisions unanimously, and each Party's representatives shall collectively have one (1) vote. In the event the JPT cannot reach an agreement regarding a decision within the JPT's authority for a period of **[*]**, the JPT shall refer such matter to the JSC for resolution pursuant to Section 2.1(d).

(d) JPT Meetings. JPT meetings shall be held at least **[*]** during the Collaborative Development Period prior to an Opt-In by Genentech and, after Opt-In by Genentech but before the end of the Collaborative Development Period, at the request of the JSC. Other representatives of each Party may attend meetings as nonvoting observers (provided such nonvoting observers have confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement). A JPT meeting may be held by audio, video or internet teleconference with the consent of each Party, but at least half (1/2) of the minimum number of meetings in each year shall be held in person, in South San Francisco, California. Meetings of the JPT shall be effective only if at least one (1) representative of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the JPT meetings. The Parties will alternate hosting the meeting, and the Party hosting is responsible for preparing and circulating the minutes of the JPT meetings.

2.3 Joint Commercialization Committee.

(a) Membership. Within **[*]** after **[*]**, the Parties shall establish a JCC to coordinate the co-promotion of Licensed Product(s) in the Profit-Share Territory. The JCC shall consist of two (2) representatives from each Party. Each Party may replace its appointed JCC representatives at any time upon reasonable written notice to the other Party. Each Party shall designate one (1) of its representatives as the co-chairpersons of the JCC. The JCC shall exist only during the period in which Exelixis is performing co-promotion activities with respect to a Licensed Product under this Agreement.

(b) Responsibilities. The responsibilities of the JCC shall include:

(i) within **[*]** after the establishment of the JCC, to prepare and approve a joint promotion plan governing the Parties' promotional activities with respect to the Licensed Products in the Profit-Share Territory (the **"Joint Promotion Plan"**);

(ii) to coordinate activities designed to create, provide training for, deploy and manage a sales force for any Licensed Product;

(iii) to coordinate regarding sales force responsibilities, and to communicate adjustments in sizing of those sales forces for each Licensed Product as appropriate (subject to Section 5.2);

(iv) to communicate and coordinate regarding promotion of Licensed Products;

(v) to communicate and coordinate regarding integration of Licensed Products into the managed care system;

(vi) to perform such other functions as appropriate to further the purposes of this Agreement as directed by the JSC.

(c) Decision Making. The JCC shall make decisions unanimously, and each Party's representatives shall collectively have one (1) vote. In the event the JCC cannot reach an agreement regarding a decision within the JCC's authority for a period of **[*]**, Genentech shall have the final authority to make the determination, so long as that determination is consistent with this Agreement and the Co-Promotion Agreement.

(d) JCC Meetings. JCC meetings shall be held at least **[*]**. With the consent of the representatives of each Party serving on the JCC, other representatives of each Party may attend meetings as nonvoting observers (provided such nonvoting observers have confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement). A JCC meeting may be held by audio, video or internet teleconference with the consent of each Party, but at least half (1/2) of the minimum number of meetings in each year shall be held in person, in South San Francisco, California. Meetings of the JCC shall be effective only if at least one (1) representative of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the JCC meetings. The Parties will alternate hosting the meeting, and the Party hosting is responsible for preparing and circulating the minutes of the JCC meetings.

ARTICLE 3

DEVELOPMENT

3.1 DC, TCP and Development End-Point. The Parties have agreed on the DC and TCP, which are attached as **Exhibit B** and **Exhibit C** to this Agreement, respectively. The Parties have also agreed on the Development End-Point, which is described in **Exhibit D** to this Agreement. The DC, TCP and Development End-Point criteria may be amended only by the Parties' mutual written agreement. The Parties agree that the Existing Compound meets the DC and TCP. For other Collaboration Compounds, the JSC shall determine whether such Collaboration Compound has met the DC or TCP based on meeting all of the objective criteria set forth in **Exhibit B** or **Exhibit C**, respectively.

3.2 Research and Development Activities for Existing Compound Prior to Opt-In.

(a) Development by Exelixis for Existing Compound. Exelixis shall, **[*]**, use Diligent Efforts to reach the Development End-Point set forth on **Exhibit D** (Development End-Point) for the Existing Compound, by conducting and completing the clinical development activities set forth on **Exhibit D**.

(b) Exelixis' Provision of Existing Compound. If Genentech will be engaging in Genentech Research pursuant to Section 3.2(c), then Exelixis shall make available to Genentech, at **[*]**, any amount that may be required to perform the Genentech Research. Exelixis shall use all reasonable efforts to make such amounts available within **[*]** after Genentech's request. Prior to exercising its Opt-In right, Genentech shall only have the right to use the Existing Compound for the purpose of performing the Genentech Research as described in Section 3.2(c) below.

(c) Pre-Opt-In Studies.

(i) The Parties agree that, prior to Genentech's exercise of its Opt-In (A) the studies set forth in **Exhibit E (**"**Planned Pre-Opt-In Studies**") are planned to be performed for the Existing Compound, and (B) other studies mutually agreed by the Parties ("**Other Pre-Opt-In Studies**") may be performed for the Existing Compound (collectively, the "**Pre-Opt-In Studies**"). The Planned Pre-Opt-In Studies shall be performed by Exelixis **[*]**, upon written request of Genentech (which request may be made on a study-by-study basis, and need not be for all such Planned Pre-Opt-In Studies, and further where such request is provided more than **[*]** after the Effective Date, the last sentence of Section 3.4(a) applies), with the exception that Genentech shall be the Party (either by itself or through a Third Party contractor selected by Genentech) performing the **[*]** as set forth on **Exhibit E [*]** (such **[*]**, the "**Genentech Research**"). Unlike the Planned Pre-Opt-in Studies, which Exelixis shall undertake if so requested by Genentech, whether the Other Pre-Opt-In Studies will be performed, by whom, and the protocols for those studies are all subject to mutual agreement of the Parties, through the JSC without either Party having the trump vote over the matter. For the Planned Pre-Opt-In Studies requested by Genentech, Exelixis shall submit the proposed protocols for Genentech's review, and shall incorporate all reasonable comments made by Genentech to the extent reasonable and practical, and provided that such comments are provided to Exelixis in a timely manner. If the Parties cannot agree on any such protocol, then the matter shall be referred to **[*]** of Exelixis and Genentech's **[*]**, and such executives shall resolve the **[*]**. If such matter cannot be resolved by such executives within such **[*]** period, **[*]**.

(ii) If Genentech engages a Third Party to perform any Other Pre-Opt-In Studies, then the Parties shall mutually agree upon a Third Party for the performance of such Other Pre-Opt-In Studies. Genentech shall engage any Third Party to perform the Genentech Research or any Other Pre-Opt-In Studies only pursuant to an agreement which sets forth such Third Party's confidentiality and non-use obligations at least as stringent as those set forth in this Agreement for Exelixis proprietary Information and Exelixis proprietary Materials transferred to such Third Party by Genentech, and which requires that all inventions and intellectual property made by the Third Party in the course of those activities shall be Controlled by Genentech and included within the definition of "Genentech Licensed IP" as if developed by Genentech.

(iii) If Genentech undertakes Genentech Research, Other Pre-Opt-In Studies or otherwise obtains the Existing Compound prior to exercising its Opt-In right, then Genentech shall not, prior to exercise of its Opt-In right: (A) perform any research in connection with that Existing Compound other than the Genentech Research; (B) use the Existing Compound in **[*]** Collaboration Compound; (C) perform tests with such Existing Compound **[*]** Collaboration Compound; (D) transfer the Existing Compound to any Third Party except as specified above in this Section 3.2(c); or (E) attempt to elucidate the chemical structure of the Existing Compound; or (F) use, prior to Genentech's exercise of its Opt-In, any: (1) data or results arising from such Genentech Research or Other Pre-Opt-In Studies; or (2) **[*]**, in each case in any manner outside the Collaboration, including without limitation in connection with the Competing Program. Genentech may use data and results from the Genentech Research for decision-making regarding **[*]** generally, and Genentech may use data and results from the Genentech Research and Other Pre-Opt-In Studies for decision-making regarding development decisions of a Collaboration Compound or Licensed Product. For clarity, the provisions of Section 7.4 apply to the performance of the Genentech Research, any Other Pre-Opt-In Studies, or other delivery of Existing Compound prior to exercising Genentech's Opt-In right.

(d) Sharing of Data. During the Collaborative Development Period, at each meeting of the JPT and each meeting of the JSC: (i) Exelixis shall deliver to Genentech an update on any ongoing Phase I Clinical Trial, and other Information regarding research or pre-clinical studies, with respect to the Existing Compound or any other Collaboration Compound (including any Pre-Opt-In Study), provided, however, that Exelixis is not required to provide **[*]** except as set forth in Section **[*]**; and (ii) Genentech shall deliver to Exelixis an update on the data and results generated on any Genentech Research conducted by Genentech or a Third Party contractor pursuant to Section 3.2(c) above. Each Party shall have the right to use the data and results received from the other Party under this Section 3.2(d) solely to perform its obligations under this Agreement or to exercise its rights under this Agreement, and, prior to Genentech exercising its Opt-In right, neither Party shall have the right to publish such data and results without the other Party's prior written consent; provided however that the restrictions set forth in this sentence shall not apply to Exelixis with respect to its development and commercialization of any Excluded Compound, Reversion Compound or product containing any of the foregoing, and further, after Genentech exercises its Opt-In right, shall not apply to Genentech with respect to its development and commercialization of any Collaboration Compound or product containing any of the foregoing.

(e) Genentech Guidance. Genentech may provide to Exelixis assistance and guidance regarding analysis and interpretation of clinical data, trial design, or other preclinical and clinical development activities undertaken by Exelixis under this Agreement, including the Phase I Clinical Trial undertaken with respect to the Existing Compound. To maximize the likelihood of that a Collaboration Compound will successfully reach the TCP or Development End-Point, Exelixis shall consider such guidance, and implement such guidance if it is reasonable to do so.

(f) Regulatory. Exelixis shall file and own all INDs for Collaboration Compounds that are the subjects of clinical trials to be carried out by Exelixis under this Agreement, subject to Section 3.5(b), and shall be responsible for the filing of any additional necessary regulatory documents in the Profit-Share Territory for such Collaboration Compounds

during the period **[*]** for those Collaboration Compounds. If Genentech exercises its Opt-In right pursuant to Section 3.4, Exelixis shall **[*]**, and **[*]** for, any additional regulatory documents or filings, including any NDAs, with respect to any Licensed Product.

3.3 Back-Up Work.

(a) Back-Up Work. In addition to the activities in Section 3.2(a) with respect to the Existing Compound, Exelixis shall engage in research, preclinical and/or clinical development activities regarding any Back-Up Compound(s) pursuant to this Section 3.3.

(i) Request by Genentech. [*], Genentech may request, through the JSC, that Exelixis perform back-up work, with the goal of advancing one Back-Up Compound **[*]** for each Exelixis Work Plan (as described below), **[*]** (the "**Back-Up Work**"). Such Back-Up Work may involve the **[*]**. During **[*]**, Genentech shall have the right to make a subsequent request for Back-Up Work to be performed by Exelixis on any additional Back-Up Compound **[*]** of the activities set forth in the Exelixis Work Plan (as described below) **[*]**. Genentech shall specify the number of Exelixis FTEs to be engaged in such Back-Up Work at the time of making each such request.

(ii) Work Plan. As soon as possible after receiving a request from Genentech, but within no more than **[*]**, Exelixis shall, in consultation with Genentech, create a draft Exelixis Work Plan that includes the following:

(1) summary of planned activities to reach the goal identified by Genentech; provided that if Exelixis concludes that it is impractical to reach the goal identified by Genentech prior to the end of the Back-Up Period using the number of FTEs specified by Genentech, then Exelixis shall so inform Genentech and the Parties may revise the goal accordingly; provided further that if **[*]**, then Exelixis shall have the right, after consultation with Genentech, to **[*]**, **[*]**;

(2) the estimated timeline to complete the Back-Up Work using the number of FTEs requested by Genentech;

(3) the estimated budget for costs and expenses in connection with the engagement of any Third Party contractor pursuant to Section 3.9; and

(4) at Exelixis' option, **[*]** the number of FTEs **[*]** the timeline and budget for Genentech's **[*]**.

(iii) Approval of Exelixis Work Plan. Each draft Exelixis Work Plan provided by Exelixis pursuant to Section 3.3(a)(ii) is subject to approval by Genentech, through the JSC. In approving the Exelixis Work Plan, Genentech shall have the right to make the final decision as to **[*]** (subject to Section **[*]**) and the **[*]** for the project on such Exelixis Work Plan. Exelixis, however, shall have the right to make the final decision as to the **[*]** such Exelixis Work Plan that are directed to **[*]**, and as to whether Exelixis will **[*]** for such Back-Up Compound. Exelixis shall begin Back-Up Work within **[*]** after approval of an Exelixis Work Plan.

(iv) Performance by Exelixis; Limits on Genentech Request. Exelixis shall use Diligent Efforts to reach the goal of that Back-Up Work as set forth in the Exelixis Work Plan. Subject to the other provisions under this Section 3.3(a) and Section 3.3(b), Exelixis shall undertake Back-Up Work requested by Genentech, so long as Genentech makes its request **[*]** and so long as the total number of Exelixis FTEs for all Back-Up Work is between **[*]**, inclusive.

(v) Payment for Back-Up Work. Genentech shall (i) pay Exelixis for the FTEs that have engaged in Back-Up Work, provided that the number of such FTEs is within the number requested by Genentech; and (ii) reimburse Exelixis for actual Third Party expenses incurred under an Exelixis Work Plan, pursuant to Section 3.10, up to a maximum of the amount of expenses that are within the scope of the Exelixis Work Plan approved pursuant to Section 3.3(a)(iii).

(vi) [*] under an Exelixis Work Plan. Subject to Section 3.3(a)(iv), Genentech shall have the right to **[*]** under a particular Exelixis Work Plan by **[*]**, or to **[*]** under a particular Exelixis Work Plan by **[*]**, provided that such **[*]**, and the **[*]** in Genentech's **[*]** under such Exelixis Work Plan, shall not **[*]**. Any **[*]** an Exelixis Work Plan will result in **[*]** such Exelixis Work Plan. The Parties will **[*]** the Exelixis Work Plan to **[*]**.

(b) Completion of Work under the Exelixis Work Plan. Exelixis shall only have the obligation to perform Back-Up Work during the Back-Up Period. If at the end of the Back-Up Period, Exelixis has not completed the planned activities set forth in an Exelixis Work Plan, then Exelixis shall have the choice of **[*]**.

(c) Exelixis Provision of Back-Up Compounds. After Genentech exercises its Opt-In right under Section 3.4 below, Exelixis shall continue to use Diligent Efforts to deliver to Genentech a Back-Up Compound meeting the goal for the Exelixis Work Plan for such Back-Up Compound: (i) after reaching the goal specified in that approved Exelixis Work Plan; or (ii) when Exelixis stops work pursuant to Section 3.3(b) above if the Back-Up Compound then under development has **[*]**, as the case may be. If the goal of an Exelixis Work Plan has been met prior to Genentech exercising its Opt-In right, then Exelixis shall deliver that Back-Up Compound upon Genentech exercising its Opt-In right. In the event Exelixis stops work pursuant to Section 3.3(b) above and the Back-Up Compound then under development has **[*]**, then, after Genentech exercises its Opt-In right under Section 3.4 below, Exelixis shall **[*]**, that **[*]**, **[*]** (such **[*]**). Exelixis shall **[*]** is made based on **[*]** of the same **[*]** whether a compound **[*]**, and shall **[*]**. For clarity, Exelixis shall have no obligation to deliver any Back-Up Compound **[*]**.

3.4 Opt-In Right.

(a) Delivery of Data. Exelixis shall use Diligent Efforts to reach the Development End-Point for the Existing Compound. After Exelixis reaches the Development End-Point for such Existing Compound, Exelixis shall deliver to Genentech, for Genentech's review, a data package including **[*]** generated from the studies on **Exhibit D [*]** performed by Exelixis that have not been previously disclosed to Genentech by Exelixis; provided that, for those **[*]** after the Effective Date, Exelixis shall only **[*]** deliver to Genentech **[*]** that have been **[*]** the Development End Point.

(b) Initial Opportunity for Opt-In.

(i) Within **[*]** days after receiving a complete data package from Exelixis pursuant to Section 3.4(a) above for such Existing Compound (the last day of such period, the **"Initial Opt-In Expiration Date"**), Genentech shall notify Exelixis in writing of its decision as to whether it would exercise its right to obtain a license for the development and commercialization of Licensed Product(s) containing any Collaboration Compound (**"Opt-In"**).

(ii) If, as of the Initial Opt-In Expiration Date, Genentech notifies Exelixis in writing of its decision to exercise its Opt-In right with respect to such Existing Compound, then: (A) Genentech shall obtain a license, pursuant to Section 7.1, to develop and commercialize such Existing Compound and any other Collaboration Compounds; and (B) all **[*]** Existing Compound will **[*]**, but will **[*]**. The Parties shall conduct further development activities and commercialization activities with respect to such Collaboration Compounds and the associated Licensed Products pursuant to this Agreement, with Genentech being the Party responsible for the further clinical development (after the completion or termination of Exelixis Work Plans being conducted by Exelixis on or after the date Genentech exercises its Opt-In rights) of all Collaboration Compound(s) and the commercialization of any Licensed Product(s) containing such Collaboration Compound(s).

(iii) If, by the Initial Opt-In Expiration Date, Genentech notifies Exelixis of its decision not to exercise its Opt-In right, or fails to notify Exelixis of its decision whether it elects to exercise its Opt-In right, then:

(1) If, as of the Initial Opt-In Expiration Date, there is no outstanding request from Genentech for Exelixis to undertake Back-Up Work, and Exelixis does not have any ongoing obligations under any Exelixis Work Plan, then this Agreement shall terminate, the Existing Compound shall become an "Excluded Compound," and Section 11.3(c) applies. Exelixis shall have the full right (and not obligation) to research, develop, partner and commercialize the Excluded Compound without any further obligation to Genentech.

(2) If, as of the Initial Opt-In Expiration Date, there is an outstanding request from Genentech for Exelixis to undertake Back-Up Work or Exelixis has on-going obligations under any Exelixis Work Plan, then: (I) the Existing Compound shall thereupon become an Excluded Compound; (II) Genentech shall have no rights to develop or commercialize such Excluded Compound; and (III) Genentech shall retain an on-going right to Opt-In as set forth in Section 3.4(c) below. In such event:

(a) Exelixis shall retain all right, title and interest to such Excluded Compound, and shall have the full right (and not obligation) to research, develop, commercialize or partner such Excluded Compound without any obligation to Genentech.

(b) Exelixis shall, subject to Section 3.2 above, continue to use Diligent Efforts to perform its obligations pursuant to the then ongoing and any future Exelixis Work Plan(s).

(c) Subsequent Opportunities for Genentech to Exercise Its Opt-In Right.

(i) Upon completion of each Exelixis Work Plan (or upon a decision to cease Back-Up Work under an Exelixis Work Plan as authorized under Section 3.3(b)), Exelixis shall deliver to Genentech, for Genentech's review, all data and results generated under such Exelixis Work Plan not previously disclosed to Genentech (**[*]**, which is subject to Section **[*]**).

(ii) If Genentech has not exercised its Opt-In right under Section 3.4(b) by the Initial Opt-In Expiration Date or if the development of the Existing Compound is suspended before Genentech's Opt-In right under Section 3.4(b) is triggered (such date on which the right is triggered under Section 3.4(b), the **"Trigger Date"**), then Genentech may exercise its Opt-In right at any time prior to **[*]** days after the later of: (I) Exelixis having delivered the data package for the first completed Exelixis Work Plan pursuant to Section 3.4(c)(i) above; and (II) the Trigger Date (**"Subsequent Opt-In Expiration Date**"). On or before the Subsequent Opt-In Expiration Date, Genentech shall notify Exelixis in writing of its decision as to whether it would exercise the Opt-In (which is for a license for the development and commercialization of Licensed Product(s) containing any Back-Up Compounds that have met all the criteria for DC, **[*]** delivered by Exelixis to Genentech **[*]**). If, as of the Subsequent Opt-In Expiration Date, Genentech notifies Exelixis in writing of its decision to exercise the Opt-In, then Section 3.4(b)(ii) shall apply to such Back-Up Compounds as if such Back-Up Compounds were the Existing Compound. If Genentech does not notify Exelixis of its decision to exercise its Opt-In right prior to the Subsequent Opt-In Expiration Date, then this Agreement shall terminate and thereupon all Collaboration Compounds shall become Excluded Compounds, and Exelixis shall have the full right (and not obligation) to research, develop, partner and commercialize all such Excluded Compounds without any further obligation to Genentech.

(iii) Exelixis shall not disclose any **[*]** to Genentech pursuant to this Section 3.4(c) except upon **[*]**.

(iv) [*], each Back-Up Compound that does not reach DC pursuant to an Exelixis Work Plan shall, at the end of such Exelixis Work Plan, cease to be a Back-Up Compound or a Collaboration Compound; and, the obligations in Section **[*]** shall continue to apply to such compounds if such compounds **[*]**.

(v) For clarity, each compound shall cease to be a Collaboration Compound when it becomes an Excluded Compound.

3.5 Development of Collaboration Compounds after Genentech Opt-In.

(a) Creation of Development Plan. Promptly after Exelixis receives Genentech's notice of its decision to Opt-In pursuant to Section 3.4, Genentech shall provide to Exelixis, through the JPT or JSC, a plan for the further development of that Collaboration

Compound and the associated Licensed Product which shall be incorporated herein by reference (the **"Development Plan"**). Genentech has final decision-making authority regarding any Development Plan; the Development Plan shall reflect Genentech's responsibility for the further clinical development (after the completion of the Phase I Clinical Trial being conducted by Exelixis on the date Genentech exercises its Opt-In rights) of Collaboration Compound(s) in the Profit-Share Territory. Genentech may amend or update the Development Plan **[*]**, and shall provide such updated Development Plan to **[*]** at scheduled meetings of the JSC, but no more frequently than annually. The Development Plan is **[*]**.

(b) Regulatory. As between Genentech and Exelixis, Genentech shall be responsible for the filing of all regulatory documents, including without limitation all associated submissions (e.g., safety alerts, protocol submissions, NDAs, etc.), for responding to inquiries and correspondences from the Regulatory Authorities, and for the establishment of the safety database for the Profit Share Territory for any Licensed Products, and the monitoring of all clinical experiences and submission of all required reports throughout clinical development and commercialization of any Licensed Product, in each case in compliance with all laws and regulations. With respect to any Collaboration Compound(s) or Licensed Product(s) in the Profit Share Territory, Genentech shall provide Information to Exelixis and reasonably consult with Exelixis regarding any filings, and regarding significant or material notices, actions or requests from or by Regulatory Authorities (whether such filings, notices, questions, actions and requests are related to testing, manufacture, distribution or facilities for that Licensed Product). Exelixis shall, at Genentech's request, review and comment on filings, submissions, and responses to Regulatory Authorities related to any Licensed Product(s) in the Profit Share Territory.

(c) Technical Assistance and Transfer Plan. Promptly after Exelixis receives Genentech's decision to Opt-In pursuant to Section 3.4, the Parties shall also agree on a transfer plan under which Exelixis shall use Diligent Efforts to transfer to Genentech, in a timely manner: (i) **[*]** for Collaboration Compound(s); (ii) **[*]** in connection with the **[*]** for such Collaboration Compounds; (iii) at **[*]**, all **[*]** Exelixis **[*]** such Collaboration Compounds; (iv) technology transfer of the Information associated with Manufacturing for that Collaboration Compound, either to Genentech or a Third Party manufacturer designated by Genentech; and (v) the scope of continuing technical assistance reasonably required for Genentech to continue to develop and Manufacture such Collaboration Compound(s), and the terms under which such technical assistance will be provided (the **"Transfer Plan"**). **[*]** is responsible for the **[*]** performance under items (i) through (iv) listed above.

(d) Development Costs. Genentech (or its sublicensees) shall bear one hundred percent (100%) of all Development Costs with respect to a Collaboration Compound and with respect to the associated Licensed Product after Genentech exercises its Opt-In rights under Section 3.4(b) or Section 3.4(c).

3.6 Development of Collaboration Compound(s) and Licensed Product(s) in the Other Territory. Genentech (or its Affiliates or sublicensees) shall have the sole responsibility and authority to, at its sole expense, develop Collaboration Compound(s) and/or Licensed Product(s) in the Other Territory and file for Regulatory Approvals for such Collaboration Compound(s) and/or Licensed Product(s) in the Other Territory; provided that Genentech shall use Diligent Efforts to obtain Regulatory Approvals for at least **[*]**.

3.7 Competing Programs; Exclusivity.

(a) Genentech may, at its own expense and outside the scope of this Collaboration, conduct or have conducted programs for the **[*]** compounds that **[*]** (each such program, a **"Competing Program"**), provided that Genentech may not use in any such Competing Program any Exelixis Licensed Know-How, Confidential Information of Exelixis, or Materials transferred from Exelixis to Genentech under Section 3.2(b) and Section 3.3(c).

(b) Exelixis' Exclusivity Obligations.

(i) For the term of this Agreement (**[*]**, subject to Sections 3.7(b)(ii) and 3.7(b)(iii), Exelixis **[*]**. For the term of this Agreement (**[*]**), subject to Sections 3.7(b)(ii) and 3.7(b)(iii), Exelixis **[*]** with respect to, **[*]** related to, **[*]**, and **[*]**, any **[*]** except: (i) to the extent Exelixis has rights to an Excluded Compound under Sections 7.1 and 7.2, Exelixis may exercise such rights; (ii) Exelixis shall have the right to conduct research and development as set forth under an Exelixis Work Plan, pursuant to Section 3.2, or as otherwise expressly authorized by Genentech in writing; (iii) Exelixis shall have the right to conduct research within the scope of its retained rights under Section 7.1(e), **[*]** provide **[*]** to **[*]** with respect to **[*]**; and (iv) Exelixis shall have the right to screen its libraries against targets other than MEK (either for its internal programs or in collaboration with a Third Party), **[*]**, and if **[*]**, then Exelixis shall have the right to make and use such **[*]** for the purpose of **[*]**, provided that **[*]**, or any **[*]**. Exelixis **[*]** the right to **[*]** in (A) any research or development **[*]**, or (B) engage in any other research or development activities, in either case with the purpose of **[*]**, in either case by itself or in collaboration with a Third Party, **[*]**.

(ii) Notwithstanding anything to the contrary, Section 3.7(b)(i) shall not apply to any **[*]** that, as of the Effective Date, **[*]** and has been **[*]** as a result of a **[*]**; and (B) is directed to **[*]**.

(iii) Nothing in this Section 3.7(b) shall be interpreted as prohibiting Exelixis from performing activities intended to facilitate Exelixis' compliance with the obligations of this Section 3.7(b).

3.8 Conduct of Development. The Parties shall use Diligent Efforts to conduct their respective tasks throughout the Collaboration in good scientific manner, and in compliance in all material respects with the requirements of all applicable laws, rules and regulations and all applicable good laboratory practices. After Genentech exercises its Opt-In right pursuant to Section 3.4, Genentech shall use Diligent Efforts to develop and commercialize one or more Licensed Products during the term of this Agreement. It is understood that activities by Genentech's Affiliates or sublicensees will be considered as Genentech's activities under this Agreement for purposes of determining whether Genentech has complied with its obligations under this Section 3.8, but Genentech shall be primarily liable and responsible for all such activities conducted by Genentech's Affiliates or sublicensees. Exelixis may notify Genentech in writing if Exelixis in good faith believes that Genentech is not meeting its diligence obligations set forth in this Section 3.8 and the Parties will meet and discuss the matter in good faith. Exelixis may further request review of Genentech's records generated and maintained as required under Article 6 below, to the extent those records relate to development and

commercialization of a Licensed Product. If such matter is still not resolved to Exelixis' satisfaction, then the matter will be considered a dispute between the Parties and subject to the dispute resolution procedures, with the associated rights and responsibilities, under this Agreement.

3.9 [*] Exelixis to Engage Third Parties. Exelixis **[*]** use Third Party subcontractors or any other Third Parties to perform any of its obligations under this Agreement **[*]**. **[*]** Exelixis may engage a Third Party contractor **[*]**: (a) with respect to its **[*]**, subject to the terms of Section **[*]**; (b) with respect to **[*]** activities such as **[*]**; (c) with respect to **[*]** activities; or (d) as specified in **[*]**; provided that all **[*]** by such Third Party subcontractor **[*]** and **[*]**. Notwithstanding any delegation of obligations under this Agreement, Exelixis shall remain primarily liable and responsible for the performance of all of its obligations.

3.10 Exelixis FTEs; Invoices. Exelixis shall assign FTEs for activities it is required to perform under an Exelixis Work Plan at the level set forth in the Exelixis Work Plan, subject to Section 3.3(a)(v). Genentech shall reimburse Exelixis for the number FTEs who actually performed activities under Section 3.3(a) at a rate of **[*]** per FTE per calendar quarter. Exelixis shall provide an invoice to Genentech within **[*]** days after the end of each calendar quarter setting forth: (a) the number of FTEs engaged during the preceding calendar quarter by Exelixis for such activities; and (b) the amount and underlying calculation for any other costs Genentech is required under this Agreement to reimburse directly to Exelixis. Genentech shall pay amounts due within **[*]** days after receipt of such invoice.

ARTICLE 4

MANUFACTURE AND SUPPLY

4.1 Overview.

(a) Prior to exercise of Genentech's Opt-In pursuant to Section 3.4, Exelixis shall be the Party responsible for the Manufacture of Collaboration Compound(s) in the Profit-Share Territory to supply the activities to be conducted prior to such Opt-In exercise or pursuant to an Exelixis Work Plan, either by itself or through one or more Third Parties (subject to Section **[*]**); such Manufacture is **[*]**.

(b) Upon Genentech's exercise of its Opt-In, Exelixis shall be relieved from any Manufacturing obligations for any Collaboration Compound, except for those Collaboration Compounds for which Exelixis is performing Back-Up Work under an Exelixis Work Plan. Upon being relieved of its Manufacturing obligations, Exelixis shall transfer the Manufacturing-related activities for those Collaboration Compounds for which it no longer has Manufacturing obligations to Genentech, pursuant to Section 3.5(c), within **[*]** after those obligations cease. Where Genentech has taken over the responsibility for the Manufacture of any Collaboration Compound(s) and related Licensed Product(s), Genentech may carry out such responsibilities either by itself or through one or more Third Parties. Other than costs pursuant to carrying out the Manufacturing-related activities under the Transfer Plan (which costs are borne by **[*]** pursuant to Section 3.5(c)), Fully Burdened Manufacturing Costs (as defined in the Financial Appendix, and expressly including Third Party suppliers) incurred by Genentech (including in

connection with engaging Third Party suppliers) for Collaboration Compound(s) and/or Licensed Product(s) with be borne as follows: (i) if the product is for use in **[*]** (including **[*]**), such Fully Burdened Manufacturing Costs shall be **[*]** and shall be borne **[*]**; (ii) if the product is for **[*]**, such Fully Burdened Manufacturing Costs shall be borne **[*]**; and (iii) if the product is for **[*]**, such Fully Burdened Manufacturing Costs shall be **[*]** and **[*]**.

4.2 Engaging Third Party Manufacturers. It is understood that when a Party engages a non-licensed Affiliate or any Third Party to Manufacture any Licensed Product, that engagement may require a limited license or limited sublicense of rights obtained from the other Party under this Agreement. In addition to each Party's respective rights to sublicense under Article 7, the Party engaging such Third Party (or non-licensed Affiliate) may disclose Confidential Information of the other Party solely as necessary to fulfill the business purposes of the engagement, and then only pursuant to terms and conditions that are substantially as protective of that Confidential Information as the terms and conditions of this Agreement. Notwithstanding any delegation of obligations under this Agreement by a Party to its Affiliates or to a Third Party, the Party shall remain primarily liable and responsible for the performance of all of its obligations under this Agreement and for causing such Affiliates or Third Parties to act in a manner consistent herewith. In addition, such Party shall assure that any intellectual property developed by its Affiliates or such Third Parties shall be Controlled by that Party and included in and subject to the licenses set forth in Article 7. The Party contracting with such Third Party shall not agree to any term that would make it unable to comply with its obligations under this Agreement.

ARTICLE 5

COMMERCIALIZATION

5.1 Commercialization in the Profit-Share Territory. As between Genentech and Exelixis, Genentech (alone or through its Affiliates or sublicensees) shall be the Party responsible for commercialization of any Licensed Product in the Profit-Share Territory, and shall use Diligent Efforts to commercialize any and all Licensed Product(s) in the Profit-Share Territory after such Licensed Product has received Regulatory Approval in the Profit-Share Territory. If Exelixis exercises its co-promotion option pursuant to Section 5.6 below, then Exelixis shall participate in promotional activities related to such commercialization as set forth under the Co-Promotion Agreement entered into pursuant to Section 5.6, and shall use Diligent Efforts to carry out its responsibilities under that Co-Promotion Agreement and under any Joint Promotion Plan created under Section 2.3(b). As between Exelixis and Genentech, Genentech **[*]** of the Licensed Products in the Profit Share Territory, and shall have the **[*]** of the Licensed Product in the Profit-Share Territory.

5.2 Commercialization in the Other Territory. As between Genentech and Exelixis, Genentech (alone or through its Affiliate or sublicensees) shall be the Party responsible for commercialization of any Licensed Product(s) in the Other Territory, and shall do so at its own expense, using Diligent Efforts to commercialize a Licensed Product in each of the Major Market Countries after such Licensed Product has received Regulatory Approval in such country. Subject to the foregoing obligation to use Diligent Efforts, all decisions regarding such commercialization shall be **[*]**, including decisions regarding **[*]** of the Licensed Product in

the Other Territory. As between Exelixis and Genentech, Genentech (alone or through Affiliates or sublicensees) **[*]** the Licensed Products in the Other Territory, and shall **[*]** in connection with such commercialization in the Other Territory.

5.3 Cost Sharing. All costs incurred and all revenues received by the Parties in connection with the commercialization of Licensed Products in the Profit-Share Territory shall be calculated as part of the Operating Profit (Losses) pursuant to the Financial Appendix, excluding any Development Costs, which shall be borne solely by Genentech.

5.4 Product Labeling; Promotional Materials. Genentech shall be responsible for designing and supplying the product labeling and promotional materials for the Licensed Product for the Profit-Share Territory. Genentech shall be responsible as to how and the manner in which Genentech shall be presented and described to the medical community in any promotional materials and the placement of the names and logos of the Parties therein, in each case as permitted by applicable law and with the labeling for the Licensed Product approved by the applicable Regulatory Authority.

5.5 Sales and Distribution. Genentech shall be **[*]** responsible for handling all returns, order processing, invoicing and collection, distribution, and inventory and receivables for the Licensed Product throughout the Profit-Share Territory. Genentech shall **[*]** for establishing and modifying the terms and conditions with respect to the sale of the Licensed Product, including any terms and conditions relating to or affecting the price at which the Licensed Product shall be sold, discounts available to any Third Party payers (including, without limitation, managed care providers, indemnity plans, unions, self insured entities, and government payer, insurance or contracting programs such as Medicare, Medicaid, or the U.S. Dept. of Veterans Affairs), any discount attributable to payments on receivables, distribution of the Licensed Product, and credits, price adjustments, or other discounts and allowances to be granted or refused; provided, however, that Genentech shall **[*]** when doing the foregoing.

5.6 Exelixis' Co-Promotion Option. Exelixis has an option to co-promote Licensed Products in the Profit-Share Territory. Such co-promotion would mean that Exelixis could provide up to **[*]** of the total sales force for the Licensed Product in the Profit-Share Territory (**[*]**), and would call on customers and otherwise engage in promotional activities using that sales force, consistent with the terms of this Agreement and a co-promotion agreement containing commercially reasonable terms consistent with the terms and conditions outlined in **Exhibit F** attached hereto (such agreement, the **"Co-Promotion Agreement"**). Genentech shall keep Exelixis informed of its progress **[*]** for any Licensed Product in the Profit-Share Territory. Once Genentech notifies Exelixis that **[*]**, Exelixis shall have the right but not the obligation to exercise its co-promotion option by providing notice to Genentech of its decision to so do. Exelixis' option expires if not exercised within **[*]** months after notice from Genentech. **[*]** the foregoing option, Exelixis **[*]** the Licensed Product, including: (a)**[*]**; and (b) an **[*]** of Exelixis, which **[*]**.

5.7 Compliance. Each Party shall comply with all applicable laws and regulations relating to activities performed or to be performed by such Party (or its Affiliates, contractor(s) or sublicensee(s)) under or in relation to the commercialization of the Licensed Product pursuant to this Agreement. Each Party represents, warrants and covenants to the other Party that, as of

the Effective Date and during the term of this Agreement, such Party and its Affiliates have adequate procedures in place: (a) to ensure their compliance with such laws and regulations; (b) to bring any noncompliance therewith by any of the foregoing entities to its attention; and (c) to promptly remedy any such noncompliance.

ARTICLE 6

RECORDS

6.1 Records. Each Party shall maintain complete and accurate records of: (a) all significant development, Manufacturing and commercialization events and activities conducted by it or on its behalf related to a Collaboration Compound or Licensed Product; and (b) all significant Information generated by it or on its behalf in connection with research and development of Collaboration Compounds or Licensed Products under this Agreement. Such records shall be in sufficient detail to properly reflect, in good scientific manner, all significant work done and results of studies and trial undertaken, and further shall be at a level of detail appropriate for patent and regulatory purposes.

6.2 Progress Information. Each Party shall use Diligent Efforts to keep the other Party informed of its research, development and commercialization (including promotional) activities hereunder, and shall provide to the other Party's representatives on the JPT or JSC, as appropriate, regular summary updates at each meeting. If reasonably necessary for a Party to perform its work under this Agreement or to exercise its rights under this Agreement, that Party may request that the other Party provide more detailed information and data regarding the updates it earlier provided, and the other Party shall promptly provide the requesting Party with information and data as is reasonably available and reasonably related to the work under this Agreement. Neither Party is required to generate additional data or prepare additional reports to comply with the foregoing obligation. All such reports, information and data provided by a Party shall be considered the providing Party's Confidential Information.

ARTICLE 7
LICENSES

7.1 Licenses to Genentech.

(a) Research License. Subject to the terms of this Article 7 and Sections 3.2(c), 3.2(d) and 3.7(a), Exelixis hereby agrees to grant and hereby grants (on behalf of itself and its Affiliates) Genentech a worldwide, non-exclusive, royalty-free license (with the right to grant and authorize sublicenses solely to mutually agreed Affiliates and Third Party contractors in accordance with Section 3.2(c)(ii)), under the Exelixis Licensed IP, to use the Existing Compound for purposes of engaging in the Genentech Research (as defined in Section 3.2(c)) or Other Pre-Opt-In Studies. The foregoing license shall expire on the Initial Opt-In Expiration Date if Genentech has not exercised its Opt-In right by such date.

(b) Development and Commercialization License. Subject to the terms of this Article 7 and Section 3.7(a), Exelixis agrees to grant and hereby grants (on behalf of itself and its Affiliates) Genentech and its Affiliates, effective upon Genentech's exercise of its Opt-In

right pursuant to Section 3.4(b) or Section 3.4(c), an exclusive, worldwide, revenue-bearing license (with the right to grant and authorize sublicenses pursuant to Section 7.1(d)) under the Exelixis Licensed IP, to make, have made, use, and import Collaboration Compound(s) in the Field and to make, have made, use, sell, offer for sale, and import Licensed Products in the Field; provided, however, that with respect to the **[*]**, such license **[*]** (other than a Collaboration Compound). Notwithstanding the limitation to the Field, the foregoing license expressly includes the right to test Collaboration Compounds in animals for the sole purpose of developing and commercializing Licensed Products in the Field.

(c) License for Diagnostic Products. Subject to the terms of this Article 7 and Section 3.7(a), Exelixis agrees to grant and hereby grants (on behalf of itself and its Affiliates) Genentech and its Affiliates, effective upon Genentech's exercise of its Opt-In right pursuant to Section 3.4(b) or 3.4(c), a worldwide, royalty-free license (with the right to grant and authorize sublicenses pursuant to Section 7.1(d) below), under the Exelixis Diagnostic IP, to make, have made, use, sell, offer for sale and import Diagnostic Products solely for the purposes of supporting the development and commercialization of Licensed Products. The foregoing license is **[*]** Collaboration Compound, and **[*]**. For clarity, the right to sell Diagnostic Products under the foregoing license shall be limited to those times and countries in which Licensed Products are sold by Genentech or its Affiliates or sublicensees.

(d) Sublicensing. For those licenses granted under this Section 7.1 that grant Genentech the right to grant and authorize sublicenses, Genentech shall grant such sublicenses in a manner consistent with the terms and conditions of this Agreement. Genentech shall also provide to Exelixis **[*]**. Genentech shall remain responsible for each of its permitted sublicensees' compliance with the material and applicable terms and conditions of this Agreement. Notwithstanding the foregoing, Genentech shall not grant to any Third Party any sublicense of its license under Section 7.1(b) that includes the right to **[*]**, except: (i) when the Third Party is **[*]**; (ii) when notwithstanding the sublicense, Genentech **[*]** marketing and commercialization of such Licensed Product; or (iii) **[*]**.

(e) Exelixis Retained Rights. Notwithstanding the licenses granted in this Section 7.1, Exelixis shall retain all rights under the Exelixis Licensed IP: (i) to make, have made, use and modify Collaboration Compounds solely: (1) for purpose of **[*]** (including **[*]** performed by Exelixis pursuant to **[*]**); (2) to perform Exelixis' obligations under this Agreement; and (3) to the extent subcontracting is authorized under this Agreement, to grant subcontractors the right to perform Exelixis' obligations under this Agreement; and (ii) to make, have made, use, sell, offer for sale and import any Excluded Compounds and products containing Excluded Compounds (provided that such products do not also contain Collaboration Compounds). The foregoing rights retained by Exelixis with respect to Excluded Compounds do not extend to **[*]**, and **[*]**. The foregoing rights do extend to **[*]** and other **[*]**. Nothing in this Section 7.1(e) shall be interpreted as implying that any Excluded Compound is a Collaboration Compound. Once a compound becomes an Excluded Compound, it automatically ceases being a Collaboration Compound.

7.2 Licenses to Exelixis.

(a) Research and Development License. Subject to the terms of Article 7 and Section 3.7(b), Genentech agrees to grant and hereby grants (on behalf of itself and its Affiliates) Exelixis, a non-exclusive, royalty-free license (without the right to grant sublicenses except in connection with engaging a subcontractor pursuant to Section 3.8), under the Genentech Research IP, solely to perform Exelixis' obligations under this Agreement.

(b) License for Co-Promotion Activities. Subject to the terms of Article 7 and Section 3.7(b), during any period in which Exelixis is engaging in co-promotion under this Agreement after having exercised its co-promotion option pursuant to Section 5.6, Genentech agrees to grant and hereby grants (on behalf of itself and its Affiliates) Exelixis a co-exclusive (with Genentech, its permitted Affiliates and sublicensees) license under the Genentech Research IP to offer for sale (but not to sell) Licensed Products in the Field in the Profit-Share Territory.

(c) License to Inventions from Genentech Research. Subject to the terms of Article 7 and Section 3.7(b), Genentech agrees to grant and hereby grants (on behalf of itself and its Affiliates) Exelixis, a non-exclusive, royalty-free license (with the right to grant sublicenses), under any Patents on inventions created and reduced to practice, and any data and results generated, in the course of performing Genentech Research, to make (and have made), use, import, offer for sale and sell any product or practice any method or process, and Exelixis shall have the right to use any data or results required to be delivered under Section 3.2(d) to do so.

(d) Excluded Compounds. Subject to the terms of Article 7 (including Section 7.1(e)), Genentech agrees to grant and hereby grants (on behalf of itself and its Affiliates) Exelixis, effective upon the Existing Compound becoming an Excluded Compound under Section 3.4(b) or Section 3.4(c) a worldwide, exclusive, royalty-free, perpetual, irrevocable license (with the right to grant sublicenses), under the Genentech Licensed IP, to make, have made, use, sell, offer for sale and import Excluded Compounds and products containing Excluded Compounds.

7.3 Information and Materials. The Parties understand and agree that neither Party is required to provide the other with: (a) any Information other than Information either expressly required to be provided or to which access is expressly described or required under this Agreement; or (b) any Materials other than, where Exelixis is the providing Party, the Collaboration Compounds to be provided by Exelixis pursuant to Section 3.2(b) and Section 3.3(c).

7.4 Genentech Use of Collaboration Compounds. Genentech shall not perform any **[*]** of, any Collaboration Compound (other than **[*]**) at any time after Genentech exercises its Opt-In right. Any **[*]** at any time after Genentech exercises its Opt-In right shall be for the sole purpose of researching, developing and commercializing Licensed Products in the Field.

7.5 No Additional Licenses. Except as expressly provided in Sections 7.1, 7.2 and 11.3, nothing shall grant either Party any right, title or interest in and to the intellectual property rights of the other Party (either expressly or by implication or estoppel). Neither Party has a license under the other Party's Licensed Patents for activities outside the scope of the licenses granted, or for Patents, Information or Materials not within the scope of the licenses granted.

ARTICLE 8

COMPENSATION

8.1 Upfront Fee. Genentech shall pay Exelixis a one-time fee of twenty-five million dollars ($25,000,000) within **[*]** days after the Effective Date. Such fee shall be non-creditable and nonrefundable.

8.2 Opt-In Fees. Genentech shall pay Exelixis a non-refundable and non-creditable fee in consideration for its exercising the Opt-In right pursuant to Section 3.4, as follows: (a) if Genentech exercises its Opt-In right pursuant to Section 3.4(b) (*i.e.*, with respect to an Existing Compound and all other Collaboration Compounds), Genentech shall pay Exelixis $**[*]** within **[*]** days of exercising such right pursuant to Section 3.4(b); or (b) if Genentech exercises its Opt-In right pursuant to Section 3.4(c) (*i.e.*, not with respect to an Existing Compound but with respect to a Back-Up Compound), then Genentech shall pay Exelixis the fee(s) as set forth in the table below:

Opt-In Payment within [*]			**[*] within [*] after [*] (as defined below)**
[*]	**[*]**	**[*]**	
[*]			
$**[*]**	N/A	N/A	$**[*]**
N/A	$**[*]**	N/A	$**[*]**
N/A	N/A	$**[*]**	$**[*]**

* If Genentech exercises its Opt-In right when the **[*]**, and subsequent to such Opt-In, Genentech **[*]**, in each case pursuant to **[*]**, then instead of making **[*]**, Genentech shall pay Exelixis $**[*]** within **[*]** days after **[*]**, and another $**[*]** within **[*]** days after a **[*]**.

8.3 Milestone Payments.

(a) Licensed Products Containing the Existing Compound. In recognition of Exelixis' submission on December 20, 2006 of an IND for a Licensed Product containing an Existing Compound, Genentech shall pay Exelixis the one-time, non-refundable and non-creditable milestone payment in the amount of $15,000,000 no later than **[*]**.

(b) Licensed Products containing Back-Up Compounds. Genentech shall pay Exelixis the one-time non-refundable and non-creditable fees set forth in the tables below within **[*]** days of a Licensed Product containing a Back-Up Compound meeting the milestone events described in the table below.

	[*]	**[*]**
First Licensed Product containing a [*] Back-Up Compound	$**[*]**	$**[*]**
Second Licensed Product containing a [*] Back-Up Compound	$**[*]**	$**[*]**

For clarity, in no event shall Genentech's payment obligation under this Section 8.3(b) exceed $**[*]**.

(c) Definitions and Interpretations for Above Tables.

(i) **"[*]"** means a **[*]** (or successor thereof), **[*]** (or a substantially similar **[*]**, to **[*]** of a Licensed Product.

(ii) **"[*] Back-Up Compound"** means, at the time such Back-Up Compound meets the applicable milestone, there is **[*]** Compound by **[*]**, such **[*]** Compound being either the **[*]** Compound **[*]** in its state of development.

(iii) **Same Active Ingredient.** Products that contain the same active pharmaceutical ingredient, but different **[*]** of a particular Collaboration Compound shall **[*]** Licensed Products for this Section 8.3 unless such products contain **[*]** Compound.

8.4 Payments.

(a) Profit Share in the Profit-Share Territory.

(i) Profit-Share Ratio. The Parties shall share Operating Profit (Loss) for Licensed Product(s) sold for the Profit-Share Territory as follows:

[*] Licensed Product in the Profit-Share Territory for a Particular Calendar Year	**Genentech's Share of Operating Profit (Loss)**	**Exelixis' Share of Operating Profit (Loss)**
[*]	50%	50%
[*]	**[*]**%	**[*]**%
[*]	**[*]**%	**[*]**%

(ii) Quarterly Calculations. Each Party's share of Operating Profit (Loss) will be determined on a calendar quarterly basis, using a weighted average based on forecasted Actual Sales for the Licensed Product in the Profit Share Territory for the then current calendar year and actual Operating Profit (Loss) for the completed calendar quarter.

(iii) Quarterly Reconciliation. On a calendar quarterly basis after the end of each calendar quarter, each Party's actual share of Operating Profit (Loss) will be calculated and reconciled as follows: the forecasted Actual Sales for the Licensed Product in the Profit Share Territory for the then current calendar year will be adjusted based on the actual sales booked for the recently-completed calendar quarter and the forecasted Actual Sales for all remaining calendar quarters. Then, each Party's share of cumulative Operating Profit (Loss) for all of the completed calendar quarter(s) for such calendar year will be determined using a weighted average based on such newly-calculated forecasted Actual Sales and the actual Operating Profit (Loss) for all such completed calendar quarter(s) for such calendar year. The payment to be made by one Party to the other Party for such recently-completed calendar quarter shall reflect such reconciliation, so that each Party will receive its share of then-current cumulative Operating Profit (Loss). This calculation is illustrated by the example in **Exhibit A**.

(iv) Reconciliation Payments. Within **[*]** days after the end of each calendar quarter for as long as any Licensed Product is being commercialized in the Profit Share Territory, Exelixis shall submit to Genentech a statement setting forth any Operating Profit (Loss) obtained by Exelixis in the Profit-Share Territory during such calendar quarter, together with the information detailing the basis for the calculation of such Operating Profit (Loss), including the individual components of such Operating Profit (Loss). Genentech shall consolidate any Operating Profit (Loss) reported by Exelixis with those obtained directly by Genentech. Genentech shall, within **[*]** days after receiving such statement from Exelixis, notify Exelixis whether a reconciliation payment is due from one Party to the other based on its calculation pursuant to Section 8.4(a)(iii) above, and if so, the amount of such reconciliation payment, so that the Parties will share the Operating Profit (Loss) for such calendar quarter in the ratio set forth in Section 8.4(a)(i) using the mechanism set forth in Section 8.4(a)(iii). The Party required to pay such reconciliation payment shall submit such payment to the other Party within **[*]** days of receiving such notice from Genentech.

(v) Budget Overrun. If, for any calendar quarter: (A) Exelixis' share of the budgeted cost for the Operating Profit (Loss) **[*]** for such calendar quarter **[*]** is in the aggregate **[*]** (the **"Budget Overrun"**) by at least **[*]** dollars ($**[*]**); and (B) a **[*]** for such calendar quarter, then Exelixis shall **[*]** such Budget Overrun **[*]**) **[*]** Exelixis to Genentech **[*]**. If Exelixis' share of the budgeted cost for the Operating Profit (Loss) **[*]** for such **[*]** is in the aggregate **[*]** what Genentech **[*]** such calendar year, then the **[*]** the budget used in the calculation of the Budget Overrun above.

(b) Royalty Payments for the Other Territory.

(i) Subject to Section 8.4(b)(ii) below, Genentech shall pay Exelixis non-refundable (subject to the audit provisions in this Agreement) royalties for each Licensed Product sold in the Other Territory, as follows:

(1) [*] percent (**[*]**%) of the aggregate Net Sales of such Licensed Product in the Other Territory for the portion of Net Sales in a calendar year in the Other Territory that is below **[*]** dollars ($**[*]**);

(2) [*] percent (**[*]**%) of the aggregate Net Sales of such Licensed Product in the Other Territory for the portion of Net Sales in a calendar year in the Other Territory that equals to or exceeds **[*]** dollars ($**[*]**) and is below **[*]** dollars ($**[*]**); and

(3) [*] percent (**[*]**%) of the aggregate Net Sales of such Licensed Product in the Other Territory for the portion of Net Sales in a calendar year in the Other Territory that equals to or exceeds **[*]** dollars ($**[*]**).

(ii) Genentech's royalty obligations shall expire, on a product-by-product and country-by-country basis, upon the later to occur of: (1) the expiration of the last-to-expire Valid Claim of the **[*]** that Covers such Licensed Product in such country; and (2) the **[*]** of the First Commercial Sale of such Licensed Product in such country. In the event that **[*]**, Genentech's royalty obligations under this Section 8.4(b) **[*]** for such Licensed Product **[*]** (as defined below in this Section 8.4(b)(ii)) of the **[*]** such Licensed Product in such country. For purposes of this Agreement, "**[*]**" means any **[*]** that has not: (I) **[*]**; (II) been **[*]** from which **[*]**; or (III) been **[*]** or otherwise. For purposes of this Agreement, a "**[*]**," with respect to any Licensed Product **[*]**, is **[*]** that: (A) **[*]** (or **[*]**) **[*]** such Licensed Product; and (B) **[*]** or otherwise, **[*]** of the foregoing), including **[*]** to the foregoing, whether for **[*]**.

8.5 [*] and Royalties for [*].

(a) Genentech shall pay Exelixis a royalty on **[*]** (**[*]** Net Sales for a Licensed Product under this Agreement) of **[*]** percent (**[*]**%), as follows:

(i) [*] percent (**[*]**%) if all of the following are true: (A) Genentech **[*]**; (B) Genentech has **[*]**; (C) a Licensed Product for which **[*]** the country of sale; and (D) there is a **[*]** the Licensed Product in the country of sale; or

(ii) [*] percent (**[*]**%) if Genentech is not paying the amounts under Section 8.4(a)(i), but a **[*]** is being sold and either: (A) the manufacture, use, sale, offer for sale or import of that **[*]** would infringe any of the **[*]** in the country of sale; or (B) Genentech **[*]** development or commercialization of that **[*]**, but only for the later of: (x) the expiration of a Valid Claim of a **[*]** that would be infringed by the manufacture, use, sale, offer for sale or import of a **[*]**; or (y) **[*]** after the First Commercial Sale of such **[*]** in such country (where, for purposes of this Section 8.5(a)(ii), "First Commercial Sale" is defined as set forth in Section 1.32, with each instance **[*]**").

(b) For purposes of Section 8.5(a), the "**[*]**" are Patents that claim a **[*]**, where a "**[*]**" is any **[*]** that is any or all of the following: (i) **[*]**; (ii) **[*]**, prior to **[*]**, using: (A) **[*]**; or (B) any **[*]** including **[*]**, so long as **[*]**. For purposes of this Section 8.5(b)(ii)(A), "**[*]**" means, with respect to the use of a **[*]**, the **[*]** from the **[*]**, and ending **[*]**, but **[*]** in any country. For purposes of this Section 8.5(b)(ii)(A), the **[*]** that is disclosed in Exelixis Licensed Patents **[*]** considered **[*]**.

(c) The obligation in Section 8.5(a) above **[*]**, except as follows: (i) the royalty under Section 8.5(a)(i) **[*]** (but the royalty under Section 8.5(a)(ii) **[*]**) if the Agreement **[*]** a Licensed Product; and (ii) **[*]**.

8.6 Third Party Patent Payments. During the term of this Agreement, if **[*]** that the development and commercialization of a Licensed Product requires a license to a Third Party's Patents for the Profit-Share Territory, or if **[*]** for the Other Territory, then the costs of obtaining such Third Party license (including any and all upfront payments, milestone payments and royalties) shall be deemed "**Third Party Patent Payments."**

(a) For the Profit-Share Territory. All Third Party Patent Payments incurred by a Party after the First Commercial Sale of a Licensed Product in the Profit-Share Territory shall be **[*]**. Where Genentech (or its Affiliate or sublicensee) is making a Third Party Patent Payment with respect to worldwide rights, the amounts of the Third Party Patent Payment will be **[*]**.

(b) For the Other Territory. All Third Party Patent Payments incurred by Genentech or its sublicensee in the Other Territory shall be **[*]**.

8.7 Royalty Reports and Payments. Within **[*]** days after the end of the calendar quarter in which the First Commercial Sale occurs, and within **[*]** days after the end of each calendar quarter thereafter, Genentech shall provide Exelixis: (a) a payment of all royalties owed for such quarter; and (b) a report of Net Sales of Licensed Products in the Other Territory in sufficient detail to permit confirmation of the accuracy of the royalty payment made, including Net Sales, the royalties payable (in dollars), and the exchange rates used. In addition, within **[*]** days after the end of each such calendar quarter, Genentech shall provide Exelixis with a good faith estimate of the Net Sales for such calendar quarter, for those territories for which Genentech would owe a royalty. Genentech shall keep, for **[*]** years from the date of each payment of royalties, complete and accurate records of sales of each Licensed Product, in sufficient detail to allow the royalties accruing to be determined accurately. Genentech shall maintain all records as reasonably required for GAAP.

8.8 Currency. All references to **"dollars"** or **"$"** means the legal currency of the United States. All payments to be made under this Agreement shall be made in United States dollars, unless expressly specified to the contrary herein. Net Sales outside of the United States shall be first determined in the currency in which they are earned and shall then be converted into an amount in United States dollars using the conversion rate reported by Reuters Ltd. on for the last day of the calendar quarter for which such payment is being determined.

8.9 Payment Type. Payment due under this Agreement must be paid in immediately available funds by wire transfer to an account to be identified by the payee or set forth in the Financial Appendix.

8.10 Withholding of Taxes. Each Party may withhold from payments due to the other Party amounts for payment of any withholding tax that is required by law to be paid to any taxing authority with respect to such payments. The Party that has withheld that tax shall provide to the other Party all relevant documents and correspondence and written evidence of the

payment of such tax, and shall also provide to the Party from whose payment that tax was withheld any other cooperation or assistance on a reasonable basis as may be necessary to enable that Party subject to withholding to claim exemption from such withholding taxes and to receive a full refund of such withholding tax or claim a foreign tax credit. The Parties agree to cooperate with each other, in the event a Party seeks deductions under any double taxation or other similar treaty or agreement from time to time in force.

8.11 Late Payments. Any amounts not paid when due under this Agreement shall be subject to interest from the date payment is due through and including the date upon which payment is received at a rate equal to **[*]** rate, as such rate is published in the Federal Reserve Bulletin H.15 or successor thereto on the last business day of the applicable quarter prior to the date on which such payment is due, calculated daily on the basis of a 365-day year, or, if lower, the highest rate permitted under applicable law.

8.12 Blocked Currency. If, at any time, legal restrictions prevent the prompt remittance of part or all royalties with respect to any country where any Licensed Product is sold, payment shall be made through such lawful means or methods as the Party paying may determine.

8.13 Records and Audit. Each Party shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing Net Sales, royalties, Operating Profit (Loss), or, with respect to Exelixis, any project-based accounting or other method for determining the number of FTEs assigned to activities subject to reimbursement under this Agreement. Each Party shall have the right for a period of **[*]** after receiving any report or statement with respect to royalties due and payable to appoint an independent accounting firm reasonably acceptable to the other Party to inspect the relevant records of such other Party (as to its own accounts or to those of its Affiliates) to verify such reports, statements, records or books of accounts, as applicable. Upon request of the Party requesting inspection, and reasonable and customary notice (at least **[*]** in advance) to the Party whose records are being inspected, the Party whose records are being inspected shall make those records available for inspection by the auditor during regular business hours, solely to verify the accuracy of the other Party's reports provided under this Agreement. Records covering any particular period may be inspected or audited **[*]**, **[*]**, and **[*]**, as **[*]** of the **[*]**, that the **[*]** and would **[*]**. The report prepared by such independent accountant, a copy of which shall be sent or otherwise provided to the audited Party at the same time it is sent or otherwise provided to the auditing Party requesting the audit, shall contain the conclusions of such independent accountant regarding the audit and will specify that the amounts paid were correct, or, if incorrect, the amount of any underpayment or overpayment. If such report shows any underpayment, then, within **[*]** after the audited Party's receipt of such report, the audited Party shall remit to the other Party the amount of the undisputed underpayment plus any applicable interest pursuant to Section 8.11. If the total amount of any underpayment (as agreed to by the audited Party or as determined pursuant to the dispute resolution procedure in this Agreement) exceeds **[*]** of the amount previously paid by the audited Party to the other Party for such calendar year, then the audited Party shall pay the reasonable costs for such inspections. Any overpayment will be a credit against future royalties or other amounts due by the Party having overpaid or a credit for the Party having overpaid in the calculation of the Operating Profit (Loss), in each case to be applied as soon as practicable; provided that, if there will be no further

payment obligation under this Agreement from the Party having overpaid to the other Party, then the other Party shall, at the request of the Party having overpaid, refund such overpaid amount within **[*]** of receiving such request.

ARTICLE 9

INTELLECTUAL PROPERTY

9.1 Ownership. Inventorship of any inventions arising under this Agreement will be determined in accordance with rules of inventorship under U.S. patent laws. Except as otherwise described herein, and subject to the licenses granted under this Agreement, each Party shall own the entire right, title and interest in and to any and all inventions (and the associated intellectual property rights) for which the inventors are solely its employees or agents. Subject to the licenses granted under this Agreement, Genentech and Exelixis shall each own an undivided one-half (1/2) interest, without duty of accounting, in and to any and all such inventions and associated intellectual property for which employees or agents of both Parties are inventors, and all Patents Covering such joint inventions shall be deemed **"Joint Patents"** and subject to Section 9.3(e). The Parties shall co-operate with each other to prepare and execute all affidavits, assignments or documents required to effect the ownership rights described in this Section 9.1.

9.2 Disclosure. During the Collaborative Development Period, each Party shall notify the other Party (through the JSC if existing, otherwise in accordance with the notice provisions of the Agreement) of any invention related to the Collaboration Compounds or Licensed Products that arose under the Agreement during the preceding quarter.

9.3 Patent Prosecution and Maintenance.

(a) Consultation. Each Party shall advise and consult with the other Party promptly after receiving any substantial action or development in the prosecution or maintenance of any Patent application being prosecuted and maintained pursuant to Sections 9.3(b), (c) and (e) (including issues regarding (A) countries in which to initiate or continue prosecution (including validation) or (B) the scope of, the issuance of, the rejection of, an interference involving, or an opposition to any such Patent application or resulting Patent). The provisions of this Section 9.3(a) as well as Sections 9.3(b), 9.3(c) and 9.3(e) shall not apply to **[*]**. Exelixis shall promptly notify Genentech in writing within thirty (30) calendar days after Exelixis receives the notice of issuance of each **[*]**.

(b) Exelixis Licensed Patents Prior to Opt-In. Prior to Genentech's Opt-In, Exelixis shall **[*]** Exelixis Licensed Patents **[*]** or **[*]** (collectively, "**[*]**") **[*]**, file, prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto), all Exelixis Licensed Patents (other than Joint Patents) in **[*]** (the **"Primary Prosecution Countries"**) **[*]**. For clarity, **[*]**. If Genentech requests that Exelixis prepare, file, prosecute or maintain an Exelixis Licensed Patent in a country other than a Primary Prosecution Country, Genentech shall **[*]** Exelixis prior to Genentech's Opt-In in connection with preparing, filing, prosecuting or maintaining such Exelixis Licensed Patent in such non-Primary Prosecution Country. **[*]** shall: (i) keep **[*]** informed as to the status of filing, prosecution, maintenance and extension of such Exelixis

Licensed Patents in a report at no less frequently than **[*]** (or as otherwise agreed by the Parties) that **[*]**; (ii) keep **[*]** informed as to the status of filing, prosecution, maintenance and extension of such Exelixis Licensed Patents, such that there is reasonable time to review, comment upon and approve (as set forth in this Section) any documents intended for submission to any patent office; (iii) furnish to **[*]** copies of documents relevant to any such filing, prosecution, maintenance and extension including copies of any Patent Office, foreign associate, and outside counsel correspondence; and (iv) **[*]** of **[*]** on documents prepared for filing with any patent office with respect to Exelixis Licensed Patent claims that Cover Collaboration Compounds or Licensed Products and statements in such documents that might **[*]**. For the purpose of this Section 9.3, **[*]** shall only have the right to review any such documents provided by Exelixis if **[*]** agrees in writing **[*]** ([*]) disclosed in such documents **[*]** and if **[*]** has not been, is not and is reasonably not expected to be in the future, **[*]** Genentech relating to **[*]**.

(c) Exelixis Licensed Patents After Opt-In. After Genentech's Opt-In, **[*]** shall continue to prepare, file, prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto), all of its Exelixis Licensed Patents throughout the world. Costs for such preparation, filing, prosecution and maintenance of Exelixis Licensed Patents for the Other Territory shall be borne **[*]**, and for the Profit-Share Territory shall be included in Operating Profit (Loss). For clarity, **[*]**. **[*]** shall: (i) keep **[*]** informed as to the filing, prosecution, maintenance and extension of all Exelixis Licensed Patents, such that **[*]** has reasonable time to review, comment upon and approve any documents intended for submission to any patent office; (ii) furnish to **[*]** copies of documents relevant to any such filing, prosecution, maintenance and extension including copies of any Patent Office, foreign associate, and **[*]**; and (iii) **[*]** of **[*]** on documents prepared for filing with any patent office with respect to Exelixis Licensed Patent claims that Cover Collaboration Compounds or Licensed Products and statements in such documents that might **[*]**. In addition, **[*]** shall provide **[*]** with a report, no less frequently than **[*]** (or as otherwise agreed by the Parties), that lists all Exelixis Licensed Patents, identifying them by country and patent or application number, and briefly describing the status thereof. In the event that **[*]** elects not to: (A) prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto) an Exelixis Licensed Patent; or (B) file continuations or divisionals of an Exelixis Licensed Patent to the extent that such continuations or divisionals Cover Collaboration Compounds or Licensed Products, then **[*]** shall promptly notify **[*]** in writing (such notice shall be at least **[*]** prior to any required action relating to such prosecution or maintenance). Thereafter, **[*]** may, but is not required to, undertake such prosecution or maintenance of an Exelixis Licensed Patent at its sole expense.

(d) Genentech Licensed Patents. Genentech shall prepare, file, prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto), all of the Genentech Licensed Patents throughout the world. Costs for filing, preparation, prosecution and maintenance of such Genentech Licensed Patents for countries within the Other Territory shall be borne solely by Genentech or its sublicensees, and for the Profit-Share Territory shall be included in Operating Profit (Loss) and shared pursuant to this Agreement.

(e) Joint Patents. [*], Exelixis and Genentech shall jointly control the preparation, filing, prosecution, extension and maintenance of any Joint Patents (provided that in the event of a dispute, **[*]** shall be the final decision-maker to the extent such Joint Patents **[*]** Collaboration Compounds and/or Licensed Products). The costs associated with such preparation, filing, prosecution, extension and maintenance for countries within the Other Territory shall be borne **[*]**, and for the Profit-Share Territory shall be included in Operating Profit (Loss). **[*]** shall: (i) keep **[*]** reasonably informed as to the filing, prosecution, maintenance and extension of such Joint Patents, such that both Parties have reasonable time to review, comment upon and approve any documents intended for submission to any patent office; (ii) furnish to **[*]** copies of documents relevant to any such filing, prosecution, maintenance and extension including copies of any Patent Office, foreign associate, and **[*]** shall perform the foregoing tasks with respect to Genentech's **[*]** and such **[*]** shall be subject to the **[*]**.

9.4 Enforcement.

(a) Notices and Consultation. The Parties shall consult in good faith as to potential strategy or strategies to manage infringement by Third Parties of the Exelixis Licensed Patents and/or Joint Patents. The provisions of this Section 9.4 shall not apply to **[*]**.

(b) Enforcement by [*] of Joint Patents. [*] shall have the first right, but not the obligation to institute, prosecute, and control any action or proceeding with respect to such infringement of Joint Patents, by counsel of its own choice, and **[*]** shall have the right, at its own expense, to be represented by counsel of its own choice in that action. **[*]** shall inform **[*]** regarding an initiation of an infringement action by **[*]** regarding Joint Patents. Any amounts obtained by **[*]** as damages or settlement of such action or proceeding shall first be used to reimburse the Parties' legal expenses (including, if any costs of **[*]** separate counsel). Any remainder shall be considered Operating Profit (Loss) in the year received. If **[*]** fails to take action to terminate infringement of a Joint Patent within a reasonable period after the Parties' consultation in Section 9.4(a), then **[*]** shall have the right, but not the obligation to institute, prosecute, and control any action or proceeding with respect to such infringement of Joint Patents, by counsel of its own choice, and **[*]** shall have the right, at its own expense, to be represented by counsel of its own choice in that action. **[*]** shall inform **[*]** regarding an initiation of an infringement action by **[*]** regarding Joint Patents. Any amounts obtained by **[*]** as damages or settlement of such action or proceeding shall first be used to reimburse the Parties' legal expenses (including, if any costs of **[*]** separate counsel). Any remainder shall be considered Operating Profit (Loss) in the year received.

(c) Enforcement by [*] of Exelixis Licensed Patents. If there is any infringement, suspected infringement or alleged infringement by a Third Party of the Exelixis Licensed Patents, to the extent that such infringement, suspected infringement or alleged infringement relates to a Collaboration Compound or a Licensed Product (**"Product Infringement"**), then each Party may provide notification to the other and engage in consultation pursuant to Section 9.4(a). Subject to the terms of this Section 9.4(c), **[*]** has the first right to take action to terminate infringement without litigation, to institute an action or proceeding for enforcement, or to settle or continue prosecution of an action or proceeding with respect to each Product Infringement. If **[*]** takes action to terminate such Product Infringement without litigation, commences a legal action or proceeding against such Product Infringement, **[*]** shall

timely inform **[*]** and the Parties shall consult as provided in Section 9.4(a). **[*]** will bear the costs and expenses of that action or proceeding, and shall control the conduct and strategy of such action or proceeding. **[*]** may act to terminate infringement without litigation, enter into settlements, stipulated judgments or other arrangements respecting such Product Infringement, at its own expense; however, **[*]** shall not (without obtaining **[*]**' prior written consent) be able to take any action or agree to any settlement that would impose undue financial burden on **[*]** or admit invalidity or unenforceability of Exelixis Licensed Patents. If **[*]** commences such a Product Infringement enforcement action, **[*]** agrees to execute all papers and to perform such other acts as may be reasonably required (including consent to be joined as nominal Party plaintiffs in such action). **[*]** shall reimburse **[*]** for its out-of-pocket expenses for performing actions requested by **[*]** in relation to such Product Infringement enforcement action. **[*]** may, at its option and at its own expense, be represented in such action by counsel of its choice. Any damages or other recovery from a Product Infringement enforcement action undertaken by **[*]** pursuant to this Section 9.4(c) shall first be used to **[*]**. Any remainder attributable to the Profit-Share Territory shall be **[*]**. If **[*]** fails to take action to terminate a Product Infringement within a reasonable period after the Parties' consultation in Section 9.4(a), then **[*]** shall have the right, in accordance with Section 9.4(d) to terminate such Product Infringement without litigation or to commence a legal action or proceeding against such Product Infringement as if it were an Other Infringement.

(d) Enforcement by [*] of Exelixis Licensed Patents. To the extent there is an infringement, suspected infringement or alleged infringement by a Third Party of Exelixis Licensed Patents to the extent that such infringement, suspected infringement or alleged infringement is not related to a Collaboration Compounds or a Licensed Product (an **"Other Infringement"**), **[*]**. If **[*]** wishes to commence a legal action or proceeding against such Other Infringement, **[*]** shall **[*]**, and **[*]** may commence such legal action or proceeding **[*]**. If **[*]** does undertake such legal action or proceeding, then **[*]** will bear the costs and expenses of that action or proceeding, and shall control the conduct and strategy of such action or proceeding. **[*]** may act to terminate infringement without litigation, enter into settlements, stipulated judgments or other arrangements respecting such Other Infringement, at its own expense, to the extent such arrangements or actions do not adversely affect the Licensed Product or any claim of an Exelixis Licensed Patent Covering such Collaboration Compound or Licensed Product. **[*]** shall not (without obtaining **[*]** prior written consent) take any action or agree to any settlement that would impose undue financial burden on **[*]** or admit invalidity or unenforceability of Exelixis Licensed Patents. If **[*]** commences such infringement action, **[*]** agrees to execute all papers and to perform such other acts as may be reasonably required. **[*]** shall reimburse **[*]** for its out-of-pocket expenses for performing actions requested by **[*]** in relation to such Other Infringement enforcement action. Any amounts obtained by **[*]** as damages or settlement of such Other Infringement enforcement action or proceeding undertaken by **[*]** pursuant to this Section 9.4(d) belong **[*]**.

9.5 Trademarks. Genentech (or its Affiliates or other sublicensees) will be responsible for, and shall have sole discretion in, selecting trademarks for the use on or in connection with the Licensed Products. Genentech (or its Affiliates or other sublicensees) will be responsible for registration of such trademarks and will be the sole owner of such trademarks. For the avoidance of doubt, trademarks, including those created hereunder, are not included in the definition of Information.

9.6 Marking. Genentech shall, and shall require that its sublicensees, apply the patent marking notices required by the law of any country where Licensed Products are made, sold or used, to the extent feasible and practical, and in accordance with the applicable patent laws of that country.

ARTICLE 10

CONFIDENTIALITY

10.1 Nondisclosure of Confidential Information.

(a) "Confidential Information" means Information, of whatever kind and in whatever form or medium, including Information about Materials provided or created, and confidential Know-How, which Information is not within the exclusions in Section 10.2(a) and further: (i) disclosed by or on behalf of a Party in connection with this Agreement, whether prior to or during the term of this Agreement and whether disclosed orally, electronically, by observation or in writing, (ii) created by, or on behalf of, either Party, or created jointly by the Parties, in the course of this Agreement, or (iii) expressly deemed to be Confidential Information pursuant to another provision of this Agreement.

(b) All Confidential Information about any Collaboration Compound that exists as of the Effective Date, is created as a result of the Pre-Opt-In Studies (including the Genentech Research), as a result of Exelixis' Back-Up Work under Section 3.3 or Exelixis' development activities under Section 3.2 (**"Pre-Opt-In Confidential Information"**), whether or not disclosed under this Agreement, will be deemed to be the Confidential Information of **[*]**. If **[*]** Confidential Information will **[*]** to be the Confidential Information of **[*]**. If **[*]** to be the Confidential Information of **[*]**. If **[*]** Compound will be deemed to be the Confidential Information of **[*]** and the rest of such **[*]** the Confidential Information of **[*]**. If **[*]** Compound will be deemed to be the Confidential Information of **[*]**, such **[*]** will be deemed to be the Confidential Information of **[*]** and the rest of such Information will be deemed to be the Confidential Information of **[*]**. If **[*]** Confidential Information will thereafter be deemed the Confidential Information of **[*]**. Any Development Plans are the Confidential Information of **[*]**. Although, pursuant to Section **[*]**, **[*]** regarding a Collaboration Compound may not be disclosed to Genentech prior to **[*]**, it nonetheless will be treated in the same manner as Pre-Opt-In Confidential Information for purposes of non-disclosure and non-use obligations.

(c) All Confidential Information about any Collaboration Compound created by Genentech after exercising the Opt-In is **[*]** Confidential Information and Confidential Information about an Excluded Compound is **[*]** Confidential Information; however, if this Agreement is terminated by **[*]** or by Exelixis pursuant to Section 11.2(c), then Confidential Information that is created by Genentech after exercising the Opt-In and that relates solely to a Reversion Compound or Reversion Product (as defined in Section 11.3(e)) will be treated as the Confidential Information of **[*]** and all other Confidential Information created by Genentech after exercising the Opt-In that relates to a Reversion Compound or Reversion Product will be treated as the Confidential Information of **[*]**.

(d) The Parties agree that during the term of this Agreement and for a period of **[*]** after the expiration or earlier termination of this Agreement, a Party receiving Confidential Information of the other Party will: (i) hold such Confidential Information in strict trust and confidence and not disclose such Confidential Information to any Third Party without prior written consent of the other Party, except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (ii) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement.

10.2 Exceptions. The term "Confidential Information" under this Agreement does not include any portion of the Information that the first Party (*i.e.*, the Party wishing to disclose Confidential Information of the other Party) can show by competent written proof:

(a) Is publicly disclosed by the other Party, either before or after it is disclosed to the first Party hereunder;

(b) Was known to the first Party, without obligation to keep it confidential, prior to disclosure by the other Party;

(c) Is subsequently made available to the first Party, without any restrictions on non-disclosure or non-use, by a Third Party having authority to do so;

(d) Is published by a Third Party or otherwise becomes publicly available or enters the public domain, without breach of this Agreement or any agreement between a Party and such Third Party, either before or after it is disclosed to the first Party; or

(e) Has been independently developed by employees or contractors of the first Party without reference of any Confidential Information of the other Party.

10.3 Authorized Disclosure. Each Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances:

(a) Filing or prosecuting Patents pursuant to Article 9 of this Agreement and, with respect to Genentech, future Patents related to Licensed Products and the uses thereof;

(b) Regulatory filings by either Party, as related to Licensed Products by such Party;

(c) To the extent such disclosure is reasonably necessary to prosecute or defend litigation, or to comply with the order of a court, applicable laws or governmental regulations; provided that receiving Party provides prompt notice to the disclosing Party of the disclosure requirement and the Confidential Information to be disclosed, and further provides reasonable assistance to enable the disclosing Party to seek a protective order or otherwise prevent or limit such disclosure by the receiving Party;

(d) To the extent such disclosure is required to comply with applicable governmental regulations (including those of the U.S. Internal Revenue Service and U.S. Securities and Exchange Commission (the **"SEC"**); provided that the procedure in Section 10.6 is followed (whether with respect to the terms of this Agreement or other Confidential Information):

(e) Disclosure to such Party's Affiliates and sublicensees, Third Party contractors and potential sublicensees or collaborators, to the extent disclosure to such entities is required or necessary for Exelixis and/or Genentech to exercise the licenses granted under this Agreement, or for the performance of the obligations under this Agreement; provided that any of the foregoing entities, prior to disclosure, must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 10.

In addition, Exelixis may disclose Genentech's Confidential Information to the extent such disclosure is reasonably necessary for the filing or prosecution of Patents relating to Excluded Compounds, Reversion Compounds or Reversion Products, or for regulatory filings relating to the Excluded Compound, Reversion Compounds or Reversion Products.

10.4 Terms of this Agreement. The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed, in confidence, by a Party: (a) to its Affiliates; (b) to collaborators, potential collaborators, sublicensees or potential sublicensees but only after redacting terms not relevant to the rights and obligations being undertaken or contemplated to be undertaken by such collaborators or sublicensees, and only for limited purposes as necessary for that collaborator or sublicensee or perform its obligations or exercise its rights; (c) to potential acquirers, investment bankers and lenders, but only after redacting terms not relevant to the potential transaction, and only for limited purposes as required in connection with a transaction; and (d) connection with a required filing to the SEC, subject to Section 10.6 below.

10.5 Termination of Prior Confidentiality Agreements. This Agreement supersedes the Amended and Restated Mutual Confidentiality Agreement between Exelixis and Genentech effective March 29, 2006. All Information (as such term is defined in such Confidentiality Agreement) exchanged between the Parties under such earlier agreement shall be deemed Confidential Information of the Party that disclosed such Information and shall be subject to the terms of this Article 10.

10.6 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as **Exhibit G**. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; *provided*, *however*, that such approval will not unreasonably be withheld or delayed with respect to any disclosure which is required by law, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded (**"Exchange"**), so long as the Party from which approval is being required will have no less than **[*]** to review and provide comment regarding any such proposed announcement, unless a shorter review time is necessary or agreed. If the compliance with the disclosure requirements of an Exchange requires filing of this

Agreement, the filing Party shall seek confidential treatment of portions of this Agreement from the Exchange and shall provide the other Party with a copy of the proposed filings at least **[*]** prior to filing it with the Exchange for the other Party to review any such proposed filing. Each Party agrees that it will obtain its own legal advice with regard to its compliance with securities laws and regulations, and will not rely on any statements made by the other Party relating to such securities laws and regulations.

10.7 Scientific Publications. [*] shall publish or present the results of research carried out during the Collaborative Development Period **[*]** pursuant to this Section 10.7. **[*]** agrees to provide **[*]** the opportunity to review any such proposed publication or presentation (including abstracts, manuscripts or verbal presentations) at least **[*]** prior to its intended submission for publication or presentation and agrees, upon request, not to submit any such publication or presentation until **[*]** is given a reasonable period of time to secure patent protection for any material in such publication or presentation which it believes to be patentable. Both Parties understand that a reasonable commercial strategy may require delay of publication or presentation of information or of filing of patent applications. The Parties agree to review and consider delay of publication or presentation and filing of patent applications under certain circumstances. Neither Party shall have the right to publish or present Confidential Information of the other Party, unless it receives the prior written consent of the other Party; upon request, a Party seeking to make a publication shall remove Confidential Information of the other Party. Further, each Party shall provide appropriate scientific attribution to the other in any publication concerning Collaboration Compounds or Licensed Products.

10.8 [*] for Collaboration Compounds. Exelixis shall provide the **[*]** for all **[*]** to Genentech **[*]**. **[*]**, Exelixis shall provide the **[*]** (collectively, the "**[*]**") **[*]** and **[*]**, but not **[*]** unless **[*]**. Any such provision of **[*]** shall take place pursuant to a confidentiality agreement between the Parties and such **[*]** that has **[*]** of **[*]** as **[*]** Confidential Disclosure Agreement between **[*]**. In the event that **[*]** that Exelixis **[*]** Genentech, Exelixis **[*]** but such **[*]** or a similarly or more **[*]** and may **[*]**. Such information can be used solely to **[*]**, and such information **[*]** any other purpose including in connection with the **[*]**.

ARTICLE 11

TERM AND TERMINATION

11.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with Section 11.2, Section 11.3 or by mutual written agreement, or until the expiration of the last payment obligation with respect to all Licensed Products hereunder.

11.2 Termination.

(a) Termination for Genentech's Decision not to Opt-In. This Agreement may be terminated pursuant to Section 3.4(b)(iii).

(b) Termination by Genentech for Convenience. At **[*]**, Genentech may terminate this Agreement, **[*]**, by providing written notice of termination to Exelixis, which

notice includes an effective date of termination at least **[*]**; provided, however, if Genentech terminates this Agreement for convenience **[*]**, then at Exelixis' request, such termination shall become effective **[*]**.

(c) Termination for Cause. If either Party believes that the other is in material breach of this Agreement, then the non-breaching Party may deliver notice of such breach to the other Party. For all breaches other than a failure to make a payment set forth in this Agreement, the allegedly breaching Party shall have **[*]** to cure such breach from the receipt of the notice **[*]**. For any breach arising from a failure to make a payment set forth in this Agreement, the allegedly breaching Party shall have **[*]** from the receipt of the notice **[*]** cure such breach. If the Party receiving notice of breach fails to cure, **[*]**, that breach within applicable period set forth above, then the Party originally delivering the notice of breach may terminate this Agreement on written notice of termination. If the allegedly breaching Party in good faith **[*]** the failure to cure or remedy such material breach and provides written notice of **[*]** to the other Party within the above time periods, then the matter will be addressed under the **[*]** provisions in Section **[*]**, and the notifying Party may **[*]** until it has been **[*]** that the **[*]** is in material breach of this Agreement, and such breaching Party further **[*]** after the **[*]**.

11.3 Effect of Termination.

(a) Accrued Obligations Survive. In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

(b) Effect of Termination on Co-Promotion. Even if **[*]** as set forth in this Section **[*]**, upon termination or expiration of this Agreement **[*]**.

(c) Effect on Licenses of Termination under Section 11.2(a) (Genentech's Decision not to Opt-In). In the event of termination of this Agreement pursuant to Section 3.4(b)(iii) or Section 3.4(c)(ii): (i) the licenses granted to Genentech under Article 7 shall expire (or never become effective, as the case may be); (ii) any licenses granted by Genentech to Exelixis shall expire (or never become effective, as the case may be), except that **[*]**.

(d) Effect on Licenses of Termination by Genentech under Section 11.2(c) (Genentech Termination for Exelixis Breach). In the event of termination of this Agreement by Genentech pursuant to Section 11.2(c): (i) the licenses granted to Exelixis shall terminate (**[*]** and **[*]** with respect to **[*]**); (ii) the licenses granted **[*]** under Section **[*]** shall survive, so long as **[*]** as set forth in this Section **[*]**; and Sections **[*]** and Article **[*]** (in each case only pertaining to **[*]**), Sections **[*]** and **[*]** shall survive; and, if the Exelixis breach is of obligations other than those in Section **[*]**, then the obligations in Sections **[*]** also survive. The license to **[*]** described in this Section **[*]** shall **[*]** of Licensed Products **[*]** at the rate set forth in the table below, **[*]**. Such royalty obligation shall expire, on a product-by-product and country-by-country basis, upon the later to occur of: (1) the expiration of the last Valid Claim of the **[*]** that Covers such Licensed Product in such country; and (2) the **[*]** of the First Commercial Sale of such Licensed Product in such country. In the event that there is **[*]**, **[*]** obligations under this Section 11.3(d) **[*]** for such Licensed Product **[*]** that Covers such Licensed Product in such country.

Time when **[*]** occurred	Royalty on Licensed Products	Section 8.5 (**[*]** and Royalties for **[*]**)
Prior to the **[*]**	**[*]**	**[*]**
After **[*]**	**[*]**	**[*]**

(e) Effect on Licenses of Termination by [*] or by Exelixis under Section 11.2(c) ([*] or Exelixis' Termination for Genentech Breach). In the case of termination of this Agreement by **[*]** or by Exelixis pursuant to Section 11.2(c), all licenses granted to Genentech under Section 7.1 cease. In addition, all **[*]** shall thereupon be deemed **"Reversion Compounds"** and all products containing such Reversion Compounds shall be deemed **"Reversion Products,"** and the license grants below shall become effective (or, if not effective, be granted by Genentech).

(i) License for Reversion Compound and Reversion Product.

(1) For purposes of this Section 11.3(e), **"Genentech Reversion IP"** means the following, to the extent it exists and is Controlled by Genentech as of the date of termination: (A) all Genentech Licensed Patents **[*]** make, have made, use, sell, have sold, offer for sale or import Reversion Compounds or Reversion Products, and (B) all Patents Controlled by Genentech that **[*]**, which Patents disclose or claim the composition of matter, manufacture or use of a Reversion Compound or Reversion Product, provided that **[*]**. For purposes of this Section, **"Reversion Information and Materials"** means the following, to the extent it exists and is Controlled by Genentech as of the date of termination (such Information in (A), (B), (D) and (E) is **"Reversion Information"**): (A) **[*]** (including **[*]**) with respect to the Reversion Products in Genentech's or its Affiliate's name; (B) **[*]** then **[*]** and related only to such Reversion Products, subject to **[*]**; (C) all supplies of Reversion Products (including **[*]**) that in each case are in Genentech's Control; (D) Information necessary for manufacture of the Reversion Product in its then-current form; and (E) **[*]** for a Reversion Product.

(2) Genentech shall, and hereby does, grant to Exelixis, effective as of the effective date of termination of this Agreement by Genentech under Section **[*]** or by Exelixis under Section **[*]** and subject to **[*] [*]** set forth below and continued compliance with Section **[*]**, a worldwide, **[*] [*]** license, with the right to sublicense: (A) under the Genentech Reversion IP, effective as of the effective date of termination of this Agreement, to make, have made, use, sell, have sold, offer for sale and import Reversion Compounds and Reversion Products; and (B) to use the Reversion Information to do so. The license described in this Section 11.3(e)(i)(2) shall bear a royalty on Exelixis' Net Sales of such Reversion Product anywhere in the world at the royalty rates set forth in the table below, **[*]**, for the period set forth in Section 11.3(e)(i)(3) below. Further, to the extent Genentech Reversion IP would include any rights under Patents and other intellectual property for which Genentech has an obligation to pay royalties or any other payments to that Third Party, then

Genentech shall disclose such obligations to Exelixis and Exelixis either may: (i) have such Patents and intellectual property included in the license and pay to the Third Party licensor amounts attributable to the rights obtained (which amounts shall be reasonably allocated between Exelixis and Genentech if they also pertain to rights not sublicensed to Exelixis) or reimburse Genentech for such amounts it has paid to that Third Party; or (ii) decline to have such Patents and intellectual property included in the license.

Time when **[*]**	Royalty on Reversion Products
Prior to the start of the **[*]**	**[*]**%
Prior to the start of the **[*]**	**[*]**%
After **[*]**	**[*]**%
After the **[*]**	**[*]**%

(3) Such royalty obligation shall expire, on a product-by-product and country-by-country basis, upon the later to occur of: (A) the expiration of the last Valid Claim of a Patent within the **[*]** that Covers such Reversion Product in such country; and (B) the **[*]** of the First Commercial Sale of such Reversion Product in such country. In the event that there is **[*]**, Exelixis' royalty obligations under this Section 11.3(e) shall cease in such country for such Reversion Product after the expiration of the last-to-expire **[*]** that Covers such Licensed Product in such country.

(4) Genentech shall transfer to Exelixis a copy of the Reversion Information, and shall transfer to Exelixis all Materials included in the scope of Reversion Information and Materials. Genentech shall use reasonable efforts to provide other research or preclinical data that is in its possession and control and is specific to the Reversion Compounds. Genentech hereby grants Exelixis an exclusive license to use such Reversion Information and Materials so transferred to make, have made, use, sell, offer for sale and import Reversion Compounds and Reversion Products. However, Genentech shall not, under such circumstances, have any obligation or right to Manufacture any Reversion Products, or to have any Reversion Products made by a Third Party. Enforcement of licensed Genentech Reversion IP shall be similar to Section 9.4(c) except to replace "Genentech" with "Exelixis", "Exelixis" with "Genentech", "Exelixis Licensed Patents" with "Genentech Reversion IP", "a Collaboration Compound or a Licensed Product" with "a Reversion Compound or a Reversion Product", **[*]**.

(ii) License for [*] Diagnostic Product.

(1) For the purpose of this paragraph, a Diagnostic Product is **[*]** (and thus a "**[*]**") if: (A) either Party is **[*]** in clinical trials of, **[*]**, or **[*]**, the Reversion Product, or (B) (I) either Party is **[*]** in clinical trials of, **[*]**, or **[*]** the Reversion Product; (II) the Patents Controlled by Genentech **[*]**; and (III) **[*]** exists.

(2) For purposes of this Section 11.3(e), **"Collaboration Diagnostic Reversion IP"** means the following, to the extent it exists and is Controlled by

Genentech as of the date of termination: **[*]**. **"Other Diagnostic Reversion IP"** means all Patents Controlled by Genentech, other than Genentech Licensed Patents, that disclose or claim an invention then existing, which Patents disclose or claim the composition of matter, manufacture or use of a **[*]**, except that to the extent Other Diagnostic Reversion IP would include any rights under Patents and other intellectual property for which **[*]**, then Genentech shall disclose such obligations to Exelixis and Exelixis either may: (I) have such Patents and intellectual property included in the license and **[*]** (which **[*]** Exelixis and Genentech if they **[*]** Exelixis) or **[*]**; or (II) **[*]**. For purposes of this Section 11.3(e), **"Diagnostic Reversion Information and Materials"** means the following, to the extent it exists and is Controlled by Genentech as of the date of termination (such Information is **"Diagnostic Reversion Information"**) **[*]** regulatory and technical information for creating such **[*]**, which may include manufacturing Information or agreements with Third Parties, but in any event includes only that Information that would not **[*]**.

(3) Genentech shall, and hereby does, grant to Exelixis, subject to Exelixis' continued compliance with its payment obligations set forth below and the terms of the licenses granted, a worldwide, non-exclusive license, under the Collaboration Diagnostic Reversion IP, with the right to sublicense, effective as of the effective date of termination of this Agreement, to make, have made, use, sell, have sold, offer for sale and import **[*]** Diagnostic Products, but only in connection with a Reversion Product and only in the countries and during the period for which Exelixis or its Affiliate or sublicensee is selling such Reversion Compound (and associated Reversion Products).

(4) If, as of the date of such termination, **[*]**, then Genentech shall, and hereby does, grant to Exelixis, subject to Exelixis' continued compliance with its payment obligations set forth below and the terms of the licenses granted, a worldwide, non-exclusive license, under such Other Diagnostic Reversion IP, with the right to sublicense, effective as of the effective date of termination of this Agreement, to make, have made, use, sell, have sold, offer for sale and import **[*]** Diagnostic Products, but only in connection with a Reversion Product and only in the countries and during the period for which Exelixis or its Affiliate or sublicensee is selling such Reversion Compound (and associated Reversion Products).

(5) If, as of the date of such termination, **[*]** that there is a reasonable likelihood that the **[*]**, then the Parties shall **[*]**, but would **[*]** with a means of one of the following, **[*]**: (1) obtaining the right or ability to use of such **[*]** Diagnostic Product, (2) obtaining an **[*]**, or **[*]** could be obtained, or (3) providing access **[*]**, in the form of **[*]**, provided that, if such **[*]** is granted in the **[*]**, then **[*]** shall be in the form of a **[*]** of such **[*]** Diagnostic Product **[*]**.

(6) If the Parties select option (3) above, then Genentech shall use reasonable efforts to transfer to Exelixis a copy of the Diagnostic Reversion Information, and to transfer to Exelixis all Materials included in the scope of Diagnostic Reversion Information and Materials. Genentech shall use reasonable efforts to provide other research or preclinical data that is in its possession and control and is specific to the **[*]** Diagnostic Product. Genentech hereby grants Exelixis an exclusive license to use such Diagnostic Reversion Information and Materials so transferred to practice its license under Sections 11.3(e)(iii)(3)-(5) above.

(f) In addition to the licenses for Reversion Products and Diagnostic Products, if at the time of termination a Licensed Product is being marketed (or being provided in a clinical trial) under a trademark or tradename specific to that Reversion Product and Controlled by Genentech, then, at Exelixis' request, Genentech shall grant Exelixis an exclusive, fully paid, fully paid, royalty-free license (with the right to grant sublicenses) to use such trademark or tradename upon, or in relation to, such Reversion Product. Such trademark license shall be only for the then-current form of the Reversion Product (*i.e.*, if another form of the Reversion Product would require an additional NDA or similar regulatory filing, then such form is not included in the trademark license) and mutually agreed enhancements to that Reversion Product (if any). Genentech shall promptly and diligently negotiate in good faith with Exelixis to agree upon the non-financial terms of the agreement pursuant to which Genentech shall grant such trademark license. Such terms shall be commercially reasonable and consistent with Genentech's practices with respect to trademark licenses. The Parties shall enter into such trademark license agreement promptly upon agreeing upon such terms. The terms of the trademark license agreement shall not include any payment obligations from Exelixis, except for reimbursements to Genentech of fees (such as maintenance and filing fees) required for ongoing maintenance of that trademark.

(g) Payment Breach. If the Agreement is terminated by either Party pursuant to Section 11.2(c) for the other Party's uncured breach of a payment obligation under this Agreement, then the terminating Party shall have the right to deduct from the future payments due to such breaching Party under this Section 11.3, the amount of such payment obligation together with all interest accrued from the date such payment was due at the rate set forth in Section 8.11, to the extent such amount and any interest so accrued is not paid by the breaching Party prior to such deduction.

(h) Return of Confidential Information. Upon any termination of this entire Agreement, each Party shall use reasonable efforts promptly to return (or destroy and provide written certification thereof) to the other Party all Confidential Information received from the other Party, including any copies thereof (except copies retained solely for legal archival purposes).

11.4 Survival. In addition to specific Sections listed in Section 11.3 as surviving particular types of termination of this Agreement, **[*]** of this Agreement shall survive expiration or termination of this Agreement for any reason.

ARTICLE 12

REPRESENTATIONS AND WARRANTIES

12.1 Mutual Authority. Exelixis and Genentech each represents and warrants to the other as of the Effective Date that: (a) it has the authority and right to enter into and perform this Agreement; (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights; and (c) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

12.2 Exelixis Warranties. Exelixis represents and warrants that:

(a) as of the Effective Date, to the knowledge of Exelixis' **[*]**, **[*]**, and **[*]**, without any duty of inquiry or investigation, Exelixis does not **[*]** directed to or claiming **[*]**, **[*]**;

(b) as of the Effective Date, to the knowledge of Exelixis' **[*]**, **[*]**, and **[*]**, without any duty of inquiry or investigation, **[*]** a Third Party has a license or an option for a license pursuant to a collaboration between Exelixis and any Third Party **[*]**;

(c) as of the Effective Date, it does not have knowledge of any rights that it currently owns or to which it currently has a license, that are within the Exelixis Licensed Patents or Exelixis Licensed Know-How (or that would be but for the terms of any agreement pursuant to which it has given up Control thereof, or pursuant to which it has rights to such Patents or Information but lacks Control thereof), to which **[*]** in this Agreement;

(d) it has **[*]** to grant licenses of the scope in this Agreement under those Patents included in that are either owned by Exelixis or its Affiliates or are the subject of a license from a Third Party to Exelixis that includes the right to sublicense, to the extent such Patents claim any Collaboration Compound;

(e) the scientific Information relating the Existing Compound that Exelixis delivered or made available to Genentech (whether directly or through its Third Party advisors) prior to the Effective Date, including the Information regarding the **[*]** of the Existing Compound, is **[*]** in **[*]** as of the Effective Date that **[*]**; Exelixis has not **[*]** pre-clinical or clinical studies of the Existing Compound Controlled by Exelixis as of the Effective Date, including **[*]** to the Existing Compound;

(f) EXEL-5518/the Existing Compound **[*]**;

(g) the scientific Information provided to Genentech **[*]** the Existing Compound or EXEL-5518 **[*]**, and the physical compound provided to Genentech under this Agreement as the Existing Compound is MEK Compound referred to internally at Exelixis as "EXEL-5518" or "XL-518"; and

(h) Exelixis Controls, with respect to the license set forth in Section 7.1(b) for the Existing Compound and Licensed Products containing such Existing Compound, **[*]** in the course of **[*]** of the Existing Compound **[*]** the Effective Date.

12.3 Genentech Warranty. Genentech represents and warrants that, as of the Effective Date, it owns or possesses adequate licenses to grant the licenses and perform the obligations herein.

12.4 Third Party Rights. Each Party represents and warrants to the other Party that, to its knowledge as of the Effective Date, performing its obligations under this Agreement will not in itself constitute a violation of a contractual or fiduciary obligation owed to any Third Party (including without limitation misappropriation of trade secrets).

12.5 Notice of Infringement or Misappropriation. Each Party represents and warrants to the other Party that, as of the Effective Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any Third Party in relation to any technology to be used in connection with the Collaboration.

ARTICLE 13

THIRD PARTY CLAIMS AND INDEMNIFICATION

13.1 Third Party Claims. If Exelixis receives notice or otherwise has knowledge, of a Claim (as defined in Section 13.2) related to any Licensed Product or Collaboration Compound, Exelixis promptly shall inform Genentech. If Genentech receives notice or otherwise has knowledge of a Claim for which Genentech reasonably expects to request indemnification from Exelixis under this Article 13, Genentech promptly shall inform Exelixis. The Parties then shall discuss a strategy on how to defend against such Claim. If the Claim is one likely to be subject to indemnification by one Party under Section 13.2, then the procedures in Section 13.4 apply. If the Claim is not a Claim subject to indemnification by one Party under Section 13.2, then the Parties shall meet and consult regarding the best way to proceed. If the Claim is of the type addressed in Article 9, the provisions of Article 9 apply. Final decisions regarding defense and settlement of Claims related to a Licensed Product or Collaboration Compound shall be made by **[*]** except if **[*]** is the indemnifying Party. Unless and to the extent **[*]** is the indemnifying Party, in no event may **[*]** settle or compromise any Claim related to a Licensed Product or Collaboration Compound without the prior written consent of **[*]**. **[*]**.

13.2 Mutual Indemnification. Subject to this Section 13.2, to the last two sentences of Section 13.1, and to Section 13.4, each Party hereby agrees to indemnify, defend and hold the other Party, its Affiliates, and its and their officers, directors, and employees (collectively, the **"Indemnitees"**) harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Indemnitees (collectively, **"Damages"**), all to the extent resulting from claims, suits, proceedings or causes of action brought by such Third Party (**"Claims"**) against such Indemnitee based on or alleging: (a) a breach of warranty by the indemnifying Party contained in this Agreement; (b) violation of applicable law by such indemnifying Party related to or in the course of the performance of this Agreement; or (c) **[*]**) or willful misconduct of a Party, its Affiliates or sublicensees, or their respective employees, officers, and directors related to or in the course of the performance of this Agreement. Subject to Section 13.4, Genentech hereby agrees to indemnify, defend and hold the Exelixis Indemnitees harmless from and against any and all Damages to the extent resulting Claims against such Indemnitees that are based on or alleging any action or failure to act occurring in the Other Territory except to the extent such Claim is based on or alleges: (i) a breach of warranty by Exelixis contained in this Agreement; (b) violation of applicable law by Exelixis related to or in the course of the performance of this Agreement; or (c) **[*]** or willful misconduct of Exelixis, its Affiliates or sublicensees, or their respective employees, officers, and directors related to or in the course of the performance of this Agreement.

13.3 Damages for Third Party Claims Related to Licensed Products. Damages from Third Party claims relating to the manufacture, use, handling, storage, sale or other disposition of any Licensed Product in the Profit-Share Territory, including without limitation Damages from claims of infringement of Third Party Patent rights, **[*]**, except that Damages **[*]** to the extent such Damages result from: (i) breach of warranty, (ii) material breach of this Agreement, (iii) violation of applicable law in the course of the performance of its obligations under this Agreement; or (iv) **[*]**) or willful misconduct by a Party, its sublicensees, or their respective employees.

13.4 Conditions to Indemnification. As used herein, **"Indemnitee"** means a party entitled to indemnification under the terms of Section 13.2. It shall be a condition precedent to an Indemnitee's right to seek indemnification under such Section 13.2 that the Indemnitee: (a) informs the indemnifying Party of a Claim as soon as reasonably practicable after it receives notice of the Claim; (b) if the indemnifying Party acknowledges that such Claim falls within the scope of its indemnification obligations hereunder, permits the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Claim (including the right to settle the Claim solely for monetary consideration); provided, however, that the indemnifying Party shall seek the prior written consent (not to be unreasonably withheld or delayed) of any such Indemnitee as to any settlement which would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and provided further that if Exelixis is the indemnifying Party and the Claim involves a Licensed Product, then Genentech has the right to approve a settlement or compromise that would damage or have the effect of damaging Genentech's strategy for defending or settling similar claims and would not require any particular activities or oversight regarding marketing or selling a Licensed Product;

and (c) fully cooperates (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Claim. Provided that an Indemnitee has complied with the foregoing, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Claim. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Claim using attorneys of its/his/her choice and at its/his/her expense. In no event may an Indemnitee settle or compromise any Claim for which it/he/she intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party, or the indemnification provided under such Section 13.2 as to such Claim shall be null and void.

13.5 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION FROM THE OTHER PARTY PURSUANT TO SECTION 13.2, AND EXCEPT FOR BREACH OF ARTICLE 10 HEREOF (CONFIDENTIALITY) OR SECTION 3.7 (EXCLUSIVITY), IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES OR SUBLICENSEES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY.

13.6 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 12 ABOVE, EACH PARTY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, TARGETS, ASSAYS, MOLECULES, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY SUCH PARTY AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO THE OTHER PARTY PURSUANT TO THE TERMS OF THIS AGREEMENT.

ARTICLE 14

INSURANCE

14.1 Insurance Coverages. Each Party shall maintain, at its own cost, the insurance coverages set forth in this Section 14.1; *provided, however*, **[*]**.

(a) Commencing as of the Effective Date, each Party shall obtain and maintain on an ongoing basis, Commercial General Liability insurance, including contractual liability, in a minimum amount of **[*]** per occurrence (combined single limit for bodily injury and property damage liability) during any period in which either Party is **[*]** (as such period may be extended under Section 14.2(c)), and **[*]** during any other period.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(b) During any period in which a Party is **[*]** (as such period may be extended under Section 14.2(c)), such Party shall obtain and maintain on an ongoing basis, Products Liability insurance, including contractual liability, in the minimum amount of **[*]** per occurrence, combined single limit for bodily injury and property damage liability.

14.2 Additional Requirements. Except **[*]**, the following provisions apply:

(a) All insurance coverages shall be primary insurance with respect to each Party's own participation under this Agreement, and shall be maintained with an insurance company or companies having an A.M. Best's rating (or its equivalent) of **[*]** or better.

(b) [*] shall name **[*]** as an **[*]** under its Commercial General Liability and Products Liability insurance policies.

(c) The insurance policies shall be under an occurrence form, but if only a claims-made form is available to a Party, then in such a case, such Party shall maintain the insurance coverage for at least **[*]** following the period during which such coverage is required under Section 14.1.

(d) Each Party's aggregate deductibles under its Commercial General Liability and Products Liability and other insurance policies shall be **[*]**, taking into account the deductibles that are prudent and customary with respect to the activities in which it is engaged under this Agreement.

(e) Upon request, each Party shall provide to the other Party its respective certificates of insurance evidencing the insurance coverages set forth in Section 14.2. Each Party shall provide to the other Party at least **[*]** prior written notice of any cancellation, nonrenewal or material change in any of the insurance coverages. Each Party shall, upon receipt of written request from the other Party, provide renewal certificates to the other Party for as long as such Party is required to maintain insurance coverages hereunder.

ARTICLE 15

MISCELLANEOUS

15.1 Complete Agreement; Modification. This Agreement constitutes the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and all prior agreements respecting the subject matter hereof, either written or oral, expressed or implied, are superseded hereby, merged and canceled, and are null and void and of no effect. No amendment or change hereof or addition hereto shall be effective or binding on either of the Parties hereto unless reduced to writing and duly executed on behalf of both Parties.

15.2 Governing Law. Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of California, without regard to conflicts of law rules requiring the application of different law.

15.3 Dispute Resolution.

(a) Internal Resolution. Except as otherwise expressly provided herein (including, without limitation, under Section 2.2(c)), in the event of any controversy, claim or other dispute arising out of or relating to any provision of this Agreement or the interpretation, enforceability, performance, breach, termination or validity hereof (a "Dispute"), such Dispute shall be first referred to **[*]** Genentech **[*]** and **[*]** of Exelixis for resolution, prior to proceeding under the following provisions of this Section 15.3. A Dispute shall be referred to such executives upon any Party providing the other Party with written notice that such Dispute exists, and such executives, or their designees, shall attempt to resolve such Dispute through good faith discussions. In the event that such Dispute is not resolved within **[*]** of such other Party's receipt of such written notice, either Party may initiate the dispute resolution procedures set forth in Section 15.3(b).

(b) Arbitration. Except as otherwise expressly provided in this Agreement, the Parties agree that any Dispute not resolved internally by the Parties pursuant to Section 15.3(a) must be finally resolved through binding arbitration by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures in effect at the time the Dispute arises, except as modified in this Agreement, applying the substantive law specified in Section 15.2. A Party may initiate an arbitration by written notice to the other Party of its intention to arbitrate, and such demand notice shall specify in reasonable detail the nature of the Dispute. Each Party shall select one (1) arbitrator, and the two (2) arbitrators so selected shall choose a third arbitrator (**[*]**) to resolve the Dispute, and all three (3) shall serve as neutrals. If a Party fails to nominate its arbitrator, or if the Parties' arbitrators cannot agree on the third arbitrator, the necessary appointments shall be made in accordance with the then prevailing Comprehensive Arbitration Rules and Procedures. Within **[*]** of the conclusion of an arbitration proceeding, the arbitration decision shall be rendered in writing and shall specify the basis on which the decision was made. The award of the arbitration tribunal shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted in San Francisco, California. The Parties agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator, except as otherwise set forth in the Agreement. Each Party shall bear its own attorneys' fees and associated costs and expenses.

(c) Patent Validity; Equitable Relief. Notwithstanding the other provisions of this Section 15.3, any Dispute that involves the validity, infringement or claim interpretation of a Patent: (i) that is issued in the United States, shall be subject to actions before the United States Patent and Trademark Office and/or submitted exclusively to the federal court located in the jurisdiction of the district where any of the defendants resides; and (ii) that is issued in any other country, shall be brought before an appropriate regulatory or administrative body or court

in that country, and the Parties hereby consent to the jurisdiction and venue of such courts and bodies. For the sake of clarity, such patent disputes shall not be subject to the provisions of Section 15.3(b). Notwithstanding the other provisions of this Section 15.3, any Dispute that involves the need to seek preliminary or injunctive measures or other equitable relief (e.g., in the event of a potential (or actual) breach of the confidentiality and non-use provisions in Article 10) need not be resolved through the procedure described in Sections 15.3(a) or (b) but may be immediately brought in a court of competent jurisdiction.

15.4 Consents Not Unreasonably Withheld or Delayed. Whenever provision is made in this Agreement for either Party to secure the consent or approval of the other, that consent or approval shall not unreasonably be withheld or delayed, and whenever in this Agreement provisions are made for one Party to object to or disapprove a matter, such objection or disapproval shall not unreasonably be exercised.

15.5 Assignment and Change of Control. Neither Party may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, except, that either Party may assign this Agreement, without the consent of the other Party in connection with a Change of Control, conditioned on providing notice of that Change of Control to the other Party, and, with respect to Exelixis, also subject to the following. If Exelixis is subject to a Change of Control, then: (a) **[*]**. Any purported assignment in contravention of this Section 15.5 shall be null and void and of no effect. No assignment shall release either Party from responsibility for the performance of any accrued obligation of such Party hereunder. This Agreement shall be binding upon and enforceable against the successor to or any permitted assignees from either of the Parties. For purposes of this Section 15.5, **"Change of Control"** means: (i) any stock acquisition, reorganization, merger, consolidation or similar transaction or series of transactions of Exelixis, other than a transaction or series of transactions in which the holders of the voting securities of Exelixis outstanding immediately prior to such transaction or series of transactions continue to retain at least fifty percent (50%) of the total voting power represented by the voting securities of Exelixis or the surviving entity outstanding immediately after consummation of such transaction or series of transactions; or (ii) a sale or other conveyance of all or substantially all of the assets of Exelixis by means of a transaction or series of transactions to another entity.

15.6 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given as of the day of personal delivery, one (1) day after the date sent by facsimile service, or on the day of successful delivery to the other Party confirmed by the courier service.

For Exelixis: Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
Attention: SVP, Patents and Licensing
Phone: +1 650-837-7000
Fax: +1 650-837-8300

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

With a copy to:	Cooley Godward Kronish LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Robert L. Jones, Esq. Phone: +1 650-843-5000 Fax: +1 650-849-7400
For Genentech:	Corporate Secretary Genentech, Inc. 1 DNA Way South San Francisco, CA 94080 Phone: +1 650-225-1672 Fax: +1 650-952-9881
With a copy to:	Vice President of Alliance Management Genentech, Inc. 1 DNA Way South San Francisco, CA 94080 Phone: +1 650-225-1000 Fax: +1 650-467-3294

15.7 Force Majeure. Each Party shall be excused from the performance of its obligations (other than payment obligations) under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, **"force majeure"** shall include conditions beyond the control of the Parties, including an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, act of terrorism, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe.

15.8 Severability; Waiver. In the event that any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect without said provision. In such event, the Parties shall in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which shall most nearly approximate the intent of the Parties in entering this Agreement. The failure of a Party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by a Party of a particular provision or right shall be in writing, shall be as to a particular matter and, if applicable, for a particular period of time and shall be signed by such Party.

15.9 Section 365(n) of Bankruptcy Code. All rights and licenses now or hereafter granted under or pursuant to Article 7 of this Agreement are rights to "intellectual property" (as defined in Section 101(35A) of Title 11 of the United States Code, as amended (such Title 11, the **"Bankruptcy Code"**)). The Party granting such a license agrees not to interfere with the receiving Party's exercise of rights and licenses to intellectual property licensed hereunder and embodiments thereof in accordance with this Agreement and agrees to use Diligent Efforts to assist such receiving Party to obtain such intellectual property and embodiments thereof in the possession or control of Third Parties as reasonably necessary or desirable for the receiving Party to exercise such rights and licenses in accordance with this Agreement. The Parties acknowledge and agree that all payments by one Party to the other Party under this Agreement constitute royalties within the meaning of Bankruptcy Code §365(n) or relate to licenses of intellectual property hereunder.

15.10 Cumulative Rights; Further Assurances. The rights, powers and remedies hereunder shall be in addition to, and not in limitation of, all rights, powers and remedies provided at law or in equity, or under any other agreement between the Parties. All of such rights, powers and remedies shall be cumulative, and may be exercised successively or cumulatively. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

15.11 Construction of this Agreement. Except where the context otherwise requires, wherever used, the singular will include the plural, the plural the singular, the use of any gender will be applicable to all genders, and the word **"or"** are used in the inclusive sense. When used in this Agreement, **"including"** means **"including without limitation"**. References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement will be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit or the Exelixis Work Plan, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

15.12 Export Control. This Agreement is made subject to any restrictions concerning the export of products or technical information from the United States of America or other countries which may be imposed upon or related to Exelixis or Genentech from time to time. Each Party agrees that it will not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

15.13 Independent Contractors; Use of Name. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between Exelixis and Genentech is that of independent contractors. The relationship between the Parties under this Agreement is not, and is not intended to be, a joint venture, an agency relationship, or a fiduciary or trust relationship. Neither Party shall have the power to bind or obligate the other Party in any manner. Except as required by law, neither Party shall use the name or trademarks of the other Party for any advertising or promotional purposes without the prior written consent of such other Party.

15.14 Affiliates.

(a) Affiliates Bound. Each Party agrees that it will prohibit each of its Affiliates from taking any action that the Party itself is prohibited from taking under this Agreement. All Affiliates of a Party that perform one or more obligations of that Party under this Agreement, or that Control any intellectual property licensed under this Agreement, are bound by all relevant provisions of this Agreement that employ the terms “Exelixis”, “Genentech”, “Party” or “Parties”. In addition, the Affiliates of a Party that receive any Confidential Information of the other Party pursuant to his Agreement are bound by all obligations set forth in Article 10.

(b) Breach by Affiliates. Each Party acknowledges and agrees that a breach by any of its Affiliates under this Agreement will be treated as a breach by that Party. In that circumstance, each Party expressly waives any requirement that the other Party exhaust any right, power or remedy, or proceed directly against its Affiliate, for any obligation or performance under this Agreement.

15.15 Electronic Data Interchange. If both Parties elect to facilitate business activities hereunder by electronically sending and receiving data in agreed formats (also referred to as Electronic Data Interchange or **“EDI”**) in substitution for conventional paper-based documents, the terms and conditions of this Agreement shall apply to such EDI activities.

15.16 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, each of which shall be binding when sent.

Signature Page Follows

IN WITNESS WHEREOF, Exelixis and Genentech have executed this Collaboration Agreement by their respective duly authorized representatives as of the Effective Date.

EXELIXIS, INC.

By: /s/ George Scangos
Name: George Scangos
Title: President and Chief Executive Officer
Date: December 22, 2006

GENENTECH, INC.

By: /s/ Arthur D. Levinson
Name: Arthur D. Levinson
Title: Chief Executive Officer
Date: December 22, 2006

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Exhibit A

Financial Appendix

Principles of Reporting.

Determination of Operating Profit (Loss) for a Licensed Product in the Profit-Share Territory will be based on each Party's respective financial information. The interpretation of the defined terms in such report shall be in accordance with GAAP and this Agreement.

Gross Sales
less **[*]**
= Operating Profit (Loss)

If necessary, a Party will make the appropriate adjustments to the financial information it supplies under the Agreement to conform to the above format of reporting results of operations.

Accounting and Cost Categories. Definitions of the various categories of revenues, costs and expenses included in Operating Profit (Loss) shall be interpreted in accordance with GAAP. Any costs included in the calculation under one cost category may not be included in the calculation of another cost category. Where the terms of this Financial Appendix would permit inclusion of a cost within more than one cost category, that cost will be allocated to a single cost category consistent with GAAP and the other provisions of this Agreement. **[*]**.

References to "Collaboration"

References in this Financial Appendix to the "**Collaboration**" are references to those activities related to the Licensed Product that would form the basis for Operating Profit (Loss) under this Agreement. The Parties may consolidate accounting of operations related to Licensed Products, and the activities subject to that consolidated accounting also will be referred to the "Collaboration." However, the Collaboration is not a legal entity for financial accounting, income tax reporting or any other purposes

Reporting.

The fiscal year for the Collaboration will be a calendar year.

Each Party is responsible for providing the other Party reports as set forth in the table below, for activities for which it is responsible and costs it incurred and revenue obtained that forms a component of Operating Profit (Loss) for Licensed Products in the Profit-Share Territory.

Reporting will be at the times set forth in the following Report Table, with submissions due on the date indicated or the next business day if such date is a weekend or U.S. holiday:
[*]

The Parties may agree to modify the foregoing reporting cycles and deadlines. In the event that a Party substantially or materially changes its internal reporting cycles and deadlines generally, then the Parties shall discuss, in good faith, appropriate revisions to the foregoing reporting cycles and deadlines to reasonably accommodate such change.

Unless otherwise agreed by the Parties consistent with their responsibilities for sales and marketing, Genentech shall record sales. Without limiting the Parties' reporting obligations as set forth in the Report Table above, on a calendar quarterly basis, **[*]** will supply **[*]** with a statement setting forth that quarter's Operating Profit (Loss) obtained by **[*]** for Licensed Products in the Profit-Share Territory, including the basis for calculation of such amounts. Genentech shall consolidate any Operating Profit (Loss) reported by Exelixis with those obtained directly by Genentech. Each such report shall be provided as early as possible, on the schedule in the chart above.

Each Party will make available a financial representative to coordinate regarding financial aspects of planning, reporting and information sharing, at the request of the other Party: Upon the reasonable request of either Party, the other Party shall answer any question and address any comment from the other Party pertaining to such financial planning and reporting.

Budgets.

Genentech will prepare a consolidated budget for Operating Profit (Loss) for the Collaboration on an **[*]** basis; Exelixis shall provide input for that budget regarding its sales force activities.

Budgets are provided for information and planning purposes, including establishing the initial profit share ratio for the forthcoming calendar year; final sharing of Operating Profit (Loss) on a calendar year basis are based on actual amounts, subject to Section 8.3(a)(v) of the Agreement.

ILLUSTRATIVE EXAMPLE OF PROFIT SHARE CALCULATION

The following two calendar year example is intended to illustrate the determination of Operating Profits (Losses) in the Profit Share Territory and the method of calculating the annual profit share percentages for each Party based on that year's Actual Sales.
[*]

Definitions for Financial Appendix.

"Actual Sales" means, with respect to a particular Licensed Product, the Gross Sales less **[*]**.

"Allocable Overhead" means costs incurred by each Party that are attributable to that Party's **[*]**. The Allocable Overhead shall not include **[*]** and shall not duplicate General & Administrative Expenses hereunder.

"Cost of Sales" means the sum of: (a) Fully Burdened Manufacturing Cost (or **"FBMC"**, as defined below) of a Licensed Product in the Profit-Share Territory (in whatever form), to the extent included pursuant to Section 4.1 of the Agreement; (b) freight, insurance, customs

charges, duty, and other costs of shipping Licensed Products in the Profit-Share Territory to customers (to the extent actually incurred by the shipping Party and not reimbursed by the customer); (c) temporary storage; and (d) the actual costs associated with the technology transfer to a Third Party manufacturer to enable Manufacturing of that Licensed Product, including without limitation any upfront and milestone based payments and startup costs associated therewith.

"Distribution Costs" means the costs, including applicable Allocable Overhead, specifically identifiable to the distribution of a Licensed Product in the Profit-Share Territory, including customer services, collection of data about sales to hospitals and other end users, order entry, billing, shipping, logistics, credit and collection and other such activities.

"Fully Burdened Manufacturing Cost" or **"FBMC"** means one hundred percent (100%) of each Party's actual manufacturing cost (as defined in each Party's accounting policies consistently applied) of goods produced, as determined by each Party manufacturing or contracting with a Third Party for each stage of the manufacturing process, in accordance with GAAP (as used in this definition of FBMC, the "Cost of Goods"), including product quality assurance/control costs, plus applicable Allocable Overhead.

"General and Administrative Costs" or **"G&A Costs"** means costs equal to **[*]** (**"G&A Rate"**) of the sum of **[*]** both Parties shall use such revised G&A Rate going forward in calculating General and Administrative Costs.

"Gross Sales" means the gross amount invoiced by Genentech, its Affiliates or sublicensees (for the purpose of this definition only, the term sublicensee shall include entities to which Genentech sells a Licensed Product in a form other than final form, including without limitation OEM manufacturer and distributors, whether or not a sublicense is expressly granted) for sales of Licensed Products (such products being in final form intended for use by the end user) in the Profit-Share Territory to any Third Party in arms-length transactions. Consideration for sales of Licensed Products in the Profit-Share Territory for other than cash shall be valued at fair market value at the time of final sale. Sales between Genentech and its Affiliates or sublicensees shall be disregarded for purposes of calculating Gross Sales, except if the purchasing entity is the end-user.

"Marketing Costs" means the specific direct costs incurred by Genentech for marketing a Licensed Product in the Profit-Share Territory, including costs incurred for marketing, promotion, advertising, promotional materials, professional education, product related public relations, relationships with opinion leaders and professional societies, market research (before and after product approval), healthcare economics studies, and other similar activities for the Licensed Product in the Profit-Share Territory. Such costs will include internal costs (e.g., salaries, benefits, travel, supplies and materials), applicable Allocable Overhead, and outside services and expenses (e.g., consultants, agency fees, meeting costs), in all cases as directly applicable to a specific Licensed Product in the Profit-Share Territory. The Marketing Costs shall also include activities related to obtaining reimbursement from payers and costs of sales and marketing data, in all cases only as directly applicable to a specific Licensed Product in the Profit-Share Territory. The Marketing Costs will specifically exclude the costs of activities that promote either Party's business as a whole without being product specific (e.g., corporate image advertising).

"Operating Profit (Loss)" means Gross Sales of all Licensed Products in the Profit-Share Territory less the following items with respect to each Licensed Product in the Profit-Share Territory, all for a given period: **[*]**, all of which as properly chargeable and allocable on a Licensed Product-by-Licensed Product basis. All calculations will be made using, and all defined and undefined terms will be construed in accordance with GAAP and consistent with generally accepted costing methods (including appropriate Allocable Overhead) for similar products in the pharmaceutical industry.

"Other Operating Income/Expense" means any of the following: (a) **[*]** of any Licensed Product in the Profit-Share Territory, to the extent not previously captured; (b) amounts with respect to**[*]** that will be shared pursuant to Article **[*]** of this Agreement; (c) costs of **[*]** with respect to the Licensed Product (provided that if such costs are allocated between products the Parties will discuss the method of such allocation, which method must be reasonable); (d) costs of **[*]** that, pursuant to Article **[*]**, will be included in Operating Profit (Loss); (e) costs to **[*]**; and (f) any **[*]** of Licensed Products in the Profit-Share Territory, excluding any **[*]** already accounted for in Fully Burdened Manufacturing Cost.

"Report Table" means the table set forth in this Appendix that specifies the frequency and timing of submissions for specific reporting events.

"Sales Costs" means costs, including Allocable Overhead, incurred by a Party pursuant to sales activities pursuant to a Promotion Plan or otherwise authorized under this Agreement for a Licensed Product in the Profit-Share Territory, which costs are specifically identifiable with such authorized sales efforts for Licensed Products in the Profit-Share Territory, with respect to all markets, including the managed care market.

"Sales Returns and Allowances" means the sum of (a) and (b), where:

(a) is a provision, determined by a Party under GAAP for sales of Licensed Products in the Profit-Share Territory for (i) trade, cash and quantity discounts on Licensed Products in the Profit-Share Territory granted and which are included in the determination of Gross Sales; (ii) credits or allowances given or made for rejection or return of previously sold Licensed Products in the Profit-Share Territory or for retroactive price reductions (including rebates similar to Medicare and/or Medicaid); (iii) sales tax, VAT taxes, and other taxes, duties or other governmental charges levied on or measured by the billing amount for Licensed Products in the Profit-Share Territory, as adjusted for rebates or refunds, that are borne by the seller thereof and that are not refundable and to the extent noncreditable; and (iv) discounts pursuant to indigent patient programs and patient discount programs, including the impact of price caps and patient assistance programs; and

(b) is a periodic adjustment of the provision determined in clause (a) to reflect amounts actually incurred by each Party in the Territory for items (i), (ii), (iii), and (iv) in clause (a). The provision allowed in clause (a) and adjustments made in clause (b) (if any) will be reviewed by the financial representatives from the Parties.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit B

Development Criteria

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit D

Development Plan and Development End-Point

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit E

Certain Research to be Performed by the Parties for the Existing Compound

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit F

TERMS OF CO-PROMOTION AGREEMENT

Without limiting the generality of either Party's rights and obligations contained in the Agreement, the Co-Promotion Agreement shall, in addition to such other terms as the Parties may agree and as are customary in an agreement of that type, include the following terms and conditions, unless otherwise agreed upon by the Parties:

Allocation of Promotional Responsibilities	Each year, the JCC shall decide the activities to be performed by each Party during the upcoming calendar year for the promotion of a Licensed Product in the Profit-Share Territory based on indication(s) then available and expected to be available during the calendar year for co-promotion of the Licensed Product in the Profit-Share Territory. The promotional activities shall be reviewed and may be modified or adjusted during a calendar year if both Parties so agree. As a fundamental principle of co-promotion in the Profit-Share Territory, Exelixis shall have the right to field up to [*] of the total [*] within the sales force for the Licensed Product, over a calendar year. Genentech shall have the right to [*], and the [*].
Details	The JCC shall establish sales promotion thresholds, measures of sales performance and shortfall provisions (*e.g.*, the target number of and allocation thereof between the Parties, and the remedies in case of shortfall of the allocated activities by one Party, etc.) in the definitive Co-Promotion Agreement.
Breach	The Parties shall jointly establish standards and consequences for material breach of the co-promotion obligations (*e.g.*, the threshold of material breach and remedies therefor, including without limitation the possibility of termination of the breaching Party's co-promotion right, etc.) set forth in the definitive Co-Promotion Agreement.
[*]	Exelixis shall not **[*]**

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit G: Press Release

Contact:
Charles Butler
Director,
Corporate Communications
Exelixis, Inc.
(650) 837-7277
cbutler@exelixis.com

EXELIXIS SIGNS CO-DEVELOPMENT AGREEMENT WITH GENENTECH FOR SMALL MOLECULE ONCOLOGY COMPOUND

-New Collaboration Focuses on Novel Compound Targeting MEK-

South San Francisco, CA – January 2, 2006 – Exelixis, Inc. (Nasdaq: EXEL) today announced that it has entered into an agreement with Genentech, Inc. for the worldwide co-development of XL518, a small-molecule inhibitor of MEK. Exelixis submitted an Investigational New Drug application (IND) for XL518 to the U.S. Food and Drug Administration (FDA) on December 20, 2006. MEK, also known as mitogen activated protein kinase (MAPK) kinase, is a key component of the RAS/RAF/MEK/ERK pathway, which is frequently activated in human tumors. Inappropriate activation of the MEK/ERK pathway can promote cell growth in the absence of exogenous growth factors.

Under the terms of the agreement, Exelixis will receive upfront and milestone payments totaling $40 million upon signing of the agreement and with the submission of the IND for XL518 to the FDA. Exelixis is responsible for developing XL518 through the end of Phase I. If Genentech exercises its option to further develop XL518, Exelixis will receive an additional payment and Genentech will be responsible for further development, including all further development costs. Exelixis has the option to co-promote in the United States along with Genentech. Exelixis has a substantial share in the marketing and commercialization costs, as well as an initial equal share in profits in the United States, which will decrease as sales increase. Exelixis will receive royalties on any sales of the product which may be commercialized outside the United States.

“Genentech is a leading innovator of important new cancer therapies, and we believe that this collaboration validates the significant potential of XL518 to be the first in a new class of drugs targeting critical intracellular signaling pathways,” said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. “This collaboration also combines our world class drug discovery and development platform with Genentech’s proven track record in commercializing novel compounds that positively impact the lives of patients with cancer. This is our second strategic collaboration with Genentech, and we look forward to strengthening our relationship with Genentech on the development of this promising compound.”

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company

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is leveraging its fully integrated drug discovery platform to fuel the growth of its development pipeline, which is primarily focused on cancer. Currently, Exelixis' broad product pipeline includes investigational compounds in Phase II and Phase I clinical development for cancer and renal disease. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including GlaxoSmithKline, Bristol-Myers Squibb Company, Genentech, Wyeth Pharmaceuticals and Sankyo. For more information, please visit the company's web site at www.exelixis.com.

Forward Looking Statement

This press release contains forward-looking statements, including, without limitation, all statements related to the clinical and commercial potential of XL518 as well as anticipated payments, costs and profits under the agreement. Words such as "believes," "anticipates," "plans," "expects," "intends," "will," and similar expressions are intended to identify forward-looking statements. These forward-looking statements are based upon Exelixis' current expectations. Forward-looking statements involve risks and uncertainties and past performance is not indicative of future results. Exelixis' actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, the risk that products candidates that appeared promising in early research do not demonstrate safety or efficacy in clinical trials; the ability of the company to advance preclinical compounds into clinical development; the uncertainty of the FDA approval process; and the therapeutic and commercial value of the company's compounds. These and other risk factors are discussed under "Risk Factors" and elsewhere in Exelixis' quarterly report on Form 10-Q for the quarter ended September 30, 2006 and other filings with the Securities and Exchange Commission. Exelixis expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

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Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-124536, 333-113472, 333-102770, 333-82724, 333-82722, 333-57026, 333-54868, 333-52434 and 333-35862) pertaining to the Exelixis, Inc. 401(k) Plan, the 2000 Equity Incentive Plan, the 2000 Employee Stock Purchase Plan and the 2000 Non-Employee Directors' Stock Option Plan of Exelixis, Inc. and the Registration Statements on Form S-3 (Nos. 333-66134, 333-119984 and 333-122079), of our reports dated February 14, 2007 with respect to the consolidated financial statements of Exelixis, Inc., Exelixis, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Exelixis, Inc., included in this Annual Report (Form 10-K) for the year ended December 29, 2006.

/s/ Ernst & Young LLP

Palo Alto, California
February 23, 2007

Exhibit 31.1

CERTIFICATION

I, George A. Scangos, Ph.D., Chief Executive Officer of Exelixis, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ GEORGE A. SCANGOS
George A. Scangos
President and Chief Executive Officer

Date: February 27, 2007

Exhibit 31.2

CERTIFICATION

I, Frank Karbe, Chief Financial Officer of Exelixis, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ FRANK KARBE
Frank Karbe
Chief Financial Officer

Date: February 27, 2007

Exhibit 32.1

CERTIFICATION

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350, as adopted), George A. Scangos, Ph.D., the Chief Executive Officer of Exelixis, Inc. (the "Company"), and Frank Karbe, the Chief Financial Officer of the Company, each hereby certifies that, to their knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 29, 2006, to which this Certification is attached as Exhibit 32.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition of the Company at the end of the periods covered by the Annual Report and the results of operations of the Company for the periods covered by the Annual Report.

In Witness Whereof, the undersigned have set their hands hereto as of the 27th day of February 2007.

/s/ GEORGE A. SCANGOS, PH.D.
George A. Scangos, Ph.D.
Chief Executive Officer
(Principal Executive Officer)

/s/ FRANK KARBE
Frank Karbe
Chief Financial Officer
(Principal Financial Officer)