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

FORM 10-Q

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

For the quarterly period ended July 3, 2009

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: 000-30235

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 No.)**

249 East Grand Ave.
P.O. Box 511
South San Francisco, CA 94083-0511
(Address of Principal Executive Offices) (Zip Code)

(650) 837-7000
(Registrant's Telephone Number, Including Area Code)

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

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

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

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

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

As of July 24, 2009 there were 107,337,212 shares of the registrant's common stock outstanding.

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EXELIXIS, INC.

QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED JULY 3, 2009

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PART I – FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

EXELIXIS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

	June 30, 2009 (unaudited)	December 31, 2008 [1]
ASSETS		
Current assets:		
Cash and cash equivalents	$ 152,912	$ 247,698
Marketable securities	42,993	—
Investments held by Symphony Evolution, Inc.	—	14,703
Other receivables	8,860	1,457
Prepaid expenses and other current assets	8,882	7,713
Total current assets	213,647	271,571
Restricted cash and investments	4,744	4,015
Long-term marketable securities	12,406	17,769
Property and equipment, net	30,696	36,247
Goodwill	63,684	63,684
Other assets	8,000	8,336
Total assets	$ 333,177	$ 401,622
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 7,904	$ 4,946
Accrued clinical trial liabilities	15,140	22,551
Other accrued liabilities	15,467	14,007
Accrued compensation and benefits	13,910	16,142
Current portion of notes payable and bank obligations	12,689	14,911
Current portion of convertible loans	28,050	28,050
Deferred revenue	91,314	88,936
Total current liabilities	184,474	189,543
Notes payable and bank obligations	12,406	17,769
Convertible loans	56,950	56,950
Other long-term liabilities	23,505	22,620
Deferred revenue	179,461	171,001
Total liabilities	456,796	457,883
Commitments		
Stockholders' deficit:		
Exelixis, Inc. stockholders' deficit:		
Common stock	107	106
Additional paid-in-capital	911,699	897,423
Accumulated other comprehensive income	20	—
Accumulated deficit	(1,035,445)	(954,504)
Total Exelixis, Inc. stockholders' deficit	(123,619)	(56,975)
Noncontrolling interest	—	714
Total stockholders' deficit	(123,619)	(56,261)
Total liabilities and stockholders' deficit	$ 333,177	$ 401,622

[1] The condensed consolidated balance sheet at December 31, 2008 has been derived from the audited consolidated financial statements at that date but does not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements.

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

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Revenues:				
Contract	$ 6,299	$ 16,757	$ 13,006	$ 35,381
License	21,103	13,655	39,699	22,974
Total revenues	27,402	30,412	52,705	58,355
Operating expenses:				
Research and development	55,036	68,869	110,380	134,842
General and administrative	8,739	10,228	17,268	18,919
Collaboration cost sharing	1,639	—	(158)	—
Total operating expenses	65,414	79,097	127,490	153,761
Loss from operations	(38,012)	(48,685)	(74,785)	(95,406)
Other income (expense):				
Interest income and other, net	367	1,471	921	3,984
Interest expense	(2,118)	(1,254)	(4,234)	(2,215)
Gain on sale of business	1,800	—	1,800	—
Loss on deconsolidation of Symphony Evolution, Inc.	(9,826)	—	(9,826)	—
Total other income (expense), net	(9,777)	217	(11,339)	1,769
Consolidated loss before taxes	(47,789)	(48,468)	(86,124)	(93,637)
Income tax benefit	846	—	846	—
Consolidated net loss	(46,943)	(48,468)	(85,278)	(93,637)
Loss attributable to noncontrolling interest.	2,181	3,344	4,337	7,239
Net loss attributable to Exelixis, Inc.	$ (44,762)	$ (45,124)	$ (80,941)	$ (86,398)
Net loss per share, basic and diluted, attributable to Exelixis, Inc.	$ (0.42)	$ (0.43)	$ (0.76)	$ (0.82)
Shares used in computing basic and diluted loss per share amounts	106,840	105,340	106,612	105,166

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

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Six Months Ended June 30,	
	2009	2008
Cash flows from operating activities:		
Consolidated net loss	$ (85,278)	$ (93,637)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	6,441	6,561
Stock-based compensation expense	11,573	11,293
Gain on sale of business	(1,800)	—
Loss on deconsolidation of Symphony Evolution, Inc.	9,826	—
Other	195	592
Changes in assets and liabilities:		
Other receivables	(3,702)	(417)
Prepaid expenses and other current assets	(1,170)	(2,050)
Other assets	741	(3,536)
Accounts payable and other accrued expenses	(3,096)	1,994
Other long-term liabilities	885	1,330
Deferred revenue	10,838	(29,317)
Net cash used in operating activities	(54,547)	(107,187)
Cash flows from investing activities:		
Purchases of investments held by Symphony Evolution, Inc.	(49)	(468)
Proceeds on sale of investments held by Symphony Evolution, Inc.	4,497	9,027
Purchases of property and equipment	(842)	(11,534)
Increase (decrease) in restricted cash and investments	(729)	1,544
Proceeds from maturities of marketable securities	5,363	43,301
Proceeds from sale of marketable securities	—	5,400
Purchases of marketable securities	(43,020)	(9,279)
Net cash (used in) provided by investing activities	(34,780)	37,991
Cash flows from financing activities:		
Proceeds from exercise of stock options and warrants	2	294
Proceeds from employee stock purchase plan	2,150	2,142
Proceeds from note payable and bank obligations	—	13,619
Principal payments on notes payable and bank obligations	(7,586)	(7,269)
Repayments, net from deconsolidation of Symphony Evolution, Inc.	(25)	—
Net cash (used in) provided by financing activities	(5,459)	8,786
Net decreases in cash and cash equivalents	(94,786)	(60,410)
Cash and cash equivalents, at beginning of period	247,698	135,457
Cash and cash equivalents, at end of period	$152,912	$ 75,047
Non-cash investing and financing activities:		
Warrants issued in conjunction with Deerfield financing agreement	—	3,438

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

EXELIXIS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2009
(unaudited)

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.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and pursuant to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the information and footnotes required by U.S. generally accepted accounting principles ("GAAP") for complete financial statements. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the results of operations and cash flows for the period presented have been included.

Exelixis has adopted a 52- or 53-week fiscal year that ends on the Friday closest to December 31 st of each year. Fiscal year 2008, a 53-week year, ended on January 2, 2009, and fiscal year 2009, a 52-week year, will end on January 1, 2010. For convenience, references in these Condensed Consolidated Financial Statements and Notes as of and for the fiscal year ended January 2, 2009 are indicated on a calendar year basis, ended December 31, 2008 and as of and for the fiscal quarters ended June 27, 2008 and July 3, 2009 are indicated as ended June 30, 2008 and 2009, respectively. The Company has evaluated subsequent events through July 30, 2009, the date on which the financial statements being presented were available to be issued, and not beyond that date.

Operating results for the three- and six-month periods ended June 30, 2009 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2009 or for any future period. These financial statements and notes should be read in conjunction with the consolidated financial statements and notes thereto for the fiscal year ended December 31, 2008 included in our Annual Report on Form 10-K filed with the SEC on March 10, 2009.

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. ("SEI"), for which we were the primary beneficiary as defined by Financial Accounting Standards Board ("FASB") Interpretation No. 46 (revised 2003), *Consolidation of Variable Interest Entities*. As of June 9, 2009, our purchase option for SEI expired and as a result, we were not longer considered to be the primary beneficiary. (Refer to Note 6). All significant intercompany balances and transactions have been eliminated.

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 SEI consist of investments in money market funds. As of June 30, 2009 and December 31, 2008, we had no investments held by SEI and investments held by SEI of $14.7 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 or marketable securities that collateralize loan balances. However, they are not restricted to withdrawal. Unrealized gains and losses on available-for-sale investments 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 and restricted cash and investments as of June 30, 2009 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$171,140	$ —	$ —	$171,140
Commercial paper	18,986	—	—	18,986
Corporate bonds	9,661	—	(20)	9,641
U.S. Government agency securities	16,031	40	—	16,071
Total	$215,818	$ 40	$ (20)	$215,838

The following summarizes available-for-sale securities included in cash and cash equivalents and restricted cash and investments as of December 31, 2008 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$270,147	$ —	$ —	$270,147
Total	$270,147	$ —	$ —	$270,147

As of December 31, 2008, we did not have any short-term or long-term marketable securities.

The following summarizes available-for-sale securities included in cash and cash equivalents and restricted cash and investments as of June 30, 2009 by contractual maturity (in thousands):

	Amortized Cost	Fair Value
Mature in less than one year	$209,876	$209,912
Mature in one to three years	5,942	5,926
Total	$215,818	$215,838

Fair Value Measurements

As of January 1, 2008, we adopted FASB Statement No. 157, *"Fair Value Measurements"* ("SFAS 157"). SFAS 157 established a framework for measuring fair value in GAAP and clarified the definition of fair value within that framework. SFAS 157 does not require any new fair value measurements in GAAP. SFAS 157 introduced, or reiterated, a number of key concepts which form the foundation of the fair value measurement approach to be utilized for financial reporting purposes. The fair value of our financial instruments reflects the amounts that would be received upon sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). SFAS 157 also established a fair value hierarchy that prioritizes the use of inputs used in valuation techniques into the following three levels:

Level 1—quoted prices in active markets for identical assets and liabilities.

Level 2—observable inputs other than quoted prices in active markets for identical assets and liabilities.

Level 3—unobservable inputs.

The adoption of SFAS 157 did not have a material effect on our financial condition and results of operations, but SFAS 157 introduced new disclosures about how we value certain assets and liabilities. Much of the disclosure is focused on the inputs used to measure fair value, particularly in instances where the measurement uses significant unobservable (Level 3) inputs. Our financial instruments are valued using quoted prices in active markets or based upon other observable inputs. The following tables set forth the fair value of our financial assets for the periods ended June 30, 2009 and December 31, 2008, respectively (in thousands):

As of June 30, 2009:

	Level 1	Level 2	Level 3	Total
Cash equivalents and marketable securities	$171,140	$44,698	$ —	$215,838
Investments held by Symphony Evolution, Inc.	—	—	—	—
Total	$171,140	$44,698	$ —	$215,838

As of December 31, 2008:

	Level 1	Level 2	Level 3	Total
Cash equivalents and marketable securities	$270,147	$ —	$ —	$270,147
Investments held by Symphony Evolution, Inc.	14,703	—	—	14,703
Total	$284,850	$ —	$ —	$284,850

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. We have outstanding balances associated with our convertible loan with GlaxoSmithKline and various equipment lines of credit. The estimated fair value of our outstanding debt was as follows (in thousands):

	June 30, 2009	December 31, 2008
GlaxoSmithKline convertible loan	$73,831	$ 77,121
Equipment lines of credit	24,931	30,388
Total	$98,762	$ 107,509

At June 30, 2009 and December 31, 2008, we had debt outstanding of $110.1 million and $117.7 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.

Collaboration Arrangements

As of January 1, 2009, we adopted Emerging Issues Task Force Issue No. 07-1, “Accounting for Collaborative Arrangements” (“EITF 07-1”). EITF 07-1 requires participants in a collaborative arrangement to present the results of collaboration activities and also requires significant disclosures related to these collaborative arrangements. Collaborative agreement reimbursement revenue or collaboration cost sharing expenses are recorded as earned or owed based on the performance requirements by both parties under the respective contracts. Under our 2007 cancer collaboration with Bristol-Myers Squibb Company (“Bristol-Myers Squibb”), we are not currently an active participant, as Bristol-Myers Squibb is responsible for leading all further development and commercialization of the compounds under the collaboration, and we are responsible for reimbursing Bristol-Myers Squibb for 35% of the shared costs. The presentation and disclosure requirements of EITF 07-1 are not applicable to the 2007 cancer collaboration at this time. However, under our 2008 cancer collaboration with Bristol-Myers Squibb, both parties are actively involved with compound development and certain research and development expenses are partially reimbursable to us on a net basis by compound. On an annual basis, amounts owed by Bristol-Myers Squibb to us, net of amounts reimbursable to Bristol-Myers Squibb by us on those projects, are recorded as collaboration revenue. Conversely, research and development expenses may include the net settlement of amounts we owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred on joint development projects, less amounts reimbursable to us by Bristol-Myers Squibb on these projects. In annual periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost-sharing expense.

Recent Accounting Pronouncements

In May 2009, the FASB issued Statement No. 165, Subsequent Events (“SFAS 165”). SFAS 165 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. SFAS 165 requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. SFAS 165 is effective on a prospective basis for interim or annual financial reporting periods ending after June 15, 2009. The adoption of SFAS 165 had no material effect on the Company’s financial condition or consolidated results of operations.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements – an amendment of Accounting Research Bulletin No. 51” (“SFAS 160”). SFAS 160 establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributed to the parent and to the noncontrolling interest, changes in a parent’s ownership interest and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. SFAS 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS 160 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and was adopted by us in the first quarter of fiscal 2009. The adoption did not have a material impact on the Company’s consolidated results or operations or financial condition; however, it did modify the presentation of our financial results.

Effective April 1, 2009, the Company adopted Financial Accounting Standards Board, or FASB, Staff Position No. FAS 115-2 (“FSP FAS 115-2”). FSP FAS 115-2 amends SFAS 115, “Accounting for Certain Investments in Debt and Equity Securities” to make the other-than-temporary impairments guidance more operational and to improve the presentation of other-than-temporary impairments in the financial statements. FSP FAS 115-2 replaces the existing requirement that the entity’s management assert it has both the intent and ability to hold an impaired debt security until recovery with a requirement that management assert it does not have the intent to sell the security, and it is more likely than not it will not have to sell the security before recovery of its cost basis. FSP FAS 115-2 requires increased and more frequent disclosures regarding expected cash flows, credit losses, and an aging of securities with unrealized losses. The adoption of FSP FAS 115-2 had no material effect on the Company’s financial condition or consolidated results of operations.

NOTE 2. Comprehensive Loss

Comprehensive loss represents net loss plus the results of certain stockholders’ deficit changes, which are comprised of unrealized gains and losses on available-for-sale securities, not reflected in the consolidated statements of operations. Comprehensive loss was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Consolidated net loss	$(46,943)	$(48,468)	$(85,278)	$(93,637)
Increase in unrealized gains (losses) on available-for-sale securities	17	(626)	20	120
Reclassification for losses on marketable securities recognized in earnings	—	(8)	—	(17)
Comprehensive loss	(46,926)	(49,102)	(85,258)	(93,534)
Comprehensive loss attributable to the noncontrolling interest	2,181	3,344	4,337	7,239
Comprehensive loss attributable to Exelixis	$(44,745)	$(45,758)	$(80,921)	$(86,295)

NOTE 3. Stock-Based Compensation

Under SFAS No. 123 (revised 2004), “Share-Based Payment” (“SFAS 123R”), we recorded and allocated employee stock-based compensation expenses as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Research and development expense	$ 4,533	$ 3,662	$ 7,809	$ 7,212
General and administrative expense	1,940	1,937	3,738	4,031
Total employee stock-based compensation expense	$ 6,473	$ 5,599	$11,547	$11,243

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. 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 Three Months Ended June 30,		ESPP Three Months Ended June 30,	
	2009	2008	2009	2008
Weighted average fair value of awards	$ 2.76	$ 4.17	$ 1.69	$ 2.75
Risk-free interest rate	2.20%	3.12%	0.18%	2.53%
Dividend yield	0%	0%	0%	0%
Volatility	67%	61%	65%	57%
Expected life	5.6 years	5.2 years	0.2 years	0.5 years

	Stock Options Six Months Ended June 30,		ESPP Six Months Ended June 30,	
	2009	2008	2009	2008
Weighted average fair value of awards	$ 2.67	$ 4.65	$ 1.77	$ 3.05
Risk-free interest rate	2.23%	3.20%	0.15%	3.27%
Dividend yield	0%	0%	0%	0%
Volatility	67%	61%	66%	55%
Expected life	5.6 years	5.2 years	0.1 years	0.5 years

A summary of all stock option activity for the six-month period ended June 30, 2009 is presented below:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at December 31, 2008	24,141,186	$ 9.67		
Granted	1,298,430	$ 4.46		
Exercised	(1,365)	$ 1.33		
Cancelled	(1,337,431)	$ 9.31		
Options outstanding at June 30, 2009	24,100,820	$ 9.40	6.42 years	$470,280
Exercisable at June 30, 2009	16,138,212	$ 10.36	5.37 years	$ 43,251

As of June 30, 2009, $28.7 million of total unrecognized compensation expense related to employee stock options was expected to be recognized over a weighted-average period of 2.34 years.

On July 7, 2009, we commenced a stock option exchange program that had been approved by our stockholders on May 14, 2009. Under SFAS 123R, we expect to recognize any incremental compensation cost of the replacement stock options granted in the exchange. The incremental compensation cost will be measured as the excess, if any, of the fair value of each award of replacement stock options granted to employees in exchange for cancelled stock options, measured as of the date the replacement stock options are granted, over the fair value of the stock options cancelled in exchange for the replacement stock options, measured immediately prior to the cancellation. This incremental compensation cost is expected to be recognized ratably over the vesting period of the replacement stock options beginning in the third quarter ending September 30, 2009 and ending in the third quarter ending September 30, 2012.

NOTE 4. Collaborations

Global License Agreement and Collaboration with sanofi-aventis

On May 27, 2009, we entered into a global license agreement with sanofi-aventis for two of our cancer programs, XL147 and XL765, and a broad collaboration for the discovery of inhibitors of phosphoinositide-3 kinase (“PI3K”) for the treatment of cancer. The license agreement and collaboration agreement became effective on July 7, 2009. In connection with the effectiveness of the license and collaboration, on July 20, 2009, we received upfront payments of $140.0 million ($120.0 million for the license and $20.0 million for the collaboration), less applicable withholding taxes of $7.0 million, for a net receipt of $133.0 million.

Under the license, sanofi-aventis received a worldwide exclusive license to XL147 and XL765, which are currently in phase 1 and phase 1b/2 clinical trials, respectively, and has sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities. We will participate in conducting ongoing and potential future clinical trials and manufacturing activities. Sanofi-aventis is responsible for funding all future development activities with respect to XL147 and XL765, including our activities. Under the discovery collaboration, the parties will combine efforts in establishing several pre-clinical PI3K programs and will jointly share responsibility for research and preclinical activities related to isoform-selective inhibitors of PI3K alpha and beta. Sanofi-aventis will provide guaranteed research and development funding to cover our expenses and is responsible for funding all development activities for each product following approval of the investigational new drug application filed with the United States Food and Drug

Administration, or the foreign equivalent thereof, for such product. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of any products arising from the collaboration; however, we may be requested to conduct certain clinical trials at sanofi-aventis' expense. The research term under the collaboration is three years, although sanofi-aventis has the right to extend the term for an additional one-year period upon prior written notice.

In addition to the aggregate upfront cash payments for the license and collaboration agreements, we are also entitled to receive guaranteed research funding of $21.0 million over three years. For both the license and the collaboration, we will be eligible to receive development, regulatory and commercial milestones of over $1.0 billion in the aggregate, as well as royalties on sales of any products commercialized under the license or collaboration. The aggregate upfront payments of $140.0 million will be recognized over an estimated term of four years, and recorded as license revenue, from the effective date of the agreements. Any milestone payments that we may receive under the agreements will be amortized over the same period but recorded as contract revenue. We will record as operating expenses all costs incurred for work performed by us under the agreements. Reimbursements we receive from sanofi-aventis under the agreements will be recorded as contract revenue commencing as of the effective date, including reimbursements for costs incurred under the license from the date of signing. In addition, the guaranteed research funding that we expect to receive over the three year research term under the collaboration will be recorded as contract revenue commencing as of the effective date of the collaboration. Tax withholding of $7.0 million in connection with the upfront payments will be recognized as income tax expense in the third quarter of 2009.

Sanofi-aventis may, upon certain prior notice to us, terminate the license as to products containing XL147 or XL765. In the event of such termination election, sanofi-aventis' license relating to such product would terminate and revert to us, and we would receive, subject to certain terms, conditions and potential payment obligations, licenses from sanofi-aventis to research, develop and commercialize such products.

The collaboration will automatically terminate under certain circumstances upon the expiration of the research term, in which case all licenses granted by the parties to each other would terminate and revert to the respective party, subject to sanofi-aventis' right to receive, under certain circumstances, the first opportunity to obtain a license from us to any isoform-selective PI3K inhibitor. In addition, sanofi-aventis may, upon certain prior written notice to us, terminate the collaboration in whole or as to certain products following expiration of the research term, in which case we would receive, subject to certain terms, conditions and potential payment obligations by us, licenses from sanofi-aventis to research, develop and commercialize such products.

Boehringer Ingelheim

On May 7, 2009, we entered into a collaboration agreement with Boehringer Ingelheim International GmbH ("Boehringer Ingelheim") to discover, develop and commercialize autoimmune disease therapies. The collaboration is focused on the discovery of sphingosine-1-phosphate type 1 receptor ("S1P1R") agonists, a central mediator of multiple pathways implicated in a variety of autoimmune diseases.

Under the terms of the agreement, Boehringer Ingelheim was required to pay us an upfront cash payment of $15.0 million for the development and commercialization rights to our S1P1R agonist program. We and Boehringer Ingelheim will share responsibility for discovery activities under the collaboration. The agreement provides that the parties will each conduct research under a mutually agreed upon research plan until such time that we submit a compound that that has met agreed-upon criteria, or such later time as agreed upon by the parties. The parties shall each be responsible for their respective costs and expenses incurred in connection with performing research under the collaboration. Under the collaboration, Boehringer Ingelheim also has the right, at its own expense to conduct additional research on S1P1R agonists outside of the scope of the research plan agreed to by the parties. The agreement further provides that Boehringer Ingelheim will receive an exclusive worldwide license to further develop, commercialize and manufacture compounds developed under the collaboration and will have sole responsibility for, and shall bear all costs and expenses associated with, all subsequent pre-clinical, clinical, regulatory, commercial and manufacturing activities. In return, we will potentially receive up to $339.0 million in further development, regulatory and commercial milestones and are eligible to receive royalties on worldwide sales of products commercialized under the collaboration. The upfront payment will be amortized over the estimated research term of approximately 11 months and recorded as license revenue from the effective date of the agreement.

Boehringer Ingelheim may, upon certain prior notice to us, terminate the agreement as to any product developed under the collaboration. In the event of such termination election, Boehringer Ingelheim's license relating to such product would terminate and revert to us, and we would receive, subject to certain terms and conditions, licenses from Boehringer Ingelheim to research, develop and commercialize such product.

Bristol-Myers Squibb

In December 2008, we entered into a worldwide collaboration with Bristol-Myers Squibb for XL184 and XL281. Upon effectiveness of the agreement in December 2008, Bristol-Myers Squibb made an upfront cash payment of $195.0 million for the development and commercialization rights to both programs. The agreement required Bristol-Myers Squibb to make additional license payments to us of $45.0 million, of which $20.0 million was received in the first quarter of 2009 and $25.0 million was received in the second quarter of 2009.

We and Bristol-Myers Squibb have agreed to co-develop XL184, which may include a backup program for XL184. The companies will share worldwide (except for Japan) development costs for XL184. We are responsible for 35% of such costs and Bristol-Myers Squibb is responsible for 65% of such costs, except that we are responsible for funding the initial $100.0 million of combined costs and have the option to defer payments for development costs above certain thresholds. In return, we will share 50% of the commercial profits and losses (including pre-launch commercialization expenses) in the United States and have the option to co-promote XL184 in the United States. We have the right to defer payment for certain early commercialization and other related costs above certain thresholds. We are eligible to receive sales performance milestones of up to $150.0 million and double-digit royalties on sales on XL184 outside the United States. The clinical development of XL184 is directed by a joint committee. It is anticipated that we will conduct certain clinical development activities for XL184. We may opt out of the co-development for XL184, in which case we would instead be eligible to receive development and regulatory milestones of up to $295.0 million, double-digit royalties on XL184 product sales worldwide and sales performance milestones. Our co-development and co-promotion rights may be terminated in the event that we have “cash reserves” below $80.0 million and we are unable to increase such cash reserves to $80.0 million or more within 90 days, in which case we would receive development and regulatory milestones, sales milestones and double-digit royalties instead of sharing product profits on XL184 in the United States. For purposes of the agreement, “cash reserves” includes our total cash, cash equivalents and investments (excluding any restricted cash), plus the amount then available for borrowing by us under the Facility Agreement dated June 4, 2008 among us, Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited, as the same may be amended from time to time, and any other similar financing arrangements. Our co-promotion rights on XL184 in the United States, and possibly our right to share product profits on XL184, may be terminated in the event we undergo certain change of control transactions. Bristol-Myers Squibb may, upon certain prior notice to us, terminate the agreement as to products containing XL184 or XL281. 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 such products.

Bristol-Myers Squibb received an exclusive worldwide license to develop and commercialize XL281. We will carry out certain clinical trials of XL281 which may include a backup program on XL281. Bristol-Myers Squibb is responsible for funding all future development on XL281, including our activities. We are eligible for development and regulatory milestones of up to $315.0 million on XL281, sales performance milestones of up to $150.0 million and double-digit royalties on worldwide sales of XL281.

The upfront payment of $195.0 million we received upon effectiveness of the collaboration agreement and the license payments of $20.0 million and $25.0 million we received in the first quarter and second quarter of 2009, respectively, will be amortized over the estimated development term of five years, and recorded as license revenue, from the effective date of the agreement in December 2008. Any milestone payments that we may receive under the agreement will be amortized over the same period but recorded as contract revenue. We will record as operating expense 100% of the cost incurred for work performed by Exelixis on the two programs. During the term of the collaboration, so long as we have not opted out of the co-development of XL184, there may be periods during which Bristol-Myers Squibb will partially reimburse us for certain research and development expenses, and other periods during which we will owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred on joint development projects, less amounts reimbursable to us by Bristol-Myers Squibb on these projects. To the extent that net research and development funding payments are received from Bristol-Myers Squibb, these payments will be presented as collaboration revenue. In periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost sharing expense. Net amounts due from or payable to Bristol-Myers Squibb will be determined and reflected on an annual basis. For the year ending December 31, 2009, we expect to incur a net payable to Bristol-Myers Squibb. However, for the six months ended June 30, 2009, we recorded a net receivable, which has resulted in a net reduction in operating expenses year-to-date. Generally, the direction of cash flows will depend on the level of development activity by either party, which may change during the development term. Our capital requirements will be impacted by the level of our expenses for the development activity conducted by us and the degree to which we will be required to make payments to, or we will receive payments from, Bristol-Myers Squibb. If we opt out of the co-development of XL184, we would have no further unreimbursed cost obligations.

Amounts attributable to both programs under the 2008 Bristol-Myers Squibb collaboration agreement consist of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009 (2)	2008
Exelixis research and development expenses (1)	$ 9,908	$ —	$ 19,769	$ —
Net amount (owed to) due from collaboration partner	$ (1,639)	$ —	158	$ —

(1) Total research and development expenses attributable to us include direct third party expenditures plus estimated internal personnel costs.

(2) The net amount due from the collaborative partner is classified as a reduction in operating expenses for the six-month period ended June 30, 2009.

NOTE 5: Restructuring Charge

In November 2008, we implemented a restructuring plan that resulted in a reduction in force of 78 employees, or approximately 10% of our workforce. All actions associated with the 2008 restructuring plan were completed in the first quarter of 2009 and we do not anticipate incurring any further costs under the 2008 plan.

In connection with the 2008 restructuring plan, we recorded a charge of approximately $2.9 million during the year ended December 31, 2008 in accordance with Statement of Financial Accounting Standards No. 146, “Accounting for Costs Associated with Exit or Disposal Activities.” This charge consisted primarily of severance, health care benefits and legal and outplacement services fees. The current balance of the liability is included in “Other Accrued Expenses” on our Condensed Consolidated Balance Sheet as of June 30, 2009 and the components are summarized in the following table (in thousands):

	Employee Severance and Other Benefits	Legal and Other Fees	Total
Balance as of December 31, 2008	$ 1,688	$ 51	$ 1,739
Cash payments	(1,572)	(120)	(1,692)
Adjustments or non-cash credits	(73)	79	6
Balance as of June 30, 2009	$ 43	$ 10	$ 53

NOTE 6. Symphony Evolution, Inc.

In 2005, we licensed three of our compounds, XL647, XL784 and XL999, to SEI, in return for an $80.0 million investment for the clinical development of these compounds. As part of the agreement, we received an exclusive purchase option to acquire all of the equity of SEI, thereby allowing us to reacquire XL647, XL784 and XL999 at our sole discretion. The purchase option expired on June 9, 2009. As a result of the expiration of the purchase option, we issued a warrant to Symphony Evolution Holdings LLC to purchase 500,000 shares of our common stock at a price of $6.05 per share, which is equal to 125% of the average closing price of our common stock on the Nasdaq Global Select Market over a continuous period of 60 trading days immediately preceding the second trading day prior to the business day immediately following the date the purchase option expired, with a five-year term.

The expiration of the purchase option triggered a reconsideration event regarding our need to consolidate SEI, a variable interest entity. Upon the expiration of the purchase option, we no longer held a variable interest in the variable interest entity. Accordingly, we deconsolidated SEI and derecognized the SEI assets, liabilities and noncontrolling interest from our financial statements. We recognized a loss of $9.8 million upon the deconsolidation of the variable interest entity.

NOTE 7. Sale of Plant Trait Business

In 2007, we entered into arrangements with Agrigenetics, Inc. (“Agrigenetics”), a wholly-owned subsidiary of The Dow Chemical Company, for (1) the sale of assets used for crop trait discovery and granted to Agrigenetics licenses to certain other related assets and intellectual property and (2) to perform contract research. In the second quarter of 2009, we signed an amendment to this arrangement upon the execution of which we were entitled to receive $1.8 million. The $1.8 million payable has been recorded as an adjustment to the gain on the sale of our plant trait business originally recorded in 2007. We are entitled to receive additional payments of up to $7.2 million if we achieve specified development milestones, which will also be recorded as adjustments to the 2007 gain, in the period that they are achieved.

NOTE 8. Income Taxes

We have incurred net losses since inception and, consequently, have not recorded any U.S. federal or state income taxes. As a result of the Housing and Economic Recovery Act of 2008, we are eligible to claim a refund of previously generated tax credits and have recorded a tax benefit, from this new law, of $846,000.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis contains 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 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," "determine," "may," "could," "would," "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 Part II, Item 1A of this Form 10-Q, as well as those discussed elsewhere in this report.

This discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this report and the financial statements and accompanying notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the Securities and Exchange Commission, or SEC, on March 10, 2009. Operating results are not necessarily indicative of results that may occur in future periods. We undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

Overview

We are committed to developing innovative therapies for cancer and other serious diseases. Through our integrated 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 discovery and development of small molecule drugs for cancer.

Utilizing our library of more than 4.5 million compounds, we have integrated high-throughput processes, medicinal chemistry, bioinformatics, structural biology and early *in vivo* testing into a process that allows us to efficiently and rapidly identify highly qualified drug candidates that meet our extensive development criteria.

Since our inception, we have filed 16 investigational new drug applications, or INDs, with the United States Food and Drug Administration, or FDA. 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 drug 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.

Based on the strength of our expertise in biology, drug discovery and development, we have established collaborations with leading pharmaceutical and biotechnology companies, including Bristol-Myers Squibb Company, sanofi-aventis, Genentech, Inc. and GlaxoSmithKline, that allow us to retain economic participation in compounds and support additional development of our pipeline. Our collaborations generally fall into one of two categories: collaborations in which we co-develop compounds with a partner, share development costs and profits from commercialization and may have the right to co-promote products in the United States, and collaborations in which we out-license compounds to a partner for further development and commercialization, have no further unreimbursed cost obligations and are entitled only to receive milestones and royalties from commercialization. Under either form of collaboration, we may also be entitled to license fees, research funding and milestone payments from research results and subsequent product development activities. We maintain exclusive ownership of those compounds in our pipeline that we are developing ourselves. We are responsible for all development costs for these compounds and are entitled to 100% of profits if the compounds are commercialized.

The following table sets forth those compounds in clinical development that we are developing internally or are co-developing with a partner:

Compound	Partner	Principal Targets	Indication	Stage of Development
XL184	Bristol-Myers Squibb	MET, VEGFR2, RET	Cancer	Phase 3
XL518	Genentech	MEK	Cancer	Phase 1
XL228	Unpartnered	IGF1R , ABL, SRC	Cancer	Phase 1
XL139	Bristol-Myers Squibb	Hedgehog	Cancer	Phase 1
XL413	Bristol-Myers Squibb	CDC7	Cancer	Phase 1
XL888	Unpartnered	HSP90	Cancer	Phase 1

The following table sets forth those compounds in preclinical and clinical development that we have out-licensed to third parties for further development and commercialization:

Compound	Partner	Principal Targets	Indication	Stage of Development
XL880	GlaxoSmithKline	MET, VEGFR2	Cancer	Phase 2
XL147	sanofi-aventis	PI3K	Cancer	Phase 1b/2
XL765	sanofi-aventis	PI3K, mTOR	Cancer	Phase 1b/2
XL281	Bristol-Myers Squibb	RAF	Cancer	Phase 1
XL652	Bristol-Myers Squibb	LXR	Metabolic and cardiovascular diseases	Phase 1
XL550	Daiichi-Sankyo	MR	Metabolic and cardiovascular diseases	Preclinical
FXR	Wyeth	FXR	Metabolic and liver disorders	Preclinical

Our Strategy

Our business strategy is to leverage our biological expertise and integrated drug discovery capabilities to generate a 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 potentially other serious diseases. We have refined our strategy to reflect the prolonged economic downturn and the deterioration of the capital markets. In particular, we are focused on ensuring that our expenses are in line with our cash resources, with the goal of being able to operate independently of the capital markets for a substantial period of time.

Our strategy is centered around three principal elements:

- Focus development—While we have historically pursued an approach to drug discovery intended to generate a significant number of development candidates to fuel our pipeline, for the foreseeable future we intend to direct our discovery efforts more towards generating development candidates under existing and future discovery collaborations with third parties. Our objective is to fund a significant portion of our discovery costs by entering into such collaborations. We are also focusing our later stage clinical development efforts on a limited number of programs. We believe that the most attractive compounds to develop ourselves or to co-develop with a partner have a lower-cost, lower-risk route to the market, usually for a niche indication, with the possibility of substantially expanding the market into major indications. Our most advanced clinical asset, XL184, which we are co-developing with Bristol-Myers Squibb, represents such a compound. We expect particularly to focus our later stage development efforts on XL184, which is being studied in a variety of tumor types, with the goal of rapidly commercializing the compound.
- Partner compounds—We are seeking new collaborations with leading pharmaceutical and biotechnology companies for the development and ultimate commercialization of some of our preclinical and clinical assets, particularly those drug candidates for which we believe that the capabilities and bandwidth of a partner can accelerate development and help to fully realize their therapeutic and commercial potential. Collaborations also provide us with a means of shifting a portion or all of the development costs related to such drug candidates. Consistent with this element of our strategy, in December 2008 we entered into a worldwide collaboration with Bristol-Myers Squibb on two of our cancer programs: one associated with XL184 and the other associated with XL281, and in May 2009 we entered into a license agreement with sanofi-aventis for XL147 and XL765 and also launched a broad collaboration with sanofi-aventis for the discovery of phosphoinositide-3 kinase, or PI3K, inhibitors. In May 2009, we also entered into a collaboration agreement with Boehringer Ingelheim International GmbH focused on the discovery of sphingosine-1-phosphate type 1 receptor agonists. We expect that over the next several years an increasingly greater portion of our development expenses will be funded by our partners.

- Control costs—We are committed to managing our costs and continually analyze our expenses to ensure that they are not disproportionate to our cash resources. We are selective with respect to funding our clinical development programs and have established definitive "go/no-go" criteria with respect to our development programs to ensure that we commit our resources only to those programs with the greatest commercial and therapeutic potential. For example, in June 2009, we discontinued development of XL019. To control costs, we may decide in the future to pursue collaborations for the development of drug candidates that we had initially determined to develop ourselves. We also retain the right to opt-out of the development of certain drug candidates that we are currently co-developing with partners.

We make decisions regarding whether and how to develop particular drug candidates we have generated through our discovery efforts based on a variety of factors, including preclinical and clinical data, our available financial resources, estimates of the costs to develop and commercialize the drug candidate, our bandwidth and our expertise. Ultimately, our decision-making is intended to maximize the value and productivity of our resources and to focus our efforts on those drug candidates that are commercially attractive and have the potential to be first-in-class or best-in-class therapeutics.

Recent Developments

Global License Agreement and Collaboration with sanofi-aventis

On May 27, 2009, we entered into a global license agreement with sanofi-aventis for two of our cancer programs, XL147 and XL765, and a broad collaboration for the discovery of inhibitors of PI3K for the treatment of cancer. The license agreement and collaboration agreement became effective on July 7, 2009. In connection with the effectiveness of the license and collaboration, on July 20, 2009, we received upfront payments of $140.0 million ($120.0 million for the license and $20.0 million for the collaboration), less applicable withholding taxes of $7.0 million, for a net receipt of $133.0 million.

Under the license, sanofi-aventis received a worldwide exclusive license to XL147 and XL765, which are currently in phase 1 and phase 1b/2 clinical trials, respectively, and has sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities. We will participate in conducting ongoing and potential future clinical trials and manufacturing activities. Sanofi-aventis is responsible for funding all future development activities with respect to XL147 and XL765, including our activities. Under the discovery collaboration, the parties will combine efforts in establishing several pre-clinical PI3K programs and will jointly share responsibility for research and preclinical activities related to isoform-selective inhibitors of PI3K alpha and beta. Sanofi-aventis will provide guaranteed research and development funding to cover our expenses and is responsible for funding all development activities for each product following approval of the investigational new drug application filed with the United States Food and Drug Administration, or the foreign equivalent thereof, for such product. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of any products arising from the collaboration; however, we may be requested to conduct certain clinical trials at sanofi-aventis' expense. The research term under the collaboration is three years, although sanofi-aventis has the right to extend the term for an additional one-year period upon prior written notice.

In addition to the aggregate upfront cash payments for the license and collaboration agreements, we are also entitled to receive guaranteed research funding of $21.0 million over three years. For both the license and the collaboration, we will be eligible to receive development, regulatory and commercial milestones of over $1.0 billion in the aggregate, as well as royalties on sales of any products commercialized under the license or collaboration. The aggregate upfront payments of $140.0 million will be recognized over an estimated term of four years, and recorded as license revenue, from the effective date of the agreements. Any milestone payments that we may receive under the agreements will be amortized over the same period but recorded as contract revenue. We will record as operating expense all costs incurred for work performed by us under the agreements. Reimbursements we receive from sanofi-aventis under the agreements will be recorded as contract revenue commencing as of the effective date, including reimbursements for costs incurred under the license from the date of signing. In addition, the guaranteed research funding that we expect to receive over the three year research term under the collaboration will be recorded as contract revenue commencing as of the effective date of the collaboration. Tax withholding of $7.0 million in connection with the upfront payments will be recognized as income tax expense in the third quarter of 2009.

Sanofi-aventis may, upon certain prior notice to us, terminate the license as to products containing XL147 or XL765. In the event of such termination election, sanofi-aventis' license relating to such product would terminate and revert to us, and we would receive, subject to certain terms, conditions and potential payment obligations, licenses from sanofi-aventis to research, develop and commercialize such products.

The collaboration will automatically terminate under certain circumstances upon the expiration of the research term, in which case all licenses granted by the parties to each other would terminate and revert to the respective party, subject to sanofi-aventis' right to receive, under certain circumstances, the first opportunity to obtain a license from us to any isoform-selective PI3K inhibitor. In addition, sanofi-aventis may, upon certain prior written notice to us, terminate the collaboration in whole or as to certain products following expiration of the research term, in which case we would receive, subject to certain terms, conditions and potential payment obligations by us, licenses from sanofi-aventis to research, develop and commercialize such products.

Symphony Evolution, Inc.

In 2005, we licensed three of our compounds, XL647, XL784 and XL999, to Symphony Evolution, Inc., or SEI, in return for an $80.0 million investment for the clinical development of these compounds. As part of the agreement, we received an exclusive purchase option to acquire all of the equity of SEI, thereby allowing us to reacquire XL647, XL784 and XL999 at our sole discretion. The purchase option expired on June 9, 2009. As a result of the expiration of the purchase option, we issued a warrant to Symphony Evolution Holdings LLC, or Holdings, to purchase 500,000 shares of our common stock at a price of $6.05 per share, which is equal to 125% of the average closing price of our common stock on the Nasdaq Global Select Market over a continuous period of 60 trading days immediately preceding the second trading day prior to the business day immediately following the date the purchase option expired, with a five-year term. Upon the expiration of the purchase option, we deconsolidated SEI and derecognized their assets, liabilities and noncontrolling interest from our financial statements. We recognized as a $9.8 million loss upon deconsolidation.

Certain Factors Important to Understanding Our Financial Condition and Results of Operations

Successful development of drugs is inherently difficult and uncertain. Our business requires significant investments in research and development over many years, often for products 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. Our financial performance is driven by many factors, including those described below.

Limited Sources of Revenues

We currently have no pharmaceutical products that have received marketing approval, and we have generated no revenues to date from the sale of such products. We do not expect to generate revenues from the sale of pharmaceutical products in the near term and expect that all of our near term revenues, such as research and development funding, license fees and milestone payments 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.

Clinical Trials

We currently have multiple compounds in clinical development and expect to expand the development program for our compounds. Our compounds may fail to show adequate safety or efficacy in clinical testing. Furthermore, predicting the timing of the initiation or completion of clinical trials is 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 in clinical development, whereas expenses will end for compounds that do not warrant further clinical development.

We are responsible for all development costs for compounds in our pipeline that are not partnered and for a portion of development costs for those compounds that we are co-developing with partners. We share development costs with partners in our co-development collaborations and have no unreimbursed cost obligations with respect to compounds that we have out-licensed. We expect that over the next several years an increasingly greater portion of our development expenses will be funded by our partners.

Liquidity

As of June 30, 2009, we had $213.1 million in cash and cash equivalents and short-term and long-term marketable securities, which included restricted cash and investments of $4.7 million. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, funds available under the Facility Agreement among us, Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited (collectively, the “Deerfield Entities”), 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 the filing date of this report. Our goal is to be able to operate independently of the capital markets for a substantial period of time. However, our future capital requirements will be substantial and depend on many factors, including the following:

- whether we repay amounts outstanding under our loan and security agreement with GlaxoSmithKline (described below) in cash or shares of our common stock;
- whether and when we draw funds under our Facility Agreement with the Deerfield Entities;
- our plans for the aggressive development of our broad clinical and preclinical pipelines;
- our obligations under our collaboration agreements, including, in particular, our collaboration agreement with Bristol-Myers Squibb for XL184; and

- whether we generate funds from existing or new collaborations for the development of any of our compounds.

Our minimum liquidity needs are also determined by financial covenants in our loan and security agreement, as amended, with GlaxoSmithKline, the Facility Agreement with the Deerfield Entities and our collaboration agreement with Bristol-Myers Squibb for XL184, as well as other factors, which are described under " – Liquidity and Capital Resources – Cash Requirements".

Our ability to raise additional funds may be severely impaired if any of our product candidates fails to show adequate safety or efficacy in clinical testing.

2008 Cancer Collaboration with Bristol-Myers Squibb

We expect to particularly focus our later stage development efforts on XL184, which is being studied in a variety of tumor types, with the goal of rapidly commercializing the compound. In December 2008, we entered into a worldwide collaboration with Bristol-Myers Squibb for XL184 and XL281. Upon effectiveness of the agreement in December 2008, Bristol-Myers Squibb made an upfront cash payment of $195.0 million for the development and commercialization rights to both programs. The agreement required Bristol-Myers Squibb to make additional license payments to us of $45.0 million, of which $20.0 million was received in the first quarter of 2009 and $25.0 million was received in the second quarter of 2009.

We and Bristol-Myers Squibb have agreed to co-develop XL184, which may include a backup program for XL184. The companies will share worldwide (except for Japan) development costs for XL184. We are responsible for 35% of such costs and Bristol-Myers Squibb is responsible for 65% of such costs, except that we are responsible for funding the initial $100.0 million of combined costs and have the option to defer payments for development costs above certain thresholds. In return, we will share 50% of the commercial profits and losses (including pre-launch commercialization expenses) in the United States and have the option to co-promote XL184 in the United States. We have the right to defer payment for certain early commercialization and other related costs above certain thresholds. We are eligible to receive sales performance milestones of up to $150.0 million and double-digit royalties on sales on XL184 outside the United States. The clinical development of XL184 is directed by a joint committee. It is anticipated that we will conduct certain clinical development activities for XL184. We may opt out of the co-development for XL184, in which case we would instead be eligible to receive development and regulatory milestones of up to $295.0 million, double-digit royalties on XL184 product sales worldwide and sales performance milestones. Our co-development and co-promotion rights may be terminated in the event that we have "cash reserves" below $80.0 million and we are unable to increase such cash reserves to $80.0 million or more within 90 days, in which case we would receive development and regulatory milestones, sales milestones and double-digit royalties, instead of sharing product profits on XL184 in the United States. For purposes of the agreement, "cash reserves" includes our total cash, cash equivalents and investments (excluding any restricted cash), plus the amount then available for borrowing by us under the Facility Agreement dated June 4, 2008 among us and the Deerfield Entities, as the same may be amended from time to time, and any other similar financing arrangements. Our co-promotion rights on XL184 in the United States, and possibly our right to share product profits on XL184, may be terminated in the event we undergo certain change of control transactions. Bristol-Myers Squibb may, upon certain prior notice to us, terminate the agreement as to products containing XL184 or XL281. 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 such products.

Bristol-Myers Squibb received an exclusive worldwide license to develop and commercialize XL281. We will carry out certain clinical trials of XL281 which may include a backup program on XL281. Bristol-Myers Squibb is responsible for funding all future development on XL281, including our activities. We are eligible for development and regulatory milestones of up to $315.0 million on XL281, sales performance milestones of up to $150.0 million and double-digit royalties on worldwide sales of XL281.

The upfront payment of $195.0 million we received upon effectiveness of the collaboration agreement and the license payments of $20.0 million and $25.0 million we received in the first quarter and second quarter of 2009, respectively, will be amortized over the estimated development term of five years, and recorded as license revenue, from the effective date of the agreement in December 2008. Any milestone payments that we may receive under the agreement will be amortized over the same period but recorded as contract revenue. We will record as operating expense 100% of the cost incurred for work performed by Exelixis on the two programs. During the term of the collaboration, so long as we have not opted out of the co-development of XL184, there may be periods during which Bristol-Myers Squibb will partially reimburse us for certain research and development expenses, and other periods during which we will owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred on joint development projects, less amounts reimbursable to us by Bristol-Myers Squibb on these projects. To the extent that net research and development funding payments are received from Bristol-Myers Squibb, these payments will be presented as collaboration revenue. In periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost sharing expense. Net amounts due from or payable to Bristol-Myers Squibb will be determined and reflected on an annual basis. For the year ending December 31, 2009, we expect to incur a net payable to Bristol-Myers Squibb. However, for the six months ended June 30, 2009, we recorded a net receivable, which has resulted in a net reduction in operating expenses year-to-date. Generally, the direction of cash flows will depend on the level of development activity by either party, which may change during

the development term. Our capital requirements will be impacted by the level of our expenses for the development activity conducted by us and the degree to which we will be required to make payments to, or we will receive payments from, Bristol-Myers Squibb. If we opt out of the co-development of XL184, we would have no further unreimbursed cost obligations.

GlaxoSmithKline Loan Repayment Obligations

In October 2002, we entered into a collaboration with GlaxoSmithKline, to discover and develop novel therapeutics in the areas of vascular biology, inflammatory disease and oncology. As part of the collaboration, we entered into a loan and security agreement with GlaxoSmithKline, pursuant to which we borrowed $85.0 million for use in our efforts under the collaboration. The loan bears interest at a rate of 4.0% per annum and is secured by certain intellectual property, technology and equipment created or utilized pursuant to the collaboration. Principal and accrued interest under the loan becomes due in three annual installments, beginning on October 27, 2009. 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, or cash. As of June 30, 2009, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $103.9 million. Following the conclusion on October 27, 2008 of the development term under our collaboration with GlaxoSmithKline, we are no longer eligible to receive selection milestone payments from GlaxoSmithKline to credit against outstanding loan amounts, and in the event the market price for our common stock is depressed, we may not be able to repay the loan in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to repay the loan may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding, including from funds available under the Facility Agreement with the Deerfield Entities, to satisfy our repayment obligations, including the payment that is due on October 27, 2009. There can be no assurance that we will have sufficient funds to repay amounts outstanding under the loan when due or that we will satisfy the conditions to our ability to repay the loan in shares of our common stock.

Deerfield Facility

In June 2008, we entered into the Facility Agreement with the Deerfield Entities pursuant to which the Deerfield Entities agreed to loan to us up to $150.0 million, subject to certain conditions. We may draw down on the facility in $15.0 million increments at any time until December 2009. The outstanding principal and interest under the loan, if any, is due by June 4, 2013, and, at our option, can be repaid at any time with shares of our common stock, subject to certain restrictions, or in cash. Interest under the loan does not accrue until we draw down on the facility, at which time interest will begin to accrue at a rate of 6.75% per annum compounded annually on the outstanding principal amount of the facility. The Deerfield Entities also have limited rights to accelerate repayment of the loan upon certain changes of control of Exelixis or an event of default. Pursuant to the Facility Agreement, we paid the Deerfield Entities a one time transaction fee of $3.8 million, or 2.5% of the loan facility, and we are obligated to pay an annual commitment fee of $3.4 million, or 2.25% of the loan facility, payable quarterly. We also issued warrants to the Deerfield Entities to purchase an aggregate of 1,000,000 shares of our common stock at an exercise price of $7.40 per share. If we draw down under the Facility Agreement, we would be required to issue to the Deerfield Entities additional warrants to purchase shares of our common stock. If we draw down under the Facility Agreement, there is no assurance that the conditions to our ability to repay the loan in shares of our common stock would be satisfied at the time that any outstanding principal and interest under the loan is due, in which case we would be obligated to repay the loan in cash, or that events permitting acceleration of the loan will not occur, in which event we would be required to repay any outstanding principal and interest sooner than anticipated. As of June 30, 2009, we had not drawn funds under the Facility Agreement.

Critical Accounting Estimates

Our consolidated financial statements and related notes are prepared in accordance with U.S. generally accepted accounting principles, or 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

Our revenues are derived from three primary sources: license fees, milestone payments and collaborative agreement reimbursements.

Revenues from license fees and milestone payments primarily consist of up-front license fees and milestone payments received under various collaboration agreements. We recognize all non-refundable up-front license fees as revenues in accordance with the guidance provided in the SEC's Staff Accounting Bulletin No. 104. We initially recognize upfront fees received from third party collaborators as unearned revenue and then recognize these amounts on a ratable basis over the expected term of the research collaboration. Often, the total research term is not contractually defined and an estimate of the term of our total obligation must be made. For example, under the 2008 cancer collaboration with Bristol-Myers Squibb, we have estimated our term to be five years, or through the completion of certain phase 3 trials. We estimate that this is the longest possible period that we could be obligated to perform services and therefore the appropriate term with which to amortize any license fees. However, if we submit a New Drug Approval application earlier than anticipated, or Bristol-Myers Squibb decides to take over management of trials prior to their completion, the estimated term of our obligation would be shortened, resulting in an increase in revenue recognition in the period in which our estimated term changes.

Although milestone payments are generally non-refundable once the milestone is achieved, we recognize the milestone revenues on a straight-line basis over the expected 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. There is diversity in practice on the recognition of milestone revenue. Other companies have adopted an alternative 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. In certain situations, we may receive milestone payments after the end of our period of continued involvement. In such circumstances, we would recognize 100% of the milestone revenue when the milestone is achieved.

Collaborative agreement reimbursement revenue consists of research and development support received from collaborators. Collaborative agreement reimbursement revenue is recorded as earned based on the performance requirements by both parties under the respective contracts. Under the 2008 cancer collaboration with Bristol-Myers Squibb, certain research and development expenses are partially reimbursable to us. On an annual basis, the amounts that Bristol-Myers Squibb owes us, net of amounts reimbursable to Bristol-Myers Squibb by us on those projects, are recorded as revenue. Conversely, research and development expenses may include the net settlement of amounts we owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred on joint development projects, less amounts reimbursable to us by Bristol-Myers Squibb on these projects. In annual periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost-sharing expense.

Some of our research and licensing arrangements have multiple deliverables in order to meet our customers' 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 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 are 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. In 2008, under our collaboration with GlaxoSmithKline, we accelerated $18.5 million in previously deferred revenue as a result of the development term concluding on the earliest scheduled end date of October 27, 2008, instead of the previously estimated end date of October 27, 2010.

Goodwill Impairment

As of June 30, 2009, our consolidated balance sheet included $63.7 million of goodwill. 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. 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.

Clinical Trial Accruals

Substantial portions of our preclinical studies and all of our clinical trials have been performed by third-party contract research organizations, or 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, the number of active clinical sites, and the duration for which the patients 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. We base our estimates on the best information available at the time. However, additional information may become available to us which will allow us to make a more accurate estimate in future periods. In this event, we may be required to record adjustments to research and development expenses in future periods when the actual level of activity becomes more certain, such increases or decreases in cost are generally considered to be changes in estimates and will be reflected in research and development expenses in the period first known.

Stock Option Valuation

We account for stock options under the fair value recognition provisions of Statement of Financial Accounting Standards No. 123 (revised 2004), “Share-Based Payment.” Under this 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 June 30, 2009, $28.7 million of total unrecognized compensation expense related to stock options is expected to be recognized over a weighted-average period of 2.34 years. See Note 3 to the Condensed Consolidated Financial Statements for a further discussion on stock-based compensation.

Fiscal Year Convention

We have adopted a 52- or 53-week fiscal year that ends on the Friday closest to December 31st of each year. Fiscal year 2008, a 53-week year, ended on January 2, 2009, and fiscal year 2009, a 52-week year, will end on January 1, 2010. For convenience, references in these Condensed Consolidated Financial Statements and Notes as of and for the fiscal year ended January 2, 2009 are indicated on a calendar year basis, ended December 31, 2008 and as of and for the fiscal quarters ended June 27, 2008 and July 3, 2009 are indicated as ended June 30, 2008 and 2009, respectively.

Results of Operations

Revenues

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Contract revenue:				
Research and development funding	$ 1.6	$ 7.3	$ 3.6	$ 15.2
Milestones	4.7	9.4	9.4	20.2
License revenue, amortization of upfront payments, including amortization of premiums for equity purchases	21.1	13.7	39.7	23.0
Total revenues	$ 27.4	$ 30.4	$52.7	$ 58.4
Dollar decrease	$ 3.0		$ 5.7	
Percentage decrease	9.9%		9.7%	

The decreases in research and development funding for the three and six-months ended June 30, 2009, as compared to the comparable periods for the prior year, were driven primarily by the end of our collaboration agreement with GlaxoSmithKline resulting in decreases of $4.4 million and $8.3 million, respectively. Additional decreases relate to the end of certain of our collaboration agreements with Genentech and Bristol-Myers Squibb.

The decrease in milestone revenues for the three months ended June 30, 2009, as compared to the comparable period for the prior year, was primarily due to the conclusion of our collaboration agreement with GlaxoSmithKline in October 2008 resulting in a decrease of $5.7 million. This decrease was partially offset by an increase of $1.3 million in revenue recognition relating to our 2008 collaboration agreement with Bristol-Myers Squibb for XL139 and XL413.

The decrease in milestone revenues for the six months ended June 30, 2009, as compared to the comparable period for the prior year, was primarily due to the conclusion of our collaboration agreement with GlaxoSmithKline in October 2008 resulting in a decrease of $7.0 million. In addition, there was a combined decrease of $3.2 million associated with additional revenue recognized in 2008 from the opt-in for XL413 in early 2008 under our 2007 cancer collaboration with Bristol-Myers Squibb as well as our MEK collaboration with Genentech that did not exist in 2009. There was also a deceleration of revenue recognition under our Bristol-Myers Squibb LXR collaboration as a result of extending the collaboration term for an additional year, which resulted in a decrease of $0.7 million year-to-date.

The increase in the amortization of upfront payments for the three months ended June 30, 2009, as compared to the comparable period for the prior year, was primarily due to $12.0 million in revenues associated with the $240 million license fee payments under our 2008 cancer collaboration with Bristol-Myers Squibb relating to XL184 and XL281 in addition to $2.5 million in revenues associated with our 2009 collaboration with Boehringer Ingelheim. This increase was partially offset by a decrease of $5.5 million relating to the end of our collaboration with GlaxoSmithKline and $1.2 million due to the deceleration of revenue recognition under our Bristol-Myers Squibb LXR collaboration as a result of extending the collaboration term.

The increase in the amortization of upfront payments for the six months ended June 30, 2009, as compared to the comparable period for the prior year, was primarily due to $24.0 million in revenues associated with the $240 million of license fee payments under our 2008 cancer collaboration with Bristol-Myers Squibb relating to XL184 and XL281 and $2.5 million in revenues associated with our 2009 collaboration with Boehringer Ingelheim. This increase was partially offset by $6.7 million relating to the end of our collaboration with GlaxoSmithKline and $2.4 million due to the deceleration of revenue recognition under our Bristol-Myers Squibb LXR collaboration as a result of extending the collaboration term. In addition, there was a decrease of $1.0 million due to the conclusion of our 2005 cancer collaboration agreement with Genentech.

Research and Development Expenses

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Research and development expenses	$ 55.0	$ 68.9	$110.4	$134.8
Dollar decrease	$ 13.9		$ 24.4	
Percentage decrease	20.1%		18.1%	

Research and development expenses consist primarily of personnel expenses, clinical trials, consulting, laboratory supplies and facilities costs.

The decrease for the three months ended June 30, 2009, as compared to the comparable period in 2008, resulted primarily from the following:

- Clinical Trials—Clinical trial expenses, which include services performed by third-party contract research organizations and other vendors, decreased by $10.0 million, or 44%, primarily due to the wind down of activities associated with XL647, XL820 and XL844 clinical trials, the transfer of XL518 to Genentech in March 2009, non-clinical toxicology studies conducted in 2008 on XL019, and a reduction in the number of active patients for two phase 1 studies for XL228. These decreases were partially offset by an increase in phase 3 clinical trial activity for XL184.
- Personnel—Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, decreased by $2.2 million, or 11%, primarily due to a reduction in headcount related to our restructuring in November 2008.
- Lab Supplies—Lab supplies decreased by $1.5 million, or 29%, primarily due to the decrease in headcount.

The decrease for the six months ended June 30, 2009, as compared to the comparable period in 2008, resulted primarily from the following:

- Clinical Trials—Clinical trial expenses, which include services performed by third-party contract research organizations and other vendors, decreased by $16.3 million, or 38%, primarily due to the wind down of activities associated with XL647, XL820, XL784 and XL844 clinical trials, the transfer of XL880 to GlaxoSmithKline in 2008, the transfer of XL518 to Genentech in March 2009, and non-clinical toxicology studies conducted in 2008 on XL019. These decreases were partially offset by an increase in phase 3 clinical trial activity for XL184, increased phase 1 clinical trial activity for XL281 and increased phase 1 activity related to XL139.
- Personnel—Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, decreased by $4.4 million, or 11%, primarily due to a reduction in headcount related to our restructuring in November 2008.
- Lab Supplies—Lab supplies decreased by $2.1 million, or 22%, primarily due to the decrease in headcount.
- Cost Reimbursement— As a result of our contract research agreement with Agrigenetics, we received an increase in research and development funding of $0.7 million in 2009 that was recognized as a reduction to research and development expense.

We do not track total research and development expenses separately for each of our research and development programs. We group our research and development expenses into three categories: drug discovery, development and other. Our drug discovery group utilizes 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 clinical development. Drug discovery expenses relate primarily to personnel expense, lab supplies and general corporate costs. Our development group leads the development and implementation of our clinical and regulatory strategies and prioritizes disease indications in which our compounds may be studied in clinical trials. Development expenses relate primarily to clinical trial, personnel and general corporate costs. The other category primarily includes stock compensation expense.

In addition to reviewing the three categories of research and development expenses described above, we principally consider qualitative factors in making decisions regarding our research and development programs. Such factors include enrollment in clinical trials for our drug candidates, the results of and data from clinical trials, the potential indications for our drug candidates and the clinical and commercial potential for our drug candidates and competitive dynamics. We also make our research and development decisions in the context of our overall business strategy, which includes the pursuit of commercial collaborations with major pharmaceutical and biotechnology companies for the development of our drug candidates.

The expenditures summarized in the following table reflect total research and development expenses by category, including allocations for general and administrative expense (dollar amounts are presented in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Drug discovery	$ 21.3	$ 26.2	$ 44.7	$ 52.7
Development	27.3	38.7	54.8	74.2
Other	6.4	4.0	10.9	7.9
Total research and development expense	$ 55.0	$ 68.9	$110.4	$134.8

For the three months ended June 30, 2009, the programs representing the greatest portion of our research and development expenses (in approximate order of magnitude), based on estimates of the allocation of our research and development efforts and expenses among specific programs, were XL184, XL147, XL765 and XL888. The expenses for these programs are included in the development category of our research and development expenses.

For the six months ended June 30, 2009, the programs representing the greatest portion of our research and development expenses (in approximate order of magnitude), based on estimates of the allocation of our research and development efforts and expenses among specific programs, were XL184, XL147, XL765, XL228 and XL281. The expenses for these programs are included in the development category of our research and development expenses.

We currently do not have reliable estimates regarding the timing of our clinical trials. We currently estimate that typical phase 1 clinical trials last approximately one year, phase 2 clinical trials last approximately one to two years and phase 3 clinical trials last approximately two to four years. However, the length of time may vary substantially according to factors relating to the particular clinical trial, such as the type and intended use of the drug candidate, the clinical trial design and the ability to enroll suitable patients. In general, we will incur increased research and development expenses for compounds that advance in clinical development, whereas expenses will end for compounds that do not warrant further clinical development.

We currently do not have reliable estimates of total costs for a particular drug candidate to reach the market. Our potential therapeutic products are subject to a lengthy and uncertain regulatory process that may involve unanticipated additional clinical trials and may not result in receipt of 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.

General and Administrative Expenses

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
General and administrative expenses	$ 8.7	$ 10.2	$17.3	$18.9
Dollar decrease	$ 1.5		$ 1.6	
Percentage decrease	14.6%		8.7%	

General and administrative expenses consist primarily of personnel expenses, employee stock-based compensation expense, facility costs and consulting and professional expenses, such as legal and accounting fees. The decrease in expenses for the three- and six-month periods ended June 30, 2009, as compared to the comparable period in 2008, was primarily due to a reduction in headcount related to our restructuring in November 2008 and other cost saving measures, partially offset by an increase in facilities costs.

Collaboration Cost-Sharing Expenses

Total collaboration cost-sharing expenses, as compared to the prior year period, were as follows (dollar amounts are presented in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Collaboration cost-sharing expenses	$ 1.6	$ —	$ (0.2)	$ —
Dollar change	$ 1.6		$ (0.2)	
Percentage change	100%		100%	

Total collaboration cost-sharing expenses consist of research and development expenses and reimbursements related to our 2008 cancer collaboration agreement with Bristol Myers-Squibb for XL184 and XL281. To the extent that net research and development funding payments are received from Bristol-Myers Squibb, these payments will be presented as collaboration revenue. In periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost sharing expense. Net amounts due from or payable to Bristol-Myers Squibb will be determined and reflected on an annual basis. For the year ending December 31, 2009, we expect to incur a net expense. For the three-month period ended June 30, 2009, we have recorded a payable, which results in an increase in operating expenses of $1.6 million. For the six-month period ended June 30, 2009, we have recorded a receivable, which results in a net reduction in operating expense of $0.2 million.

Total Other Income (Expense), Net

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2009	2008	2009	2008
Total other (expense) income, net	$ (9.8)	$ 0.2	$ (11.3)	$ 1.8
Dollar change	$ (10.0)		$ (13.1)	
Percentage decrease	Not meaningful		Not meaningful	

The change in total other (expense) income, net for the three-month and six-month periods ended June 30, 2009, as compared to the comparable period in 2008, resulted primarily from the recording of a $9.8 million loss upon deconsolidation of SEI as a result of the expiration of our purchase option for SEI in June 2009. This increase in expense was partially offset by a $1.8 million adjustment to the gain on the sale of our plant trait business originally recorded in 2007.

Income Tax Benefit

The income tax benefit of $0.8 million is a result of refunds expected from the Housing and Economic Recovery Act of 2008. Under this Act, corporations otherwise eligible to claim first year bonus depreciation for assets placed in service between April 1, 2008 and December 31, 2008 may elect to claim a refund of previously generated tax credits in lieu of claiming the bonus depreciation.

Liquidity and Capital Resources

Sources and Uses of Cash

The following table summarizes our cash flow activities for the six months ended June 30, 2009 and 2008, respectively (dollar amounts presented in thousands):

	Six Months Ended June 30,	
	2009	2008
Consolidated net loss	$ (85,278)	$ (93,637)
Adjustments to reconcile net loss to net cash used in operating activities	26,235	18,446
Changes in operating assets and liabilities	4,496	(31,996)
Net cash used in operating activities	(54,547)	(107,187)
Net cash (used in) provided by investing activities	(34,780)	37,991
Net cash (used in) provided by financing activities	(5,459)	8,786
Net decrease in cash and cash equivalents	(94,786)	(60,410)
Cash and cash equivalents, at beginning of period	247,698	135,457
Cash and cash equivalents, at end of period	$152,912	$ 75,047

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. As of June 30, 2009, we had $213.1 million in cash and cash equivalents and short-term and long-term marketable securities, which includes restricted cash and investments of $4.7 million. In addition, as of June 30, 2009, approximately $26.3 million of cash and cash equivalents and marketable securities served as collateral for bank lines of credit.

Operating Activities

Our operating activities used cash of $54.5 million for the six months ended June 30, 2009, compared to cash used of $107.2 million for the comparable period in 2008. Cash used by operating activities for the 2009 period related primarily to our net loss attributable to Exelixis, Inc. of $85.3 million, and increases in receivables, prepaid expenses and other assets, a $1.8 million adjustment to the gain on the 2007 sale of our plant trait business, and decreases in accounts payable and other accrued expenses. These increases in cash used were partially offset by non-cash charges totaling $27.8 million relating to stock-based compensation, the loss on our deconsolidation of SEI and depreciation and amortization, as well as an increase in deferred revenue of $10.8 million. Cash used by operating activities for the 2008 period related primarily to our net loss of $93.6 million, losses attributed to noncontrolling interest and to a decrease in deferred revenues, which was partially due to the acceleration of revenue recognition under our GlaxoSmithKline collaboration. These uses of cash by operating activities were partially offset by non-cash charges of stock-based compensation expense and depreciation and amortization expense.

Cash used in our operating activities decreased by $52.6 million for the six months ended June 30, 2009 as compared to the comparable period in 2008. The decrease was primarily driven by an increase in deferred revenue, the loss on our deconsolidation of SEI, and a decrease in our net loss attributable to Exelixis, Inc. partially offset by a decrease in accounts payable and accrued expenses, trade receivables and the adjustment to the gain on the 2007 sale of our plant trait business of $1.8 million. The increase in deferred revenue of $40.2 million relates principally to an increase in cash received in December 2008 and the first half of 2009 relating to our collaborations with Bristol-Myers Squibb and Boehringer Ingelheim, partially offset by the ratable recognition of deferred revenues over the period of continuing involvement from our various collaborations. Decreases in accounts payable and other accrued expense and our net loss attributable to Exelixis, Inc. relate primarily to a decrease in research and development expenses.

Investing Activities

Our investing activities used cash of $34.8 million for the six months ended June 30, 2009, compared to cash provided of $38.0 million for the comparable period in 2008. Cash used by investing activities for the 2009 period was primarily driven by purchases of marketable securities of $43.0 million, purchases of property and equipment of $0.8 million, and a decrease in restricted cash and investments of $0.7 million. This cash outflow was partially offset by proceeds of $5.4 million from the maturity of marketable securities and proceeds of $4.5 million on the sale of investments held by SEI. The purchases of marketable securities were related to payments received from our collaborations with Bristol-Myers Squibb and Boehringer Ingelheim. The proceeds provided by maturities of our marketable securities and the sale of investments held by SEI were used to fund our operations. We expect to continue to make moderate investments in property and equipment to support our operations.

Cash provided by investing activities for the 2008 period was primarily driven by proceeds of $48.7 million from the sale and maturities of our marketable securities and the sale of $9.0 million of investments held by SEI. This cash inflow was partially offset by purchases of property and equipment of $11.5 million and marketable securities purchases of $9.3 million. The proceeds provided by maturities or sale of our marketable securities and the sale of investments by SEI were used to fund our operations.

Financing Activities

Our financing activities used cash of $5.5 million for the six months ended June 30, 2009, compared to cash provided of $8.8 million for the comparable period in 2008. Cash used by our financing activities for the 2009 period was due to principal payments on notes payable and bank obligations of $7.6 million partially offset by the issuance of stock under the employee stock purchase plan. Cash provided by our financing activities for the 2008 period was primarily due to proceeds of $13.6 million from our notes payable and bank obligations and $2.4 million from the exercise of stock options and the issuance of stock under the employee stock purchase plan. These increases were partially offset by principal payments on notes payable and bank obligations of $7.3 million.

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 and other general corporate purposes. Over the next several years, we are required to make certain payments on notes, bank obligations and our loan from GlaxoSmithKline. In June 2008, we entered into the Facility Agreement with Deerfield Entities for which the Deerfield Entities agreed to loan us up to $150.0 million, subject to certain conditions. We may draw down on the facility in $15.0 million increments at any time until December 2009. The outstanding principal and interest under the loan, if any, is due by June 4, 2013, and, at our option, can be repaid at any time with shares of our common stock, subject to certain restrictions, or in cash. As of June 30, 2009, we had not drawn funds under the Facility Agreement.

Cash Requirements

We have incurred net losses since inception, including a net loss attributable to Exelixis, Inc. of $44.8 million for the three months ended June 30, 2009 and $80.9 million for the six months ended June 30, 2009, 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. As of June 30, 2009, we had $213.1 million in cash and cash equivalents and short-term and long-term marketable securities, which included restricted cash and investments of $4.7 million. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, funds available under the Facility Agreement with the Deerfield Entities, 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 the filing date of this report. Our goal is to be able to operate independently of the capital markets for a substantial period of time. However, our future capital requirements will be substantial and will depend on many factors that may require us to use available capital resources significantly earlier than we currently anticipate. These factors include:

- repayment of our loan from GlaxoSmithKline – In October 2002, we entered into a collaboration with GlaxoSmithKline, to discover and develop novel therapeutics in the areas of vascular biology, inflammatory disease and oncology. As part of the collaboration, we entered into a loan and security agreement with GlaxoSmithKline, pursuant to which we borrowed $85.0 million for use in our efforts under the collaboration. The loan bears interest at a rate of 4.0% per annum and is secured by certain intellectual property, technology and equipment created or utilized pursuant to the collaboration. Principal and accrued interest under the loan becomes due in three annual installments, beginning on October 27, 2009. 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, or cash. As of June 30, 2009, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $103.9 million. Following the conclusion on October 27, 2008 of the development term under our collaboration with GlaxoSmithKline, we are no longer eligible to receive selection milestone payments from GlaxoSmithKline to credit against outstanding loan amounts, and in the event the market price for our common stock is depressed, we may not be able to repay the loan in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to repay the loan may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding, including from funds available under the Facility Agreement with the Deerfield Entities, to satisfy our repayment obligations, including the payment that is due on October 27, 2009. There can be no assurance that we will have sufficient funds to repay amounts outstanding under the loan when due or that we will satisfy the conditions to our ability to repay the loan in shares of our common stock.
- whether and when we draw funds under our Facility Agreement with the Deerfield Entities—In June 2008, we entered into the Facility Agreement with the Deerfield Entities pursuant to which the Deerfield Entities agreed to loan to us up to $150.0 million, subject to certain conditions. We may draw down on the facility in $15.0 million increments at any time until December 2009. The outstanding principal and interest under the loan, if any, is due by June 4, 2013, and, at our option, can be repaid at any time with shares of our common stock, subject to certain restrictions, or in cash. Interest under the loan does not accrue until we draw down on the facility, at which time interest will begin to accrue at a rate of 6.75% per annum compounded annually on the outstanding principal amount of the facility. The Deerfield Entities also

have limited rights to accelerate repayment of the loan upon certain changes of control of Exelixis or an event of default. Pursuant to the Facility Agreement, we paid the Deerfield Entities a one time transaction fee of $3.8 million, or 2.5% of the loan facility, and we are obligated to pay an annual commitment fee of $3.4 million, or 2.25% of the loan facility, payable quarterly. If we draw down under the Facility Agreement, we would be required to issue to the Deerfield Entities additional warrants to purchase shares of our common stock. If we draw funds under the Facility Agreement, there is no assurance that the conditions to our ability to repay the loan in shares of our common stock would be satisfied at the time that any outstanding principal and interest under the loan is due, in which case we would be obligated to repay the loan in cash, or that events permitting acceleration of the loan will not occur, in which event we would be required to repay any outstanding principal and interest sooner than anticipated;

- the progress and scope of our collaborative and independent clinical trials and other research and development projects, including with respect to XL184, our most advanced asset. We expect to particularly focus our later stage development efforts on XL184, which is being studied in a variety of tumor types, with the goal of rapidly commercializing the compound. As described under " – Certain Factors Important to Understanding Our Financial Condition and Results of Operations - 2008 Cancer Collaboration with Bristol-Myers Squibb," in December 2008, we entered into a worldwide co-development collaboration with Bristol-Myers Squibb for the development and commercialization of XL184. The companies will share worldwide (except for Japan) development costs for XL184. We are responsible for 35% of such costs and Bristol-Myers Squibb is responsible for 65% of such costs, except that we are responsible to fund the initial $100 million of combined costs and have the option to defer payments for development costs above certain thresholds. In return, we will share 50% of the commercial profits and losses (including pre-launch commercialization expenses) in the United States and have the option to co-promote XL184 in the United States. We have the right to defer payment for certain early commercialization and other related costs above certain thresholds. During the term of the collaboration, so long as we have not opted out of the co-development of XL184, there may be periods during which Bristol-Myers Squibb will partially reimburse us for certain research and development expenses, and other periods during which we will owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred on joint development projects, less amounts reimbursable to us by Bristol-Myers Squibb on these projects. On an annual basis, to the extent that net research and development funding payments are received from Bristol-Myers Squibb, these payments will be presented as collaboration revenue. In annual periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost sharing expense. Generally, the direction of cash flows will depend on the level of development activity by either party, which may change during the development term. Our capital requirements will be impacted by the level of our expenses for the development activity conducted by us and the degree to which we will be required to make payments to, or we will receive payments from, Bristol-Myers Squibb. If we opt out of the co-development of XL184, we would have no further unreimbursed cost obligations;
- 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 additional payments;
- our ability to control costs;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the amount of our cash and cash equivalents and marketable securities that serve as collateral for bank lines of credit;
- 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 use available capital resources significantly earlier than we anticipate. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We may seek to raise funds through the sale of equity or debt securities or through external borrowings. In addition, we may enter into strategic partnerships for the development and commercialization of our compounds. 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 will have to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. For example, our loan and security agreement with GlaxoSmithKline 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, which excludes restricted cash and deferred revenue, but includes amounts available for borrowing under the Facility Agreement with the Deerfield Entities) 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 June 30, 2009, our "working capital" was $270.5 million (including $150.0 million available for borrowing under the Facility Agreement) and our "cash and investments" were $208.3 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 $103.9 million at June 30, 2009. Principal and accrued interest under the loan becomes due in three annual installments beginning on October 27, 2009. In addition, if our cash and cash equivalents and marketable securities on the last day of any calendar quarter are less than $75.0 million, then we would be in default under the Facility Agreement with the Deerfield Entities, and the Deerfield Entities would have the right, among other remedies, to cancel our right to request disbursements and declare immediately due and payable any amounts accrued or payable under the Facility Agreement. If our "cash reserves" fall below $80.0 million and we are unable to increase such cash reserves to $80.0 million or more within 90 days, our co-development and co-promotion rights with respect to XL184 under our 2008 collaboration agreement with Bristol-Myers Squibb may be terminated. "Cash reserves" for purposes of our 2008 collaboration agreement with Bristol-Myers Squibb includes our total cash, cash equivalents and investments (excluding any restricted cash), plus the amount then available for borrowing by us under the Facility Agreement with the Deerfield Entities, as the same may be amended from time to time, and any other similar financing arrangements. 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.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our market risks at June 30, 2009 have not changed significantly from those discussed in Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the Securities and Exchange Commission on March 10, 2009. Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and our long-term debt. 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 June 30, 2009 and December 31, 2008, respectively. As of June 30, 2009 and December 31, 2008, 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 $0.5 million and $1.3 million, respectively.

ITEM 4. CONTROLS AND PROCEDURES

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

Changes in internal controls. 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.

PART II. OTHER INFORMATION

ITEM 1A. RISK FACTORS

In addition to the factors discussed elsewhere in this report and our other reports filed with the Securities and Exchange Commission, 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 us or on our behalf. 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 occurs, our business could be harmed.

We have marked with an asterisk (*) those risk factors below that reflect substantive changes from the risk factors included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008 filed with the Securities and Exchange Commission on March 10, 2009.

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 June 30, 2009, we had $213.1 million in cash and cash equivalents and short-term and long-term marketable securities, which included restricted cash and investments of $4.7 million. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, funds available under the Facility Agreement with the Deerfield Entities, 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 the filing date of this report. Our goal is to be able to operate independently of the capital markets for a substantial period of time. However, our future capital requirements will be substantial and will depend on many factors that may require us to use available capital resources significantly earlier than we currently anticipate. These factors include:

- repayment of our loan from GlaxoSmithKline – In October 2002, we entered into a collaboration with GlaxoSmithKline, to discover and develop novel therapeutics in the areas of vascular biology, inflammatory disease and oncology. As part of the collaboration, we entered into a loan and security agreement with GlaxoSmithKline, pursuant to which we borrowed $85.0 million for use in our efforts under the collaboration. The loan bears interest at a rate of 4.0% per annum and is secured by certain intellectual property, technology and equipment created or utilized pursuant to the collaboration. Principal and accrued interest under the loan becomes due in three annual installments, beginning on October 27, 2009. 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, or cash. As of June 30, 2009, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $103.9 million. Following the conclusion on October 27, 2008 of the development term under our collaboration with GlaxoSmithKline, we are no longer eligible to receive selection milestone payments from GlaxoSmithKline to credit against outstanding loan amounts, and in the event the market price for our common stock is depressed, we may not be able to repay the loan in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to repay the loan may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding, including from funds available under the Facility Agreement with the Deerfield Entities, to satisfy our repayment obligations, including the payment that is due on October 27, 2009. There can be no assurance that we will have sufficient funds to repay amounts outstanding under the loan when due or that we will satisfy the conditions to our ability to repay the loan in shares of our common stock.
- whether and when we draw funds under our Facility Agreement with the Deerfield Entities – In June 2008, we entered into the Facility Agreement with the Deerfield Entities pursuant to which the Deerfield Entities agreed to loan to us up to $150.0 million, subject to certain conditions. We may draw down on the facility in $15.0 million increments at any time until December 2009. The outstanding principal and interest under the loan, if any, is due by June 4, 2013, and, at our option, can be repaid at any time with shares of our common stock, subject to certain restrictions, or in cash. Interest under the loan does not accrue until we draw down on the facility, at which time interest will begin to accrue at a rate of 6.75% per annum compounded annually on the outstanding principal amount of the facility. The Deerfield Entities also have limited rights to accelerate repayment of the loan upon certain changes of control of Exelixis or an event of default. Pursuant to the Facility Agreement, we paid the Deerfield Entities a one time transaction fee of $3.8 million, or 2.5% of the loan facility, and we are obligated to pay an annual commitment fee of $3.4 million, or 2.25% of the loan facility, payable quarterly. If we draw down under the Facility Agreement, we would be required to issue to the Deerfield Entities additional warrants to purchase shares of our common stock. If we draw funds under the Facility Agreement, there is no assurance that the conditions to our ability to repay the loan in shares of our common stock would be satisfied at the time that any outstanding principal and interest under the loan is due, in which case we would be obligated to repay the loan in cash, or that events permitting acceleration of the loan will not occur, in which event we would be required to repay any outstanding principal and interest sooner than anticipated;

- the progress and scope of our collaborative and independent clinical trials and other research and development projects, including with respect to XL184, our most advanced asset. We expect to particularly focus our later stage development efforts on XL184, which is being studied in a variety of tumor types, with the goal of rapidly commercializing the compound. As described under " – Certain Factors Important to Understanding Our Financial Condition and Results of Operations -2008 Cancer Collaboration with Bristol-Myers Squibb," in December 2008, we entered into a worldwide co-development collaboration with Bristol-Myers Squibb for the development and commercialization of XL184. The companies will share worldwide (except for Japan) development costs for XL184. We are responsible for 35% of such costs and Bristol-Myers Squibb is responsible for 65% of such costs, except that we are responsible to fund the initial $100 million of combined costs and have the option to defer payments for development costs above certain thresholds. In return, we will share 50% of the commercial profits and losses (including pre-launch commercialization expenses) in the United States and have the option to co-promote XL184 in the United States. We have the right to defer payment for certain early commercialization and other related costs above certain thresholds. During the term of the collaboration, so long as we have not opted out of the co-development of XL184, there may be periods during which Bristol-Myers Squibb will partially reimburse us for certain research and development expenses, and other periods during which we will owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred on joint development projects, less amounts reimbursable to us by Bristol-Myers Squibb on these projects. On an annual basis, to the extent that net research and development funding payments are received from Bristol-Myers Squibb, these payments will be presented as collaboration revenue. In annual periods when net research and development funding payments are payable to Bristol-Myers Squibb, these payments will be presented as collaboration cost sharing expense. Generally, the direction of cash flows will depend on the level of development activity by either party, which may change during the development term. Our capital requirements will be impacted by the level of our expenses for the development activity conducted by us and the degree to which we will be required to make payments to, or we will receive payments from, Bristol-Myers Squibb. If we opt out of the co-development of XL184, we would have no further unreimbursed cost obligations;
- 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 additional payments;
- our ability to control costs;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the amount of our cash and cash equivalents and marketable securities that serve as collateral for bank lines of credit;
- 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 use available capital resources significantly earlier than we anticipate. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We may seek to raise funds through the sale of equity or debt securities or through external borrowings. In addition, we may enter into strategic partnerships for the development and commercialization of our compounds. 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 will have to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. For example, our loan and security agreement with GlaxoSmithKline 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, which excludes restricted cash and deferred revenue, but includes amounts available for borrowing under the Facility Agreement with the Deerfield Entities) 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 June 30, 2009, our "working capital" was $270.5 million (including $150.0 million available for borrowing under the Facility Agreement) and our "cash and investments" were $208.3 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 $103.9 million at June 30, 2009. Principal and accrued interest under the loan becomes due in three annual installments beginning on October 27, 2009. In addition, if our cash and cash equivalents and marketable securities on the last day of any calendar quarter are less than $75.0 million, then we would be in default under the Facility Agreement with the Deerfield Entities, and the Deerfield Entities would have the right, among other remedies, to cancel our right to request disbursements and declare immediately due and payable any amounts accrued or payable under the Facility Agreement. If our "cash reserves" fall below $80.0 million and we are unable to increase such cash reserves to $80.0 million or more within 90 days, our co-development and co-promotion rights with respect to XL184 under our 2008 collaboration agreement with Bristol-Myers Squibb may be terminated. "Cash reserves" for purposes of our 2008 collaboration agreement with Bristol-Myers Squibb includes our total cash, cash equivalents and investments (excluding any restricted cash), plus the amount then available for borrowing by us under the Facility Agreement with the Deerfield Entities, as the same may be amended from time to time, and any other similar financing arrangements. 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 since inception, including a net loss attributable to Exelixis, Inc. of $44.8 million for the three months ended June 30, 2009 and $80.9 million for the six months ended June 30, 2009. As of that date, we had an accumulated deficit of $1,035 million. We expect our losses in 2009 to increase as compared to 2008 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 former German subsidiary, Artemis Pharmaceuticals, GmbH, or Artemis, our only revenues to date are license revenues and revenues under contracts with our partners. In November 2007, we sold 80.1% of our ownership interest in Artemis. The amount 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 to continue to incur substantial operating expenses, 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 may not realize the expected benefits of our initiatives to control costs.

Managing costs is a key element of our business strategy. Consistent with this element of our strategy, in November 2008 we implemented a restructuring that resulted in the reduction of approximately 10% of our workforce. We anticipate that we will incur some level of restructuring charges through the end of 2009 as we continue to implement this restructuring.

If we experience excessive unanticipated inefficiencies or incremental costs in connection with restructuring activities, such as unanticipated inefficiencies caused by reducing headcount, we may be unable to meaningfully realize cost savings and we may incur expenses in excess of what we anticipate. Either of these outcomes could prevent us from meeting our goal of being able to operate independently of the capital markets for a substantial period of time, and could adversely impact our results of operations or financial condition.

We are exposed to risks related to foreign currency exchange rates.*

Most of our foreign expenses incurred are associated with establishing and conducting clinical trials for XL184 and various other compounds in our pipeline at sites outside of the United States. The amount of expenses incurred will be impacted by fluctuations in the currencies of those countries in which we conduct clinical trials. Our agreements with the foreign sites that conduct

such clinical trials generally provide that payments for the services provided will be calculated in the currency of that country, and converted into U.S. dollars using various exchange rates based upon when services are rendered or the timing of invoices. When the U.S. dollar weakens against foreign currencies, the U.S. dollar value of the foreign-currency denominated expense increases, and when the U.S. dollar strengthens against these currencies, the U.S. dollar value of the foreign-currency denominated expense decreases. Consequently, changes in exchange rates may affect our results of operations. We currently do not hedge against our foreign currency risks.

Global credit and financial market conditions could negatively impact the value of our current portfolio of cash equivalents or short-term investments and our ability to meet our financing objectives.

Our cash and cash equivalents are maintained in highly liquid investments with remaining maturities of 90 days or less at the time of purchase. Our short-term and long-term investments consist primarily of readily marketable debt securities with remaining maturities of more than 90 days at the time of purchase. While as of the date of this filing we are not aware of any downgrades, material losses, or other significant deterioration in the fair value of our cash equivalents, short-term investments, or long-term investments since June 30, 2009, no assurance can be given that further deterioration in conditions of the global credit and financial markets would not negatively impact our current portfolio of cash equivalents or investments or our ability to meet our financing objectives.

Risks Related to Development of Product Candidates

Clinical testing of our product candidates is a lengthy, costly, complex and uncertain process and may fail to demonstrate safety and efficacy.

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;
- we or our competitors may subsequently discover other compounds that we believe show significantly improved safety or efficacy compared to our product candidates;
- 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 or our ability to generate revenue from the affected product candidates could be impaired, either of which could 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.

Any delay or termination described above 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.

Risks Related to Our Relationships with Third Parties

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 any of these agreements is not renewed or is 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. Our agreements with Bristol-Myers Squibb, sanofi-aventis, Genentech, Boehringer Ingelheim, Daiichi-Sanko and Wyeth 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. 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, among other things, development plans and budgets, the parties' respective research and development activities and 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 have a significant adverse affect on 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, if at all, 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, President Bush 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. In addition, members of the United States Congress have stated their desire to reduce the government’s cost for reimbursements of prescription drugs by amending this legislation.

State Medicaid programs generally have outpatient prescription drug coverage, subject to state regulatory restrictions, for the population eligible for Medicaid. The availability of coverage or reimbursement for prescription drugs under private health insurance and managed care plans varies based on the type of contract or plan purchased.

Another development that may affect the pricing of drugs is proposed congressional action regarding drug reimportation into the United States. The Medicare Prescription Drug, Improvement and Modernization Act of 2003 gives discretion to the Secretary of Health and Human Services to allow drug reimportation into the United States under some circumstances from foreign countries, including countries where the drugs are sold at a lower price than in the United States. 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 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 divert management's attention. 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 retain and, where necessary, attract 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. Retaining and, where necessary, recruiting 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 these advisors and collaborators 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 such a circumstance, we may lose work performed by them, and our development efforts with respect to the matters on which they were working maybe significantly delayed or otherwise adversely affected. 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, development, administrative and operational infrastructure. 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, rules and regulations implemented by the Securities and Exchange Commission 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.

Our headquarters are located in South San Francisco, California, and therefore 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 face liability for any injury or contamination that results from our use or the use by third parties of these materials, and such 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 could harm our reputation and business and would decrease our cash reserves.

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 or revenue;
- payments of non-refundable upfront or licensing fees, or payment for cost-sharing expenses, 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. 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 securities 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, many of which we cannot control:

- 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;
- conflicts or litigation with our collaborators;
- litigation, including intellectual property infringement and product liability 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. As with the stock of many other public companies, the market price of our common stock has been particularly volatile during the recent period of upheaval in the capital markets and world economy. This excessive volatility may continue for an extended period of time following the filing date of this report.

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 and shares issued under our employee stock purchase plan) 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.

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 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

In 2005, we licensed three of our compounds, XL647, XL784 and XL999, to SEI, in return for an $80.0 million investment for the clinical development of these compounds. As part of the agreement, we received an exclusive purchase option to acquire all of the equity of SEI, thereby allowing us to reacquire XL647, XL784 and XL999 at our sole discretion. The purchase option expired on June 9, 2009. As a result of the expiration of the purchase option, we issued a warrant to Holdings to purchase 500,000 shares of our common stock at a price of $6.05 per share, which is equal to 125% of the average closing price of our common stock on the Nasdaq Global Select Market over a continuous period of 60 trading days immediately preceding the second trading day prior to the business day immediately following the date the purchase option expired, with a five-year term.

The warrant was issued pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended, or the Securities Act, afforded by Section 4(2) of the Securities Act and Rule 506 of Regulation D thereunder, as a transaction not involving a public offering.

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

At our 2009 annual meeting of stockholders held on May 13, 2009, the stockholders were asked to vote upon:

1. The election of three Class I directors for a three-year term until the 2012 annual meeting of stockholders. The nominees for election to these positions were Charles Cohen, Ph.D., George Poste, D.V.M., Ph.D. and Jack Wyszomierski;
2. The ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending January 1, 2010;
3. The amendment of the Exelixis, Inc. 2000 Employee Stock Purchase Plan (the "2000 Purchase Plan") to increase the number of shares of common stock reserved for issuance under the 2000 Purchase Plan by 5,000,000 shares;
4. The amendment and restatement of the Exelixis, Inc. 2000 Equity Incentive Plan (the "2000 Equity Plan"); and
5. A proposed exchange of certain outstanding options for a reduced number of replacement stock options to be granted under the 2000 Equity Plan with an exercise price equal to the fair market value of Exelixis, Inc. common stock at the time of the exchange.

The results of the matters presented at the annual meeting, based on the presence in person or by proxy of holders of record of 93,778,031 shares of the 106,383,931 shares of our common stock entitled to vote, were as follows:

1. The election of each of Drs. Cohen and Poste and Mr. Wyszomierski as directors of the Company until the 2012 annual meeting of stockholders, and until his successor is elected and qualified, or until his earlier death, resignation or removal, was approved as follows:

	VOTES FOR	WITHHELD
Charles Cohen, Ph.D.	92,047,644	1,730,387
George Poste, D.V.M., Ph.D.	92,968,031	810,000
Jack L. Wyszomierski	92,037,901	1,740,130

Our Class II directors, Alan M. Garber, M.D., Ph.D., Vincent T. Marchesi, M.D., Ph.D. and Carl B. Feldbaum, Esq., will each continue to serve on the Board of Directors until the 2010 annual meeting of stockholders and until his successor is elected and qualified, or until his earlier death, resignation or removal. Our Class III directors, Stelios Papadopoulos, Ph.D., George A. Scangos, Ph.D., Frank McCormick, Ph.D. and Lance Willsey, M.D., will each continue to serve on the Board of Directors until the 2011 annual meeting of stockholders and until his successor is elected and qualified, or until his earlier death, resignation or removal.

2. The ratification of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending January 1, 2010 was approved as follows:

For	Against	Abstain	Broker Non-Vote
93,188,429	342,302	247,300	0

3. The amendment of the Exelixis, Inc. 2000 Purchase Plan to increase the number of shares of common stock reserved for issuance under the 2000 Purchase Plan by 5,000,000 shares was approved as follows:

For	Against	Abstain	Broker Non-Vote
56,832,505	16,872,728	89,073	19,983,725

4. The amendment and restatement of the Exelixis, Inc. 2000 Equity Plan was rejected as follows:

For	Against	Abstain	Broker Non-Vote
27,725,573	45,962,815	97,536	19,992,107

5. A proposed exchange of certain outstanding options for a reduced number of replacement stock options to be granted under the 2000 Equity Plan with an exercise price equal to the fair market value of Exelixis, Inc. common stock at the time of the exchange was approved as follows:

For	Against	Abstain	Broker Non-Vote
56,511,399	14,181,270	3,093,255	19,992,107

ITEM 6. EXHIBITS

(a) Exhibits

The exhibits listed on the accompanying exhibit index are filed or incorporated by reference (as stated therein) as part of this Quarterly Report on Form 10-Q.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: July 30, 2009

EXELIXIS, INC.

/s/ Frank Karbe

Frank Karbe
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT INDEX

Number	Exhibit Description
3.1	Amended and Restated Certificate of Incorporation of Exelixis, Inc. (1)
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc. (2)
3.3	Amended and Restated Bylaws of Exelixis, Inc. (3)
4.1	Specimen Common Stock Certificate. (4)
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	Form of Warrant, dated June 10, 2009, to purchase 500,000 shares of Exelixis, Inc. common stock in favor of Symphony Evolution Holdings LLC.
4.5	Warrant Purchase Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC. (5)
4.6	Form Warrant to Purchase Common Stock of Exelixis, Inc. issued or issuable to Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited (7)
4.7	Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999, among Exelixis, Inc. and certain Stockholders of Exelixis, Inc. (4)
4.8	Registration Rights Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC. (5)
4.9	Registration Rights Agreement between Exelixis, Inc. and Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited dated June 4, 2008 (7)
10.1*	License Agreement, dated May 27, 2009, between Exelixis, Inc. and sanofi-aventis.
10.2*	Collaboration Agreement, dated May 27, 2009, between Exelixis, Inc. and sanofi-aventis.
10.3	Letter, dated May 27, 2009, relating to regulatory filings for the Collaboration Agreement, May 27, 2009, between Exelixis, Inc. and sanofi-aventis.
10.4*	Third Amendment, dated July 1, 2009, to the Contract Research Agreement, dated September 4, 2007, by and among Agrigenetics, Inc., Mycogen Corporation, Exelixis Plant Sciences, Inc. and Exelixis, Inc.
10.5*	Fourth Amendment, dated July 1, 2009, to the Contract Research Agreement, dated September 4, 2007, by and among Agrigenetics, Inc., Mycogen Corporation, Exelixis Plant Sciences, Inc. and Exelixis, Inc.
10.6	2000 Employee Stock Purchase Plan (8)
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 Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

* Confidential treatment requested for certain portions of this exhibit.

** This certification accompanies this Quarterly Report on Form 10-Q, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of Exelixis, Inc. 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 Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.

(1) Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-3 (File No. 333-152166), as filed with the Securities and Exchange Commission on April 24, 2009, as amended, and incorporated herein by reference.

(2) 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.

(3) Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on October 4, 2007 and incorporated herein by reference.

(4) 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.

(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 June 9, 2008 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 April 13, 2009 and incorporated herein by reference.

NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE BEEN THE SUBJECT OF REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE, AND THE SAME HAVE BEEN (OR WILL BE, WITH RESPECT TO THE SECURITIES ISSUABLE UPON EXERCISE HEREOF) ISSUED IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE HEREOF MAY BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT AS PERMITTED UNDER SUCH SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

THE WARRANT EVIDENCED BY THIS CERTIFICATE IS SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN THE WARRANT PURCHASE AGREEMENT, DATED AS OF JUNE 9, 2005, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF THIS WARRANT WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH.

EXELIXIS, INC.

WARRANT TO PURCHASE COMMON STOCK

June 10, 2009

Void After June 10, 2014

THIS CERTIFIES THAT, for value received, **SYMPHONY EVOLUTION HOLDINGS LLC**, a Delaware limited liability company, with its principal office at 7361 Calhoun Place, Suite 325, Rockville, MD 20850, or its assigns (the "Holder"), is entitled to subscribe for and purchase at the Exercise Price (as defined below) from **EXELIXIS, INC.**, a Delaware corporation, with its principal office at 249 East Grand Ave., P.O. Box 511, South San Francisco, CA 94083 (the "Company"), up to five hundred thousand (500,000) shares of Common Stock, par value $0.001 per share, of the Company (the "Common Stock").

This Warrant is being issued pursuant to the terms of the Warrant Purchase Agreement, dated as of June 9, 2005, between the Company and Holder (the "Warrant Purchase Agreement").

1. DEFINITIONS. As used herein, the following terms shall have the following respective meanings:

(a) "Exercise Period" shall mean the period commencing on the date hereof and ending on June 10, 2014.

(b) "Exercise Price" shall mean $6.05 per share, subject to adjustment pursuant to Section 4 below.

(c) "Exercise Shares" shall mean the shares of Common Stock issuable upon exercise of this Warrant, subject to adjustment pursuant to the terms herein, including but not limited to adjustment pursuant to Section 4 below.

2. EXERCISE OF WARRANT.

2.1 Generally. The rights represented by this Warrant may be exercised in whole or in part at any time during the Exercise Period, by delivery of the following to the Company at its address set forth above (or at such other address as it may designate pursuant to Section 12 hereof):

(a) an executed Notice of Exercise in the form attached hereto;

(b) payment of the Exercise Price of the shares thereby subscribed for by wire transfer or cashier's check drawn on a United States bank to the Company, or by means of a cashless exercise pursuant to Section 2.2; and

(c) this Warrant.

Upon the exercise of the rights represented by this Warrant, a certificate or certificates for the Exercise Shares so purchased, registered in the name of the Holder or persons affiliated with the Holder, if the Holder so designates, shall be issued and delivered to the Holder as soon as practicable, but in no event longer than 30 days, after the rights represented by this Warrant shall have been so exercised. The Company shall, upon request of the Holder, if available and if allowed under applicable securities laws, use its commercially reasonable efforts to deliver any certificate or certificates required to be delivered by the Company under this section electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Exercise Shares, deliver to Holder a new Warrant evidencing the rights of Holder to purchase the unpurchased Exercise Shares called for by this Warrant, which new Warrant shall in all other respects be identical to this Warrant.

The person in whose name any certificate or certificates for Exercise Shares are to be issued upon exercise of this Warrant shall be deemed to have become the holder of record of such shares on the date on which this Warrant was surrendered and payment of the Exercise Price and all taxes required to be paid by the Holder, if any, was made, irrespective of the date of delivery of such certificate or certificates, except that, if the date of such surrender and payment is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the close of business on the next succeeding date on which the stock transfer books are open.

2.2 Cashless Exercise. Notwithstanding any provisions herein to the contrary, if the fair market value of one share of Common Stock is greater than the Exercise Price (at the date of calculation as set forth below), in lieu of exercising this Warrant by payment

of cash, the Holder may elect to receive shares equal to the value (as determined below) of this Warrant (or the portion thereof being exercised) by surrender of this Warrant together with the properly endorsed Notice of Exercise, in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

Where X = the number of shares of Common Stock to be issued to the Holder

Y = the number of shares of Common Stock purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being exercised (at the date of such calculation)

A = the fair market value of one share of Common Stock (at the date of such calculation)

B = Exercise Price (as adjusted to the date of such calculation)

For purposes of the above calculation, the fair market value of one share of Common Stock shall equal the average closing price of the Common Stock, as reported in the *Wall Street Journal*, on the NASDAQ National Market, or other national exchange that is then the primary exchange on which the Common Stock is listed (the "the Principal Market"), for the 30 trading days immediately preceding the second trading day prior to the date on which the Holder delivers to the Company an executed Notice of Exercise in the form attached hereto. If the Common Stock is not quoted on the NASDAQ National Market, or listed on another national exchange, the fair market value of one share of Common Stock shall be determined by the Company's Board of Directors in good faith.

2.3 Legend. All certificates evidencing the shares to be issued to the Holder may bear the following legends:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE, AND THE SAME HAVE BEEN ISSUED IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT AS PERMITTED UNDER SUCH SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.**"**

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN THE WARRANT PURCHASE AGREEMENT, DATED AS OF JUNE 9, 2005, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER. NO REGISTRATION OF TRANSFER OF THESE SHARES WILL BE MADE ON THE BOOKS OF THE ISSUER UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH."

2.4 Charges, Taxes and Expenses. Issuance of certificates for Exercise Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event certificates for Exercise Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder; and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

3. COVENANTS OF THE COMPANY.

3.1 No Impairment. Except and to the extent as waived or consented to by the Holder, the Company will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may be necessary or appropriate in order to protect the exercise rights of the Holder against impairment.

3.2 Notices of Record Date. If at any time:

(a) the Company shall take a record of the holders of Common Stock for the purpose of entitling them to receive a dividend or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right (other than with respect to any equity or equity equivalent security issued pursuant to a rights plan adopted by the Company's Board of Directors);

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company; or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of such cases, the Company shall give to Holder (i) at least 10 days' prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, recapitalization, consolidation, merger, sale, transfer, disposition, dissolution, liquidation or winding up and (ii) in the case of any such reorganization, reclassification, recapitalization, consolidation, merger, sale, transfer, disposition, dissolution, liquidation or winding up, at least 10 days' prior written notice of the date on which the same shall take place. Such notice in accordance with the foregoing clause also shall specify the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof.

4. ADJUSTMENT OF EXERCISE PRICE. In the event of changes in the outstanding Common Stock by reason of stock dividends, split-ups, recapitalizations, reclassifications,

combinations or exchanges of shares, separations, reorganizations, liquidations or the like, the number and class of shares available under this Warrant in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of this Warrant, on exercise for the same aggregate Exercise Price, the total number, class and kind of shares as the Holder would have owned had the Warrant been exercised prior to the event and had the Holder continued to hold such shares until after the event requiring adjustment. The form of this Warrant need not be changed because of any adjustment in the number of Exercise Shares subject to this Warrant.

5. FRACTIONAL SHARES. No fractional shares shall be issued upon the exercise of this Warrant, including as a consequence of any adjustment pursuant hereto. If the exercise would result in the issuance of a fractional share, the Company shall, in lieu of issuance of any fractional share, pay the Holder otherwise entitled to such fraction a sum in cash equal to the product resulting from multiplying the then current fair market value of an Exercise Share (determined as provided in Section 2.2 hereof) by such fraction; provided, however, that the Company may elect in its sole discretion to issue the next higher number of full shares of Common Stock by issuing a full share with respect to such fractional share.

6. CORPORATE TRANSACTIONS. In case the Company shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another corporation (where the Company is not the surviving corporation or where there is a change in or distribution with respect to the Common Stock), or sell, transfer or otherwise dispose of all or substantially all its property, assets or business and, pursuant to the terms of such reorganization, reclassification, merger, consolidation or disposition of assets, shares of common stock of the successor or acquiring corporation, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring corporation ("Other Property"), are to be received by or distributed to the holders of the Common Stock, then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the number of shares of common stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and Other Property receivable upon or as a result of such reorganization, reclassification, merger, consolidation or disposition of assets by a Holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such event. For purposes of this Section 6, "common stock of the successor or acquiring corporation" shall include stock of such corporation of any class which is not preferred as to dividends or assets over any other class of stock of such corporation and which is not subject to redemption and shall also include any evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable for any such stock, either immediately or upon the arrival of a specified date or the happening of a specified event and any warrants or other rights to subscribe for or purchase any such stock. The foregoing provisions of this Section 6 shall similarly apply to successive reorganizations, reclassifications, mergers, consolidations or disposition of assets.

7. NOTICE OF ADJUSTMENT. Whenever the number of Exercise Shares or number or kind of securities or other property purchasable upon the exercise of this Warrant or the Exercise Price is adjusted, as herein provided, the Company shall give notice thereof to the Holder at the address of such Holder appearing on the books of the Company, which notice shall state the number of Exercise Shares (and other securities or property) purchasable upon the exercise of this Warrant and the Exercise Price of such Exercise Shares (and other securities or property) after such adjustment, setting forth a brief statement of the facts requiring such adjustment and setting forth the computation by which such adjustment was made.

8. ORDERLY SALE. This Warrant and the Exercise Shares are subject to the provisions of Section 6.05 of the Warrant Purchase Agreement.

9. NO STOCKHOLDER RIGHTS. This Warrant does not entitle the Holder to any voting rights or other rights as a stockholder of the Company prior to the exercise hereof. Upon the exercise of this Warrant in accordance with Section 2, the Exercise Shares so purchased shall be and be deemed to be issued to such Holder as the record owner of such shares as of the close of business on the date of such exercise.

10. TRANSFER OF WARRANT. Subject to applicable laws, the restriction on transfer set forth on the first page of this Warrant and the provisions of Article VI of the Warrant Purchase Agreement, this Warrant and all rights hereunder are transferable by the Holder, in person or by duly authorized attorney, upon delivery of this Warrant, the Assignment Form attached hereto and funds sufficient to pay any transfer taxes payable upon the making of such transfer, to any transferee designated by Holder. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. A Warrant, if properly assigned, may be exercised by a new holder for the purchase of Exercise Shares without having a new Warrant issued. The Company may require, as a condition of allowing a transfer (i) that the Holder or transferee of this Warrant, as the case may be, furnish to the Company a written opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that such transfer may be made without registration under the Securities Act and under applicable state securities or blue sky laws, (ii) that the holder or transferee execute and deliver to the Company an investment letter in form and substance acceptable to the Company, (iii) that the transferee be an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act and (iv) the transferee agree in writing to be bound by the terms of this Warrant and the Warrant Purchase Agreement as if an original signatory thereto.

11. LOST, STOLEN, MUTILATED OR DESTROYED WARRANT. If this Warrant is lost, stolen, mutilated or destroyed, the Company may, on such terms as to indemnity or otherwise as it may reasonably impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination and tenor as the Warrant so lost, stolen, mutilated or destroyed.

12. NOTICES, ETC. Any notice, request, demand, waiver, consent, approval or other communication that is required or permitted to be given hereto shall be in writing and shall be deemed given only if delivered to the applicable party personally or sent to the party by facsimile transmission (promptly followed by a hard-copy delivered in accordance with this Section 12), by next business day delivery by a nationally recognized courier service, or by registered or certified mail (return receipt requested), with postage and registration or certification fees thereon prepaid, addressed to the party at its address set forth in the Warrant Purchase Agreement, or at such other address as the Company or Holder may designate by ten (10) days advance written notice to the other party hereto.

13. ACCEPTANCE. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

14. GOVERNING LAW. This Warrant and all rights, obligations and liabilities hereunder shall be governed by the laws of the State of New York.

15. SATURDAYS, SUNDAYS, HOLIDAYS, ETC. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday, Sunday or a legal holiday, then such action may be taken or such right may be exercised on the next succeeding day not a Saturday, Sunday or legal holiday.

16. AMENDMENT. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

17. SUCCESSORS AND ASSIGNS. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and permitted assigns of Holder.

18. HEADINGS. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its duly authorized officer as of June 10, 2009.

EXELIXIS, INC.

By: /s/ James B. Bucher
Name: James B. Bucher
Title: Vice President Corporate Legal Affairs and Secretary

NOTICE OF EXERCISE

TO: EXELIXIS, INC.

(1) ☐ The undersigned hereby elects to purchase shares of Common Stock of **EXELIXIS, INC.** (the "Company") pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

☐ The undersigned hereby elects to purchase shares of Common Stock of **EXELIXIS, INC.** (the "Company") pursuant to the terms of the net exercise provisions set forth in Section 2.2 of the attached Warrant, and shall tender payment of all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name as is specified below:

_____

(Name)

_____

_____

(Address)

(3) The undersigned represents that:

(A) It is an "accredited investor" within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act").

(B) It has relied completely on the advice of, or has consulted with or has had the opportunity to consult with, its own personal tax, investment, legal or other advisors and has not relied on the Company or any of its affiliates for advice.

(C) It has been advised and understands that the offer and sale of the attached Warrant and the shares of Common Stock issued upon exercise of the Warrant (the "Warrant Shares") have not been registered under the Securities Act. It is able to bear the economic risk of such investment for an indefinite period and to afford a complete loss thereof.

(D) It is acquiring the Warrant Shares solely for its own account for investment purposes as a principal and not with a view to the resale of all or any part thereof. It agrees that the Warrant Shares may not be resold (1) without registration thereof under the Securities Act (unless an exemption from such registration is available), or (2) in violation of any law. It acknowledges that the Company is not required to register the Warrant Shares under the Securities Act. It is not and will not be an underwriter within the meaning of Section 2(11) of the Securities Act with respect to the Warrant Shares.

(E) No person or entity acting on behalf of, or under the authority of, the undersigned is or will be entitled to any broker's, finder's, or similar fees or commission payable by the Company or any of its affiliates.

(Date)

(Signature)

(Print name)

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Dated: _____, 2____

Holder's
Signature: _____

Holder's
Address: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

CONFIDENTIAL

Execution Copy

[*] = 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.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of May 27, 2009 (the "**Execution Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having an address at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **SANOFI-AVENTIS**, a French company, having an address at 174, Avenue de France, 75013 Paris, France ("**Sanofi-Aventis**"). Exelixis and Sanofi-Aventis are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Sanofi-Aventis is a leading pharmaceutical company committed to researching, developing, manufacturing and marketing novel products of high therapeutic value for human and veterinary medicine.

B. Exelixis is a biotechnology company that has expertise relating to the discovery and development of therapeutics and owns the rights to the compounds XL147 and XL765 (as further defined below) that modulate signal transduction pathways involved in oncology and other disease areas.

C. Sanofi-Aventis desires to obtain and Exelixis desires to grant to Sanofi-Aventis exclusive worldwide rights under such Exelixis technology 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 "Alliance Manager" has the meaning set forth in Section 3.5(a).

1.3 "Annual Development Plan" has the meaning set forth in Section 4.3(a).

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

1.5 "Backup" means: (a) with respect to EXEL-04286147, any [*]; and (b) with respect to EXEL-04286765, any [*].

1.6 "Calendar Quarter" shall mean any consecutive 3-month period ending March 31, June 30, September 30 or December 31.

1.7 "Clinical Supply Requirements" means the quantities of the Product which are required by a Party or the Parties for the Development of a Product under this Agreement, including, without limitation, the conduct of pre-clinical studies and clinical trials in connection with each Annual Development Plan. **"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) other 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.

1.9 "Committee" means the JEC or JDC as the case may be.

1.10 "Confidential Information" has the meaning set forth in Section 10.1.

1.11 "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.

1.12 "Development" means, with respect to a Product, those activities, including pre-clinical development activities, clinical trials, supporting manufacturing activities and related regulatory activities, that are [*] to: (a) obtain from applicable Regulatory Authorities the Regulatory Approvals 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 and (b) maintain such Regulatory Approvals. To avoid confusion, Development does not include [*]. For clarity, **"Develop"** and **"Developing"** have a correlative meaning.

1.13 "Diligent Efforts" means the carrying out of obligations or tasks by a Party in a sustained manner using good faith commercially reasonable and diligent efforts, which efforts shall be consistent with the exercise of prudent scientific and business judgment in accordance with the efforts such Party devotes to products or research or development projects owned by it of similar scientific and commercial potential. Diligent Efforts shall be [*].

1.14 "Directly Competing Product" means a [*] that: (a) is not a Licensed Compound or a Reverted Product; and (b) [*], in each case of subsections (i) – (iii), with [*]: (i) [*]; (ii) [*]; or (iii) [*].

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

1.16 "Drug Approval Application" or **"DAA"** means in any country or regulatory jurisdiction, the application for Regulatory Approval required for commercial sale or use of a Product (or with respect to a subsequent Indication) in such country or regulatory jurisdiction.

1.17 "Effective Date" has the meaning set forth in Section 12.3(e).

1.18 "Executive Officers" means: (a) in the case of Exelixis, the President and Chief Executive Officer of Exelixis; and (b) in the case of Sanofi-Aventis, [*].

1.19 "Exelixis Clinical Supply Costs" means (a) the [*] incurred by Exelixis for having Product Manufactured and purchasing Product for Clinical Supply Requirements under the applicable Global Development Plan, (b) the [*] incurred by Exelixis for purchasing comparator agent or placebo requirements for activities contemplated under the applicable Global Development Plan, (c) the [*] incurred by Exelixis for filling, packaging, labeling and delivery of such Clinical Supply Requirements, comparator agent, combination agent and/or placebo, as the case may be, for activities contemplated under the applicable Global Development Plan and (d) any irrecoverable VAT or similar taxes actually paid with respect to the Manufacture or delivery of Clinical Supply Requirements. **"Exelixis Clinical Trials"** means the ongoing, expanded or new clinical trials that are carried out for each Product and that are described in the Global Development Plan or each Annual Development Plan, and any other trials that are designated as Exelixis Clinical Trials by the JDC.

1.21 "Exelixis Development Expenses" means those costs and expenses incurred by Exelixis directly in connection with the Development of a Product in accordance with this Agreement and the applicable Annual Development Plan, including without limitation:

(a) all Out-of-Pocket Costs, including, without limitation, fees and expenses associated with the conduct of Exelixis Clinical Trials or any other mutually agreed Development activities with respect to a Product;

(b) Exelixis FTE Costs;

(c) Exelixis Clinical Supply Costs incurred in connection with the Exelixis Clinical Trials or the supply to Sanofi-Aventis of Clinical Supply Requirements; and

(d) any other costs or expenses [*] incurred in connection with any other mutually agreed research or Development activities of Exelixis with respect to a Product.

1.22 "Exelixis FTE Cost" means, for all Development activities performed by Exelixis in accordance with the Annual Development Plan(s), the amount equal to (a) the number of FTEs required for such Development activity as set forth in the approved Annual Development Plan multiplied by (b) the Exelixis FTE Rate. For the avoidance of doubt, the activity of contract personnel shall be charged as Out-of-Pocket Costs.

1.23 "Exelixis FTE Rate" means initially [*] subject to adjustment in accordance with Section 4.5(d).

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

1.25 "Exelixis Patents" means all Patents Controlled by Exelixis and its Affiliates, as of the Effective Date or during the Term (including Exelixis' Sole Invention Patents) that: (a) cover a Licensed Compound, a composition containing a Licensed Compound, a formulation containing a Licensed Compound, or the manufacture or use of a Licensed Compound; and (b) are [*] for Sanofi-Aventis to exercise the rights licensed to it under the Agreement. Exelixis Patents shall include the Patents listed in **Exhibit 1.25** attached hereto, such Exhibit to be amended from time to time.

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

1.27 "FTE" means the equivalent of the work of one (1) employee full time for one (1) year consisting of a total of [*] per year directly related to the research or Development of any Product or Licensed Compound. Any individual who devotes less than [*] per year (or such other number as may be agreed by the JEC) shall be treated as an FTE on a pro-rata basis upon the number of hours worked (based on Exelixis' internal methodology for calculating the number of hours that comprises an FTE) divided by [*].

1.28 "GAAP" means United States generally accepted accounting principles, as they exist from time to time, and any successor set of accounting principles (including IFRS if adopted by the United States Securities and Exchange Commission), consistently applied.

1.29 "Generic Product" means, with respect to a given Product in a given country, any pharmaceutical product that: (a) is marketed for sale in such country by a Third Party; (b) contains as active pharmaceutical ingredient [*]; and (c) [*]. With respect to a Product that is [*], a Generic Product shall, for purposes of this paragraph, contain as active pharmaceutical ingredients [*], and meet the conditions defined in (a) and (c) above.

1.30 "Global Development Plan" has the meaning set forth in Section 4.2(a).

1.31 "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.

1.32 "IFRS" means International Financial Reporting Standards, as they exist from time to time, consistently applied.

1.33 "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.

1.34 "Indication" means :

(a) with respect to the oncology therapeutic area, [*] (for clarification purposes, (i) [*]; and (ii) [*]); or,

(b) any disease in therapeutic areas other than oncology.

1.35 "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 excludes any Patents.

1.36 "Invention" means any and all inventions and improvements conceived or reduced to practice by or on behalf of a Party or the Parties jointly in the performance of its obligations, or the exercise of its rights, under this Agreement.

1.37 "Joint Development Committee" or **"JDC"** has the meaning set forth in Section 3.1(a).

1.38 "Joint Executive Committee" or **"JEC"** has the meaning set forth in Section 3.1(a).

1.39 "Joint Invention" means any Invention conceived and/or reduced to practice jointly by or on behalf of both Parties.

1.40 "Joint Invention Patent" means a Patent that claims a Joint Invention.

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

1.42 "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 [*].

1.43 "Licensed Compound" means: (a) XL147; or (b) XL765, as the case may be, and **"Licensed Compounds"** means XL147 and XL765 as such codes are hereinafter defined.

1.44 "Losses" has the meaning set forth in Section 13.1.

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

1.46 "Major Territories" means the [*].

1.47 "Manufacturing" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, inspection, receiving, holding and shipping of Licensed 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.

1.48 "Manufacturing Technology" shall have the meaning set forth in Section 7.4(a).

1.49 "mTOR" means: (a) the gene for [*]; (b) the protein encoded by such gene; and (c) all [*].

1.50 "Net Sales" means the amount invoiced or otherwise billed by Sanofi-Aventis 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, 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 Sanofi-Aventis in accordance with IFRS, consistently applied, during the applicable royalty calculation period; and (f) 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 IFRS.

Notwithstanding the foregoing, if any Product is sold [*], then, solely for the purpose of calculating Net Sales for royalty purposes hereunder, any [*] on such Products [*] 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 Sanofi-Aventis, 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 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, mechanical but not chemical drug delivery vehicles, adjuvants, and excipients shall not be deemed to be "**active ingredients**" or "**active functional elements**". For clarity, [*] such as, without limitation, [*], shall [*] to be "**active ingredients**" or "**active functional elements**" for purposes of this paragraph.

1.51 "Out-of-Pocket Costs" means costs and expenses paid to Third Parties (or payable to Third Parties and accrued in accordance with GAAP) by Exelixis and/or its Affiliates, if applicable.

1.52 "[*]" means a small molecule compound that: (a) contains the chemical scaffold identified in the [*]; and (b) [*].

1.53 "[*]" means a small molecule compound that: (a) contains the chemical scaffold identified in the [*]; and (b) [*].

1.54 "Party Vote" has the meaning set forth in Section 3.4(c)(i).

1.55 "Patent" means all: (a) unexpired letters patent (including inventor's certificates) 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 applications; and (c) any international counterparts to (a) and (b) above.

1.56 "Phase I Clinical Trial" means a clinical trial that generally provides for the first introduction into humans of a Product, with a primary purpose of determining safety, metabolism and pharmacokinetic properties and clinical pharmacology of such Product, and generally consistent with 21 CFR § 312.21(a), as amended (or its successor regulation), or other comparable regulation imposed by a Regulatory Authority in any country.

1.57 "Phase I/II Clinical Trial" means a human clinical trial of a Product, which trial satisfies the requirements for a Phase I Clinical Trial and for a Phase II Clinical Trial.

1.58 "Phase II Clinical Trial" means a human clinical trial of a Product, the principal purpose of which is to make a preliminary determination that such Product is safe for its intended use and to obtain sufficient information about such Product's efficacy to permit the design of further clinical trials, and generally consistent with 21 CFR § 312.21(b), as amended (or its successor regulation), or other comparable regulation imposed by a Regulatory Authority in any country.

1.59 "Phase II/III Clinical Trial" means a human clinical trial of a Product, that satisfies the requirements for a Phase II Clinical Trial and for a Phase III Clinical Trial.

1.60 "Phase III Clinical Trial" means a pivotal human clinical trial of a Product, which trial is designed to: (a) establish that such Product is safe and efficacious for its intended use; (b) define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed; (c) support Regulatory Approval of such Product; and (d) be generally consistent with 21 CFR § 312.21(c), as amended (or its successor regulation), or other comparable regulation imposed by a Regulatory Authority in any country.

1.61 "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.).

1.62 "PI3K" means: (a) the gene encoding [*]; (b) the protein encoded by such gene and (c) all [*]. For the purposes of this Agreement the term "PI3K" refers to [*].

1.63 "Product" means any therapeutic or prophylactic product (for use in animals or humans) in bulk or finished form that comprises or incorporates any Licensed Compound.

1.64 "Regulatory Approval" means any and all 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 Agency ("**EMEA**")), 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.

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

1.66 "Reverted Products" has the meaning set forth in Section 11.5(d).

1.67 "Royalty Term" has the meaning set forth in Section 8.5.

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

1.69 "Sanofi-Aventis Patents" means all Patents Controlled by Sanofi-Aventis and its Affiliates (including Sanofi-Aventis' Sole Inventions Patents but excluding Exelixis Patents) as of the Effective Date or during the Term that: (a) cover a Licensed Compound, a composition containing a Licensed Compound, a formulation containing a Licensed Compound, or the manufacture or use of a Licensed Compound; and (b) are [*] for Exelixis to exercise the rights licensed to it under the Agreement or to perform its obligations under the Agreement.

1.70 "Sole Invention" means any Invention conceived and reduced to practice solely by or on behalf of a Party during the Term.

1.71 "Sole Invention Patent" means a Patent that claims a Sole Invention.

1.72 "Target Potency Threshold" means: (a) for a [*], that such small molecule compound [*]: (i) [*]; and (ii) [*]; and (b) for a [*], that such small molecule compound [*]: (i) [*]; (ii) [*]; and (iii) [*].

1.73 "Term" has the meaning set forth in Section 11.1.

1.74 "Third Party" means any person or entity other than: (a) Exelixis; (b) Sanofi-Aventis; or (c) an Affiliate of either Party.

1.75 "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 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 [*], and 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.

1.76 "Working Group" has the meaning set forth in Section 3.4(f).

1.77 "XL147" means: (a) the small molecule compound with Exelixis identifier EXEL-04286147; (b) any Backups to EXEL-04286147; and (c) any [*] of the compounds described in (a) or (b).

1.78 "XL765" means: (a) the small molecule compound with Exelixis identifier EXEL-04286765; (b) any Backups to EXEL-04286765; and (c) any [*] of the compounds described in (a) or (b).

2. LICENSES AND RELATED RIGHTS

2.1 Licenses to Sanofi-Aventis; Exelixis Retained Rights; and Co-Branding.

(a) Development, Manufacturing and Commercialization. Subject to the terms of this Agreement, Exelixis hereby grants Sanofi-Aventis an exclusive, worldwide, royalty-bearing license (with the right to sublicense), under the Exelixis Patents, the Exelixis Know-How, and Exelixis' interest in the Joint Invention Patents, to develop, have developed, make, have made, use any Licensed Compound and develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any Licensed Compound.

(b) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Know-How and Exelixis Patents except those expressly granted to Sanofi-Aventis on an exclusive basis under the terms of this Agreement. Notwithstanding the exclusive licenses granted to Sanofi-Aventis pursuant to Section 2.1(a), Exelixis retains the right under the Exelixis Patents and the Exelixis Know-How and the Joint Invention Patents to: (i) make, have made, use, and test Licensed Compounds solely for internal research purposes; and (ii) to perform (and to sublicense Third Parties to perform) Exelixis' obligations under this Agreement, including for the purpose of performing its activities in connection with the Exelixis Clinical Trials and any related Manufacture of Clinical Supply Requirements under Section 7.2. For clarity, the license granted to Sanofi-Aventis in Section 2.1(a) shall not require Exelixis to remove any Licensed Compounds from Exelixis' compound library.

2.2 Sanofi-Aventis License Limitations and Covenants.

(a) Sanofi-Aventis hereby covenants that Sanofi-Aventis shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Know-How or Exelixis Patents for a purpose other than as set forth in Section 2.1(a) above.

(b) Sanofi-Aventis acknowledges and agrees that, the licenses granted in Section 2.1(a) shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any Patents, Information or other intellectual property right that is Controlled by Exelixis to research, develop, manufacture and/or commercialize any compounds (other than Licensed Compounds), and/or any composition containing any of the foregoing.

2.3 Limited License to Exelixis. Subject to the terms of this Agreement, Sanofi-Aventis hereby grants Exelixis a non-exclusive, worldwide, royalty-free license (with the right to sublicense to Affiliates, but without the right to sublicense to Third Parties except with prior written consent of Sanofi-Aventis, which shall not be unreasonably withheld) under the Sanofi-Aventis Know-How, the Sanofi-Aventis Patents and Sanofi-Aventis' interest in the Joint Invention Patents, solely to perform Exelixis' obligations under this Agreement, including for the purpose of performing its activities in connection with the Exelixis Clinical Trials and any related Manufacture of Clinical Supply Requirements under Section 7.2.

2.4 Exelixis License Limitations and Covenants.

(a) Exelixis hereby covenants that Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any Sanofi-Aventis Know-How or Sanofi-Aventis Patents for a purpose other than that expressly permitted in Sections 2.3 and 11.5(d).

(b) Each sublicense granted by Exelixis, pursuant to Section 2.3, to a Party who is an Affiliate at the time such license is granted shall terminate immediately upon such Party ceasing to be an Affiliate.

2.5 No Additional Licenses. Except as expressly provided in this Agreement, 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).

2.6 Sublicensing. Each Party shall provide the other Party with the name of each permitted sublicensee of its rights under this Article 2 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.

2.7 Non-Compete.

(a) General Rule. Subject to Sections 2.7(b) and (c), during the Term, neither Party shall be free to [*] a Directly Competing Product.

(b) Exception for [*]. Notwithstanding anything to the contrary, if a Party is engaged in [*] that: (i) [*]; (ii) [*]; and (iii) [*], then [*], solely to [*].

(c) Exception for [*]. Notwithstanding anything to the contrary, the restrictions in Section 2.7(a) shall not apply to any [*]: (i) that [*]; (ii) that [*]; and (iii) for which [*].

3. GOVERNANCE

3.1 General.

(a) Role of Committees. Subject to Section 3.1(b), Section 3.1(d) 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 Sanofi-Aventis' and Exelixis' activities under this Agreement and facilitate communications between the Parties with respect to the Development and Manufacture of Products and any other issues which the Parties wish to debate at the JEC hereunder; and (ii) a specialized joint committee to focus on the Development of Products (such committee, the "**Joint Development Committee**" or "**JDC**"). Each Committee shall have the responsibilities and authority allocated to it in this Article 3 and elsewhere in this Agreement. It is contemplated that: (X) all significant matters relating to the pre-clinical and clinical Development of Products under this Agreement will be primarily addressed by the JDC and, if appropriate, by the JEC, as contemplated by Section 3.4(c); and (Y) the Parties' respective activities under this Agreement will be reported to the relevant Committees in a reasonable and appropriate level of detail. The JDC shall provide, on a [*] basis (unless otherwise requested by the JEC), updates on its activities and achievements to the JEC for review and comment.

(b) Limitations on the Authority of Committees. Notwithstanding the Committee structure established pursuant to Section 3.1(a), 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 [*]) without Exelixis' express written consent [*]; (iv) require Exelixis to [*] (other than [*]) without Exelixis' express written consent [*]; (v) require Sanofi-Aventis to [*] without Sanofi-

Aventis' express written consent [*]; (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 decision that would require Exelixis to [*]; (viii) to [*] (provided that the appropriate Committee may propose a written amendment to be signed by both Parties which may [*]); (ix) adjust the Exelixis FTE Rate; or (x) make any decision matters that 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.

(c) Discontinuation of Participation on a Committee. Each Committee shall continue to exist until the first to occur of: (i) the Parties mutually agreeing to disband the Committee, or (ii) a Party providing to the other Party written notice of its intention to disband and no longer participate in such Committee. Once one Party has provided the other Party written notice as referred to in subclause (ii) above, such Committee shall have no further obligations under this Agreement and such other Party receiving such notice shall have the right to solely decide, without consultation, any matters previously before such Committee, subject to the other terms of this Agreement.

(d) Disbandment of JEC and JDC. The Parties hereby agree that the JEC and the JDC shall be disbanded within [*] following the completion of any and all Development activities to be performed by Exelixis hereunder, including but not limited to the Exelixis Clinical Trials.

3.2 Joint Executive Committee.

(a) Formation and Purpose. Exelixis and Sanofi-Aventis shall establish the JEC within [*] after the Effective Date. Subject to Sections 3.1(b) and 3.4(c), the JEC responsibility shall be: (a) to determine the global Development strategy for the Products; (b) to coordinate the Parties' activities hereunder; and (c) as applicable, to review, comment on, approve, and resolve disputes with respect to the foregoing or other matters which the Parties wish to bring to the JEC, including the specific responsibilities of the JEC outlined below. The JEC shall have the membership and shall operate by the procedures set forth in Section 3.4.

(b) Specific Responsibilities of the JEC. In addition to its overall responsibility for the Development strategy of the Products, but subject to Sections 3.1(b) and 3.4(c), the JEC shall, in particular, have the following specific responsibilities:

(i) approve the Global Development Plan and each Annual Development Plan for each Product;

(ii) oversee the Parties' activities hereunder;

(iii) approve budgets for the Exelixis Development Expenses;

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

(v) oversee the Development of each Product pursuant to its Global Development Plan and respective Annual Development Plan, up to the initiation of Phase III Clinical Trials;

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

(vii) provide a forum for disputed matters within the responsibilities of JDC or JEC; and

(viii) 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.

3.3 Joint Development Committee.

(a) Formation and Purpose. Exelixis and Sanofi-Aventis shall establish the JDC within [*] after the Effective Date. Subject to Sections 3.1(b) and 3.4(c), the JDC shall oversee, coordinate and expedite the Development of each Product worldwide in order to obtain Regulatory Approvals. 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. The JDC shall have the membership and shall operate by the procedures set forth in Section 3.4.

(b) Specific Responsibilities of the JDC. In support of its responsibility for overseeing, coordinating and expediting the Development of, and regulatory filings for, each Product, but subject to Sections 3.1(b) and 3.4(c), the JDC shall, in particular:

(i) monitor Development activities, including with respect to operational matters such as enrollment strategies, site selection, CRO contract strategies;

(ii) review and discuss 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;

(v) provide on a [*] basis updates on its activities and achievements to the JEC for review and comment;

(vi) 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.

3.4 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 Sanofi-Aventis and Exelixis shall designate representatives with appropriate expertise to serve as members of each Committee. Each Party may replace its Committee representatives at any time upon written notice to the other Party. Each Committee shall have co-chairpersons. Sanofi-Aventis 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.

(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 JDC, and once every [*] for the JEC. Each Committee shall meet alternately at Exelixis' facilities in South San Francisco, California, and Sanofi-Aventis' facilities in Paris, 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 10, 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 3.1(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 3.4(c) and subject to Section 3.1(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.

(ii) [*] Decisions. [*] shall be made by Sanofi-Aventis, provided however that, [*] shall be made by Exelixis, [*]. Any dispute regarding a decision made by [*] pursuant to this paragraph shall first be referred to 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 referred to the JDC and/or JEC for resolution.

(iii) Disagreements on JDC. Except for matters outside the jurisdiction and authority of the Committees as provided in Section 3.1(b), any disagreement between the designees of Sanofi-Aventis and Exelixis on the JDC 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.

(iv) [*] Casting Vote on JEC. [*] shall have a tie-breaking vote with respect to any matter submitted to the JEC for resolution pursuant to Section 3.2(b), in the event the designees of Sanofi-Aventis and Exelixis on the JEC are unable to make a decision due to a lack of required unanimity. [*] right to exercise final decision-making authority pursuant to this paragraph shall be exercised in good faith, with due regard for the impact of such decisions on Products, and, consistent in all material respects with the terms of this Agreement. [*] shall make all [*] decisions [*] (through its JEC or JDC members, as applicable) on such matters and the proposed [*] decision.

(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 at the Discretion of the JEC. The JEC may determine that a separate JDC be formed for each Product. 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, in each case, solely with respect to the Product to which such Committees relate.

(f) Working Groups. From time to time, the JEC or JDC 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 or JDC, 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 3. Any disagreement between the designees of Sanofi-Aventis and Exelixis on a Working Group shall be referred to the applicable Committee for resolution.

(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, 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.

3.5 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint a single individual to act as a single point of contact between the Parties (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 3.4(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; 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.

3.6 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 Sanofi-Aventis is that of independent contractors and neither Party shall have the power to bind or obligate the other Party in any manner.

4. DEVELOPMENT OF PRODUCTS

4.1 Development Responsibility. Subject to the terms and conditions of this Agreement, Sanofi-Aventis shall, during the Term, have sole authority and responsibility for the Development of each Product in accordance with the Approved Plans, and shall bear all costs and expenses associated therewith (for clarity, any costs and expenses incurred by or on behalf of Exelixis and related to Development work performed prior to the Execution Date shall be borne by Exelixis, subject to the provisions of Section 7.2). Notwithstanding the foregoing, Annual Development Plans may specify that [*], pursuant to Section 4.4 below. Sanofi-Aventis shall make such determination in the best interests of each Product Development.

4.2 Global Development Plans.

(a) Scope. For each Product during the period in which there are Exelixis Clinical Trials ongoing, the Development of such Product shall be governed by a comprehensive, multi-year, worldwide plan (the **"Global Development Plan"**) covering the Development of such Product for use in the U.S., each of the Major European Countries and Europe [*], and, [*], for the rest of the world. The Global Development Plan shall: (i) provide a comprehensive 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; (ii) indicate [*]; and (iii) set forth those obligations assigned to each Party with respect to the performance of the Development activities contemplated by such Global Development Plan.

(b) Initial Global Development Plan. The initial Global Development Plan shall be presented by the JDC to the JEC for approval by the JEC within [*] following the Effective Date.

(c) Updates to the Global Development Plan. Subject to Section 4.2(d), any material update, amendment or modification to any provisions of such Global Development Plan shall require the approval of the JEC.

(d) Reports. Beginning [*] after disbandment of the JDC and JEC in accordance with Section 3.1(d), and every [*] thereafter during the Term, Sanofi-Aventis shall submit to Exelixis a written progress report, substantially in the form of **Exhibit 4.2(d)**, which summarizes the Development of Products performed by Sanofi-Aventis.

4.3 Annual Development Plans.

(a) Scope. The Development of each Product [*] 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 Product for such year and providing an estimate of the Exelixis Development Expenses to be incurred for such year, based on the information available at the time including patient estimates. Each Annual Development

Plan shall be proposed by the JDC for approval by the JEC. Each Annual Development Plan for such Product, and any modifications thereto, shall cover, and be consistent in all material respects with, all the Development activities in the then-current Global Development Plan for such Product that are to be performed in that particular calendar year.

(b) Procedure. The initial Annual Development Plan for [*] will be determined by the JDC no later than [*]. Thereafter, the JDC shall submit on an annual basis an Annual Development Plan for each Product during the period in which there are [*] to the JEC for its review, comment, and approval. Each such submission shall be no later than [*] of the 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.

4.4 Exelixis Clinical Trials.

(a) The Parties have agreed that the initial list of Exelixis Clinical Trials, which will be made part of the Initial Global Development Plan, shall be as set forth in **Exhibit 4.4(a)** hereof. At the [*], the Parties shall also agree on [*]. [*], the list of Exelixis Clinical Trials may be modified only in accordance with the terms and conditions of Article 3.

(b) Exelixis shall conduct the Exelixis Clinical Trials for each applicable Product in a collaborative and efficient manner. The Parties shall engage in joint decision-making for the Exelixis Clinical Trials as set forth in Article 3.

(c) Notwithstanding anything to the contrary in this Agreement, the Parties agree that Exelixis shall be the sponsor for the Exelixis Clinical Trials, and that Exelixis shall have the responsibility and the authority to act as the sponsor and make those decisions and take all actions necessary to assure compliance with all regulatory requirements. Exelixis agrees to be bound by, and perform all obligations set forth in, 21 C.F.R. §312 related to its role as the sponsor for the Exelixis Clinical Trials for a given Product. Notwithstanding anything to the contrary in this Agreement, Exelixis may discontinue or modify any clinical trial that is part of the Exelixis Clinical Trials without the approval of the JDC or the JEC in the event such actions are: (i) [*]; and (ii) [*].

(d) The Annual Development Plan may specify that outside contractors (reporting to, or acting on behalf of, Exelixis and reasonably selected by Exelixis) will have responsibility to direct and conduct any additional pre-clinical activities and applicable clinical trials in any country. The parties shall, to the extent practicable and permitted by applicable law, rule or regulation, cooperate, prior to engagement of a given outside contractor, to minimize costs associated with the retention of any outside contractors, including, where possible, the retention by Exelixis of such Sanofi-Aventis contractors where cost savings may be achieved by doing so.

(e) Exelixis shall use Diligent Efforts to carry out its responsibilities under each Annual Development Plan. Exelixis shall have the right to use commercially reasonable discretion in carrying out its obligations under each Annual Development Plan, including

without limitation: (a) carrying out day-to-day planning and implementation of activities under the Annual Development Plan; (b) managing day-to-day regulatory compliance matters, including adverse event reporting; (c) managing clinical research organizations engaged to carry out activities under the Annual Development Plan; and (d) managing the Exelixis Clinical Trials.

4.5 Exelixis Development Expenses.

(a) Reports and Payments for Exelixis Development Expenses. Promptly after the Effective Date, Exelixis shall provide Sanofi-Aventis with an estimate of the Exelixis Development Expenses (and invoice for Exelixis FTE Costs and for Out-of-Pocket Costs incurred by Exelixis, accompanied by reasonable supporting documentation, given that such invoicing will be on an accrual basis) covering: (i) the period between the Execution Date and the start of the first Calendar Quarter arising after the Effective Date; and (ii) the first Calendar Quarter arising after the Effective Date. By the [*] of each subsequent Calendar Quarter during the Term, Exelixis shall provide Sanofi-Aventis with: (A) an estimate of the Exelixis Development Expenses for such Calendar Quarter (and invoice for Exelixis FTE Costs); and (B) with the actual Exelixis Development Expenses for the preceding Calendar Quarter (and invoice for Out-of-Pocket Costs incurred by Exelixis during that Calendar Quarter, accompanied by reasonable supporting documentation, given that such invoicing will be on an accrual basis). Any overpayment or underpayment of the actual Exelixis FTE Costs against the prepayment made for the preceding Calendar Quarter will be netted by Exelixis against the current Calendar Quarter estimate therefor. Sanofi-Aventis shall pay Exelixis the amount in each such invoice within [*] after receipt thereof. Sanofi-Aventis shall have the right, at a reasonable time and upon reasonable prior notice [*], to audit Exelixis' records as provided in Section 12.3(c) to confirm the accuracy of Exelixis' costs and reports with respect to Exelixis Development Expenses under this Agreement.

(b) Accounting of Exelixis Development Expenses. Exelixis agrees to determine Exelixis Development Expenses using its standard accounting procedures, consistently applied, [*] as specifically provided in this Agreement. The Parties also recognize that such procedures may change from time to time. 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 Exelixis' accounting procedures in effect as of the date on which the activity in question (e.g., Development) first commences under this Agreement. [*]. 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.

(c) [*].

(d) FTE Records and Calculations; Adjustments to Exelixis FTE Rate. Exelixis shall record and account for its FTE effort for the Development of Products to the extent that such FTE efforts are included in Exelixis Development Expenses, and shall report such FTE effort to the JDC on a quarterly basis. The Exelixis FTE Rate may be adjusted annually, with each annual adjustment effective as of January 1 of each calendar year, with the first such annual adjustment to be made as of January 1, 2010, in accordance with the percentage increase or decrease, if any, in the US CPI for the twelve (12) months ending June 30 of the calendar year prior to the calendar year for which the adjustment is being made.

4.6 Technology and Regulatory Transfer of Licensed Compounds. Exelixis shall disclose or transfer to Sanofi-Aventis the Information and documents described in subsections 4.6(a) – (b) below:

(a) Within [*] after the Effective Date Exelixis shall disclose (and provide copies, as applicable) to Sanofi-Aventis any Information, including but not limited to any preclinical data, clinical data, assays, protocols, procedures and any other information in Exelixis' possession or Control, not previously disclosed to Sanofi-Aventis, and [*] to continue or initiate pre-clinical or clinical Development, or in seeking Regulatory Approval of Products.

(b) Exelixis shall transfer, [*] to Sanofi-Aventis, [*] (except as described below) and upon [*] prior written notice to Exelixis: (i) [*]; (ii) any agreements [*] all or some of the agreements [*], and Exelixis shall not be required to transfer, [*] the items described in [*] that are [*] for Exelixis to conduct such Exelixis Clinical Trials until such delegation of authority ceases.

5. REGULATORY

5.1 Regulatory Responsibility.

(a) Subject to Section 5.1(b) and Section 6.3, Sanofi-Aventis shall, during the Term, have [*] control and responsibility for the preparation, drafting, submission and filing, in its own name and at its own cost, of all DAAs, documents, dossiers, etc., for Regulatory Approvals for the Products in the jurisdictions where Sanofi-Aventis determines[*] it is commercially reasonable to do so. Subject to Section 5.1(b), Sanofi-Aventis shall have [*] responsibility for interacting with any Regulatory Authority regarding any issues, DAAs or any Regulatory Approval, and Exelixis shall provide its reasonable assistance to Sanofi-Aventis (at Sanofi-Aventis' expense), whenever Sanofi-Aventis seeks such assistance, to answer questions on the Products from any Regulatory Authority. Additionally, in the event Sanofi-Aventis must communicate with or respond to a Regulatory Authority within a very limited amount of time and needs the assistance of Exelixis for such interaction with the Regulatory Authority, Exelixis will use its Diligent Efforts to assist Sanofi-Aventis within the required time frame (at Sanofi-Aventis' expense). Furthermore, subject to Section 5.1(b) and to applicable laws and regulations, Sanofi-Aventis shall own all Regulatory Approvals, submissions and dossiers that it files as well as the Regulatory Approvals that are granted during the Term, including supporting documentation and information.

(b) Pending the transfer of an IND held by Exelixis with respect to a Product pursuant to Section 4.6(b), Exelixis shall remain the primary contact of Regulatory Authorities for regulatory activities regarding such Product, on behalf of Sanofi-Aventis. However, Sanofi-Aventis shall have the right to review and approve in advance any communication with any

Regulatory Authority regarding such Product. Upon the transfer of an IND with respect to a Product pursuant to Section 4.6(b), Exelixis shall notify the applicable Regulatory Authorities in writing that it is transferring such INDs for the applicable Product to Sanofi-Aventis, and Sanofi-Aventis would notify the applicable Regulatory Authorities in writing that it is accepting such INDs and all responsibilities associated therewith (including without limitation, the responsibility for reporting adverse events), other than any ongoing activities of Exelixis relating to ongoing Exelixis Clinical Trials (if applicable).

5.2 Other Regulatory Matters.

(a) Pharmacovigilance. Sanofi-Aventis shall be responsible for the management of all pharmacovigilance and all reports required by the Regulatory Authorities in order to obtain and maintain any Regulatory Approvals granted for the Products in the Territory, including, without limitation, adverse drug experience reports. The Parties agree to negotiate and execute a definitive safety data exchange agreement (the "SDEA") within [*] of the Effective Date of this Agreement, or within another time period as mutually agreed by the Parties, which will describe the responsibilities and procedures to be followed by the Parties with regard to all regulatory reporting for the Products under this Agreement.

(b) Pricing and Reimbursement Approvals. Sanofi-Aventis and its Affiliates shall have sole responsibility in the conduct of all pricing and reimbursement approval proceedings relating to each Product.

(c) Rights of Reference. Sanofi-Aventis 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 (including all Approvals) in order to support regulatory filings that Sanofi-Aventis is permitted to make under this Agreement for any such Product and to enable Sanofi-Aventis to fulfill its obligations under this Agreement to Develop, Manufacture (anywhere in the world), or Commercialize any such Product.

5.3 Recalls. Any decision to initiate a recall or withdrawal of a Product shall be made by Sanofi-Aventis. In the event of any recall or withdrawal, Sanofi-Aventis 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 by Sanofi-Aventis. The costs of any such recall or withdrawal shall be borne solely by Sanofi-Aventis [*].

6. COMMERCIALIZATION; SANOFI-AVENTIS RESPONSIBILITIES

6.1 Scope. Sanofi-Aventis shall have sole control and responsibility for, and bear all costs and expenses associated with, the Commercialization of all Licensed Compounds and/or Products. In connection with the foregoing, Sanofi-Aventis shall be solely responsible for defining the marketing strategy and promotional policy for the Products and, subject to Section 6.2, for creating all packaging and promotional materials for the Products. Subject to Section 6.2, Sanofi-Aventis shall own all right, title and interest in and to any and all such promotional materials, including all applicable copyrights, trademarks, program names and domain names relating to the Products.

6.2 Packaging and Marketing Materials.

(a) During the Term, Sanofi-Aventis shall ensure that the packaging artwork and label and the marketing materials, used for Commercializing each Product in the U.S., Japan, and the Major European Countries, clearly identify Exelixis as the licensor of the Product, provided however that any such references comply with applicable laws and market practice in such countries. For the purpose of the foregoing, Exelixis grants Sanofi-Aventis the right to use certain of Exelixis corporate trademarks in accordance with the Trademark License Agreement attached as Exhibit 6.2.

(b) Sanofi-Aventis shall provide to Exelixis, the mock-ups for any packaging artwork and labels or marketing material it wishes to use for the Commercialization of a Product.

(c) In the event Exelixis shall desire to make any change to any printing, packaging or labeling proposed or used for a Product to reflect any changes to its trademark, tradename, logo or other features thereof (other than a change to correct an error or omission in such trademark, tradename, logo or other features), Exelixis shall be responsible for, and shall reimburse Sanofi-Aventis for, all costs associated with such changes, if any, including the costs of any inventory of the Product or labeling, printing or packaging materials rendered obsolete or rejected as a result of such change, including the cost of destruction of any of the foregoing.

6.3 Diligence. During the Term, Sanofi-Aventis shall use Diligent Efforts to Develop and obtain Regulatory Approvals for [*] Products and Commercialize the approved Products in the approved Indications in the Major Territories; provided that Sanofi-Aventis may satisfy such obligation by sublicensing the Development and Commercialization of a Product to a Third Party pursuant to the terms of this Agreement. Exelixis may notify Sanofi-Aventis in writing if Exelixis in good faith believes that Sanofi-Aventis is not meeting its diligence obligations set forth in this Section 6.3, and the Parties shall meet and discuss the matter in good faith. Exelixis may further request review of Sanofi-Aventis' records generated and maintained as required under Sections 6.4 and 12.3(c) below, to the extent those records relate to Development, Manufacture and Commercialization of a Product.

6.4 Reports. During the Term, Sanofi-Aventis shall submit to Exelixis every [*] a written progress report summarizing the Commercialization of Products performed by Sanofi-Aventis substantially in the form of **Exhibit 6.4**. If reasonably necessary or useful for Exelixis to exercise its rights under this Agreement, Exelixis may request that Sanofi-Aventis provide more detailed information and data regarding such reports by Sanofi-Aventis, and Sanofi-Aventis 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 Sanofi-Aventis.

7. MANUFACTURING AND SUPPLY

7.1 Manufacturing Generally.

(a) Subject to Sections 7.1(b) and 7.2 and in accordance with Section 7.4, it is the Parties' intention to transfer responsibility for the Manufacture of the Licensed Compounds and the Products to Sanofi-Aventis within the shortest delay possible following the Effective Date and Exelixis agrees to cooperate with Sanofi-Aventis toward that goal.

(b) Notwithstanding the foregoing, Exelixis agrees that it shall retain responsibility for the Manufacture and supply of all of the Clinical Supply Requirements necessary for the Development of the Products in accordance with Section 7.2, until and pending the actual transfer of the Manufacturing responsibility to Sanofi-Aventis in accordance with Section 7.4.

7.2 Manufacture of Clinical Supply Requirements by Exelixis. Pending the transfer to Sanofi-Aventis of the Manufacturing responsibility, Exelixis shall Manufacture and supply, or arrange with a Third Party for the Manufacture and supply of any Clinical Supply Requirements for the Development of the Products until completion of the Manufacturing Technology transfer in accordance with Section 7.4, and the Parties shall use Diligent Efforts to complete such transfer before [*]. Any Exelixis Clinical Supply Costs incurred in connection with the foregoing shall be borne solely by Sanofi-Aventis, including expenses for Exelixis' transfer to Sanofi-Aventis of any Clinical Supply Requirements that may exist as of the Execution Date and through the Effective Date, and that will be invoiced at cost to Sanofi-Aventis [*]. Promptly after the Effective Date, the Parties shall enter into a letter agreement, substantially in the form of the letter described in **Exhibit 7.2**, containing the terms and conditions for the quality responsibilities associated with Exelixis' provision of Clinical Supply Requirements for the Development of the Product.

7.3 Manufacture of Commercial Quantities. Sanofi-Aventis shall Manufacture, or arrange with Third Parties for the Manufacture of any Product (in bulk and finished form) for Commercialization, and Sanofi-Aventis shall bear the costs of such Manufacture. Sanofi-Aventis shall, at all times, have sole control and responsibility for the manufacturing process development with respect to the Products for Commercialization and expenses associated therewith.

7.4 Transfer of Manufacturing Technology.

(a) [*] after the Effective Date, Exelixis shall disclose (and provide copies, as applicable) to either Sanofi-Aventis or a Third Party manufacturer designated by Sanofi-Aventis [*] that is Controlled by Exelixis, required for the Manufacture of the Licensed Compounds and Products and is [*] to enable Sanofi-Aventis or such Third Party manufacturer (as appropriate) to Manufacture such Products. Such Information shall include, without limitation, the Information and documents set forth in **Exhibit 7.4** hereof (the "**Manufacturing Technology**"). The steps, planning and obligations of the Parties regarding the transfer of the Manufacturing Technology for each Product (for both the active pharmaceutical ingredient and the drug product) will be set forth in a "Technology Transfer Master Plan API" and a "Technology Transfer Master Plan Drug Product" respectively, to be executed between the Parties [*].

(b) Exelixis will [*] use Diligent Efforts to provide Sanofi-Aventis, upon request, with any additional information or on-site support as may be required by Sanofi-Aventis and its Affiliates in connection with the transfer of the Manufacturing Technology. Sanofi-Aventis shall reimburse Exelixis for any on-site support rendered at the Exelixis FTE Rate of per FTE-day, provided further Exelixis shall in no event be obliged to provide more than [*] FTE-day in total, unless the Parties otherwise agree in writing.

(c) At any time during the transfer of the Manufacturing Technology, Sanofi-Aventis may require to perform a technical audit of Exelixis' or any Third Party's facilities where the Products and their respective active pharmaceutical ingredient are Manufactured. During such audit, Sanofi Aventis shall have the right to review the batch records and any other relevant documentation related to the Manufacture of the Product, and Exelixis shall use its Diligent Efforts to facilitate such review. Should Exelixis' agreement with the applicable Third Party vendor not permit or contemplate the possibility of such an audit, [*].

(d) For the purpose of this Section 7.4, the actual transfer to Sanofi-Aventis of the Manufacturing Technology with respect to a particular Product shall be deemed completed when [*].

(e) Sanofi-Aventis and/or its Third Party manufacturer shall use [*] transferred pursuant to Section 7.4(a) solely for the purpose of Manufacturing any Products for use by Exelixis or Sanofi-Aventis under this Agreement, and for no other purpose.

(f) Sanofi-Aventis acknowledges and agrees that Exelixis may condition its agreement to the transfer of any Manufacturing Technology 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 10 of this Agreement.

8. COMPENSATION

8.1 Upfront Fee. Sanofi-Aventis shall pay Exelixis an upfront fee of One Hundred Twenty Million Dollars ($120,000,000) within [*] after the Effective Date. The upfront fee payment made by Sanofi-Aventis to Exelixis pursuant to this Section 8.1 shall be noncreditable and nonrefundable.

8.2 Milestone Payments. All milestone payments made by Sanofi-Aventis to Exelixis hereunder shall be noncreditable and nonrefundable.

(a) Development and Regulatory Milestones. Sanofi-Aventis shall make the milestone payments set forth below to Exelixis within [*] after the achievement of each of the following events by Sanofi-Aventis or any of its Affiliates or sublicensees:

Event	Milestone Payment
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
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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.

(i) Milestone Payment Restrictions.

(1) Each of the milestone payments set forth in Section 8.2(a) shall be triggered only once by the achievement of such milestone, [*], the total and maximum milestone amount payable to Exelixis under Section 8.2 (a) shall be [*].

(2) For the avoidance of doubt, it is understood that if, for any reason whatsoever, the Development of a Product is discontinued in any Indication prior to such Product achieving Regulatory Approval, the selection of a Backup of such Product or a different Product for Development in that same Indication will not trigger the payment of the milestone already paid for that Indication with respect to the terminated Product. By way of example, if [*] with respect to a Product in a first Indication (triggering payment of [*], and Development of such Product is thereafter discontinued, the [*] with respect to a Backup of such discontinued Product or a different Product in that same Indication will not trigger payment of any additional milestone for such event.

(3) An Indication that is relevant for the achievement of a given clinical trial or approval event in Section 8.2(a) does not have to be the same Indication that is relevant for the achievement of a different clinical trial or approval event in Section 8.2(a). For example, [*].

(b) Commercial Milestones. Sanofi-Aventis shall make the milestone payments set forth below to Exelixis after the achievement of each of the following events by Sanofi-Aventis or any of its Affiliates or sublicensees. Each milestone payment shall be made by Sanofi-Aventis within [*] after the end of the calendar year in which such milestone event is met. For clarity, if two (2) or more such events are met in a given calendar year, then the corresponding two (2) or more payments shall be due for such calendar year (and not spread out over subsequent years).

(i) [*] upon the first time the annual, worldwide, aggregate, Net Sales of the Products reach or exceed [*];

(ii) [*] upon the first time the annual, worldwide, aggregate, Net Sales of the Products reach or exceed [*]; and

(iii) [*] upon the first time the annual, worldwide, aggregate, Net Sales of the Products reach or exceed [*].

8.3 Royalty Payments.

(a) Royalty Rates. Sanofi-Aventis shall pay Exelixis royalties, on a country-by-country basis, on Net Sales of each Product at the royalty rates stated below.

(i) [*] of the annual, worldwide, aggregate Net Sales less than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product;

(ii) [*] of the annual, worldwide, aggregate Net Sales greater than or equal to [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product.

(iii) By way of example, if, during any calendar year, the amount of Net Sales of a Product is [*], Exelixis will receive [*].

(b) Royalty Adjustments.

(i) Third Party Royalty Offset. Subject to Section 8.3(b)(iv), Sanofi-Aventis may deduct from the royalties it would otherwise owe in a particular country for a particular Product pursuant to Section 8.3(a), an amount equal to [*] of royalties paid by Sanofi-Aventis to Third Parties with respect to licenses to [*].

(ii) Know-How Royalties. Subject to Section 8.3(b)(iv), Sanofi-Aventis' royalty obligations under Section 8.3(a) above with respect to a particular Product in a particular country shall be reduced by [*], after expiration in such country of the [*].

(iii) [*]. Subject to Section 8.3(b)(iv), Sanofi-Aventis' royalty obligations under Section 8.3(a) above with respect to a particular Product in a particular country shall be reduced by [*] in the event the Product [*].

(iv) Minimum Royalty Rate. During the Royalty Term, the operation of [*] Section 8.3(b) singularly or in combination, shall not reduce the royalties due to Exelixis for any Product below [*] of what would otherwise have been due under Section 8.3(a). [*].

(v) [*]. During the applicable Royalty Term, for a particular Product and in a particular country, if [*], and [*], then [*] for as long as [*] or [*]. During the applicable Royalty Term, for a particular Product and in a particular country, if [*], and [*], then [*] for as long as [*] or [*].

8.4 Quarterly Payments. All royalties due under Section 8.3 shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant Calendar Quarter for which royalties are due.

8.5 Term of Royalties. Exelixis' right to receive royalties for a particular Product under Section 8.3 shall expire on a country-by-country basis upon the later of: (a) [*]; or (b) [*] (the "**Royalty Term**").

8.6 Royalty Payment Reports. Each royalty payment shall be accompanied by a statement stating the number, description, and aggregate Net Sales, by country, of each Product sold during the relevant calendar quarter.

8.7 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. For milestone payments due under Section 8.2(a), Sanofi-Aventis shall notify Exelixis in writing within [*] of the achievement of each event that triggers a milestone payment, and, within [*] of receipt of such notice, Exelixis shall provide Sanofi-Aventis with an invoice for each such milestone payment.

8.8 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, Sanofi-Aventis 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.

8.9 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 the country in local currency by deposit in a local bank designated by Exelixis, unless the Parties otherwise agree.

8.10 Sublicenses. In the event Sanofi-Aventis grants licenses or sublicenses to others to sell Products which are subject to royalties under Section 8.3, such licenses or sublicenses shall include an obligation for the licensee or sublicensee to account for and report its sales of Products on the same basis as if such sales were Net Sales by Sanofi-Aventis, and Sanofi-Aventis shall pay, or shall ensure that sublicensee shall pay, to Exelixis, with respect to such sales, royalties as if such sales of the licensee or sublicensee were Net Sales of Sanofi-Aventis.

8.11 Foreign Exchange. Conversion of sales recorded in local currencies to Dollars shall be performed in a manner consistent with Sanofi-Aventis' 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.

8.12 Records; Inspection. Sanofi-Aventis shall keep complete, true and accurate books of account and records for the purpose of determining the payments to be made under this Agreement. Such books and records shall be kept for at least [*] following the end of the calendar quarter to which they pertain. Such records shall be open for inspection during such [*] period by independent accountants, solely for the purpose of verifying payment statements hereunder. Such inspections shall be made no more than [*], at reasonable time and on reasonable notice. Any unpaid amounts (plus interest) that are discovered shall be paid promptly by Sanofi-Aventis. Inspections conducted under this Section 8.12 shall be at the expense of Exelixis, unless a variation or error producing an increase exceeding [*] of the royalty amount stated for any period covered by the inspection is established in the course of such inspection, whereupon all costs relating to the inspection for such period shall be paid promptly by Sanofi-Aventis.

8.13 Interest. If Sanofi-Aventis fails to make any payment due to Exelixis under this Agreement, then interest shall accrue on a daily basis at the greater of a rate equal to [*] commercial lending rate of CitiBank, N.A. San Francisco, California, or at the maximum rate permitted by applicable law, whichever is the lower.

9. INTELLECTUAL PROPERTY

9.1 Ownership.

(a) The inventorship of all Sole Inventions and Joint Inventions shall be determined under the patent laws of the United States. The Parties acknowledge and agree that this Agreement shall be deemed to be a Joint Research Agreement under 35 U.S.C. 103(c).

(b) Each Party shall own the entire right, title and interest in and to any and all of its Sole Invention Patents. Sanofi-Aventis and Exelixis shall be joint owners in and to any and all Joint Invention Patents. Subject to the terms and conditions of this Agreement, including without limitation, the exclusive license rights granted under the Joint Invention Patents to Sanofi-Aventis in Section 2.1(a), Sanofi-Aventis and Exelixis as joint owners each shall have the right to [*].

(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.

9.2 Disclosure. Each Party shall disclose in writing to the JEC any Sole Invention or Joint Invention arising hereunder which it believes may be patentable, within [*] following the day such Invention was made 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 any Patent to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension thereof.

9.3 Patent Prosecution and Maintenance; Abandonment.

(a) Filing, Prosecution and Maintenance of Exelixis Prosecuted Patents.

(i) Exelixis' Right to File, Prosecute and Maintain [*]. Subject to the rest of this Section 9.3(a), Exelixis shall be responsible for the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all [*] (the **"Exelixis Prosecuted Patents"**), provided that such responsibilities shall be carried out by [*], or by [*]. Exelixis, [*] shall provide Sanofi-Aventis with an update of the filing, prosecution and maintenance status for each of the Exelixis Prosecuted Patents on a periodic basis, and in any event not less than [*], and shall use commercially reasonable efforts to consult with and cooperate with Sanofi-Aventis with respect to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents, including providing Sanofi-Aventis with drafts of proposed filings to allow Sanofi-Aventis a reasonable opportunity for review and comment before such filings are due. Exelixis, [*] shall provide to Sanofi-Aventis 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 Exelixis 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 Sanofi-Aventis' written consent (such consent to not be unreasonably withheld, delayed or conditioned) or Sanofi-Aventis otherwise first being given an opportunity to assume full responsibility ([*] at Sanofi-Aventis' expense) for the continued prosecution and maintenance of such Exelixis Prosecuted Patents or the filing of such new patent application. In the event that Exelixis decides either: (A) not to continue the prosecution or maintenance of a Patent within the Exelixis Prosecuted Patents in any country; or (B) not to file such new patent application, Exelixis shall provide Sanofi-Aventis with written notice of this decision at least [*] prior to any pending lapse or abandonment thereof. In the event that Sanofi-Aventis decides to assume responsibility for such filing, prosecution and maintenance, Sanofi-Aventis shall so notify Exelixis in writing and Exelixis shall (i) [*], and (ii) cooperate as reasonably requested by Sanofi-Aventis to facilitate such [*] transfer of filing, prosecution and maintenance responsibility to Sanofi-Aventis. [*]. In the case where Sanofi-Aventis takes over the filing, prosecution or maintenance of any Patent as set forth above, Exelixis shall not be liable to Sanofi-Aventis in any way with respect to the results obtained from, the filing, prosecution, issuance, extension or maintenance of any such Patent or any failure by Sanofi-Aventis to so file, prosecute, extend or maintain, provided however that Exelixis shall, at the expense of Sanofi-Aventis, provide such assistance and execute such documents as are reasonably necessary to continue or permit the filing, prosecution or maintenance of such Patent or the issuance, maintenance or extension of any resulting Patent or permit enforcement of Patents.

(b) Filing, Prosecution and Maintenance of [*]. Sanofi-Aventis shall be responsible for the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all [*] (the "**Sanofi-Aventis Prosecuted Patents**").

(c) Patent Term Extension. Exelixis and Sanofi-Aventis 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. Exelixis [*] apply for patent term extensions or supplemental protection certificates or their equivalents in any country under the [*] during the Term. [*], then, if reasonably requested [*], [*]. If elections with respect to obtaining such patent term extensions or supplemental protection certificates or their equivalents in any country are to be made, [*] shall have the right to make the election to seek patent term extension or supplemental protection or their equivalents in any country, *provided* that such election shall be made so as to [*].

(d) Patent Expenses.

(i) [*] costs and expenses (including fees for any outside counsel, and inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of [*].

(ii) [*] costs and expenses (including fees for any outside counsel, and inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of [*].

(e) Patent Report. 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 this Section 9.3, such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention or Joint Invention.

9.4 Enforcement of Patent Rights. If either Party becomes aware of a suspected infringement of any Exelixis Patents, Joint Invention Patents or Sole Invention Patents through the development, manufacture or sale of a Product by a Third Party, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. [*] shall have the first right, but shall not be obligated, to bring an infringement action against such Third Party at its own expense and by counsel of its own choice, and [*] shall have the right to participate in such action, at its own expense and by counsel of its own choice. If [*] fails to bring such an action or proceeding prior to the earlier of: (a) [*] following [*] receipt of notice of alleged infringement; or (b) [*] before the time limit, if any, set forth in the appropriate laws and regulations for the filing of such actions, [*] shall have the right to bring and control any such action, at its own expense and by counsel of its own choice, and [*] shall have the right to be represented in any such action, at its own expense and by counsel of its own choice. If a Party brings an infringement action pursuant to this Section 9.4, the other Party will reasonably assist the enforcing Party (at the enforcing Party's expense) in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if required by law in order for

the enforcing Party to bring such action. Neither Party shall have the right to settle any patent infringement litigation under this Section 9.4 in a manner that diminishes the rights or interests of the other Party without the prior written consent of such other Party, such consent not to be unreasonably withheld or delayed. Except as otherwise agreed to by the Parties as part of a cost sharing arrangement, any recovery realized as a result of such litigation, after reimbursement of any litigation expenses of Sanofi-Aventis and Exelixis, shall be [*], except that [*].

(a) 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), Sanofi-Aventis 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 Sanofi-Aventis (and at Sanofi-Aventis' expense), Exelixis shall provide reasonable cooperation to Sanofi-Aventis in filing and maintaining such Orange Book (and foreign equivalent) listings.

(b) No Action in Violation of Law. Neither Party shall be required to take any action pursuant to this Section 9.4 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.

(c) Notification of Patent Certification. Exelixis shall notify and provide Sanofi-Aventis with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of an Exelixis Patent licensed 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 Sanofi-Aventis by Exelixis as soon as practicable and at least within [*] after Exelixis receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below in Section 14.7

9.5 Defense of Third Party Claims. If a claim is brought by a Third Party that [*], 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.

9.6 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 9.

10. CONFIDENTIALITY

10.1 Nondisclosure of Confidential Information. All Information disclosed by one Party to the other Party pursuant to this Agreement, including disclosure by either Party to the other of any results and data resulting from its activities hereunder shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during the Term 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 or in connection with exercising such Party's rights and/or fulfilling its obligations under this Agreement (it being understood that this Section 10.1 shall not create or imply any rights or licenses not expressly granted under Article 2 or Section 11.5 hereof).

10.2 Exceptions. The obligations in Section 10.1 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 10.1, 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.

[*] = 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.

10.3 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, provided that 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 any patent application;

(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 licensees (including potential co-marketing and co-promotion contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, 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 10.

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 10.3(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 Article 10. 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. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic 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.

10.4 Termination of Prior Agreements. This Agreement supersedes the Confidential Disclosure Agreement between Exelixis and Sanofi-Aventis effective October 6, 2008, as amended, (such confidential disclosure agreement, as amended, the "**Prior CDA**"). All Information and materials exchanged between the Parties or their Affiliates under the Prior CDA shall be deemed Confidential Information and shall be subject to the terms of this Article 10.

10.5 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press releases attached as **Exhibit 10.5**. 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.

10.6 Publications. Neither Party shall publish or present any proposed disclosure which relates to any Inventions, or which otherwise may contain Confidential Information of the other Party, without the opportunity for prior review by the other Party. Subject to Section 10.3, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which 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 Licensed Compound (including a presentation or publication about the outcome of any Exelixis Clinical Trial), 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 applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JEC shall review such requests and recommend subsequent action. Neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to Section 10.1. Nothing contained in this Section 10.6 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. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JEC.

11. TERM AND TERMINATION

11.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until the expiration of the last payment obligation with respect to any Product, as provided in Article 8 (the "**Term**"), unless earlier terminated in accordance with Sections 11.2, 11.3 or 11.4, or by mutual written agreement. Upon expiration of the Term of this Agreement (but not a termination pursuant to Sections 11.2 – 11.4), [*].

11.2 Termination by Sanofi-Aventis. Beginning [*], Sanofi-Aventis shall have the right to terminate this Agreement without cause, in whole or in part, for one or more Licensed Compound(s) (each a "**Terminated Compound**"), upon [*] prior written notice, at the end of which the termination shall be effective. Upon such termination, the terms and provisions set forth in Section 11.5(d) shall apply to any Product pertaining to the Terminated Compound(s).

11.3 Termination by Exelixis. Exelixis may terminate this Agreement in its entirety upon [*] advance written notice if Sanofi-Aventis or its Affiliates or sublicensees (directly or indirectly, individually or in association with any other person or entity) challenge the validity, enforceability or scope of any Exelixis Patents anywhere in the world. For clarity, any dispute as to whether a given Patent is within the scope of Exelixis Patents, such matter shall be subject to dispute resolution as set forth in Section 14.3.

11.4 Termination for Material Breach. This Agreement may be terminated by written notice by either Party at any time during the Term of this Agreement for the uncured material breach by the other Party of such other Party" representations, warranties, covenants or obligations under this Agreement. The breaching Party shall be given [*] from the date of the notice by the non-breaching Party to cure its material breach, and if it does not do so, this Agreement shall be terminated at the end of the [*] cure period; provided, however, if the cause of the material breach is non-payment of the amounts due under this Agreement, then the cure period for such non-payment shall be [*] from the date of notice of material breach by the non-breaching Party, unless there exists a *bona fide* dispute as to whether such payment is due to the non-breaching Party, in which case, the [*] cure period shall be extended pending resolution of such dispute pursuant to Section 14.1.

11.5 Effect of Termination; Survival.

(a) In the event of termination of this Agreement for any reason, 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.

(c) In addition, in the event of Sanofi-Aventis' termination of this Agreement pursuant to Section 11.4, all licenses granted under this Agreement shall [*].

(d) In the event of Sanofi-Aventis' termination of this Agreement or a Product pursuant to Section 11.2, or Exelixis' termination of this Agreement pursuant to Section 11.3 or 11.4:

(i) Sanofi-Aventis hereby grants Exelixis a worldwide, exclusive license (with the right to sublicense) under the Sanofi-Aventis Know-How, Sanofi-Aventis Patents, and Sanofi-Aventis' interest in the Joint Invention Patents to research (including performing derivatizing or discovery activities), develop, have developed, make, have made, use, import, sell, offer to sell and have sold any Licensed Compounds or products comprising or incorporating one or more Licensed Compounds (collectively, the "**Reverted Products**"), effective upon the termination of this Agreement by Sanofi-Aventis pursuant to Section 11.2 or by Exelixis pursuant to Sections 11.3 or 11.4.

(ii) The license granted under Section 11.5(d)(i) above shall be:

(1) royalty-free and fully paid with respect to all Reverted Products for which [*]; and

(2) with respect to any Reverted Product for which [*], subject to Exelixis' payment obligation to Sanofi-Aventis of a royalty that is [*] of the net sales of such Reverted Product for a period of [*] after the Launch of such Reverted Product, with such net sales calculated in the same manner as the Net Sales are calculated for the purpose of determining Sanofi-Aventis' royalty obligations to Exelixis; *provided, however* that, after expiration of the aforementioned [*], and for [*], Exelixis shall pay to Sanofi-Aventis a royalty of [*] of the Net Sales of such Reverted Product(s).

(iii) Sanofi-Aventis shall transfer via assignment, license or sublicense to Exelixis: (1) all Sanofi-Aventis Know-How [*] for the research, development, manufacture and commercialization of any Reverted Product; (2) all regulatory filings (including any Regulatory Approvals, drug dossiers, and drug master files) in Sanofi-Aventis' name; (3) agreements with Third Parties; (4) trademark rights Controlled by Sanofi-Aventis; and (5) supplies of Product (including any intermediates, retained samples and reference standards), that in each case ((1) through (5)) are existing and in Sanofi-Aventis' Control and that relate to such Reverted Products. Any such transfer(s) shall be at the sole expense of Exelixis. Sanofi-Aventis shall use commercially reasonable efforts to maintain ([*]) and not to breach any agreements with Third Parties that provide a grant from such Third Party to Sanofi-Aventis of rights that are Controlled by Sanofi-Aventis and that are licensed to Exelixis pursuant to Section 11.5(d)(i).

(iv) At Exelixis' written request, Sanofi-Aventis shall supply, or cause to be supplied, to Exelixis sufficient quantities of Product to satisfy Exelixis' requirements for Product for a period of up to [*] following the effective date of termination, as Exelixis may require until Exelixis can itself assume or transition to a Third Party such manufacturing responsibilities; *provided*, *however* that Exelixis shall use Diligent Efforts to affect such assumption (or transition) as promptly as practicable. Such supply shall be at a price equal to [*]. Any such supply will be made pursuant to a supply agreement between the Parties with typical provisions relating to quality, forecasting and ordering to forecast, force majeure and product liability and indemnity.

12. REPRESENTATIONS AND WARRANTIES AND COVENANTS

12.1 Representations and Warranties of Each Party. Exelixis and Sanofi-Aventis 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.

12.2 Additional Representations and Warranties of Exelixis.

(a) Authority. Exelixis represents and warrants to Sanofi-Aventis that, as of the Execution Date and at the Effective Date, 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 Sanofi-Aventis such licenses or the right to exercise its rights hereunder.

(b) Third Party Rights; Liens. Exelixis represents and warrants to Sanofi-Aventis that, as of the Execution Date and at the Effective Date:

(i) Exelixis is the sole and exclusive owner of or Controls the Exelixis Patents listed on **Exhibits 1.25, 1.52 and 1.53** and the Exelixis Know-How, including the Manufacturing Technology, all of which are free and clear of any liens, charges and encumbrances, or other Third Party rights and, with respect to such Exelixis Patents and Know-How, Exelixis has the right to grant to Sanofi-Aventis those licenses granted in Section 2.1 of this Agreement;

(ii) Exelixis has not granted, and covenants that it shall not grant after the Execution Date and during the Term, 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 Sanofi-Aventis hereunder (including but not limited to the Exelixis Patents and the Exelixis Know-How, including the Manufacturing Technology) that is in conflict with the licenses granted to Sanofi-Aventis under this Agreement; and it will not grant any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to Sanofi-Aventis hereunder that would prevent either Party from performing their respective obligations under this Agreement, or permit such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to Sanofi-Aventis hereunder;

(iii) Exhibit 1.25 sets forth a true, correct and complete list of Patents Controlled by Exelixis that cover the Licensed Compounds described in Section 1.78(a) and (b) and Section 1.79(a) and (b).

(c) Infringement or Misappropriation. Exelixis hereby represents and warrants to Sanofi-Aventis that, as of the Execution Date and at the Effective Date and to its Knowledge: (i) [*] or (ii) [*]; and (iii) [*]; and (iv) [*].

12.3 Covenants of Each Party.

(a) Compliance with Law. Each Party hereby covenants and agrees to comply with applicable law in performing its activities under the Agreement.

(b) 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 Licensed Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Licensed 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 2 and Section 11.5) as if such intellectual property had been developed by the Party.

(c) Records. Each Party shall maintain complete and accurate records of all work conducted and all results, data and developments made pursuant to its activities hereunder. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance hereof 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: (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 necessary or useful for it to conduct its obligations or enforce its rights under this Agreement; provided, however, that no Party shall have the right to audit the other Party more than [*].

(d) Third Party Agreements. During the Term, each Party shall use Diligent Efforts to maintain 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 2 or Article 11. 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.

(e) 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 [*]. 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 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 10 and this Section 12.3(e)) [*] under the HSR Act in the United States, 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"**).

12.4 Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, EACH PARTY 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 NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, LICENSED COMPOUNDS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS HEREUNDER OR OTHERWISE MADE AVAILABLE TO THE OTHER PARTY PURSUANT TO THE TERMS OF THE AGREEMENT.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Indemnification by Sanofi-Aventis. Subject to Section 13.3, Sanofi-Aventis hereby agrees to indemnify, defend and hold harmless Exelixis and its 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 (collectively, "**Losses**") to the extent such Losses result from the Manufacture, use, handling, storage, sale or other disposition of any Licensed Compound or Product by Sanofi-Aventis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach by Exelixis of any of its representations and warranties or covenants under the Agreement; (b) breach of the Agreement or applicable law by Exelixis; or (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.

13.2 Indemnification by Exelixis. Subject to Section 13.3, Exelixis hereby agrees to indemnify, defend and hold harmless Sanofi-Aventis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from the Manufacture, use, handling, storage, sale or other disposition of any Licensed Compound, Product, or Reverted Product by Exelixis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach by Sanofi-Aventis of any of its representations and warranties or covenants under the Agreement; (b) breach of the Agreement or applicable law by Sanofi-Aventis; or (c) negligence or willful misconduct by Sanofi-Aventis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement.

13.3 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a Party entitled to indemnification under the terms of Section 13.1 or 13.2. A condition precedent to each Indemnitee's right to seek indemnification under such Section 13.1 or 13.2 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 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 13.1 or 13.2 as to such Loss shall be null and void.

13.4 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 13.1 AND 13.2, AND EXCEPT FOR BREACH OF ARTICLE 10 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.

[*] = 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.

14. MISCELLANEOUS

14.1 Dispute Resolution.

(a) In the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, other than a dispute arising under Article 3 (which shall be handled in accordance with the terms and conditions thereof) or a dispute described in Section 14.3, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Executive Officer of Exelixis and the Executive Officer of Sanofi-Aventis. 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 of the Parties 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 by arbitration in accordance with Section 14.1(b) below.

(b) Except as otherwise expressly provided in this Agreement, any unresolved disputes between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by either Party of its obligations hereunder, whether before or after termination of this Agreement, shall be submitted to the exclusive jurisdiction of the state and federal courts sitting in New York, New York.

14.2 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 New York, without regard to conflicts of law rules.

14.3 Patents and Trademarks; Equitable Relief. Any dispute, controversy or claim arising out of, relating to or in connection with: (i) the scope, validity, enforceability or infringement of any Patent covering the manufacture, use or sale of any Licensed Compound or Product; or (ii) any trademark rights related to any Product, in each case shall be submitted to a court of competent jurisdiction in the country in which such Patent or trademark rights were granted or arose.

14.4 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.

14.5 Bankruptcy.

(a) All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by Exelixis to Sanofi-Aventis 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. Exelixis agrees during the Term to create and maintain current

[*] = 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.

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 Exelixis (the "**Bankrupt Party**") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, Exelixis (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall, at the election of Exelixis made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of Sanofi-Aventis) either (i) perform all of the obligations provided in this Agreement to be performed by Exelixis including, where applicable, providing to Sanofi-Aventis portions of such intellectual property (including embodiments thereof) held by Exelixis and such successors and assigns or otherwise available to them or (ii) provide to Sanofi-Aventis all such intellectual property (including all embodiments thereof) held by Exelixis and such successors and assigns or otherwise available to them.

(b) If a Title 11 case is commenced by or against Exelixis and this Agreement is rejected as provided in Title 11 and Sanofi-Aventis elects to retain its rights hereunder as provided in Title 11, then Exelixis (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to Sanofi-Aventis all such intellectual property (including all embodiments thereof) held by Exelixis and such successors and assigns or otherwise available to them immediately upon Sanofi-Aventis's written request therefor. Whenever Exelixis or any of its successors or assigns provides to Sanofi-Aventis any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 14.5, Sanofi-Aventis shall have the right to perform the obligations of Exelixis hereunder with respect to such intellectual property, but neither such provision nor such performance by Sanofi-Aventis shall release Exelixis from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of Sanofi-Aventis 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 Exelixis. Sanofi-Aventis, 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 Sanofi-Aventis 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 Exelixis or any Third Party with whom Exelixis contracts to perform an obligation of Exelixis 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 14.5 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.

[*] = 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.

14.6 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, 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.

14.7 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.

For Exelixis:	Exelixis, Inc. 170 Harbor Way P.O. Box 511 South San Francisco, CA 94083 Attention: Executive Vice President and General Counsel
With a copy to:	Cooley Godward LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Marya A. Postner, Esq.
For Sanofi-Aventis:	Sanofi-Aventis 174 Avenue de France 75013 Paris, France Attn: General Counsel

Furthermore, a copy of any notices required or given under Section 9.4(c) of this Agreement shall also be addressed as set forth in Section 9.4(c).

14.8 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.

14.9 Assignment.

(a) 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 substantially all of the business of such Party to which this Agreement relates, whether in a 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 14.9(a) shall be null and void and of no legal effect.

(b) In the event that a Party is acquired by a Third Party (such Third Party, hereinafter referred to as an **"Acquiror"**), then the intellectual property of such Acquiror held or developed by such Acquiror (whether prior to or after such acquisition) shall be excluded from the intellectual property definitions under this Agreement, and such Acquiror (and Affiliates of such Acquiror which are not controlled by (as defined in Section 1.1) the acquired Party itself) shall be excluded from "Affiliate" solely for purposes of the applicable components of the intellectual property definitions herein, in all such cases if and only if: (a) the acquired Party remains a wholly-owned subsidiary of the Acquiror; (b) all intellectual property of the acquired Party and all research and development assets and operations of the acquired Party, in each case relating to Licensed Compounds, remain with the acquired Party and are not transferred to the Acquiror or another Affiliate of the Acquiror; (c) the scientific and development activities with respect to Licensed Compounds of the acquired Party and the Acquiror (if any) are maintained separate and distinct, and (d) there is no exchange of Confidential Information relating to Licensed Compounds between the acquired Party and the Acquiror. For clarity, in the event that a Party is acquired by an Acquiror and each of the criteria described in subsections (a) through (d) is not satisfied, then the intellectual property of such Acquiror shall be included within the intellectual property definitions herein. Any permitted assignment shall be binding on the successors of the assigning Party.

(c) Any permitted assignment shall be binding on the successors of the assigning Party.

14.10 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.

14.11 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.

[*] = 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.

14.12 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.

14.13 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**" is 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 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, any records required under this Agreement, any correspondence between the Parties, 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.

14.14 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, or electronically in PDF format, each of which shall be binding when sent.

[Signature page follows.]

[*] = 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers. The date that this Agreement is signed shall not be construed to imply that the document was made effective on that date.

EXELIXIS, INC.

/s/ GEORGE SCANGOS

By: George A. SCANGOS, PhD
Title: President and Chief Executive Officer

Date: May 27, 2009

SANOFI-AVENTIS

/s/ Jérôme CONTAMINE

By: Jérôme CONTAMINE
Title: Executive Vice President, Chief Financial Officer

Date: May 27, 2009

/s/ Laurence DEBROUX

By: Laurence DEBROUX
Title: Senior Vice President, Chief Strategic Officer

Date: May 27, 2009

[*] = 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 1.25

Exelixis Patents

[*]

[*] = 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 1.52

[*] Patents

[*]

[*] = 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 1.53

[*] Patents

[*]

[*] = 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 4.2(d)

Form of [*] Development Report

[*]

[*] = 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 4.4

List of Initial Exelixis Clinical Trials

[*]

[*] = 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 6.2

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT ("**Agreement**"), effective as of _____, (the "**Effective Date**"), is entered into 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 (hereafter "**Exelixis**" or "**Licensor**"), and **SANOFI-AVENTIS,** a French company, having an address at 174, Avenue de France, 75013 Paris, France (hereafter "**Sanofi-Aventis**" or "**Licensee**").

WHEREAS, Exelixis and Sanofi-Aventis entered into a License Agreement executed as of [date] (the "**License Agreement**") for the purposes of licensing Exelixis' products known as XL147 and XL765; and

WHEREAS Licensor currently owns certain corporate name and logo marks, and desires to license the use of said marks to Licensee pursuant to the restrictions set forth below; and

WHEREAS, Licensee desires authorization from Licensor to use the marks in the Territory pursuant to the restrictions set forth below;

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. If a capitalized term is not defined in this Article 1 or in the text of this Agreement, and that capitalized term is defined within the License Agreement, the definition as set forth in the License Agreement shall apply.

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"Commercialization" shall mean 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) conducting Phase IV Clinical Trials.

"Major European Countries" shall mean France, Germany, Spain, Italy, and the United Kingdom.

"Marks" shall mean the Exelixis marks set forth in Schedule A to this Agreement, as such schedule may be amended from time to time pursuant to Section 7.1.

"Product" shall have the meaning set forth in the License Agreement.

"Term" shall have the meaning set forth in Section 4.1.

"Territory" shall mean [*].

"Third Party" shall mean any entity other than: (a) Exelixis; (b) Sanofi-Aventis; or (c) an Affiliate of either Party.

2. License Grant.

2.1. License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee for the Term a nonexclusive, sublicensable (solely in accordance with Section 5.3), nonassignable (except as set forth in Section 7.2), and royalty-free license to use the Marks throughout the Territory solely in connection with the Commercialization of the Products to identify Exelixis as the licensor of the Products, provided that such use of the Marks satisfies all provisions of Section 2.2 and Article 3.

2.2. Compliance. The Marks may only be used on Products that are Commercialized in accordance with applicable law and current pharmaceutical industry standards of quality, including the terms of all applicable Regulatory Approvals.

3. Use and Display of Trademarks.

3.1. Licensee shall use the Marks on labels, packaging and promotional/marketing materials for or in connection with the Products provided that and only so long as such use complies with applicable laws and market practice in the country of use.

3.2. Licensee shall be obligated to display the Marks [*] used in connection with the Commercialization of the Product. The display of the Marks on the aforementioned packaging labels or marketing and promotional material shall be [*], provided however that Licensee shall not display the Marks in such a manner to suggest that any party (including Licensee) other than Licensor owns the Marks.

3.3. In the event of an uncured material breach of the License Agreement by Licensor, or any bankruptcy or insolvency of Licensor, this Agreement (including the license set forth in Section 2.1) shall remain in effect but Licensee shall no longer be obligated pursuant to the preceding Section to continue using any of the Marks

3.4. Licensee shall use the Marks upon or in relation to the Products only in such manner where the distinctiveness, reputation, and validity of the Marks shall not be impaired. Without prejudice to the generality of the foregoing, Licensee shall ensure in particular that the Marks are correctly spelled, and that any text, graphics, or designs adjacent to the Marks do not put the Marks or Licensor in a negative or derogatory light. Licensee shall provide Licensor with proposed Product packaging and corresponding marketing materials prior to publication or shipment of any Product under the Marks.

4. Term and Termination of Agreement.

4.1. The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue in full force until the expiration or termination of the License Agreement, unless earlier terminated pursuant to the terms and conditions of this Agreement or pursuant to the mutual written agreement of Licensor and Licensee.

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4.2. In the event of a partial termination of the License Agreement, where the License Agreement is terminated only in respect to certain Products or certain countries within the Territory, this Agreement shall terminate with respect to those Products and countries in the Territory for which the License Agreement terminated and this Agreement shall remain in effect with respect to those Products or countries in the Territory which continue to be governed by the License Agreement.

4.3. In the event of Licensee committing a material breach of any of the terms of this Agreement and failing to rectify same within [*] of receiving written notification of such breach from Licensor, Licensor shall have the right to terminate this Agreement upon written notice to Licensee.

4.4. Licensor shall also have the right to terminate this Agreement upon written notice to Licensee if, in Licensor's reasonable discretion, Licensee's use of the Marks tarnishes, blurs, or dilutes the quality associated with the Marks or the associated goodwill and Licensee fails to rectify same within [*].

4.5. In the event of termination of this Agreement, the following provisions of this Agreement shall survive: Article 6; and Sections 7.4 and 7.10. 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.

5. Licensor's Exclusive Interest in the Marks.

5.1. Licensor hereby warrants to Licensee that Licensor is the owner of the Marks and retains all rights, title and interest in and to the Marks. This Agreement does not grant to Licensee any proprietary right of any of Licensor's Marks, other than use of the Marks as set forth in this Agreement.

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5.2. In the event that management or in-house counsel for Licensee becomes aware of a suspected infringement of a Mark by a Third Party, Licensee shall notify Licensor promptly in writing. Licensee shall provide the same level of disclosure to Licensor's in-house counsel concerning suspected infringement of a Mark as Licensee would provide to its own in-house counsel with respect to suspected infringement of its own mark. As between the Parties, Licensor shall have the sole right, but shall not be obligated, to bring an action with respect to such suspected infringement at its own expense, in its own name and entirely under its own direction and control.

5.3. In the event that Licensee grants to a Third Party a sublicense of its rights under the License Agreement to Commercialize one or more Products in one or more countries in the Territory, Licensee shall enter into a sublicense agreement with such Third Party (the "Sublicensee") that grants the Sublicensee a sublicense of the Licensee's rights pursuant to Section 2.1 with respect to such Products in such countries in the Territory. Each such sublicense agreement shall be under the same terms and conditions as this Agreement.

5.4. Licensee agrees that it will take no action adverse to or inconsistent with Licensor's ownership of the Marks, including without limitation seeking to register any of the Marks in the Territory, or opposing, disputing, or assisting others in opposing or disputing Licensor's ownership of the Marks in any way.

5.5. Licensee acknowledges that all use of the Marks and all rights and goodwill attached to or arising out of such use, shall accrue to the benefit of Licensor. Licensee shall at any time, whether during or after the Term, execute any documents that shall reasonably be required by Licensor to confirm Licensor's ownership of the Marks.

6. Governing Law; Venue.

6.1. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York, without regard to conflict of law rules.

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6.2. Unless otherwise set forth in this Agreement, 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; and *further provided*, that any dispute, controversy or claim arising out of, relating to or in connection with any Mark shall be submitted to a court of competent jurisdiction in the territory in which such Mark were granted or arose.

7. Miscellaneous.

7.1. 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 with respect to the Marks and supersedes and terminates all prior agreements and understandings between the Parties with respect thereto. For clarity, this Agreement satisfies the obligations set forth in Section 6.2 of the License Agreement to enter into a Trademark License Agreement but does not supersede or terminate any portion of the License Agreement. 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. Notwithstanding the foregoing, and subject to Section 6.2 (c) of the License Agreement, Licensor may revise Schedule A upon written notice to Licensee.

7.2. 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

[*] = 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.

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 also the permitted successor or assignee of such Party's rights and obligations pursuant to the License Agreement and 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 7.2 shall be null and void and of no legal effect.

7.3. Mutual Authority. Each Party represents and warrants to the other Party 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 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.

7.4. Confidentiality. All Information disclosed by one Party to the other Party pursuant to this Agreement shall be "**Confidential Information**" and the Parties shall have the rights and obligations with respect thereto that are set forth in Article 10 of the License Agreement. The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties pursuant to the License Agreement and the Parties shall have the rights and obligations with respect thereto that are set forth in Article 10 of the License Agreement with respect to the terms of the License Agreement.

[*] = 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.

7.5. 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.

For Exelixis:	Exelixis, Inc. 249 East Grand Avenue P.O. Box 511 So. San Francisco, CA 94083-0511 Attention: EVP, General Counsel Fax:
With a copy to:	Cooley Godward Kronish LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Marya Postner, Esq.
For Sanofi-Aventis:	Sanofi-Aventis 174 Avenue de France 75013 Paris, France Attention: EVP, General Counsel Fax: +33.1.53.77.43.03

7.6. 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.

7.7. 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.

7.8. 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.

7.9. 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 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, any records required by this Agreement, any correspondence between the Parties, 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.

7.10. Indemnities.

7.10.1. Subject to Section 7.10.2, 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).

[*] = 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.

7.10.2. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of Section 7.10.1. A condition precedent to each Indemnitee's right to seek indemnification under such Section 7.10.1 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 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 not to be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope or duration of any Marks 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 7.10.2(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, or the indemnification provided under such Section 7.10.1 as to such Loss shall be null and void.

7.11. 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, or electronically in PDF format, each of which shall be binding when sent.

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Signature page follows.

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IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers.

For and On Behalf of Licensor

EXELIXIS, INC.

By: _____

Print Name: _____

Title: _____

For and On Behalf of Licensee

SANOFI-AVENTIS

By: _____

Print Name: _____

Title: _____

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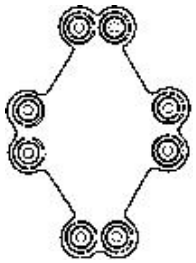
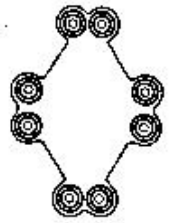
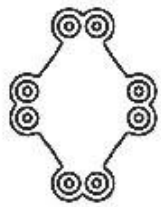
SCHEDULE A TO TRADEMARK LICENSE AGREEMENT

THE MARKS

MARK	APP. NO. / REG. NO.	CLASS
EXELIXIS [United States]	Reg. No. 2,823,801	005
EXELIXIS [United States]	App. No. 77/558,426	042
 Old Exelixis Logo [United States]	Reg. No. 2,824,097	005
 Old Exelixis Logo [United States]	Reg. No. 2,332,528	042

[*] = 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.

	App. No. 77/284,507	005
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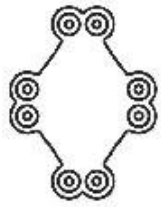	App. No. 77/284,531	042
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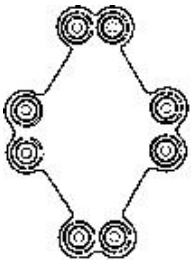
EXELIXIS [European Union]	Reg. No. 001243831	016 041 042
	Reg. No. 3006772	001 005 042
Old Exelixis Logo [European Union]		

[*] = 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.

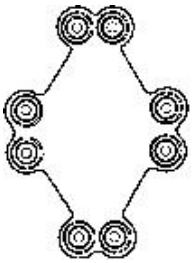
EXELIXIS [Japan]	Reg. No. 4599309	005
 Old Exelixis Logo [Japan]	Reg. No. 4693262	005

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Exhibit 6.4

Commercialization Report

[*]

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Exhibit 7.2

Quality Responsibilities Relating to Licensed Compounds

THIS QUALITY LETTER (the "**Letter**") is made and entered into as of _____ [__], 2009 (the "**Execution Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having an address at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **SANOFI-AVENTIS**, a French company, having an address at 174, Avenue de France, 75013 Paris, France ("**Sanofi-Aventis**"). Exelixis and Sanofi-Aventis are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The Parties have entered into a License Agreement (the "**Agreement**") effective as of the Effective Date regarding the Licensed Compounds. In connection with the Agreement, this Letter is intended to set forth the Parties' mutual understandings with respect to certain quality and Manufacturing responsibilities with respect to: (A) the lots of drug substance for the Exelixis Clinical Trials under Section 7.2 of the Agreement (each hereinafter referred to as a "Drug Substance Lot"); and (B) the lots of finished drug product for the Exelixis Clinical Trials under Section 7.2 of the Agreement (each hereinafter referred to as a "Drug Product Lot"). Specifically, each of the Parties hereby agrees to assume the responsibilities corresponding to such Party as set forth on Schedule A hereto. Any capitalized terms used in this Letter that are not otherwise defined herein shall have the meanings given to them in the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Letter in duplicate originals by their proper officers. The date that this Letter is signed shall not be construed to imply that the document was made effective on that date.

SANOFI-AVENTIS	**EXELIXIS, INC.**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

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SCHEDULE A

[*]

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Exhibit 7.4

Priority Documents
[*]

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Exhibit 10.5

Exelixis Press Release

www.exelixis.com

210 East Grand Ave, P.O. Box 511
South San Francisco, CA 94083-0511
650.837.7000 main
650.837.8205 fax

Contact
Charles Butler
Executive Director, Corporate Communications & Investor Relations
Exelixis, Inc, San Francisco
650-837-7277

cbutler@exelixis.com

EXELIXIS AND SANOFI-AVENTIS SIGN GLOBAL LICENSE AGREEMENT FOR XL147 & XL765 AND LAUNCH BROAD COLLABORATION FOR DISCOVERY OF PI3K INHIBITORS

-Exelixis receives $140 million upfront payment and guaranteed research funding-

Paris, France and South San Francisco, CA – May XX, 2009 — Sanofi-aventis (EURONEXT: SAN and NYSE: SNY) and Exelixis, Inc. (Nasdaq: EXEL) today announced a global license agreement for XL147 and XL765 and a broad collaboration for the discovery of inhibitors of phosphoinositide-3 kinase (PI3K) for the treatment of cancer. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation, survival, and resistance to chemotherapy and radiotherapy. Under the license, Sanofi-aventis will have a worldwide exclusive license to XL147 and XL765, which are currently in phase 1 and phase 1b/2 clinical trials, and will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities. Exelixis will participate in conducting ongoing and potential future clinical trials and manufacturing activities.

Under the discovery collaboration, Exelixis and Sanofi-aventis will combine efforts in establishing several pre-clinical PI3K programs and jointly share responsibility for research and preclinical activities related to isoform-selective inhibitors of PI3K. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of any products arising from the collaboration; however, Exelixis may be responsible for conducting certain clinical trials.

Sanofi-aventis will pay Exelixis a combined upfront cash payment of $140 million under the license and collaboration. Exelixis will also receive guaranteed research funding of $21 million over a three year research term under the collaboration. For both the license and the collaboration, Exelixis will be eligible to receive development, regulatory and commercial milestones of over $1 billion in the aggregate, as well as royalties on sales of any products commercialized under the license and collaboration.

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“Sanofi-aventis has a track record of success in commercializing innovative cancer therapies and is deeply committed to advancing the care of cancer patients,” said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. “We believe that their expertise and resources will enable us to move aggressively in advancing the development of XL147 and XL765 and other potential PI3K inhibitors. The data generated to date in the XL147 and XL765 clinical programs suggest that these compounds may have utility in treating diverse cancers. Sanofi-aventis and Exelixis are committed to realizing the full potential of these compounds and other PI3K inhibitors to provide cancer patients with new treatment options.”

The effectiveness of the license agreement is subject to antitrust clearance under the Hart-Scott-Rodino Antitrust Improvements Act and other customary regulatory approvals.

Oral Presentations

Clinical data from the phase 1 trials of XL147 and XL765 will be presented at the American Society of Clinical Oncology Annual Meeting, which will be held from May 29 to June 2, 2009 in Orlando, Florida:

- “Phase 1 dose-escalation study of XL147, a PI3K inhibitor administered orally to patients with solid tumors” will be presented on Monday, June 1, 2009, starting at 1:30 p.m. local time (Abstract #3500)
- “A Phase 1 dose-escalation study of the safety, pharmacokinetics (PK) and pharmacodynamics of XL765, a PI3K/TORC1/TORC2 inhibitor administered orally to patients (pts) with advanced solid tumors” will be presented on Monday, June 1, 2009 starting at 2:00 p.m. local time (Abstract #3502)

XL147 and XL765 target PI3K, which plays an important role in cell proliferation and survival. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation, survival, and resistance to chemotherapy and radiotherapy. XL765 also inhibits the mammalian target of rapamycin (mTOR), which can be activated via upregulation of PI3K, or via PI3K-independent mechanisms. mTOR is frequently activated in human tumors, and plays a central role in tumor cell proliferation.

About Sanofi-aventis

Sanofi-aventis, a leading global pharmaceutical company, discovers, develops and distributes therapeutic solutions to improve the lives of everyone. Sanofi-aventis is listed in Paris (EURONEXT: SAN) and in New York (NYSE: SNY).

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. Currently, Exelixis’ broad product pipeline includes investigational compounds in phase 3, phase 2, and phase 1 clinical development. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including Bristol-Myers Squibb, GlaxoSmithKline, Genentech, Boehringer Ingelheim, Wyeth Pharmaceuticals, and Daiichi-Sankyo. For more information, please visit the company’s web site at www.exelixis.com.

[FLS to be inserted by legal]

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Exhibit 10.5

Sanofi-Aventis Press Release

Sanofi-aventis and Biotechnology company Exelixis enter into an Exclusive Global Alliance for Novel Targeted Oncology Therapies

*- **Alliance includes a Global License Agreement for XL147 & XL765 and an Exclusive Collaboration for discovery of PI3K Inhibitors** -*

Paris, France - May 28, 2009 - Sanofi-aventis (EURONEXT: SAN and NYSE: SNY) and Exelixis, Inc. (Nasdaq: EXEL) announced today a ***global license agreement*** for ***XL147*** and ***XL765*** and an ***exclusive collaboration for the discovery*** of inhibitors of phosphoinositide-3 kinase (PI3K) for the management of solid malignancies. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation and cell survival, as well as resistance to chemotherapy and radiotherapy.

Under the license agreement, sanofi-aventis will have an exclusive worldwide license to ***XL147***, an oral PI3K inhibitor, and ***XL765***, an oral dual inhibitor of PI3K and mTOR (mammalian target of rapamycin); both are currently in phase 1 clinical trials. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, manufacturing and commercial activities. Exelixis will participate in ongoing and potential future clinical trials.

Under the exclusive discovery collaboration, sanofi-aventis and Exelixis will combine research efforts to establish several preclinical programs related to isoform-selective inhibitors of PI3K. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of the products that result from the collaboration. However, Exelixis may be responsible for conducting certain clinical trials.

"We are very excited about integrating such novel targeted therapies with high therapeutic potential in our portfolio," said Marc Cluzel, Senior Vice-President R&D, sanofi-aventis. *"We look forward to combining our efforts with Exelixis to develop innovative drugs in the best interest of patients suffering from cancers. This alliance is aligned with our strategy to create value through strategic partnerships that deliver new therapeutic options".*

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Under the terms of the agreements, sanofi-aventis will pay Exelixis an upfront cash payment as well as development and regulatory milestone payments that could reach over $1 billion in aggregate for existing and future programmes under both agreements. In addition, Exelixis will be entitled to receive royalties and commercial milestones on sales when products are commercialized.

The license agreement is subject to antitrust clearance under the *Hart-Scott-Rodino Antitrust Improvements Act*.

***

About PI3K inhibitors

The phosphoinositide-3-kinase (***PI3K***) pathway is triggered in normal cells upon exposure to growth factors. It regulates a cascade of proliferation and survival signals. The PI3K pathway is one of the primary deregulated signaling pathways in human cancer. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation, survival, and resistance to chemotherapy and radiotherapy. Novel therapeutics impacting the PI3K pathway, alone or in combination, are therefore considered to have a high therapeutic potential.

About XL147 and XL765

XL147 is an orally available small molecule inhibitor of phosphoinositide-3-kinase (PI3K). XL765 is a orally available small molecule, dual inhibitor of PI3K and mTOR (mammalian target of rapamycin). mTOR can be activated via upregulation of PI3K, or via PI3K-independent mechanisms. mTOR is frequently activated in human tumors, and plays a central role in tumor cell proliferation.

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. Currently, Exelixis' broad product pipeline includes investigational compounds in Phase III, Phase II and Phase I clinical development. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including Bristol-Myers Squibb, GlaxoSmithKline, Genentech, Wyeth Pharmaceuticals and Daiichi-Sankyo. For more information, please visit the company's website at http://www.exelixis.com.

About sanofi-aventis

Sanofi-aventis, a leading global pharmaceutical company, discovers, develops and distributes therapeutic solutions to improve the lives of everyone. Sanofi-aventis is listed in Paris (EURONEXT: SAN) and in New York (NYSE: SNY).

Forward Looking Statements

This press release contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995, as amended. Forward-looking statements are statements that are not historical facts. These statements include product development, product potential projections and estimates and their underlying assumptions, statements regarding plans, objectives, intentions and expectations with respect to future events, operations, products and services, and statements regarding future performance. Forward-looking statements are generally identified by the words "expects," "anticipates," "believes," "intends," "estimates," "plans" and similar expressions. Although sanofi-aventis' management

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believes that the expectations reflected in such forward-looking statements are reasonable, investors are cautioned that forward-looking information and statements are subject to various risks and uncertainties, many of which are difficult to predict and generally beyond the control of sanofi-aventis, that could cause actual results and developments to differ materially from those expressed in, or implied or projected by, the forward-looking information and statements. These risks and uncertainties include among other things, the uncertainties inherent in research and development, future clinical data and analysis, including post marketing, decisions by regulatory authorities, such as the FDA or the EMEA, regarding whether and when to approve any drug, device or biological application that may be filed for any such product candidates as well as their decisions regarding labelling and other matters that could affect the availability or commercial potential of such products candidates, the absence of guarantee that the products candidates if approved will be commercially successful, the future approval and commercial success of therapeutic alternatives as well as those discussed or identified in the public filings with the SEC and the AMF made by sanofi-aventis, including those listed under "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements" in sanofi-aventis' annual report on Form 20-F for the year ended December 31, 2008. Other than as required by applicable law, sanofi-aventis does not undertake any obligation to update or revise any forward-looking information or statements.

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CONFIDENTIAL

EXECUTION COPY

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COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (the "**Agreement**") is made and entered into as of May 27, 2009 (the "**Effective Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having an address at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **SANOFI-AVENTIS**, a French company, having an address at 174, Avenue de France, 75013 Paris, France ("**Sanofi-Aventis**"). Exelixis and Sanofi-Aventis are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Sanofi-Aventis is a leading pharmaceutical company committed to researching, developing, manufacturing and marketing novel products of high therapeutic value for human and veterinary medicine.

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

C. Sanofi-Aventis and Exelixis desire to establish a collaboration to apply their respective technology and expertise in isoform-specific Class I phosphoinositide-3-kinases 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 "Alliance Manager" has the meaning set forth in Section 4.5(a).

1.3 "Annual Development Plan" has the meaning set forth in Section 5.3(a).

1.4 "Approved Plan" means, with respect to a Product, any one or more of the Initial Development Plans and each Annual Development Plan, in each case as adopted or approved under the terms of this Agreement.

1.5 "Calendar Half" means any consecutive 6-month period ending June 30 or December 31.

1.6 "Calendar Quarter" means any consecutive 3-month period ending March 31, June 30, September 30 or December 31.

1.7 "Calendar Year" means any consecutive 12-month period ending December 31.

1.8 "Clinical Supply Requirements" means the quantities of the Product which are required by a Party or the Parties for the Development of a Product under this Agreement, including, without limitation, the conduct of research, pre-clinical studies and clinical trials in connection with each Annual Development Plan.

1.9 "CMC Activities" has the meaning set forth in Section 7.2(b).

1.10 "Collaboration" means all the activities performed by or on behalf of either Exelixis or Sanofi-Aventis in the course of performing work contemplated in Articles 2, 3, 4, 5, 6 and 7.

1.11 "Collaboration Compound" means: (a) Lead Compounds; (b) Development Candidates; or (c) any isomer, racemate, salt, solvate, hydrate, metabolite, conjugate, co-crystals, polymorphs, ester, or prodrug of the compounds set forth in clause (a) or (b) of this definition.

1.12 "Collaborative Research Term" shall mean the period beginning on the Effective Date and continuing until the third (3rd) anniversary of the Effective Date. The Collaborative Research Term may be further extended beyond its initial period pursuant to Section 2.5 or upon the mutual written agreement of the Parties.

1.13 "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) other 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.

1.14 "Committee" means the JEC or JRDC, as the case may be.

1.15 "Confidential Information" has the meaning set forth in Section 11.1.

1.16 "Contractual Joint Patent" means any Exelixis Patent, Sanofi-Aventis Patent or Joint Invention Patent that [*].

1.17 "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.

1.18 "Development" means, with respect to a Product, those activities, including clinical development activities, clinical trials, supporting manufacturing activities and related regulatory activities, that are [*] to: (a) obtain, from the appropriate Regulatory Authorities, the Regulatory Approvals 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; and (b) maintain such Regulatory Approvals. To avoid confusion, Development does not include [*]. For clarity, **"Develop"** and **"Developing"** have a correlative meaning.

1.19 "Development Candidate" means any former Lead Compound that: (a) is a PI3Ka Selective Inhibitor, PI3Kß Selective Inhibitor, PI3Ka/ß Inhibitor, PI3Ka/mTOR Inhibitor, PI3Kß/mTOR Inhibitor, or PI3Ka/ß/mTOR Inhibitor; (b) has met the Development Candidate Criteria set forth in the Research Plan (or has otherwise been nominated by the JRDC pursuant to Section 2.3(e)); and (c) [*]. For clarity, a Lead Compound ceases to be a Lead Compound after it has been approved as a Development Candidate.

1.20 "Development Candidate Nomination Criteria" has the meaning set forth in Section 5 of **Exhibit 2.2**.

1.21 "Diligent Efforts" means the carrying out of obligations or tasks by a Party in a sustained manner using good faith commercially reasonable and diligent efforts, which efforts shall be consistent with the exercise of prudent scientific and business judgment in accordance with the efforts such Party devotes to products or research or development projects owned by it of similar scientific and commercial potential. Diligent Efforts shall be [*].

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

1.23 "Drug Approval Application" or "**DAA**" means: in any country or regulatory jurisdiction, the application for Regulatory Approval required for commercial sale or use of a Product (or with respect to a subsequent Indication) in such country or regulatory jurisdiction.

1.24 "Exelixis Clinical Trials" means the clinical trials that are carried out by Exelixis for each Product and that are described in the Global Development Plan or each Annual Development Plan, and any other trials that are designated as Exelixis Clinical Trials by the JRDC.

1.25 "Exelixis Development Expenses" means those costs and expenses incurred by Exelixis directly in connection with the Development of a Product in accordance with this Agreement and the applicable Annual Development Plan, including without limitation:

(i) all Out-of-Pocket Costs, including, without limitation, fees and expenses associated with the conduct of Exelixis Clinical Trials or any other mutually agreed Development activities with respect to a Product (e.g., fees paid to CROs, purchase of comparator or placebo);

(ii) Exelixis FTE Costs; and

(iii) any other costs or expenses [*] incurred in connection with any other mutually agreed research or Development activities of Exelixis with respect to a Product.

1.26 "Exelixis FTE Cost" means, for all Development activities performed by Exelixis in accordance with the Annual Development Plan(s), the amount equal to (a) the number of FTEs required for such Development activity as set forth in the approved Annual Development Plan multiplied by (b) the Exelixis FTE Rate. For the avoidance of doubt, the activity of contract personnel shall be charged as Out-of-Pocket Costs.

1.27 "Exelixis FTE Rate" means [*], subject to adjustment in accordance with Section 5.5(d).

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

1.29 "Exelixis Patents" means all Patents Controlled by Exelixis and its Affiliates, as of the Effective Date or during the Term, including Sole Invention Patents Controlled by Exelixis that: (a) cover a Collaboration Compound, a composition containing a Collaboration Compound, a formulation containing a Collaboration Compound, or the manufacture or use of a Collaboration Compound; and (b) are [*] for Sanofi-Aventis to exercise the rights licensed to it under the Agreement or to perform its obligations to the Collaboration under the Agreement.

1.30 "Exelixis Prosecuted Patents" has the meaning set forth in Section 10.3(a)(i).

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

1.32 "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 directly related to the research or Development of any Pre-Lead Compound, Lead Compound, Development Candidate, or Product 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 JEC) shall be treated as an FTE on a pro-rata basis upon the number of hours worked (based on Exelixis' internal methodology for calculating the number of hours that comprises an FTE) divided by [*] hours.

1.33 "Generic Product" means, with respect to a given Product in a given country, any pharmaceutical product that: (a) is marketed for sale in such country by a Third Party; (b) contains as active pharmaceutical ingredient [*]; and (c) [*]. With respect to a Product that is [*], a Generic Product shall, for purposes of this paragraph, contain as active pharmaceutical ingredients [*], and meet the conditions defined in (a) and (c) above.

1.34 "GAAP" means United States generally accepted accounting principles, as they exist from time to time, consistently applied.

1.35 "IFRS" means International Financial Reporting Standards, as they exist from time to time, consistently applied.

1.36 "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.

1.37 "IND Submission Criteria" has the meaning set forth in Section 7 of **Exhibit 2.2**.

1.38 "Indication" means:

(a) with respect to the oncology therapeutic area, [*] (for clarification purposes, (i) [*]; and (ii) [*]); or,

(b) any disease in therapeutic areas other than oncology.

1.39 "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 excludes any Patents.

1.40 "Initial Development Plan" has the meaning set forth in Section 5.2(a).

1.41 "Invention" means any and all inventions and improvements conceived or reduced to practice by or on behalf of a Party or the Parties jointly in the performance of its obligations, or the exercise of its rights, under this Agreement.

1.42 "Joint Executive Committee" or **"JEC"** has the meaning set forth in Section 4.1(a).

1.43 "Joint Research & Development Committee" or **"JRDC"** has the meaning set forth in Section 4.1(a).

1.44 "Joint Invention" means any Invention conceived and/or reduced to practice jointly by or on behalf of both Parties.

1.45 "Joint Invention Patent" means (i) a Patent that claims a Joint Invention or (ii) a Contractual Joint Patent.

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

1.47 "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 [*].

1.48 "Lead Compound" means any: (a) former Pre-Lead Compound that: (i) is a PI3Ka Selective Inhibitor, PI3Kß Selective Inhibitor, PI3Ka/ß Inhibitor, PI3Ka/mTOR Inhibitor, PI3Kß/mTOR Inhibitor, or PI3Ka/ß/mTOR Inhibitor; (ii) has met the Lead Compound Nomination Criteria set forth in the Research Plan (or has otherwise been nominated by the JRDC pursuant to Section 2.3(c)); and (iii) has been approved by the JRDC pursuant to Section 2.3(c); or (b) small molecule compound Controlled by a Party that: (i) is [*]; (ii) is a PI3Ka Selective Inhibitor, PI3Kß Selective Inhibitor, PI3Ka/ß Inhibitor, PI3Ka/mTOR Inhibitor, PI3Kß/mTOR Inhibitor, or PI3Ka/ß/mTOR Inhibitor; (iii) has met the Lead Compound Nomination Criteria set forth in the Research Plan (or has otherwise been nominated by the JRDC pursuant to Section 2.3(c)); and (iv) has been approved by the JRDC pursuant to Section 2.3(c). For clarity, [*].

1.49 "Lead Compound Nomination Criteria" has the meaning set forth in Section 3 of **Exhibit 2.2**.

1.50 "Lead Development Party" has the meaning set forth in Section 5.1.

1.51 "Lead Optimization Responsibilities" has the meaning set forth in Section 4 of **Exhibit 2.2**.

1.52 "Losses" has the meaning set forth in Section 14.1.

1.53 "MAD" has the meaning set forth in the definition of **"Transfer Date"**.

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

1.55 "Major Territory" means each of the following territories: [*].

1.56 "Manufacturing" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, inspection, receiving, holding and shipping of 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.

1.57 "**MTD**" has the meaning set forth in the definition of "**Transfer Date**".

1.58 "mTOR" means: (a) the gene for [*]; (b) the protein encoded by such gene; and (c) all [*].

1.59 "Net Sales" means the amount invoiced or otherwise billed by Sanofi-Aventis 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, 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 Sanofi-Aventis in accordance with IFRS, consistently applied, during the applicable royalty calculation period; and (f) 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 IFRS.

Notwithstanding the foregoing, if any Product is sold [*], then, solely for the purpose of calculating Net Sales for royalty purposes hereunder, any [*] on such Products [*] 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 Sanofi-Aventis, 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 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, adjuvants, mechanical but not chemical drug delivery devices, and excipients shall not be deemed to be "**active ingredients**" or "**active functional elements**". For clarity, [*] such as, without limitation, [*] to be "**active ingredients**" or "**active functional elements**" for purposes of this paragraph.

1.60 "Out-of-Pocket Costs" means costs and expenses paid to Third Parties (or payable to Third Parties and accrued in accordance with GAAP) by Exelixis and/or its Affiliates, if applicable.

1.61 "Party Vote" has the meaning set forth in Section 4.4(c)(i).

1.62 "Patent" means all: (a) unexpired letters patent (including inventor's certificates) 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 applications; and (c) any international counterparts to (a) and (b) above.

1.63 "Phase I Clinical Trial" means a clinical trial that generally provides for the first introduction into humans of a Product, with a primary purpose of determining safety, metabolism and pharmacokinetic properties and clinical pharmacology of such Product, and generally consistent with 21 CFR § 312.21(a), as amended (or its successor regulation), or other comparable regulation imposed by a Regulatory Authority in any country.

1.64 "Phase I/II Clinical Trial" means a human clinical trial of a Product, which trial satisfies the requirements for a Phase I Clinical Trial and for a Phase II Clinical Trial.

1.65 "Phase II Clinical Trial" means a human clinical trial of a Product, the principal purpose of which is to make a preliminary determination that such Product is safe for its intended use and to obtain sufficient information about such Product's efficacy to permit the design of further clinical trials, and generally consistent with 21 CFR § 312.21(b), as amended (or its successor regulation), or other comparable regulation imposed by a Regulatory Authority in any country.

1.66 "Phase II/III Clinical Trial" means a human clinical trial of a Product, that satisfies the requirements for a Phase II Clinical Trial and for a Phase III Clinical Trial.

1.67 "Phase III Clinical Trial" means a pivotal human clinical trial of a Product, which trial is designed to: (a) establish that such Product is safe and efficacious for its intended use; (b) define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed; (c) support Regulatory Approval of such Product; and (d) be generally consistent with 21 CFR § 312.21(c), as amended (or its successor regulation), or other comparable regulation imposed by a Regulatory Authority in any country.

1.68 "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 JRDC and that otherwise fit the foregoing definition.

1.69 "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 JRDC and that otherwise fit the foregoing definition.

1.70 "PI3K" means: (a) the gene encoding [*]; (b) the protein encoded by such gene; and (c) all [*]. For the purposes of this Agreement the term "**PI3K**" refers to [*].

1.71 "PI3Ka Selective Inhibitor" means a small molecule compound that: (a) inhibits PI3Ka at the applicable Target Potency Threshold; and (b) meets the applicable Target Specificity Threshold.

1.72 "PI3Ka/ß Inhibitor" means a small molecule compound that: (a) inhibits PI3Ka and PI3Kß at the applicable Target Potency Threshold; and (b) meets the applicable Target Specificity Threshold.

1.73 "PI3Ka/ß/mTOR Inhibitor" means a small molecule compound that: (a) inhibits PI3Ka, PI3Kß and mTOR at the applicable Target Potency Threshold; and (b) meets the applicable Target Specificity Threshold.

1.74 "PI3Ka/mTOR Inhibitor" means a small molecule compound that: (a) inhibits PI3Ka and mTOR at the applicable Target Potency Threshold; and (b) meets the applicable Target Specificity Threshold.

1.75 "PI3Kß Selective Inhibitor" means a small molecule compound that: (a) inhibits PI3Kß at the applicable Target Potency Threshold; and (b) meets the applicable Target Specificity Threshold.

1.76 "PI3Kß/mTOR Inhibitor" means a small molecule compound that: (a) inhibits PI3Kß and mTOR at the applicable Target Potency Threshold; and (b) meets the applicable Target Specificity Threshold.

1.77 "Pre-Lead Compound" means a small molecule compound that: (a) [*]; (b) such Party has [*] (as applicable); (c) meets the Pre-Lead Criteria set forth in the Research Plan; and (d) is [*] to the JRDC for inclusion under the Agreement as a Collaboration Compound.

1.78 "Pre-Lead Criteria" has the meaning set forth in Section 2 of **Exhibit 2.2**.

1.79 "Product" means any therapeutic or prophylactic product (for use in animals or humans) in bulk or finished form that comprises or incorporates any [*].

1.80 "Regulatory Approval" means any and all 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 Agency ("**EMEA**")), 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.

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

1.82 "Research Plan" has the meaning set forth in Section 2.2.

1.83 "Royalty Term" has the meaning set forth in Section 9.5.

1.84 "[*]" has the meaning set forth in Section 4.4(c)(iv).

1.85 "Sanofi-Aventis Know-How" means all Information Controlled by Sanofi-Aventis (other than Sanofi-Aventis Patents) and its Affiliates as of the Effective Date or during the Term, that: (a) covers a Collaboration Compound, a composition containing a Collaboration Compound, 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 under the Agreement.

1.86 "Sanofi-Aventis Patents" means all Patents Controlled by Sanofi-Aventis and its Affiliates (including Sanofi-Aventis' Sole Invention Patents but excluding Exelixis Patents), as of the Effective Date or during the Term, including any Sole Invention Patents Controlled by Sanofi-Aventis, that: (a) cover a Collaboration Compound, a composition containing a Collaboration Compound, 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 under the Agreement.

1.87 "SAR" has the meaning set forth in Section 2.3(b).

1.88 "Selectivity Panel" has the meaning described in **Exhibit 1.88**.

1.89 "Sole Invention" means any Invention conceived and reduced to practice solely by or on behalf of a Party during the Term.

1.90 "Sole Invention Patent" means a Patent that claims a Sole Invention.

1.91 "Target Potency Threshold" has the meaning set forth in **Exhibit 1.91**.

1.92 "Target Specificity Threshold" has the meaning set forth in **Exhibit 1.92**.

1.93 "Term" has the meaning set forth in Section 12.1.

1.94 "Third Party" means any person or entity other than: (a) Exelixis; (b) Sanofi-Aventis; or (c) an Affiliate of either Party.

1.95 "Transfer Date" for a given Exelixis Clinical Trial with respect to any given Product means: (a) the date on which Exelixis notifies Sanofi-Aventis of the first occurrence of any of the following events: (i) [*]; and (ii) [*]; or (b) the date on which [*].

1.96 "Upstate Panel" has the meaning described in **Exhibit 1.88**.

1.97 "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

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 [*], and 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.

1.98 "Working Group" has the meaning set forth in Section 4.4(f).

2. COLLABORATION

2.1 Overview; Guidelines; and Independence.

(a) Overview. The Parties desire to apply their respective technology and expertise to discover, optimize and advance Collaboration Compounds that are a PI3Ka Selective Inhibitor, PI3Kb Selective Inhibitor, PI3Ka/b Inhibitor, PI3Ka/mTOR Inhibitor, PI3Kb/mTOR Inhibitor, or PI3Ka/b/mTOR Inhibitor so that such Collaboration Compounds may be Developed into Products and Commercialized by Sanofi-Aventis. As a general goal, the Parties intend to advance [*] Lead Compounds as Development Candidates, and to submit [*] INDs on Development Candidates ([*]), during the Collaborative Research Term. The Parties agree that failure to advance [*] such Lead Compounds as Development Candidates, or failure to submit [*] such INDs on Development Candidates shall not be treated as a breach of this Agreement. Each Party shall have responsibilities under the Collaboration in accordance with the allocation of duties set forth in the Research Plan, including responsibilities for lead optimization, preclinical development of Collaboration Compounds, and conduct of [*] Clinical Trial(s) for such Collaboration Compounds.

(b) Resources. Each Party 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 Pre-Lead Compound, Lead Compound or Development Candidate as if it were a proprietary compound solely of its own organization. In all matters related to the Collaboration, the Parties shall strive to balance as best as 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). Notwithstanding anything to the contrary, during the Collaborative Research Term, Exelixis shall allocate and utilize [*] FTEs per year, [*] to fulfilling its obligations under the Research Plan, and Sanofi-Aventis shall allocate [*] to perform its obligations under the Research Plan.

2.2 Research Plan. The Parties have agreed in writing upon an initial plan for the research to be carried out by the Parties during the Collaborative Research Term, which is set forth in the **Exhibit 2.2** and incorporated herein by reference (the "**Research Plan**"). The Research Plan includes each Party's respective obligations in furtherance of the Collaboration

and timelines for completion of key stages. The JRDC shall review the Research Plan at least [*] and may propose to the JEC (for its review and approval) revised versions of the Research Plan that do not contradict any terms of this Agreement. Once approved by the JEC, such revised Research Plan shall replace the prior Research Plan. If the terms of the Research Plan contradict, or create inconsistencies or ambiguities with, the terms of this Agreement, then the terms of this Agreement shall govern.

2.3 Conduct of Research.

(a) General. The Parties shall use Diligent Efforts to conduct their respective tasks set forth in the Research Plan and shall conduct the Collaboration in good scientific manner, and in compliance in all material respects with the requirements of applicable laws, rules and regulations and all applicable good laboratory practices.

(b) Pre-Lead Discovery and Nomination. During the Collaborative Research Term, each Party shall use Diligent Efforts to [*]. Each Party shall [*] identification and characterization (but not [*]) with the JRDC at each meeting. **Exhibit 2.3(b)(i)** identifies (as of the Effective Date) a list of compounds that [*], and **Exhibit 2.3(b)(ii)** identifies (as of the Effective Date) a list of compounds that [*]. Once [*] a given compound meets the Pre-Lead Compound Nomination Criteria identified in the Research Plan, then [*] shall submit to the JRDC a data package (excluding [*]) for nominating such compound as a Pre-Lead Compound. Alternatively, the JRDC may request [*] to assemble and submit ([*]) a data package (excluding [*]) for any PI3Ka Selective Inhibitor, PI3Kb Selective Inhibitor, PI3Ka/b Inhibitor, PI3Ka/mTOR Inhibitor, PI3Kb/mTOR Inhibitor, or PI3Ka/bmTOR Inhibitor that has been disclosed to the JRDC by [*]. The JRDC shall review each data package submitted for Pre-Lead Compound nomination and shall determine whether to approve such compound as a Pre-Lead Compound. If the JRDC approves such compound, then such compound shall be deemed to be a Pre-Lead Compound. Upon such approval by the JRDC, the [*] for such Pre-Lead Compound shall be [*]. If the JRDC does not approve a compound as a Pre-Lead Compound, and the JRDC recommends that such compound should be subject to additional work, then, [*]; provided, however, that the JRDC shall have the sole discretion to prioritize such additional work relative to any work being performed [*]. If the JRDC does not approve such compound as a Pre-Lead Compound and does not recommend additional work, then such compound shall [*] further research, develop or commercialize such compound [*].

(c) Lead Discovery and Nomination. Once [*] Pre-Lead Compound meets the Lead Compound Nomination Criteria identified in the Research Plan, then [*] shall submit to the JRDC a data package for such Pre-Lead Compound to be approved as a Lead Compound by the JRDC. Alternatively, the JRDC may nominate a Pre-Lead Compound for consideration to be a Lead Compound and request [*] to assemble and submit ([*]) a data package for such Pre-Lead Compound. The JRDC shall review each submitted data package and shall determine whether to approve such Pre-Lead Compound as a Lead Compound, provided, however, that prior to such determination, [*] shall have the right to request and receive, [*]. If the JRDC approves such Pre-Lead Compound, then such Pre-Lead Compound shall be deemed to be a Lead Compound, and shall no longer be deemed to be a Pre-Lead Compound. If the JRDC does

not approve a Pre-Lead Compound, and the JRDC recommends that such Pre-Lead Compound should be subject to additional work, then, [*]; provided, however, that the JRDC shall have the sole discretion to prioritize such additional work relative to any work being performed [*]. If JRDC does not approve such Pre-Lead Compound and does not recommend additional work, then such Pre-Lead Compound shall cease to be a Pre-Lead Compound, and [*].

(d) Review of Lead Compounds. As part of the criteria for the submission of a Lead Compound for approval as a Development Candidate, [*] review the results of all screening assays for [*]. [*]. If [*], then [*]; *provided, however*, that [*]. For clarity, (a) nothing in this Section 2.3 shall be deemed to [*], and (b) [*]. In the event that [*], then [*].

(e) Lead Optimization. During the Collaborative Research Term, the JRDC shall review and prioritize each Lead Compound on a regular basis, allocating the split of responsibilities and resources between the Parties with the goal of advancing a prioritized Lead Compound to Development Candidate by the conduct of the Lead Optimization Responsibilities set forth in the Research Plan, and the factors described below. In general, the responsibilities for [*] of a Lead Compound and associated [*] shall remain with [*]; *provided, however*, that the Parties may agree to allocate some activities (and transfer Lead Compounds) to [*]. During the Collaborative Research Term, each Party shall [*] update the JRDC with the progress and results of such conduct. The JRDC shall assess the status of the Lead Compounds, and, if a Lead Compound meets the Development Candidate Nomination Criteria, or if the JRDC otherwise determines that a Lead Compound should be advanced as a Development Candidate for preclinical development, then the JRDC shall nominate such Lead Compound as a Development Candidate to [*]. [*] shall promptly (and in good faith) review such nomination and determine whether such Lead Compound shall be advanced for preclinical development by becoming a Development Candidate. If [*] determines to approve such Lead Compound as a Development Candidate, then [*] shall promptly notify the JRDC, and such Lead Compound shall be deemed to be a Development Candidate and shall no longer be deemed to be a Lead Compound. [*] shall also determine which Party would be responsible for CMC Activities, preclinical development, IND submission and conduct of the first Phase I Clinical Trial for such Development Candidate. If the JRDC decides not to nominate a Lead Compound as a Development Candidate, or if [*] does not approve a Lead Compound as a Development Candidate, and the JRDC [*] recommends additional work to be performed on such Lead Compound, then, [*] shall use Diligent Efforts to conduct such additional work and re-submit such Lead Compound to the JRDC; provided, however, that the JRDC shall have the sole discretion to prioritize such additional work relative to any work being performed by such Party under this Agreement.

(f) Preclinical Development and IND Submission. After [*] determines to advance a Lead Compound as a Development Candidate, [*] shall use Diligent Efforts during the Collaborative Research Term to conduct the Preclinical Development Activities set forth in the Research Plan. The JRDC shall assess the status of such Preclinical Development Activities, and, if a Development Candidate meets the IND Submission Criteria, or if the JRDC otherwise determines that an IND should be submitted for a Development Candidate, then the JRDC shall nominate such Development Candidate for IND submission to [*]. [*] shall promptly (and in

good faith) review such nomination and determine whether an IND should be submitted for such Development Candidate. If [*] determines that an IND should be submitted, then [*] shall promptly notify the JRDC, and the Lead Development Party shall prepare the Initial Development Plan and Annual Development Plan pursuant to Article 5. After the Initial Development Plan and Annual Development Plan are finalized, the Lead Development Party shall use Diligent Efforts to prepare and submit to the applicable Regulatory Authority the IND package for such Development Candidate. If the JRDC determines that an IND should not be submitted for a Development Candidate, or if [*] determines not to submit an IND for a Development Candidate, but if either the JRDC or [*] recommends that such Development Candidate should be subject to additional work, then, [*] shall use Diligent Efforts to conduct such additional work and re-submit such Development Candidate to the JRDC [*]; provided, however, that the JRDC shall have the sole discretion to prioritize such additional work relative to any work being performed [*]. After the INDs for at least [*] Development Candidates, have been approved by the appropriate Regulatory Authority [*] shall have any obligation to submit (or conduct any work related to the submission of) any additional INDs for any other Development Candidates, and [*] shall have any obligation to submit (or conduct any work related to the submission of) any additional Lead Compounds for advancement as Development Candidates.

(g) Expenses and Reimbursement.

(i) Collaborative Research Term. Subject to Section 4.1(b)(ii) and Section 9.1(b), [*] shall bear [*] costs and expenses associated with each Collaboration Compound for the conduct of [*] tasks described in the Research Plan, until [*]. Such expenses shall include [*].

(ii) Development. Sanofi-Aventis shall bear the costs and expense (and reimburse Exelixis) associated with conducting clinical development of a Development Candidate incurred after the approval of the applicable IND, including any Exelixis Development Expenses incurred after the approval of the applicable IND; provided, however, [*].

2.4 Information Exchange; Reports. During the Collaborative Research Term, each Party shall report to the JRDC no less than [*] and shall submit to the other Party and the JRDC a [*] written progress report summarizing the results and data obtained from the conduct of the Research Plan. Notwithstanding anything to the contrary in this Agreement, neither Party shall be obligated to [*]. If reasonably necessary for a Party to perform its work under the Research Plan or to exercise its rights under the Agreement, such Party may request that the other Party provide more detailed information and data regarding such results reported by such other Party, and such other Party shall promptly provide the requesting Party with information and data as is reasonably related to such request, including any records created by a Party pursuant to Section 13.3(c). All such reports shall be considered Confidential Information of the Party providing same.

2.5 Option to Extend Collaborative Research Term. Provided [*] is not [*], [*] shall have the right to extend the Collaborative Research Term for an additional [*] period, upon a minimum of [*] written notice prior to the expiry of the Collaborative Research Term on the same terms and conditions in this Agreement (except that [*] shall not have the ability to make additional unilateral extensions to the Collaborative Research Term). [*] may, at its option, request that [*] execute an extension agreement in order to formalize the extension of the Collaborative Research Term, but [*]. Subsequent to such [*] extension, the Parties may extend the Collaborative Research Term solely [*].

3. SANOFI-AVENTIS DEVELOPMENT AND COMMERCIALIZATION RESPONSIBILITIES

3.1 Scope. Except for the Exelixis' responsibilities under the Research Plan and the Exelixis Clinical Trials, Sanofi-Aventis shall have sole control and responsibility for the Development, Manufacture (including formulation, but subject to Section 7.1) and Commercialization of all Collaboration Compounds and/or Products. Sanofi-Aventis shall bear all costs and expenses associated with, the Development, Manufacture (including formulation) and Commercialization of all Products unless otherwise provided herein.

3.2 Diligence. During the Term, Sanofi-Aventis shall use Diligent Efforts to Develop and Commercialize in each of the Major Territories at least [*], provided however that Sanofi-Aventis may satisfy such obligation by sublicensing the Development and Commercialization of a Product to a Third Party pursuant to the terms of this Agreement.

3.3 Discussion Opportunity. Exelixis may notify Sanofi-Aventis in writing if Exelixis in good faith believes that Sanofi-Aventis is not meeting its diligence obligations set forth in Section 3.2, and the Parties shall meet and discuss the matter in good faith. Exelixis may further request review of Sanofi-Aventis' records generated and maintained as required under Section 3.4 below, to the extent those records relate to Development, Manufacture and Commercialization of a Product.

3.4 Reports. Beginning on with the first full [*] that ends at least [*] after the JRDC and JEC are disbanded pursuant to Section 4.1, and for each [*] thereafter during the Term, Sanofi-Aventis shall submit to Exelixis a written progress report summarizing the Development, Manufacturing, and Commercialization of Products performed by Sanofi-Aventis. If [*] for Exelixis to exercise its rights under this Agreement, Exelixis may request that Sanofi-Aventis provide more detailed information and data regarding such reports by Sanofi-Aventis, and Sanofi-Aventis 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 Sanofi-Aventis.

4. GOVERNANCE

4.1 Collaboration Governance and Committee Structure.

(a) Role of Committees. Subject to Section 4.1(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 discovery and Development of Products hereunder; and (ii) a specialized joint committee (such committee, the "**Joint Research & Development Committee**" or "**JRDC**") focusing on each of the following areas arising out of the Collaboration: (A) discovery and chemical optimization of Collaboration Compounds up to Development Compound nomination; and (B) Development (including preclinical development) and Regulatory Approval of Products. Each Committee shall have the responsibilities and authority allocated to it in this Article 4 and elsewhere in this Agreement. It is contemplated that: (X) all significant matters relating to the discovery, lead optimization, preclinical and clinical Development of Products under this Agreement will be addressed by the JRDC and, if appropriate, by the JEC, as contemplated by Section 4.4(c); and (Y) the Parties' respective activities under this Agreement will be reported to the relevant Committees in a reasonable and appropriate level of detail. The JRDC 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 4.1(a), 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; or (ii) require Exelixis to [*], without the Parties' prior written agreement.

(c) Discontinuation of Participation on a Committee. Each Committee shall continue to exist until the first to occur of: (i) the Parties mutually agreeing to disband the Committee; or (ii) a Party providing to the other Party written notice of its intention to disband and no longer participate in such Committee. Once one Party has provided the other Party written notice as referred to in subclause (ii) above, such Committee shall have no further obligations under this Agreement and such other Party receiving such notice shall have the right to solely decide, without consultation, any matters previously before such Committee, subject to the other terms of this Agreement.

(d) Disbandment of JEC and JRDC. The Parties hereby agree that the JEC and the JRDC shall be disbanded within [*] following the completion of any and all Development activities to be performed by Exelixis hereunder, including but not limited to the Exelixis Clinical Trials.

4.2 Joint Executive Committee.

(a) Formation and Purpose. Exelixis and Sanofi-Aventis shall establish the JEC within [*] after the Effective Date. Subject to Sections 4.1(b) and 4.4(c), the JEC's responsibilities shall be: (i) to determine the strategy for the research and Development of Collaboration Compounds and Products; (ii) to coordinate the Parties' activities hereunder; and (iii) as applicable, to review, comment on, approve, and resolve disputes with respect to the foregoing matters or other matters which the Parties wish to bring to the JEC, including the specific responsibilities of the JEC outlined below. The JEC shall have the membership and shall operate by the procedures set forth in Section 4.4.

(b) Specific Responsibilities of the JEC. In addition to its overall responsibility for the Collaboration, but subject to Sections 4.1(b) and 4.4(c), the JEC shall, in particular, have the following specific responsibilities:

(i) Review and approve the research and Development strategies for each Collaboration Compound and Product;

(ii) oversee the Parties' activities hereunder;

(iii) approve budgets for the Exelixis Development Expenses;

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

(v) oversee the Development of each Product pursuant to its Initial Development Plan and respective Annual Development Plan, up to the initiation of Phase III Clinical Trials;

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

(vii) provide a forum for disputed matters within the responsibilities of JRDC; and

(viii) 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.

4.3 Joint Research & Development Committee.

(a) Formation and Purpose. Exelixis and Sanofi-Aventis shall establish the JRDC within [*] after the Effective Date, which Committee shall, subject to Sections 4.1(b) and 4.4(c), oversee the discovery efforts and preclinical development of Collaboration Compounds, as described in Article 2. The JRDC shall have the membership and shall operate by the procedures set forth in Section 4.3, and shall disband subsequent to the Collaborative Research Term or otherwise at the direction of the JEC.

(b) Specific Responsibilities of the JRDC. In addition to its overall responsibility described above, and subject to Sections 4.1(b) and 4.4(c), the JRDC shall, in particular, have the following specific responsibilities:

(i) provide a forum for the Parties to report progress with respect to discovery and preclinical development activities and to allow the Parties to review and comment with respect to such discovery activities;

(ii) determine which: (A) [*] will become Pre-Lead Compounds; (B) Pre-Lead Compounds will become Lead Compounds; and (C) Lead Compounds will be nominated [*] as Development Candidates;

(iii) prioritize and allocate Party resources for lead optimization projects as set forth in the Research Plan;

(iv) review and revise the Research Plan;

(v) determine which Development Candidates will be nominated [*] for IND submission;

(vi) provide [*] with its recommendation as to which Party it believes should be responsible for CMC Activities, preclinical development, IND submission and conduct of Phase I Clinical Trials for a Collaboration Compound (it being understood that assignment of the foregoing responsibilities will be made by Sanofi-Aventis);

(vii) monitor Development activities, including with respect to operational matters such as enrollment strategies, site selection, CRO contract strategies;

(viii) review and discuss the Initial Development Plan and each Annual Development Plan;

(ix) review all material information generated in the course of implementing the Initial Development Plan and the Annual Development Plans;

(x) assist in coordinating scientific interactions and division of responsibilities with respect to Development activities, and resolving disagreements during the course of implementing the Initial Development Plan and the Annual Development Plans;

(xi) provide on a [*] basis updates on its activities and achievements to the JEC for review and comment;

(xii) initiate a transfer of the IND for the Product in an Exelixis Clinical Trial in advance of [*]; and

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

4.4 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 Sanofi-Aventis and Exelixis shall designate representatives with appropriate expertise to serve as members of each Committee. Each Party may replace its Committee representatives at any time upon written notice to the other Party. Each Committee shall have co-chairpersons. Sanofi-Aventis 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.

(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 JRDC, and once every [*] for the JEC. Each Committee shall meet alternately at Exelixis' facilities in South San Francisco, California, and Sanofi-Aventis' facilities in the Paris, France metro area, or at such other locations as the Parties may agree. The Alliance Managers shall, and other employees of each Party involved in the discovery, preclinical development, 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 discovery, preclinical development, Development or Manufacture of any Product may attend meetings of each Committee as nonvoting observers; provided that such employees and 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; 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 4.1(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 4.4(c) and subject to Section 4.1(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.

(ii) [*] Decisions. [*] shall be made by Sanofi-Aventis; provided, however that, any [*], shall be made by Exelixis. Any dispute regarding a decision made by [*] pursuant to this paragraph shall first be referred to 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 referred to the JRDC and/or JEC for resolution.

(iii) Disagreements on Committees. Except for matters outside the jurisdiction and authority of the Committees and in any event without limiting the other rights and obligations of the Parties under this Agreement, any disagreement between the designees of Sanofi-Aventis and Exelixis on the JRDC 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. If the JEC does not resolve any such matter submitted to it for resolution within [*] after such submission, , then the [*] co-chairperson of the JEC shall have the right to decide any such matter, subject to Section 4.4(c)(iv).

(iv) [*]. [*] right to exercise final decision-making authority pursuant to Section 4.4(c)(iii) ([*]) shall be subject to the following limitations:

(1) All [*] 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 by [*] shall violate or breach any term or condition of this Agreement. [*] shall make all [*] only after [*] (through its JEC or JRDC members, as applicable) on such matters and the [*], and in the case of [*] made pursuant to Section [*], only after [*], and the [*] on such matters, at a subsequent meeting.

(2) [*] shall have no right to make a [*]: (A) on any matter that would require [*]; (B) on any matter that would amend, violate or breach any provision of this Agreement; (C) to change the [*]; (D) to change the [*]; (E) [*]; or (F) on any matter that would require [*]. Resolution of disputes relating to the foregoing matters shall require mutual agreement of the Parties (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.

(e) Working Groups. From time to time, the JEC or JRDC 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 or JRDC, 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 4. Any disagreement between the designees of Sanofi-Aventis and Exelixis on a Working Group shall be referred to the applicable Committee for resolution.

(f) 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, 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.

4.5 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint a single individual to act as a single point of contact between the Parties (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 4.4(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; 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.

5. DEVELOPMENT OF PRODUCTS

5.1 Lead Development Party. The JRDC shall recommend to Sanofi-Aventis the Party that it believes should serve as the lead Party for the conduct of the first Phase I Clinical Trial for each Product. The JRDC's recommendation shall be made in the best interest of the Collaboration. After careful review of the recommendation of the JRDC, Sanofi-Aventis shall determine which Party shall serve as the lead Party for the conduct of the first Phase I Clinical Trial (the "**Lead Development Party"**). If Sanofi-Aventis determines that Exelixis serve as the Lead Development Party for a Product, then Exelixis' responsibility to Develop such Product shall cease after the Transfer Date for the first Phase I Clinical Trial for such Product, and Sanofi-Aventis shall be responsible (as of the Transfer Date) for all further Development of such Product pursuant in Section 3.1. If Sanofi-Aventis is the Lead Development Party for a Product, then Sanofi-Aventis shall be responsible for all Development of such Product pursuant to Sections 3.1, 5.2 and 5.3.

5.2 Initial Development Plans.

(a) Scope. The initial Development of each Product shall be governed by a comprehensive, multi-year plan covering the conduct of the early clinical development of such Product up to clinical proof-of-concept (the **"Initial Development Plan"**). The Initial Development Plan shall: (i) provide a comprehensive 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; (iii) indicate [*]; (iv) set forth those obligations assigned to each Party with respect to the performance of the Development activities contemplated by such Initial Development Plan; (v) contain a study protocol for the establishment of [*] for the Product in the first Phase I Clinical Trial; and (vi) provide an expected forecast, based on the information available at the time, including patient estimates and cost forecasts (and methodology, if available).

(b) Creation of Initial Development Plan. The Lead Development Party shall use Diligent Efforts to prepare and submit to the JRDC a draft of the Initial Development Plan for a given Product no later than [*] prior to the anticipated date of IND submission for such Product. The JRDC shall promptly meet, discuss such draft and provide feedback to the Lead Development Party. The Lead Development Party shall use Diligent Efforts to prepare a final version of the Initial Development Plan, including a final study protocol, and submit it to the JRDC for final review approximately [*] in advance of the anticipated IND submission date. The JRDC shall promptly meet, discuss such final version and provide feedback to the Lead Development Party. After obtaining any additional feedback, the Lead Development Party shall prepare and submit the IND package to the applicable Regulatory Authority pursuant to Section 2.3(f).

(c) Updates to the Initial Development Plan. Any material update, amendment or modification to any provisions of such Initial Development Plan shall require the approval of the JEC.

(d) Reports. Beginning [*] after disbandment of the JRDC and JEC in accordance with Section 4.1(d), and every [*] thereafter during the Term, Sanofi-Aventis shall submit to Exelixis a written progress report, substantially in the form of **Exhibit 5.2(d)**, which summarizes the Development of Products performed by Sanofi-Aventis.

5.3 Annual Development Plans.

(a) Scope. To further refine each Initial Development Plan, the JRDC shall prepare a separate, detailed and specific Development plan covering all material Development activities to be performed for such Product for such year, and budgets covering all Exelixis Development Expenses for those Development activities for such Product conducted in support of Regulatory Approvals for such Product (each, an **"Annual Development Plan"**). Each Annual Development Plan and budget shall be proposed by the JRDC for approval by the JEC. Each Annual Development Plan for such 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 Initial Development Plan for such Product that are to be performed in that particular Calendar Year.

(b) Procedure. The initial Annual Development Plan shall be prepared by the Lead Development Party in conjunction with the preparation of the Initial Development Plan described in Section 5.2(b). Thereafter, the Lead Development Party shall submit on an annual basis an Annual Development Plan for each Product to the JRDC for its review, comment, and approval. Each such submission shall be no later than [*] of the 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.

5.4 Exelixis Clinical Trials.

(a) Scope. Exelixis shall conduct the Exelixis Clinical Trials for each applicable Product in a collaborative and efficient manner. The Parties shall engage in joint decision-making for the Exelixis Clinical Trials as set forth in Article 4.

(b) Notwithstanding anything to the contrary in this Agreement, the Parties agree that Exelixis shall be the sponsor for, and the Lead Development Party for, the Exelixis Clinical Trials, and that Exelixis shall have the responsibility and the authority to act as the sponsor and make those decisions and take all actions necessary to assure compliance with all regulatory requirements. Exelixis agrees to be bound by, and perform all obligations set forth in, 21 C.F.R. §312 related to its role as the sponsor for the Exelixis Clinical Trials for a given Product. Notwithstanding anything to the contrary in this Agreement, Exelixis may discontinue or modify any clinical trial that is part of the Exelixis Clinical Trials without the approval of the JRDC or the JEC in the event such actions are: (i) [*]; and (ii) [*], provided however, that in such an event the JRDC and JEC shall be informed of such discontinuation or modification without delay. The Annual Development Plan for an Exelixis Clinical Trial may specify that outside contractors (reporting to, or acting on behalf of, Exelixis and reasonably selected by Exelixis) will have responsibility to direct and conduct any additional pre-clinical activities and applicable clinical trials in any country. The Parties shall, to the extent practicable and permitted by applicable law, rule or regulation, cooperate, prior to engagement of a given outside contractor, to minimize costs associated with the retention of any outside contractors, including, where possible, the retention by Exelixis of Sanofi-Aventis contractors where cost savings may be achieved by doing so.

(c) Exelixis shall use Diligent Efforts to carry out its responsibilities under the then-applicable Initial Development Plan and Annual Development Plan. Exelixis shall have the right to use commercially reasonable discretion in carrying out its obligations under the Annual Development Plan and the Initial Development Plan, including without limitation: (i) carrying out day-to-day planning and implementation of activities under the Annual Development Plan; (ii) managing day-to-day regulatory compliance matters, including adverse event reporting; (iii) managing clinical research organizations engaged to carry out activities under the Annual Development Plan; and (iv) managing the Exelixis Clinical Trials.

5.5 Exelixis Development Expenses.

(a) Process for Payments of Exelixis Development Expenses. Promptly after the date of the JRDC meeting allocating to Exelixis the performance of a Phase I Clinical Trial, Exelixis shall provide Sanofi-Aventis with an estimate of the Exelixis Development Expenses (and invoice for Exelixis FTE Costs and for Out-of-Pocket Costs incurred by Exelixis, accompanied by reasonable supporting documentation, given that such invoicing will be on an accrual basis) covering: (i) the period between the aforementioned JRDC meeting and the start of the first Calendar Quarter arising after the date of such JRDC meeting; and (ii) the first Calendar Quarter arising after the date of such JRDC meeting. By the [*] of each subsequent Calendar Quarter during the Term, Exelixis shall provide Sanofi-Aventis with: (A) an estimate of the Exelixis Development Expenses for such Calendar Quarter (and invoice for Exelixis FTE Costs); and (B) with the actual Exelixis Development Expenses for the preceding Calendar Quarter (and invoice for Out-of-Pocket Costs incurred by Exelixis during that Calendar Quarter, accompanied by reasonable supporting documentation, given that such invoicing will be on an accrual basis). Any overpayment or underpayment of the actual Exelixis FTE Costs against the prepayment made for the preceding Calendar Quarter will be netted by Exelixis against the current Calendar Quarter estimate therefor. Sanofi-Aventis shall pay Exelixis the amount in each such invoice within [*] after receipt thereof. Sanofi-Aventis shall have the right, at a reasonable time and upon reasonable prior notice [*], to audit Exelixis' records as provided in Section 13.3(c) to confirm the accuracy of Exelixis' costs and reports with respect to Exelixis Development Expenses under this Agreement.

(b) Accounting of Exelixis Development Expenses. Exelixis agrees to determine Exelixis Development Expenses using its standard accounting procedures, consistently applied, [*] as specifically provided in this Agreement. The Parties also recognize that such procedures may change from time to time. 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 Exelixis' accounting procedures in effect as of the date on which the activity in question (e.g., Development) first commences under this Agreement. [*]. 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.

(c) [*]

(d) FTE Records and Calculations; Adjustments to Exelixis FTE Rate. Exelixis shall record and account for its FTE effort for the Development of Products to the extent that such FTE efforts are included in Exelixis Development Expenses, and shall report such FTE effort to the JRDC on a quarterly basis. The Exelixis FTE Rate may be adjusted annually, with each annual adjustment effective as of January 1 of each Calendar Year, in accordance with the percentage increase or decrease, if any, in the US CPI for the twelve (12) months ending June 30 of the Calendar Year prior to the Calendar Year for which the adjustment is being made.

5.6 Technology and Regulatory Transfer of Collaboration Compounds. Exelixis shall disclose or transfer to Sanofi-Aventis the Information and documents described in subsections 5.6(a) and 5.6(b) below:

(a) Within [*] after the Transfer Date, Exelixis shall, at Sanofi-Aventis' expense, disclose (and provide copies, as applicable) to Sanofi-Aventis any Information, including any preclinical data, clinical data, assays, protocols, procedures and any other information in Exelixis' possession or control, not previously disclosed to Sanofi-Aventis, and [*] to continue clinical Development of such Product, or in seeking Regulatory Approval of such Products.

(b) The Parties shall cooperate to ensure that Exelixis transfers to Sanofi-Aventis, [*] after the Transfer Date for a given Product: (i) [*]; (ii) any agreements [*], all agreements [*]. If an agreement that is described in subsection [*] is not assignable, then Exelixis shall use Diligent Efforts to amend the agreement to permit assignment.

6. REGULATORY

6.1 Regulatory Responsibility.

(a) Subject to Section 3.2 and Section 6.1(b), Sanofi-Aventis shall, during the Term, have [*] discretion, control and responsibility for the preparation, drafting, submission and filing, in its own name and at its own cost, of all DAAs, documents, dossiers, etc., for Regulatory Approvals for the Products. Subject to Section 6.1(b), Sanofi-Aventis shall have [*] responsibility for interacting with any Regulatory Authority regarding any issues, DAAs or any Regulatory Approval, and Exelixis shall provide its reasonable assistance to Sanofi-Aventis (at Sanofi-Aventis' expense), whenever Sanofi-Aventis seeks such assistance, to answer questions on the Products from any Regulatory Authority. Additionally, in the event Sanofi-Aventis must communicate with or respond to a Regulatory Authority within a very limited amount of time and needs the assistance of Exelixis for such interaction with the Regulatory Authority, Exelixis will use its Diligent Efforts to assist Sanofi-Aventis within the required time frame (at Sanofi-Aventis' expense). Furthermore, subject to Section 6.1(b) and to applicable laws and regulations, Sanofi-Aventis shall own all Regulatory Approvals, submissions and dossiers that it files as well as the Regulatory Approvals that are granted during the Term, including supporting documentation and information.

(b) Pending the [*], Exelixis shall remain the primary contact of Regulatory Authorities for regulatory activities regarding such Product, on behalf of Sanofi-Aventis. However, Sanofi-Aventis shall have the right to review and approve in advance any communication with any Regulatory Authority regarding such Product. Upon the [*], Exelixis shall notify the applicable Regulatory Authorities in writing that it is [*] for the applicable Product to Sanofi-Aventis, and Sanofi-Aventis would notify the applicable Regulatory Authorities in writing that it is [*] and all responsibilities associated therewith (including without limitation, the responsibility for reporting adverse events), other than any ongoing activities of Exelixis relating to ongoing Exelixis Clinical Trials (if applicable).

6.2 Other Regulatory Matters.

(a) Pharmacovigilance. Sanofi-Aventis shall be responsible for the management of all pharmacovigilance and all reports required by the Regulatory Authorities in order to obtain and maintain any Regulatory Approvals granted for the Products in the Territory, including, without limitation, adverse drug experience reports. The Parties agree to negotiate and execute a definitive safety data exchange agreement (the "SDEA") within [*] of the Effective Date of this Agreement, or within another time period as mutually agreed by the Parties, which will describe the responsibilities and procedures to be followed by the Parties with regard to all regulatory reporting for the Products under this Agreement.

(b) Pricing and Reimbursement Approvals. Sanofi-Aventis and its Affiliates shall have sole responsibility in the conduct of all pricing and reimbursement approval proceedings relating to each Product.

(c) 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 (including all Approvals) in order to support regulatory filings that such Party is permitted to make under this Agreement for any such Product and to enable such Party to fulfill its obligations under this Agreement to Develop, Manufacture (anywhere in the world), or Commercialize any such Product.

6.3 Packaging and Promotional Materials.

(a) Subject to Section 6.3(b) through 6.3(d), Sanofi-Aventis shall be solely responsible for creating all packaging and promotional materials for the Products. Sanofi-Aventis shall own all right, title and interest in and to any and all such promotional materials, including all applicable copyrights, trademarks, program names and domain names.

(b) During the Term, Sanofi-Aventis shall ensure that the packaging artwork and label and the marketing materials, used for Commercializing each Product in the U.S., Japan, and the Major European Countries, clearly identify Exelixis as the licensor of the Product, provided however that any such references comply with applicable laws and market practice in such countries. For the purpose of the foregoing, Exelixis grants Sanofi-Aventis the right to use certain of Exelixis corporate trademarks in accordance with the Trademark License Agreement attached as **Exhibit 6.3**.

(c) Sanofi-Aventis shall provide to Exelixis, the mock-ups for any packaging artwork and labels or marketing material it wishes to use for the Commercialization of a Product.

(d) In the event Exelixis shall desire to make any change to any printing, packaging or labeling proposed or used for a Product to reflect any changes to its trademark, tradename, logo or other features thereof (other than a change to correct an error or omission in such trademark, tradename, logo or other features), Exelixis shall be responsible for, and shall reimburse Sanofi-Aventis for, all costs associated with such changes, if any, including the costs of any inventory of the Product or labeling, printing or packaging materials rendered obsolete or rejected as a result of such change, including the cost of destruction of any of the foregoing.

6.4 Recalls. Any decision to initiate a recall or withdrawal of a Product shall be made by Sanofi-Aventis. In the event of any recall or withdrawal, Sanofi-Aventis 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 by Sanofi-Aventis. The costs of any such recall or withdrawal shall be borne solely by Sanofi-Aventis, [*].

7. MANUFACTURING

7.1 Manufacturing Generally.

(a) Subject to the terms and conditions of this Agreement, Sanofi-Aventis shall at all time Control the Manufacturing process development and may elect to Manufacture a Lead Compound, Development Candidate or a Product at any time during the Term. Any and all technology and Information relating to and required for the Manufacturing of a Lead Compound, a Development Candidate or a Product (including, as the case may be, any related Third Party agreements) (the "**Manufacturing Technology**") [*] during the Term of this Agreement, shall be transferred and assigned to Sanofi-Aventis and disclosed pursuant to Section 7.3, within a reasonable period following Exelixis' receipt of notification in writing by Sanofi-Aventis of its election to take over the Manufacturing of such Lead Compound, Development Candidate or Product.

(b) Notwithstanding the foregoing, the Party designated by the JRDC pursuant to Section 7.2(a) to perform process development and Manufacturing activities shall, retain responsibility for the Manufacture and supply of part or all of the Clinical Supply Requirements necessary for the Development of a Development Candidate or a Product in accordance with Section 7.2(c).

7.2 Manufacturing Activities.

(a) Discovery and Characterization of Lead Compounds. During the Collaborative Research Term, the JRDC shall prioritize advanced Lead Compounds for scale-up manufacturing to allow expanded profiling in efficacy, PK and toxicology assays. The JRDC shall also determine which Party shall conduct (or have conducted) the following activities, [*]:

(i) Evaluation of the medicinal chemistry synthetic route for such Lead Compound to determine if it can be safely and reproducibly scaled up. If such route cannot be safely scaled up, then evaluate alternate routes. Preparation for this activity may occur before the Development Candidate declaration.

(ii) [*].

(iii) Preformulation characterization.

(iv) Manufacture of approximately [*] of such Lead Compound required for full characterization.

The Party designated by the JRDC shall use Diligent Efforts to perform (or have performed) the activities described in subsections (i) – (iv) at is own expense.

(b) CMC Activities for Development Candidates. After Sanofi-Aventis determines to advance a Lead Compound as a Development Candidate, the Party that was allocated the Manufacturing responsibilities for such Development Candidate shall use Diligent Efforts during the Collaborative Research Term to conduct the following activities on such Development Candidate to support its IND submission and early clinical development (the "**CMC Activities**"):

(i) Conduct analytical methods development and qualification (e.g., stability indicating HPLC, process specific OVI's by GC, etc.).

(ii) Preparation of drug substance for IND-enabling non-clinical safety studies ("**NCSS**").

(iii) Conduct stability studies (ICH) on the NCSS batch.

(iv) Perform the tech transfer of process and analytical methods to internal production group or contract manufacturing organization for preparation of GMP drug substance.

(v) Identify a suitable formulation for the GLP NCSS.

(vi) Develop a simple formulation for rapid entry into Phase I Clinical Trials.

(vii) Prepare a prototype formulation for comparative pK study (intended clinical formulation vs. NCSS tox formulation).

(viii) Conduct stability studies on formulation prototypes (ICH).

(ix) Conduct further analytical methods development and qualification (e.g., potency, purity, dissolution, content uniformity, etc.).

(x) Perform the tech transfer of drug product process and analytical methods to contract manufacturing organization for preparation of GMP clinical supplies.

(c) Clinical Supply.

(i) Any costs and expenses incurred by either Party in carrying out the Manufacturing of Clinical Supply Requirements for the first Phase I Clinical Trial of any Product shall be borne solely by Sanofi-Aventis, including expenses for Exelixis' transfer to Sanofi-Aventis of any Product (or related active pharmaceutical ingredients) that may exist prior to the Transfer Date and that was Manufactured for use in the Development of such Product.

(ii) Prior to the transfer and assignment under Section 7.3 of any Manufacturing Technology for a Product [*], Exelixis shall Manufacture, or arrange with a Third Party for the Manufacture of Clinical Supply Requirements with respect to such Product. After the completion of Exelixis' transfer under Section 7.3 of the Manufacturing Technology for a given Product, Sanofi-Aventis may, at its discretion, Manufacture, or arrange with Third Parties for the Manufacture of any Clinical Supply Requirements (in bulk and finished form). Alternatively, Sanofi-Aventis may require that Exelixis continues to supply such Clinical Supply Requirements for a period to be agreed between the Parties or as may be imposed by regulatory requirements.

(iii) Promptly after the Effective Date, the Parties shall enter into a letter agreement, substantially in the form of the letter described in **Exhibit 7.2**, containing the terms and conditions for the quality responsibilities associated with Exelixis' provision of Clinical Supply Requirements for the Development of the Products.

(d) Commercial Supply. Sanofi-Aventis shall Manufacture, or arrange with Third Parties for the Manufacture of Product(s) (in bulk and finished form) for use in Commercialization.

7.3 Transfer of Manufacturing Technology.

(a) [*] after the Transfer Date for a given Product, Exelixis shall disclose (and provide copies, as applicable) to either Sanofi-Aventis or a Third Party manufacturer designated by Sanofi-Aventis [*] that is Controlled by Exelixis, required for the Manufacture of such Product and is [*] to enable Sanofi-Aventis or such Third Party manufacturer (as appropriate) to Manufacture such Product, including the Information described on **Exhibit 7.3(a).** The steps, planning and obligations of the Parties regarding the transfer of the Manufacturing Technology for such Product (for both the active pharmaceutical ingredient and the drug product as the case may be) will be set forth in a "Technology Transfer Master Plan API" and a "Technology Transfer Master Plan Drug Product" respectively, to be executed between the Parties.

(b) Upon request, Exelixis will [*] use Diligent Efforts to provide Sanofi-Aventis with any additional information or on-site support as may be required by Sanofi-Aventis and its Affiliates in connection with the transfer of the Manufacturing Technology. Sanofi-Aventis shall reimburse Exelixis for any on-site support rendered at the Exelixis FTE Rate per FTE-day of 8 hours, provided further Exelixis shall in no event be obliged to provide more than [*] FTE-days of 8 hours in total, unless the Parties otherwise agree in writing.

(c) At any time during the transfer of the Manufacturing Technology, Sanofi-Aventis may require to perform a technical audit of Exelixis' or any Third Party's facilities where the Products and their respective active pharmaceutical ingredient are Manufactured. During such audit, Sanofi Aventis shall have the right to review the batch records and any other relevant documentation related to the Manufacture of the Product, and Exelixis shall use its Diligent Efforts to facilitate such review. Should Exelixis' agreement with the applicable Third Party vendor not permit or contemplate the possibility of such an audit, [*].

(d) For the purpose of this Section 7.4, the actual transfer to Sanofi-Aventis of the Manufacturing Technology with respect to a particular Product shall be deemed completed when [*].

8. LICENSES AND RELATED RIGHTS

8.1 Licenses to Sanofi-Aventis; Exelixis' Retained Rights; and Co-Branding.

(a) Collaborative Research. During the Collaborative Research Term, and subject to the terms and conditions of this Agreement, Exelixis hereby grants Sanofi-Aventis an exclusive, worldwide, royalty-free license (without the right to sublicense except to Third Party contract research providers and manufacturers), under the Exelixis Patents, Exelixis Know-How and Exelixis' interest in the Joint Invention Patents, solely to: (i) conduct Sanofi-Aventis' responsibilities under the Research Plan; and (ii) conduct Manufacturing activities pursuant to Section 7.2(a) or Section 7.2(b), as applicable.

(b) Development and Commercialization. During the Term, and subject to the terms of this Agreement, Exelixis hereby grants Sanofi-Aventis an exclusive, worldwide, royalty-bearing license (with the right to sublicense), under the Exelixis Patents, Exelixis Know-How and Exelixis' interest in the Joint Invention Patents to: (i) develop, make, have made, or use any Development Candidate; and (ii) develop, make, have made, use, import, sell, offer to sell, have sold, or otherwise commercialize Products.

(c) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Know-How, Exelixis Patents and Joint Invention Patents, except those expressly granted to Sanofi-Aventis on an exclusive basis under the terms of this Agreement. Notwithstanding the exclusive licenses granted to Sanofi-Aventis pursuant to Sections 8.1(a) and 8.1(b), Exelixis retains the right to practice the Exelixis Patents, the Exelixis Know-How and the Joint Invention Patents to: (i) make, have made, use, and test Collaboration Compounds solely for internal research purposes; and (ii) perform (and to sublicense (or otherwise enter into contractual arrangements with) Third Parties to perform) Exelixis' obligations under this Agreement, including the conduct of any Exelixis Clinical Trials and any related Manufacture of Products under Article 7.

8.2 Sanofi-Aventis License Limitations and Covenants.

(a) Sanofi-Aventis hereby covenants that Sanofi-Aventis shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Know-How, Exelixis Patents or any chemical or biological materials that may be transferred to it by Exelixis under this Agreement during the Collaborative Research Term, in each case for a purpose other than that expressly permitted in Sections 8.1(a) and (b) above.

(b) Sanofi-Aventis acknowledges and agrees that: (i) the licenses granted in Section 8.1(a) shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any Patents, Information or other intellectual property right that is Controlled by Exelixis to research, develop, manufacture and/or commercialize any compound that is not a Collaboration Compound, and/or any composition containing any of the foregoing; and (ii) the license granted in Section 8.1(b) shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any Patents, Information or other intellectual property right that is Controlled by Exelixis to develop, manufacture and/or commercialize any compound that is not a Development Candidate, and/or any composition containing any of the foregoing. For clarity, the licenses in Sections 8.1(a) and (b) do not grant Sanofi-Aventis any right to research, develop, make, have made, use, import, sell, offer to sell, have sold and otherwise commercialize any compounds that selectively inhibit PI3Kd or PI3Kg

8.3 Limited License to Exelixis for Collaborative Research and Development. During the Term, and subject to the terms and conditions of this Agreement, Sanofi-Aventis hereby grants Exelixis a non-exclusive, worldwide, royalty-free license (without the right to sublicense except to Third Party contract research providers and manufacturers), under the Sanofi-Aventis Patents, Sanofi-Aventis Know-How and Sanofi-Aventis' interest in the Joint Invention Patents, to perform (and to sublicense (or otherwise enter into contractual arrangements with) Third Parties to perform) Exelixis' obligations under this Agreement, including the conduct of any of Exelixis' responsibilities under the Research Plan, the conduct of the Exelixis Clinical Trials and any related Manufacture of Products under Article 7.

8.4 Exelixis License Limitations and Covenants.

(a) Exelixis hereby covenants that Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any Sanofi-Aventis Know-How, Sanofi-Aventis Patents or any chemical or biological materials that may be transferred to it by Sanofi-Aventis under this Agreement during the Collaborative Research Term, in each case for a purpose other than that expressly permitted in Sections 8.3 and 12.3.

(b) Each sublicense granted by Exelixis, pursuant to Section 8.3, to a Party who is an Affiliate at the time such license is granted shall terminate immediately upon such Party ceasing to be an Affiliate.

8.5 No Additional Licenses. Except as expressly provided in Sections 8.1, 8.3, and 12.3, 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).

8.6 Sublicensing. 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.

8.7 Exclusivity.

(a) General Rule. Subject to Sections 8.7(b) (c) and (d), during the period beginning on the Effective Date and ending [*], neither Party shall (directly or indirectly, and either with or without a *bona fide* collaborator) [*].

(b) Exception for [*]. Notwithstanding anything to the contrary, if a Party is engaged in the [*]: (i) for which [*]; and (ii) that is [*], and [*], then [*].

(c) Exception for [*]. Notwithstanding anything to the contrary, the restrictions in Section 8.7(a) shall not apply to any [*]: (i) that [*]; and (ii) for which [*]; and (iii) for which [*].

(d) Sanofi-Aventis [*]. Following the termination of the Agreement pursuant to Section 12.2(a), Exelixis shall have the right but not the obligation to conduct any programs that are intended to [*], provided, however, that in the event Exelixis wishes to [*] and [*]. If the Parties do not [*].

9. COMPENSATION

9.1 Fees.

(a) Upfront Fee. Sanofi-Aventis shall pay Exelixis an upfront fee of Twenty Million Dollars ($20,000,000) within [*] after the Effective Date. The upfront fee payment made by Sanofi-Aventis to Exelixis pursuant to this Section 9.1(a) shall be noncreditable and nonrefundable.

(b) Annual Research Fee. Sanofi-Aventis shall pay Exelixis a guaranteed annual research fee of Seven Million Dollars ($7,000,000) during the Collaborative Research Term in [*]. The [*] shall be due on the [*] of the Effective Date, and each of the remaining [*]. Payments of [*] in subsequent years will be due on the [*]. The guaranteed annual research fee payments made by Sanofi-Aventis to Exelixis pursuant to this Section 9.1(b) shall be noncreditable and nonrefundable.

(c) Success Fees. Sanofi-Aventis shall pay Exelixis success fees of:

(i) [*] within [*] after [*]; and

(ii) [*] within [*] after [*].

The success fee payments made by Sanofi-Aventis to Exelixis pursuant to this Section 9.1(c) shall be noncreditable and nonrefundable. Notwithstanding [*], the fees payable pursuant to: (X) Section 9.1(c)(i) shall in no event be greater than [*] in the aggregate; and (Y) Section 9.1(c)(ii) shall in no event be greater than [*] in the aggregate.

9.2 Milestone Payments. The milestone payments under both subsections (a) and (b) of this Section 9.2 shall be applicable and payable for each Product. All milestone payments made by Sanofi-Aventis to Exelixis hereunder shall be noncreditable and nonrefundable.

(a) Development and Regulatory Milestones. Sanofi-Aventis shall make the milestone payments set forth below to Exelixis within [*] after the achievement of each of the following events for each Product by Sanofi-Aventis or any of its Affiliates or sublicensees:

Event	Milestone Payment
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

An Indication that is relevant for the achievement of a given clinical trial or approval event in Section 9.2(a) does not have to be the same Indication that is relevant for the achievement of a different clinical trial or approval event in Section 9.2(a). For example, [*].

(b) Commercial Milestones. Sanofi-Aventis shall make the milestone payments set forth below to Exelixis after the achievement of each of the following events by Sanofi-Aventis or any of its Affiliates or sublicensees for each Product. Each milestone payment shall be made by Sanofi-Aventis within [*] after the end of the year in which such milestone event is met:

(i) [*] upon the first time the annual, worldwide, aggregate, Net Sales of the Product reach or exceed [*];

(ii) [*] upon the first time the annual, worldwide, aggregate, Net Sales of the Product reach or exceed [*]; and

(iii) [*] upon the first time the annual, worldwide, aggregate, Net Sales of the Product reach or exceed [*].

9.3 Royalty Payments.

(a) Royalty Rates. Sanofi-Aventis shall pay Exelixis royalties, on a country-by-country basis, on Net Sales of each Product at the royalty rates stated below.

(i) If [*], then the royalty rates are:

(1) [*] of the annual, worldwide, aggregate Net Sales less than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product;

(2) [*] of the annual, worldwide, aggregate Net Sales equal to or greater than [*] and less than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product;

(3) [*] of the annual, worldwide, aggregate Net Sales equal to or greater than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product.

(4) By way of example, if, during any Calendar Year, the amount of Net Sales of a Product is [*], Exelixis will receive [*].

(ii) If [*], then the royalty rates are:

(1) [*] of the annual, worldwide, aggregate Net Sales less than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product;

(2) [*] of the annual, worldwide, aggregate Net Sales equal to or greater than [*] and less than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product;

(3) [*] of the annual, worldwide, aggregate Net Sales equal to or greater than [*] by Sanofi-Aventis (or its Affiliate or sublicensee) of such Product.

(iii) By way of example, if, during any Calendar Year, the amount of Net Sales of a Product is [*], Exelixis will receive [*].

(b) Royalty Adjustments.

(i) Third Party Royalty Offset. Subject to Section 9.3(b)(iii) below, Sanofi-Aventis may deduct from the royalties it would otherwise owe in a particular country for a particular Product pursuant to Section 9.3(a), an amount equal to [*] of royalties paid by Sanofi-Aventis to Third Parties with respect to licenses to [*].

(ii) Reduced Royalties. Subject to Section 9.3(b)(iii) below, Sanofi-Aventis' royalty obligations under Section 9.3(a) above with respect to a particular Product in a particular country shall be reduced by [*]: (A) in the event the Product is [*]; or (B) after expiration in such country of [*].

(iii) Minimum Royalty Rate. During the Royalty Term the operation of [*], singularly or in combination, shall not reduce the royalties due to Exelixis for any Product below [*] of what would otherwise have been due under Section 9.3(a).

(iv) [*]. During the applicable Royalty Term, for a particular Product and in a particular country, if [*], and [*], then [*] for as long as [*] or [*]. During the applicable Royalty Term, for a particular Product and in a particular country, if [*], and [*], then [*] for as long as [*] or [*].

9.4 Quarterly Payments. All royalties due under Section 9.3 shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant quarter for which royalties are due.

9.5 Term of Royalties. Exelixis' right to receive royalties for a particular Product under Section 9.3 shall expire on a country-by-country basis upon the later of: (a) [*]; or (b) [*] (the "**Royalty Term**").

9.6 Royalty Payment Reports. Each royalty payment shall be accompanied by a statement stating the number, description, and aggregate Net Sales, by country, of each Product sold during the relevant Calendar Quarter.

9.7 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. For milestone payments due under Section 9.2(a), Sanofi-Aventis shall notify Exelixis in writing within [*] of the achievement of each event that triggers a milestone payment, and, within [*] of receipt of such notice, Exelixis shall provide Sanofi-Aventis with an invoice for each such milestone payment.

9.8 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, Sanofi-Aventis 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.

9.9 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 the country in local currency by deposit in a local bank designated by Exelixis, unless the Parties otherwise agree.

9.10 Sublicenses. In the event Sanofi-Aventis grants licenses or sublicenses to others to sell Products which are subject to royalties under Section 9.3, such licenses or sublicenses shall include an obligation for the licensee or sublicensee to account for and report its sales of Products on the same basis as if such sales were Net Sales by Sanofi-Aventis, and Sanofi-Aventis shall pay, or shall ensure that sublicensee shall pay, to Exelixis, with respect to such sales, royalties as if such sales of the licensee or sublicensee were Net Sales of Sanofi-Aventis.

9.11 Foreign Exchange. Conversion of sales recorded in local currencies to U.S. dollars shall be performed in a manner consistent with Sanofi-Aventis' 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.

9.12 Records; Inspection. Sanofi-Aventis shall keep complete, true and accurate books of account and records for the purpose of determining the payments to be made under this Agreement. Such books and records shall be kept for at least [*] following the end of the Calendar Quarter to which they pertain. Such records shall be open for inspection during such [*] period by independent accountants, solely for the purpose of verifying payment statements hereunder. Such inspections shall be made no more than [*], at reasonable time and on reasonable notice. Any unpaid amounts (plus interest) that are discovered shall be paid promptly by Sanofi-Aventis. Inspections conducted under this Section 9.12 shall be at the expense of Exelixis, unless a variation or error producing an increase exceeding [*] of the royalty amount stated for any period covered by the inspection is established in the course of such inspection, whereupon all costs relating to the inspection for such period shall be paid promptly by Sanofi-Aventis.

9.13 Interest. If Sanofi-Aventis fails to make any payment due to Exelixis under this Agreement, then interest shall accrue on a daily basis at the greater of a rate equal to [*] commercial lending rate of CitiBank, N.A. San Francisco, California, or at the maximum rate permitted by applicable law, whichever is the lower.

10. INTELLECTUAL PROPERTY

10.1 Ownership.

(a) Inventorship; Joint Research Agreement. The inventorship of all Sole Inventions and Joint Inventions shall be determined under the patent laws of the United States. The Parties acknowledge and agree that this Agreement shall be deemed to be a Joint Research Agreement under 35 U.S.C. 103(c).

(b) Sole Invention Patents. Subject to Section 10.1(c), each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions Patents.

(c) Contractual Joint Patents. Notwithstanding the provision of Section 10.1(b), the Parties agree that the Parties shall be joint owners in and to all Contractual Joint Patents. Accordingly, each Party hereby transfers and assigns an undivided half (1/2) interest in the Contractual Joint Patents to the other Party.

(d) Joint Invention Patents. Sanofi-Aventis and Exelixis shall be joint owners in and to all Joint Inventions. Sanofi-Aventis and Exelixis as joint owners each shall have the right to [*].

(e) Obligations to Assign. 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.

10.2 Disclosure. Each Party shall disclose in writing to the JEC any Sole Invention or Joint Invention arising hereunder which it believes may be patentable, within [*] following the day such Invention was made 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 any Patent to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension thereof.

10.3 Patent Prosecution and Maintenance; Abandonment.

(a) Filing, Prosecution and Maintenance of Exelixis Prosecuted Patents.

(i) Exelixis' Right to File, Prosecute and Maintain Sanofi-Aventis Patents. Subject to the rest of this Section 10.3(a), Exelixis shall be responsible for the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of (A) [*] (the **"Exelixis Prosecuted Patents"**), provided that such responsibilities shall be carried out by [*], or by [*]. Exelixis, [*] shall provide Sanofi-Aventis with an update of the filing, prosecution and maintenance status for each of the Exelixis Prosecuted Patents on a periodic basis, and shall use Diligent Efforts to consult with and cooperate with Sanofi-Aventis with respect to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents, including providing Sanofi-Aventis with drafts of proposed filings to allow Sanofi-Aventis a reasonable opportunity for review and comment before such filings are due. Exelixis, [*] shall provide to Sanofi-Aventis 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 Exelixis 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 Sanofi-Aventis' written consent (such consent to not be unreasonably withheld, delayed or conditioned) or Sanofi-Aventis otherwise first being given an opportunity to assume full responsibility ([*] at Sanofi-Aventis' expense) for the continued prosecution and maintenance of such Exelixis Prosecuted Patents or the filing of such new patent application. In the event that Exelixis decides either: (A) not to continue the prosecution or maintenance of a Patent within the Exelixis Prosecuted Patents in any country; or (B) not to file such new patent application, Exelixis shall provide Sanofi-Aventis with written notice of this decision at least [*] prior to any pending lapse or abandonment thereof. In the event that Sanofi-Aventis decides to assume responsibility for such filing, prosecution and maintenance, Sanofi-Aventis shall so notify Exelixis in writing and Exelixis shall (i) [*], and (ii) cooperate as

reasonably requested by Sanofi-Aventis to facilitate such [*] transfer of filing, prosecution and maintenance responsibility to Sanofi-Aventis. [*]. In the case where Sanofi-Aventis takes over the filing, prosecution or maintenance of any Patent as set forth above, Exelixis shall not be liable to Sanofi-Aventis in any way with respect to the results obtained from, the filing, prosecution, issuance, extension or maintenance of any such Patent or any failure by Sanofi-Aventis to so file, prosecute, extend or maintain, provided however that Exelixis shall, at the expense of Sanofi-Aventis, provide such assistance and execute such documents as are reasonably necessary to continue or permit the filing, prosecution or maintenance of such Patent or the issuance, maintenance or extension of any resulting Patent or permit enforcement of Patents.

(b) Filing, Prosecution and Maintenance of Sanofi-Aventis Prosecuted Patents.

(i) Sanofi-Aventis' Right to File, Prosecute and Maintain Exelixis Patents. Subject to the rest of this Section 10.3(b), Sanofi-Aventis shall be responsible for the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of (A) [*] (the "**Sanofi-Aventis Prosecuted Patents**"). Sanofi-Aventis, [*] shall provide Exelixis with an update of the filing, prosecution and maintenance status for each of the Sanofi-Aventis Prosecuted Patents on a periodic basis, and shall use Diligent Efforts to consult with and cooperate with Exelixis with respect to the filing, prosecution and maintenance of the Sanofi-Aventis Prosecuted Patents, including providing Exelixis with drafts of proposed filings to allow Exelixis a reasonable opportunity for review and comment before such filings are due. Sanofi-Aventis, [*] shall provide to Exelixis copies of any papers relating to the filing, prosecution and maintenance of the Sanofi-Aventis Prosecuted Patents promptly upon their being filed and received.

(ii) Abandonment. In no event shall Sanofi-Aventis knowingly permit any of the Sanofi-Aventis 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 Sanofi-Aventis 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 Exelixis' written consent (such consent to not be unreasonably withheld, delayed or conditioned) or Exelixis otherwise first being given an opportunity to assume full responsibility ([*] at Exelixis' expense) for the continued prosecution and maintenance of such Sanofi-Aventis Prosecuted Patents or the filing of such new patent application. In the event that Sanofi-Aventis decides either: (A) not to continue the prosecution or maintenance of a Patent within the Sanofi-Aventis Prosecuted Patents in any country; or (B) not to file such new patent application, Sanofi-Aventis shall provide Exelixis with written notice of this decision at least [*] prior to any pending lapse or abandonment thereof. In the event that Exelixis decides to assume responsibility for such filing, prosecution and maintenance, Exelixis shall so notify Sanofi-Aventis in writing and Sanofi-Aventis shall (i) [*], and (ii) cooperate as reasonably requested by Exelixis to facilitate such [*] transfer of filing, prosecution and maintenance responsibility to Exelixis. [*]. In the case where Exelixis takes over the filing, prosecution or maintenance of any Patent as set forth above, Sanofi-Aventis shall not be liable to Exelixis in any way with respect to the results obtained from, the filing,

prosecution, issuance, extension or maintenance of any such Patent or any failure by Exelixis to so file, prosecute, extend or maintain, provided however that Sanofi-Aventis shall, at the expense of Exelixis, provide such assistance and execute such documents as are reasonably necessary to continue or permit the filing, prosecution or maintenance of such Patent or the issuance, maintenance or extension of any resulting Patent or permit enforcement of Patents.

(c) Patent Term Extension. Exelixis and Sanofi-Aventis shall each cooperate with each another and shall use Diligent 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. [*], then, if reasonably requested [*], [*]. Exelixis [*] apply for patent term extensions or supplemental protection certificates or their equivalents in any country under the [*] during the Term. If elections with respect to obtaining such patent term extensions or supplemental protection certificates or their equivalents in any country are to be made, [*] shall have the right to make the election to seek patent term extension or supplemental protection or their equivalents in any country, *provided* that such election shall be made so as to [*].

(d) Patent Expenses.

(i) [*] costs and expenses (including fees for any outside counsel, and inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of [*].

(ii) [*] costs and expenses (including fees for any outside counsel, and inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of [*].

(e) Patent Report. 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 this Section 10.3, such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention or Joint Invention.

10.4 Enforcement of Patent Rights. If either Party becomes aware of a suspected infringement of any Exelixis Patents, Sanofi-Aventis Patents, or Joint Invention Patents by a Third Party, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. [*] shall have the first right, but shall not be obligated, to bring an infringement action against such Third Party at its own expense and by counsel of its own choice, and [*] shall have the right to participate in such action, at its own expense and by counsel of its own choice. If [*] fails to bring such an action or proceeding prior to the earlier of: (a) [*] following [*] receipt of notice of alleged infringement; or (b) [*] before the time limit, if any, set forth in the appropriate laws and regulations for the filing of such actions, [*] shall have the right to bring and control any such action, at its own expense and by counsel of its own choice, and [*] shall have the right to be represented in any such action, at its own expense and by counsel of its own choice. If a Party brings an infringement action pursuant to this Section 10.4, the other Party will reasonably assist the enforcing Party (at the enforcing Party's

expense) in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if required by law in order for the enforcing Party to bring such action. Neither Party, and no Third Party having a license under any Exelixis Patent or Joint Invention Patent shall have the right to settle any patent infringement litigation under this Section 10.4 in a manner that diminishes the rights or interests of the other Party without the prior written consent of such other Party, such consent not to be unreasonably withheld or delayed. Except as otherwise agreed to by the Parties as part of a cost sharing arrangement, any recovery realized as a result of such litigation, after reimbursement of any litigation expenses of Sanofi-Aventis and Exelixis, shall be [*], except that [*].

(a) 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), Sanofi-Aventis 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 Sanofi-Aventis (and at Sanofi-Aventis' expense), Exelixis shall provide reasonable cooperation to Sanofi-Aventis in filing and maintaining such Orange Book (and foreign equivalent) listings.

(b) 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.

(c) Notification of Patent Certification. Exelixis shall notify and provide Sanofi-Aventis with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of an Exelixis Patent licensed 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 Sanofi-Aventis by Exelixis as soon as practicable and at least within [*] after Exelixis receives such certification, and shall be sent by facsimile and overnight courier to the address set forth in Section 15.7 below.

10.5 Defense of Third Party Claims. [*]. If a claim is brought by a Third Party that [*], 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. Notwithstanding anything contained herein to the contrary, each Party shall [*].

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, including disclosure by either Party to the other of any results and data resulting from its activities hereunder shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during the Term 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 or in connection with exercising such Party's rights and/or fulfilling its obligations under 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 or Section 12.3 hereof). Notwithstanding anything to the contrary in this Section 11.1, data or other information resulting from the research conducted by each Party pursuant to the Collaboration shall be Confidential Information of both Parties, whether disclosed by Exelixis or Sanofi-Aventis.

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.

[*] = 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.

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, provided that 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 any patent application;

(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 licensees (including potential co-marketing and co-promotion contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, 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 8.3(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 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. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic 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 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press releases attached as **Exhibit 11.4**. 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.

[*] = 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.

11.5 Publications. Neither Party shall publish or present any proposed disclosure which relates to any Inventions, or which otherwise may contain Confidential Information of the other Party, without the opportunity for prior review by the other Party. Subject to Section 11.3, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which 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 Collaboration Compound (including a presentation or publication about the outcome of any Exelixis Clinical Trial), 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 applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JEC shall review such requests and recommend subsequent action. 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 11.5 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. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JEC.

12. TERM AND TERMINATION

12.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until the expiration of the last payment obligation with respect to any Product, as provided in Article 9 (the "**Term**"), unless earlier terminated in accordance with Section 12.2 or by mutual written agreement. Upon expiration of the Term of this Agreement (but not a termination pursuant to Section 12.2), [*].

12.2 Early Termination.

(a) Termination at End of Collaborative Research Term. If Sanofi-Aventis has not [*] by the last day of the Collaborative Research Term, then this Agreement shall automatically terminate as of the last day of the Collaborative Research Term.

(b) Termination by Sanofi-Aventis. Beginning [*], Sanofi-Aventis shall have the right to terminate this Agreement without cause, in whole or on a Product-by-Product basis, upon [*] prior written notice, at the end of which the termination shall be effective.

(c) Termination by Exelixis. Exelixis may terminate this Agreement in its entirety upon [*] advance written notice if Sanofi-Aventis or its Affiliates or sublicensees (directly or indirectly, individually or in association with any other person or entity) challenge the validity, enforceability or scope of any Exelixis Patents anywhere in the world. For clarity, any dispute as to whether a given Patent is within the scope of Exelixis Patents, such matter shall be subject to dispute resolution as set forth in Section 15.3.

(d) Termination for Material Breach. This Agreement may be terminated by written notice by either Party at any time during the Term of this Agreement for the uncured material breach by the other Party of such other Party's representations, warranties, covenants or obligations under this Agreement. The breaching Party shall be given [*] from the date of the notice by the non-breaching Party to cure its material breach, and, if it does not do so, this Agreement shall be terminated at the end of the [*] cure period; provided, however, if the cause of the material breach is non-payment of the amounts due under this Agreement, then the cure period for such non-payment shall be [*] from the date of notice of material breach by the non-breaching Party, unless there exists a *bona fide* dispute as to whether such payment is due to the non-breaching Party, in which case, the [*] cure period shall be extended pending resolution of such dispute.

12.3 Survival; Effect of Termination.

(a) Survival. In the event of termination of this Agreement for any reason, the following provisions of this Agreement shall survive: [*].

(b) General Effects. 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.

(c) Effects of Termination under Section 12.2(a). In the event of termination of this Agreement pursuant to Section 12.2(a), all licenses granted by one Party to the other Party under this Agreement shall immediately terminate, and each Party's rights to [*] shall [*].

(d) Effects of Termination under Sections 12.2(b), Section 12.2(c), or by Exelixis for Sanofi-Aventis' breach under Section 12.2(d). In the event of termination of this Agreement pursuant to Section 12.2(b), Section 12.2(c) or by Exelixis for Sanofi-Aventis' breach under Section 12.2(d):

(i) Sanofi-Aventis hereby grants Exelixis a worldwide, exclusive license (with the right to sublicense) under the Sanofi-Aventis Know-How, Sanofi-Aventis Patents and Sanofi-Aventis interest in the Joint Invention Patents to develop, make, have made, use, import, sell, offer to sell and have sold any terminated Collaboration Compound and products comprising or incorporating one or more of such Collaboration Compounds (the "**Reverted Products**"), effective upon such termination of this Agreement.

(ii) In consideration for the foregoing license, Exelixis shall pay to Sanofi-Aventis the following (as applicable).

(1) If Exelixis terminates under Section 12.2(c) or 12.2(d), then Exelixis shall pay Sanofi-Aventis [*].

(2) If there is a termination under Section 12.2(b), and, [*], [*], then Exelixis shall pay Sanofi-Aventis [*]. For clarity, [*].

(3) If there is a termination under Section 12.2(b), and, [*], then Exelixis shall pay Sanofi-Aventis either: (A) [*] sell Reverted Products containing a Collaboration Compound that either: (I) [*]; or (II) [*]; (B) [*] sell Reverted Products containing a Collaboration Compound that either: (III) [*]; or (IV) [*]; or (C) [*] sell both: (X) [*]; and (Y) [*]. For clarity, [*].

(iii) Sanofi-Aventis shall to transfer via assignment, license or sublicense to Exelixis: (A) all Sanofi-Aventis Know-How [*] for the development, manufacture and commercialization of any Reverted Product; (B) all regulatory filings (including any Regulatory Approvals, drug dossiers, and drug master files) in Sanofi-Aventis' name; (C) agreements with Third Parties (at Exelixis' sole discretion and to the extent that such agreement is assignable or sublicensable); (D) trademark rights Controlled by Sanofi-Aventis; and (E) supplies of Product (including any intermediates, retained samples and reference standards), that in each case ((A) through (E)) are existing and in Sanofi-Aventis' Control and that relate to such Reverted Products. Any such transfer(s) shall be at the sole expense of Exelixis. Sanofi-Aventis shall use commercially reasonable efforts to maintain ([*]) and not to breach any agreements with Third Parties that provide a grant from such Third Party to Sanofi-Aventis of rights that are Controlled by Sanofi-Aventis and that are licensed to Exelixis pursuant to Section 12.3(d)(i). If an agreement that is described in subsection (iii)(C) is not assignable or not sublicensable, then Sanofi-Aventis shall use Diligent Efforts to amend the agreement to permit assignment or sublicensing.

(iv) At Exelixis' written request, Sanofi-Aventis shall supply, or cause to be supplied, to Exelixis sufficient quantities of Reverted Product to satisfy Exelixis' requirements for Reverted Product for a period of up to [*] following the effective date of termination, as Exelixis may require until Exelixis can itself assume or transition to a Third Party such manufacturing responsibilities; *provided, however* that Exelixis shall use Diligent Efforts to affect such assumption (or transition) as promptly as practicable. Supply shall be at a price equal to [*]. Any such supply will be made pursuant to a supply agreement between the Parties with typical provisions relating to quality, forecasting and ordering to forecast, force majeure and product liability and indemnity.

(e) Effects of Termination by Sanofi-Aventis for Exelixis' breach under Section 12.2(d). In the event of termination of this Agreement by Sanofi-Aventis for Exelixis' breach under Section 12.2(d), all licenses granted under this Agreement shall [*]; *provided, however*, that [*].

13. REPRESENTATIONS AND WARRANTIES AND COVENANTS

13.1 Mutual Authority. Exelixis and Sanofi-Aventis 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 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, each Party shall use commercially reasonable efforts to maintain ([*]) 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 Effective 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 Effective Date and during the Term, 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 Patents and the Sanofi-Aventis Patents, as the case may be) that is in conflict with the licenses granted 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 Covenants of Each Party.

(a) Compliance with Law. Each Party hereby covenants and agrees to comply with applicable law, rule and regulation in performing its activities under the Agreement.

(b) 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 and Section 12.3) as if such intellectual property had been developed by the Party.

(c) Records. Each Party shall maintain complete and accurate records of all work conducted and all results, data and developments made pursuant to its activities hereunder. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance hereof 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: (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 necessary or useful for it to conduct its obligations or enforce its rights under this Agreement; provided, however, that no Party shall have the right to audit the other Party more than [*].

(d) Third Party Agreements. During the Term, each Party shall use Diligent Efforts to maintain 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 or Section 12.3. Each Party agrees to provide promptly the other Party with notice of any such alleged breach or obligation to renew. As of the Effective Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

13.4 Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 13 ABOVE, EACH PARTY 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 NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, COLLABORATION COMPOUNDS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS HEREUNDER OR OTHERWISE MADE AVAILABLE TO THE OTHER PARTY PURSUANT TO THE TERMS OF THE AGREEMENT.

14. INDEMNIFICATION AND LIMITATION OF LIABILITY

14.1 Indemnification by Sanofi-Aventis. Subject to Section 14.3, Sanofi-Aventis hereby agrees to indemnify, defend and hold harmless Exelixis and its 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 (collectively, "**Losses**") to the extent such Losses result from the Manufacture, use, handling, storage, sale or other disposition of Collaboration Compounds or Products by Sanofi-Aventis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach by Exelixis of any of its representations and warranties or covenants under the Agreement; (b) breach of the Agreement or applicable law by Exelixis; or (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.

14.2 Indemnification by Exelixis. Subject to Section 14.3, Exelixis hereby agrees to indemnify, defend and hold harmless Sanofi-Aventis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from the Manufacture, use, handling, storage, sale or other disposition of any Collaboration Compound, Product, or Reverted Product by Exelixis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach by Sanofi-Aventis of any of its representations and warranties or covenants under the Agreement; (b) breach of the Agreement or applicable law by Sanofi-Aventis; or (c) negligence or willful misconduct by Sanofi-Aventis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement.

14.3 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a Party entitled to indemnification under the terms of Section 14.1 or 14.2. A condition precedent to each Indemnitee's right to seek indemnification under such Section 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 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.

14.4 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 8.7 OR ARTICLE 11 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.

15. MISCELLANEOUS

15.1 Dispute Resolution.

(a) In the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, other than a dispute between members of a Committee regarding matters under such Committee's authority (which shall be handled in accordance with Section 4.4(c)) or a dispute described in Section 15.3, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the CEO of Exelixis (or his designee) and the CEO of Sanofi-Aventis (or his designee). 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 CEOs (or their respective designees) of the Parties shall meet for attempted resolution by good faith negotiations. If such CEOs (or their respective designees) are unable to resolve such dispute within [*] of their first meeting for such negotiations, either Party may seek to have such dispute resolved by arbitration in accordance with Section 15.1(b) below.

(b) Except as otherwise expressly provided in this Agreement, any unresolved disputes between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by either Party of its obligations hereunder, whether before or after termination of this Agreement, shall be submitted to the exclusive jurisdiction of the state and federal courts sitting in New York, New York.

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 New York, 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 manufacture, use or sale of any Product; or (ii) any trademark rights related to any Product, in each case shall not be resolved through the procedure described in Section 15.1 but shall 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 (e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in Article 11) shall not be resolved through the procedure described in Section 15.1 but shall 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 with respect to the subject matter of this Agreement and supersedes and terminates all prior agreements and understandings between the Parties with respect to such subject matter. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with respect to such subject matter other than as are set forth in this Agreement. 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.

[*] = 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.

15.5 Bankruptcy.

(a) All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by Exelixis to Sanofi-Aventis 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. Exelixis agrees during the Term 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 Exelixis (the "**Bankrupt Party**") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, Exelixis (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall, at the election of Exelixis made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of Sanofi-Aventis) either (i) perform all of the obligations provided in this Agreement to be performed by Exelixis including, where applicable, providing to Sanofi-Aventis portions of such intellectual property (including embodiments thereof) held by Exelixis and such successors and assigns or otherwise available to them or (ii) provide to Sanofi-Aventis all such intellectual property (including all embodiments thereof) held by Exelixis and such successors and assigns or otherwise available to them.

(b) If a Title 11 case is commenced by or against Exelixis and this Agreement is rejected as provided in Title 11 and Sanofi-Aventis elects to retain its rights hereunder as provided in Title 11, then Exelixis (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to Sanofi-Aventis all such intellectual property (including all embodiments thereof) held by Exelixis and such successors and assigns or otherwise available to them immediately upon Sanofi-Aventis's written request therefor. Whenever Exelixis or any of its successors or assigns provides to Sanofi-Aventis any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 14.5, Sanofi-Aventis shall have the right to perform the obligations of Exelixis hereunder with respect to such intellectual property, but neither such provision nor such performance by Sanofi-Aventis shall release Exelixis from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of Sanofi-Aventis 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 Exelixis. Sanofi-Aventis, 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 Sanofi-Aventis 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 Exelixis or any Third Party with whom Exelixis contracts to perform an obligation of Exelixis 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 14.5 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.

15.6 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, 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.

15.7 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.

For Exelixis:	Exelixis, Inc. 170 Harbor Way P.O. Box 511 South San Francisco, CA 94083 Attention: Executive Vice President and General Counsel
With a copy to:	Cooley Godward LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Marya A. Postner, Esq.
For Sanofi-Aventis:	Sanofi-Aventis 174 Avenue de France 75013 Paris, France Attn: General Counsel

Furthermore, a copy of any notices required or given under Section 10.4(c) of this Agreement shall also be addressed as set forth in Section 10.4(c).

[*] = 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.

15.8 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.

15.9 Assignment.

(a) 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 substantially all of the business of such Party to which this Agreement relates, whether in a 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 15.9(a) shall be null and void and of no legal effect.

(b) In the event that a Party is acquired by a Third Party (such Third Party, hereinafter referred to as an **"Acquiror"**), then the intellectual property of such Acquiror held or developed by such Acquiror (whether prior to or after such acquisition) shall be excluded from the intellectual property definitions under this Agreement, and such Acquiror (and Affiliates of such Acquiror which are not controlled by (as defined in Section 1.1) the acquired Party itself) shall be excluded from "Affiliate" solely for purposes of the applicable components of the intellectual property definitions herein, in all such cases if and only if: (a) the acquired Party remains a wholly-owned subsidiary of the Acquiror; (b) all intellectual property of the acquired Party and all research and development assets and operations of the acquired Party, in each case relating to Collaboration Compounds, remain with the acquired Party and are not transferred to the Acquiror or another Affiliate of the Acquiror; (c) the scientific and development activities with respect to Collaboration Compounds of the acquired Party and the Acquiror (if any) are maintained separate and distinct, and (d) there is no exchange of Confidential Information relating to Collaboration Compounds between the acquired Party and the Acquiror. For clarity, in the event that a Party is acquired by an Acquiror and each of the criteria described in subsections (a) through (d) is not satisfied, then the intellectual property of such Acquiror shall be included within the intellectual property definitions herein. Any permitted assignment shall be binding on the successors of the assigning Party.

15.10 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.

[*] = 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.

15.11 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.

15.12 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 Sanofi-Aventis is that of independent contractors and neither Party shall have the power to bind or obligate the other Party in any manner.

15.13 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.

15.14 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**" is 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 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.

15.15 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, or electronically in PDF format, 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. The date that this Agreement is signed shall not be construed to imply that the document was made effective on that date.

EXELIXIS, INC.

/s/ GEORGE SCANGOS

By: George A. SCANGOS, PhD
Title: President and Chief Executive Officer

Date: May 27, 2009

SANOFI-AVENTIS

/s/ Jérôme CONTAMINE

By: Jérôme CONTAMINE
Title: Executive Vice President, Chief Financial Officer

Date: May 27, 2009

/s/ Laurence DEBROUX

By: Laurence DEBROUX
Title: Senior Vice President, Chief Strategic Officer

Date: May 27, 2009

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Exhibit 1.88

Selectivity Panel & Upstate Panel

[*]

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Exhibit 1.91

Target Potency Threshold
[*]

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Exhibit 1.92

Target Specificity Threshold
[*]

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Exhibit 2.2

Research Plan
[*]

[*] = 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 2.3(b)(i)

[*] Compounds [*] as of the Effective Date
[*]

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Exhibit 2.3(b)(ii)

[*] Compounds [*] as of the Effective Date
[*]

[*] = 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 5.2(d)

Form of [*] Development Report
[*]

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Exhibit 6.3

Form of Trademark License

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT ("**Agreement**"), effective as of _____, (the "**Effective Date**"), is entered into 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 (hereafter "**Exelixis**" or "**Licensor**"), and **SANOFI-AVENTIS,** a French company, having an address at 174, Avenue de France, 75013 Paris, France (hereafter "**Sanofi-Aventis**" or "**Licensee**").

WHEREAS, Exelixis and Sanofi-Aventis entered into a Collaboration Agreement executed as of [date] (the "**Collaboration Agreement**") for the purposes of researching, developing and commercializing certain products; and

WHEREAS Licensor currently owns certain corporate name and logo marks, and desires to license the use of said marks to Licensee pursuant to the restrictions set forth below; and

WHEREAS, Licensee desires authorization from Licensor to use the marks in the Territory pursuant to the restrictions set forth below;

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. If a capitalized term is not defined in this Article 1 or in the text of this Agreement, and that capitalized term is defined within the License Agreement, the definition as set forth in the Collaboration Agreement shall apply.

"Commercialization" shall mean 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

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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) conducting Phase IV Clinical Trials.

"Major European Countries" shall mean France, Germany, Spain, Italy, and the United Kingdom.

"Marks" shall mean the Exelixis marks set forth in Schedule A to this Agreement, as such schedule may be amended from time to time pursuant to Section 7.1.

"Product" shall have the meaning set forth in the Collaboration Agreement.

"Term" shall have the meaning set forth in Section 4.1.

"Territory" shall mean [*].

"Third Party" shall mean any entity other than: (a) Exelixis; (b) Sanofi-Aventis; or (c) an Affiliate of either Party.

2. License Grant.

2.1. License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee for the Term a nonexclusive, sublicensable (solely in accordance with Section 5.3), nonassignable (except as set forth in Section 7.2), and royalty-free license to use the Marks throughout the Territory solely in connection with the Commercialization of the Products to identify Exelixis as the licensor of the Products, provided that such use of the Marks satisfies all provisions of Section 2.2 and Article 3.

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2.2. Compliance. The Marks may only be used on Products that are Commercialized in accordance with applicable law and current pharmaceutical industry standards of quality, including the terms of all applicable Regulatory Approvals.

3. Use and Display of Trademarks.

3.1. Licensee shall use the Marks on labels, packaging and promotional/marketing materials for or in connection with the Products provided that and only so long as such use complies with applicable laws and market practice in the country of use.

3.2. Licensee shall be obligated to display the Marks [*] used in connection with the Commercialization of the Product. The display of the Marks on the aforementioned packaging labels or marketing and promotional material shall be [*], provided however that Licensee shall not display the Marks in such a manner to suggest that any party (including Licensee) other than Licensor owns the Marks.

3.3. In the event of an uncured material breach of the License Agreement by Licensor, or any bankruptcy or insolvency of Licensor, this Agreement (including the license set forth in Section 2.1) shall remain in effect but Licensee shall no longer be obligated pursuant to the preceding Section to continue using any of the Marks

3.4. Licensee shall use the Marks upon or in relation to the Products only in such manner where the distinctiveness, reputation, and validity of the Marks shall not be impaired. Without prejudice to the generality of the foregoing, Licensee shall ensure in particular that the Marks are correctly spelled, and that any text, graphics, or designs adjacent to the Marks do not put the Marks or Licensor in a negative or derogatory light. Licensee shall provide Licensor with proposed Product packaging and corresponding marketing materials prior to publication or shipment of any Product under the Marks.

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4. Term and Termination of Agreement.

4.1. The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue in full force until the expiration or termination of the Collaboration Agreement, unless earlier terminated pursuant to the terms and conditions of this Agreement or pursuant to the mutual written agreement of Licensor and Licensee.

4.2. In the event of a partial termination of the Collaboration Agreement, where the Collaboration Agreement is terminated only in respect to certain Products or certain countries within the Territory, this Agreement shall terminate with respect to those Products and countries in the Territory for which the Collaboration Agreement terminated and this Agreement shall remain in effect with respect to those Products or countries in the Territory which continue to be governed by the Collaboration Agreement.

4.3. In the event of Licensee committing a material breach of any of the terms of this Agreement and failing to rectify same within [*] of receiving written notification of such breach from Licensor, Licensor shall have the right to terminate this Agreement upon written notice to Licensee.

4.4. Licensor shall also have the right to terminate this Agreement upon written notice to Licensee if, in Licensor's reasonable discretion, Licensee's use of the Marks tarnishes, blurs, or dilutes the quality associated with the Marks or the associated goodwill and Licensee fails to rectify same within [*].

4.5. In the event of termination of this Agreement, the following provisions of this Agreement shall survive: Article 6; and Sections 7.4 and 7.10. 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.

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5. Licensor's Exclusive Interest in the Marks.

5.1. Licensor hereby warrants to Licensee that Licensor is the owner of the Marks and retains all rights, title and interest in and to the Marks. This Agreement does not grant to Licensee any proprietary right of any of Licensor's Marks, other than use of the Marks as set forth in this Agreement.

5.2. In the event that management or in-house counsel for Licensee becomes aware of a suspected infringement of a Mark by a Third Party, Licensee shall notify Licensor promptly in writing. Licensee shall provide the same level of disclosure to Licensor's in-house counsel concerning suspected infringement of a Mark as Licensee would provide to its own in-house counsel with respect to suspected infringement of its own mark. As between the Parties, Licensor shall have the sole right, but shall not be obligated, to bring an action with respect to such suspected infringement at its own expense, in its own name and entirely under its own direction and control.

5.3. In the event that Licensee grants to a Third Party a sublicense of its rights under the Collaboration Agreement to Commercialize one or more Products in one or more countries in the Territory, Licensee shall enter into a sublicense agreement with such Third Party (the "Sublicensee") that grants the Sublicensee a sublicense of the Licensee's rights pursuant to Section 2.1 with respect to such Products in such countries in the Territory. Each such sublicense agreement shall be under the same terms and conditions as this Agreement.

5.4. Licensee agrees that it will take no action adverse to or inconsistent with Licensor's ownership of the Marks, including without limitation seeking to register any of the Marks in the Territory, or opposing, disputing, or assisting others in opposing or disputing Licensor's ownership of the Marks in any way.

5.5. Licensee acknowledges that all use of the Marks and all rights and goodwill attached to or arising out of such use, shall accrue to the benefit of Licensor. Licensee shall at any time, whether during or after the Term, execute any documents that shall reasonably be required by Licensor to confirm Licensor's ownership of the Marks.

6. Governing Law; Venue.

6.1. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York, without regard to conflict of law rules.

6.2. Unless otherwise set forth in this Agreement, 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; and *further provided*, that any dispute, controversy or claim arising out of, relating to or in connection with any Mark shall be submitted to a court of competent jurisdiction in the territory in which such Mark were granted or arose.

7. Miscellaneous.

7.1. 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 with respect to the Marks and supersedes and terminates all prior agreements and understandings between the Parties with respect thereto. For clarity, this Agreement satisfies the obligations set forth in Section 6.3 of the Collaboration Agreement to enter into a Trademark License Agreement but does not supersede or terminate any portion of the Collaboration Agreement. No subsequent

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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. Notwithstanding the foregoing, and subject to Section 6.3 (d) of the Collaboration Agreement, Licensor may revise Schedule A upon written notice to Licensee.

7.2. 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 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 also the permitted successor or assignee of such Party's rights and obligations pursuant to the Collaboration Agreement and 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 7.2 shall be null and void and of no legal effect.

7.3. Mutual Authority. Each Party represents and warrants to the other Party 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 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.

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7.4. Confidentiality. All Information disclosed by one Party to the other Party pursuant to this Agreement shall be "Confidential Information" and the Parties shall have the rights and obligations with respect thereto that are set forth in Article 11 of the Collaboration Agreement. The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties pursuant to the Collaboration Agreement and the Parties shall have the rights and obligations with respect thereto that are set forth in Article 11 of the Collaboration Agreement with respect to the terms of the Collaboration Agreement.

7.5. 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.

For Exelixis:	Exelixis, Inc. 249 East Grand Avenue P.O. Box 511 So. San Francisco, CA 94083-0511 Attention: EVP, General Counsel Fax:
With a copy to:	Cooley Godward Kronish LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Marya Postner, Esq.
For Sanofi-Aventis:	Sanofi-Aventis 174 Avenue de France 75013 Paris, France Attention: EVP, General Counsel Fax: +33.1.53.77.43.03

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7.6. 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.

7.7. 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.

7.8. 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.

7.9. 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 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, any records required by this Agreement, any correspondence between the Parties, 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.

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7.10. Indemnities.

7.10.1. Subject to Section 7.10.2, 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).

7.10.2. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of Section 7.10.1. A condition precedent to each Indemnitee's right to seek indemnification under such Section 7.10.1 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 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 not to be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope or duration of any Marks 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.

[*] = 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.

Provided that an Indemnitee has complied with all of the conditions described in subsections 7.10.2(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, or the indemnification provided under such Section 7.10.1 as to such Loss shall be null and void.

7.11. 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, or electronically in PDF format, each of which shall be binding when sent.

Signature page follows.

[*] = 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers.

For and On Behalf of Licensor

EXELIXIS, INC.

By: _____

Print Name: _____

Title: _____

For and On Behalf of Licensee

SANOFI-AVENTIS

By: _____

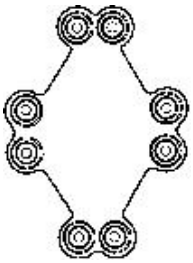
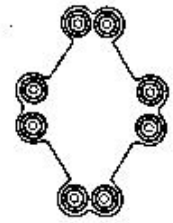
Print Name: _____

Title: _____

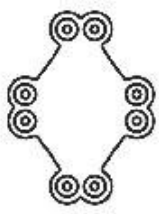
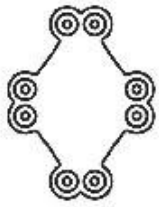
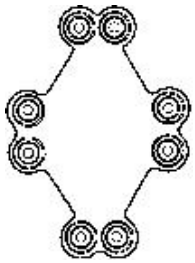
[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

SCHEDULE A TO TRADEMARK LICENSE AGREEMENT

THE MARKS

MARK	APP. NO. / REG. NO.	CLASS
EXELIXIS [United States]	Reg. No. 2,823,801	005
EXELIXIS [United States]	App. No. 77/558,426	042
 Old Exelixis Logo [United States]	Reg. No. 2,824,097	005
 Old Exelixis Logo [United States]	Reg. No. 2,332,528	042

[*] = 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.

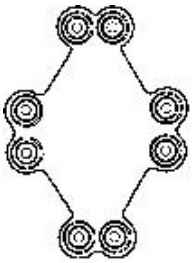
 New Exelixis Logo [United States]	App. No. 77/284,507	005
 New Exelixis Logo [United States]	App. No. 77/284,531	042
EXELIXIS [European Union]	Reg. No. 002607802	001 005 042
EXELIXIS [European Union]	Reg. No. 001243831	016 041 042
 Old Exelixis Logo [European Union]	Reg. No. 3006772	001 005 042

[*] = 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.

EXELIXIS Reg. No. 4599309 005

[Japan]

Reg. No. 4693262 005



Old Exelixis Logo

[Japan]

[*] = 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 7.2

Quality Responsibilities Relating to Development Candidates

THIS QUALITY LETTER (the "**Letter**") is made and entered into as of _____ [__], 2009 (the "**Execution Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having an address at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **SANOFI-AVENTIS**, a French company, having an address at 174, Avenue de France, 75013 Paris, France ("**Sanofi-Aventis**"). Exelixis and Sanofi-Aventis are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The Parties have entered into a Collaboration Agreement (the "**Agreement**") effective as of the Effective Date regarding the Collaboration Compounds. In connection with the Agreement, this Letter is intended to set forth the Parties' mutual understandings with respect to certain quality and Manufacturing responsibilities with respect to: (A) the lots of drug substance for the Exelixis Clinical Trials under Section 7.2 of the Agreement (each hereinafter referred to as a "Drug Substance Lot"); and (B) the lots of finished drug product for the Exelixis Clinical Trials under Section 7.2 of the Agreement (each hereinafter referred to as a "Drug Product Lot"). Specifically, each of the Parties hereby agrees to assume the responsibilities corresponding to such Party as set forth on Schedule A hereto. Any capitalized terms used in this Letter that are not otherwise defined herein shall have the meanings given to them in the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Letter in duplicate originals by their proper officers. The date that this Letter is signed shall not be construed to imply that the document was made effective on that date.

SANOFI-AVENTIS	**EXELIXIS, INC.**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

[*] = 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.

SCHEDULE A

[*]

[*] = 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 7.3(a)

Information to be included for Transfer of Manufacturing Technology
[*]

[*] = 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 11.4

Exelixis Press Release

www.exelixis.com

210 East Grand Ave, P.O. Box 511
South San Francisco, CA 94083-0511
650.837.7000 main
650.837.8205 fax

Contact

Charles Butler
Executive Director, Corporate
Communications & Investor Relations
Exelixis, Inc, San Francisco
650-837-7277

cbutler@exelixis.com

EXELIXIS AND SANOFI-AVENTIS SIGN GLOBAL LICENSE AGREEMENT FOR XL147 & XL765 AND LAUNCH BROAD COLLABORATION FOR DISCOVERY OF PI3K INHIBITORS

-Exelixis receives $140 million upfront payment and guaranteed research funding-

Paris, France and South San Francisco, CA – May XX, 2009 — Sanofi-aventis (EURONEXT: SAN and NYSE: SNY) and Exelixis, Inc. (Nasdaq: EXEL) today announced a global license agreement for XL147 and XL765 and a broad collaboration for the discovery of inhibitors of phosphoinositide-3 kinase (PI3K) for the treatment of cancer. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation, survival, and resistance to chemotherapy and radiotherapy. Under the license, Sanofi-aventis will have a worldwide exclusive license to XL147 and XL765, which are currently in phase 1 and phase 1b/2 clinical trials, and will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities. Exelixis will participate in conducting ongoing and potential future clinical trials and manufacturing activities.

Under the discovery collaboration, Exelixis and Sanofi-aventis will combine efforts in establishing several pre-clinical PI3K programs and jointly share responsibility for research and preclinical activities related to isoform-selective inhibitors of PI3K. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of any products arising from the collaboration; however, Exelixis may be responsible for conducting certain clinical trials.

Sanofi-aventis will pay Exelixis a combined upfront cash payment of $140 million under the license and collaboration. Exelixis will also receive guaranteed research funding of $21 million over a three year research term under the collaboration. For both the license and the collaboration, Exelixis will be eligible to receive development, regulatory and commercial milestones of over $1 billion in the aggregate, as well as royalties on sales of any products commercialized under the license and collaboration.

[*] = 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.

“Sanofi-aventis has a track record of success in commercializing innovative cancer therapies and is deeply committed to advancing the care of cancer patients,” said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. “We believe that their expertise and resources will enable us to move aggressively in advancing the development of XL147 and XL765 and other potential PI3K inhibitors. The data generated to date in the XL147 and XL765 clinical programs suggest that these compounds may have utility in treating diverse cancers. Sanofi-aventis and Exelixis are committed to realizing the full potential of these compounds and other PI3K inhibitors to provide cancer patients with new treatment options.”

The effectiveness of the license agreement is subject to antitrust clearance under the Hart-Scott-Rodino Antitrust Improvements Act and other customary regulatory approvals.

Oral Presentations

Clinical data from the phase 1 trials of XL147 and XL765 will be presented at the American Society of Clinical Oncology Annual Meeting, which will be held from May 29 to June 2, 2009 in Orlando, Florida:

- “Phase 1 dose-escalation study of XL147, a PI3K inhibitor administered orally to patients with solid tumors” will be presented on Monday, June 1, 2009, starting at 1:30 p.m. local time (Abstract #3500)
- “A Phase 1 dose-escalation study of the safety, pharmacokinetics (PK) and pharmacodynamics of XL765, a PI3K/TORC1/TORC2 inhibitor administered orally to patients (pts) with advanced solid tumors” will be presented on Monday, June 1, 2009 starting at 2:00 p.m. local time (Abstract #3502)

XL147 and XL765 target PI3K, which plays an important role in cell proliferation and survival. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation, survival, and resistance to chemotherapy and radiotherapy. XL765 also inhibits the mammalian target of rapamycin (mTOR), which can be activated via upregulation of PI3K, or via PI3K-independent mechanisms. mTOR is frequently activated in human tumors, and plays a central role in tumor cell proliferation.

About Sanofi-aventis

Sanofi-aventis, a leading global pharmaceutical company, discovers, develops and distributes therapeutic solutions to improve the lives of everyone. Sanofi-aventis is listed in Paris (EURONEXT: SAN) and in New York (NYSE: SNY).

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. Currently, Exelixis’ broad product pipeline includes investigational compounds in phase 3, phase 2, and phase 1 clinical development. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including Bristol-Myers Squibb, GlaxoSmithKline, Genentech, Boehringer Ingelheim, Wyeth Pharmaceuticals, and Daiichi-Sankyo. For more information, please visit the company’s web site at www.exelixis.com.

[FLS to be inserted by legal]

[*] = 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 11.4

Sanofi-Aventis Press Release

Sanofi-aventis and Biotechnology company Exelixis enter into an Exclusive Global Alliance for Novel Targeted Oncology Therapies

*- **Alliance includes a Global License Agreement for XL147 & XL765 and an Exclusive Collaboration for discovery of PI3K Inhibitors** -*

Paris, France - May 28, 2009 - Sanofi-aventis (EURONEXT: SAN and NYSE: SNY) and Exelixis, Inc. (Nasdaq: EXEL) announced today a ***global license agreement*** for ***XL147*** and ***XL765*** and an ***exclusive collaboration for the discovery*** of inhibitors of phosphoinositide-3 kinase (PI3K) for the management of solid malignancies. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation and cell survival, as well as resistance to chemotherapy and radiotherapy.

Under the license agreement, sanofi-aventis will have an exclusive worldwide license to ***XL147***, an oral PI3K inhibitor, and ***XL765***, an oral dual inhibitor of PI3K and mTOR (mammalian target of rapamycin); both are currently in phase 1 clinical trials. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, manufacturing and commercial activities. Exelixis will participate in ongoing and potential future clinical trials.

Under the exclusive discovery collaboration, sanofi-aventis and Exelixis will combine research efforts to establish several preclinical programs related to isoform-selective inhibitors of PI3K. Sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of the products that result from the collaboration. However, Exelixis may be responsible for conducting certain clinical trials.

"We are very excited about integrating such novel targeted therapies with high therapeutic potential in our portfolio," said Marc Cluzel, Senior Vice-President R&D, sanofi-aventis. *"We look forward to combining our efforts with Exelixis to develop innovative drugs in the best interest of patients suffering from cancers. This alliance is aligned with our strategy to create value through strategic partnerships that deliver new therapeutic options".*

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Under the terms of the agreements, sanofi-aventis will pay Exelixis an upfront cash payment as well as development and regulatory milestone payments that could reach over $1 billion in aggregate for existing and future programmes under both agreements. In addition, Exelixis will be entitled to receive royalties and commercial milestones on sales when products are commercialized.

The license agreement is subject to antitrust clearance under the *Hart-Scott-Rodino Antitrust Improvements Act*.

***

About PI3K inhibitors

The phosphoinositide-3-kinase (***PI3K***) pathway is triggered in normal cells upon exposure to growth factors. It regulates a cascade of proliferation and survival signals. The PI3K pathway is one of the primary deregulated signaling pathways in human cancer. Activation of the PI3K pathway is a frequent event in human tumors, promoting cell proliferation, survival, and resistance to chemotherapy and radiotherapy. Novel therapeutics impacting the PI3K pathway, alone or in combination, are therefore considered to have a high therapeutic potential.

About XL147 and XL765

XL147 is an orally available small molecule inhibitor of phosphoinositide-3-kinase (PI3K). XL765 is a orally available small molecule, dual inhibitor of PI3K and mTOR (mammalian target of rapamycin). mTOR can be activated via upregulation of PI3K, or via PI3K-independent mechanisms. mTOR is frequently activated in human tumors, and plays a central role in tumor cell proliferation.

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. Currently, Exelixis' broad product pipeline includes investigational compounds in Phase III, Phase II and Phase I clinical development. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including Bristol-Myers Squibb, GlaxoSmithKline, Genentech, Wyeth Pharmaceuticals and Daiichi-Sankyo. For more information, please visit the company's website at http://www.exelixis.com.

About sanofi-aventis

Sanofi-aventis, a leading global pharmaceutical company, discovers, develops and distributes therapeutic solutions to improve the lives of everyone. Sanofi-aventis is listed in Paris (EURONEXT: SAN) and in New York (NYSE: SNY).

Forward Looking Statements

This press release contains forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995, as amended. Forward-looking statements are statements that are not historical facts. These statements include product development, product potential projections and estimates and their underlying assumptions, statements regarding plans, objectives, intentions and expectations with respect to future events, operations, products and services, and statements regarding future performance. Forward-looking statements are generally identified by the words "expects," "anticipates,"

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“believes,” “intends,” “estimates,” “plans” and similar expressions. Although sanofi-aventis’ management believes that the expectations reflected in such forward-looking statements are reasonable, investors are cautioned that forward-looking information and statements are subject to various risks and uncertainties, many of which are difficult to predict and generally beyond the control of sanofi-aventis, that could cause actual results and developments to differ materially from those expressed in, or implied or projected by, the forward-looking information and statements. These risks and uncertainties include among other things, the uncertainties inherent in research and development, future clinical data and analysis, including post marketing, decisions by regulatory authorities, such as the FDA or the EMEA, regarding whether and when to approve any drug, device or biological application that may be filed for any such product candidates as well as their decisions regarding labelling and other matters that could affect the availability or commercial potential of such products candidates, the absence of guarantee that the products candidates if approved will be commercially successful, the future approval and commercial success of therapeutic alternatives as well as those discussed or identified in the public filings with the SEC and the AMF made by sanofi-aventis, including those listed under “Risk Factors” and “Cautionary Statement Regarding Forward-Looking Statements” in sanofi-aventis’ annual report on Form 20-F for the year ended December 31, 2008. Other than as required by applicable law, sanofi-aventis does not undertake any obligation to update or revise any forward-looking information or statements.

[*] = 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 10.3

Michael MORRISSEY, PhD
President of Research and Development EXELIXIS INC
170 Harbor Way,
P.O. Box 511
SOUTH SAN FRANCISCO, CA 94083-511 U.S.A.

Paris, May 27th, 2009

Re: Effective Date of the Collaboration Agreement

Dear Michael,

In connection with the Collaboration Agreement, made and entered into as of May 27, 2009 (the "Collaboration Agreement") by and between Exelixis Inc, a Delaware corporation having its address at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 (« Exelixis ») and Sanofi-Aventis, a French company, having an address at 174, Avenue de France, 75013 Paris, France ("Sanofi-Aventis"), Exelixis and Sanofi-Aventis hereby confirm the understandings set forth with respect to the Effective Date of the Collaboration Agreement and the obligations to submit any required regulatory filings.

1. Notwithstanding anything to the contrary in the Collaboration Agreement, the Collaboration Agreement shall not become effective until the expiration or earlier termination of the waiting period under the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") in the United States, 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 the Collaboration Agreement in any jurisdiction requiring advance approval or clearance (as so defined the "Effective Date").

2. The Parties shall each, prior to or as promptly as practicable after the execution date of the Collaboration 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 by the Collaboration Agreement; provided that the Parties shall each file the notifications required to be filed under the HSR Act no later than five (5) business days after the execution date thereof. Each Party shall be responsible for its own costs in connection with such filing, except that

Sanofi-Aventis shall be solely responsible for the applicable filing fees. 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.

Any capitalized term used in this letter that is not defined herein shall have the meaning given to such term in the Collaboration Agreement.

Please confirm Exelixis' acknowledgment and agreement by signing below.

Sincerely

/s/ Karen M. Linehan

SANOFI-AVENTIS
By: Karen M. Linehan

Title: Senior Vice President, Legal Affairs and General Counsel

/s/ Michael Morrissey, PhD

EXELIXIS INC
By: Michael Morrissey, PhD

Title: President of Research and Development

Date: May 27, 2009

[*] = 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.

THIRD AMENDMENT TO THE CONTRACT RESEARCH AGREEMENT

This **THIRD AMENDMENT TO THE CONTRACT RESEARCH AGREEMENT** (the "**Amendment**") is made and entered into by and between **AGRIGENETICS, INC.**, a Delaware corporation having its principal place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268 ("**Agrigenetics**") and **EXELIXIS PLANT SCIENCES, INC.**, a Delaware corporation having its principal place of business at 16160 SW Upper Boones Ferry Road, Portland, Oregon 97224 ("**EPS**"). Agrigenetics and EPS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Agrigenetics, Mycogen Corporation, EPS and Exelixis, Inc. (**"Exelixis"**) are parties to a Contract Research Agreement effective as of September 4, 2007 as amended by the First Amendment effective as of January 1, 2008 and the Second Amendment effective as of October 27, 2008 (the "**Agreement**"), under which Agrigenetics engaged EPS to conduct certain research pursuant to a Research Plan.

B. Agrigenetics and EPS desire to amend the Agreement in accordance with Section 14.10 of the Agreement to re-define certain terms and roles.

NOW, THEREFORE, the Parties agree as follows:

1. THIRD AMENDMENT OF THE AGREEMENT

The parties hereby agree to amend the terms of the Agreement as provided below, effective as of July 1, 2009 (the "**Third Amendment Effective Date**"). Where the Agreement is not explicitly amended, the terms of the Agreement will remain in force. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the same meanings as such terms are given in the Agreement.

1.1 Section 2.5 shall be amended to state in it is entirety:

"**2.5 Implementation of the Research Plan.** The Parties agree that, subject to Sections 2.9 and 3.5, [*] shall have the primary responsibility for decision making with respect to the implementation of the Research Plan for the activities with respect to Additional Purchased Asset 1 or Additional Purchased Asset 2. In addition, [*] shall serve as the primary contact for communications between the Parties with respect to such implementation."

1.2 The first sentence of Section 2.8(b) (as added by the First Amendment to the Contract Research Agreement) is amended to delete "[*] " and "[*] " and to insert in lieu thereof "[*] " and "[*] ", respectively.

1.3 The penultimate sentence of Section 2.8(b) (as added by the First Amendment to the Contract Research Agreement) is amended to read in its entirety as follows:

"Without limiting the generality of the foregoing, no Special Consultant shall be obligated to spend more than [*] of his work time, on a calendar monthly average basis, performing Special Consulting Services, and Agrigenetics shall not request that any Special Consultant perform Special Consulting Services in excess of the foregoing amounts."

1.4 Section 2.9 is added to the Agreement to read in its entirety as follows:

"2.9 Transition Consultation.

(a) If at any time prior to the achievement of Additional Purchased Asset 2, [*] , Agrigenetics shall cause DAS to allow [*] to dedicate up to [*] of his work time consulting with EPS regarding (i) [*] and (ii) [*] . In no event shall [*] devote more than [*] of his work time consulting with EPS.

(b) Should [*] and devote a portion of his work time to consulting with EPS as contemplated by Section 2.9(a), DAS shall be solely responsible for [*] ."

1.5 Section 6.5 shall be amended to state in it is entirety:

"6.5 Payment for Additional Purchased Assets.

(a) Within [*] after each of Additional Purchased Asset 1 or Additional Purchased Asset 3 has been fully achieved, EPS shall invoice Agrigenetics the following amount, whichever is applicable, for such Additional Purchased Asset:

(i) if such achievement occurs prior to the applicable Anticipated Delivery Date (as adjusted under Section 4.2(a) or 4.2(b) if necessary) or within [*] thereafter, [*] ; or

(ii) if such achievement occurs more than [*] , after the applicable Anticipated Delivery Date (as adjusted under Section 4.2(a) or 4.2(b) if necessary), [*] .

[*] = 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.

The payments set forth in this Section 6.5(a) shall be due for each of Additional Purchased Asset 1 and Additional Purchased Asset 3, for a maximum aggregate payment by Agrigenetics under this Section 6.5(a) of [*] .

(b) Within [*] after Additional Purchased Asset 2 has been fully achieved, EPS shall invoice Agrigenetics the following amount, whichever is applicable, for such Additional Purchased Asset:

(i) if such achievement occurs prior to the applicable Anticipated Delivery Date (as adjusted under Section 4.2(a) or 4.2(b) if necessary) or within [*] thereafter, [*] ; or

(ii) if such achievement occurs more than [*] , after the applicable Anticipated Delivery Date (as adjusted under Section 4.2(a) or 4.2(b) if necessary), [*] .

(c) All payments made by Agrigenetics to EPS pursuant to this Section 6.5 shall be noncreditable and nonrefundable and shall be paid by Agrigenetics within thirty (30) days after Agrigenetics' receipt of the invoice from EPS."

1.6 Section 6.9 is added to the Agreement to read in its entirety as follows:

"6.9 Third Amendment Payment. Upon the Third Amendment Effective Date, EPS shall send Agrigenetics an invoice for $1,800,000 . Agrigenetics shall pay such amount on or before [*] . Such payment shall be noncreditable and nonrefundable."

1.7 The second sentence of Section 8.1 shall be amended to read:

"All EPS employees and Agrigenetics Employees shall perform activities under the Research Program under the direction and supervision of [*] , who shall direct and manage the day-to-day activities under the Research Plan subject to Section 2.9."

1.8 Section 7.6 is added to the Agreement to read in its entirety as follows:

"7.6 Cell Factory Special Consulting Inventions.

(a) EPS shall own all rights, title and interests in and to all data, results, inventions, improvements, or discoveries, whether patentable or not, that are made by [*] , either solely or jointly with EPS or its Affiliate, in the course of conducting the Cell Factory Special Consulting Services, including all intellectual property rights therein (collectively, the **"Cell Factory Special Consulting Inventions"**). All Cell Factory Special Consulting Inventions shall be Cell Factory Special Confidential

Information (as defined in Section 9.11). Agrigenetics on behalf of itself and its Affiliate, DAS, hereby assigns to EPS all of Agrigenetics' and DAS' rights, title and interests in and to the Cell Factory Special Consulting Inventions. Agrigenetics shall cause DAS to maintain an agreement with [*] requiring him to assign all of his rights, title and interests in and to Cell Factory Special Consulting Inventions to DAS, and ownership of such Cell Factory Special Consulting Inventions will transfer to EPS pursuant to the third sentence of this Section 7.6(a).

(b) At EPS' reasonable request and expense, Agrigenetics and DAS will execute and deliver such documents and instruments and take such other actions reasonably necessary to ensure that all right, title and interest is properly passed to EPS in any Cell Factory Special Consulting Inventions."

1.9 **[*]** shall no longer be a Key Personnel and shall be removed from the Key Personnel List referenced in Section 8.3.

1.10 The last sentence of Section 8.5(b) shall be amended to read:

"[*] "

1.11 The first sentence of Section 9.1 of the Agreement is amended to read in its entirety as follows:

"Except as set forth in Section 9.10, 9.11 or 9.12, all information disclosed by one Party or its Affiliates (the "**Disclosing Party**") to the other Party or its Affiliates (the "**Receiving Party**") pursuant to this Agreement shall be "**Confidential Information**" of the Disclosing Party for all purposes hereunder, except that all Research Inventions shall be Confidential Information of Agrigenetics, regardless of the identity of the party disclosing such information, and Agrigenetics shall be deemed the 'Disclosing Party' to all such information."

1.12 Section 9.11 is added to the Agreement to read in its entirety as follows:

"**9.11 Cell Factory Special Confidential Information**.

(a) Definition. In the course of the Cell Factory Special Consulting Services, EPS or its Affiliates may disclose to [*] confidential information of EPS or its Affiliates, or confidential information of a Third Party provided to EPS or its Affiliates under obligation of confidentiality, and Third Parties to whom EPS has written confidentiality obligations may disclose to [*] confidential information of such Third Parties, in each case solely for use in the Cell Factory Special Consulting Services (such information, the "**Cell Factory Special**

[*] = 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.

Confidential Information"). In disclosing any Cell Factory Special Confidential Information to [*] , EPS shall use best efforts not to create any conflicting confidentiality obligations for Agrigenetics or its Affiliates under this Agreement. If disclosed in writing, the Cell Factory Special Confidential Information shall be clearly marked as "Cell Factory Special Confidential Information; not for distribution within Agrigenetics or its Affiliates" or equivalent, and if disclosed orally, such information shall be identified as Cell Factory Special Confidential Information at the time of disclosure. Any information disclosed to [*] that is not so identified shall be deemed Confidential Information of EPS and not subject to this Section 9.11. In addition, if EPS or its Affiliates discloses any Cell Factory Special Confidential Information to [*] , then such Cell Factory Special Confidential Information shall cease to be Cell Factory Special Confidential Information and shall instead be Confidential Information of EPS and no longer subject to this Section 9.11.

(b) **Nondisclosure and Nonuse.** Agrigenetics shall cause DAS to use reasonable efforts to ensure that [*] (i) maintains the Cell Factory Special Confidential Information in confidence and does not disclose the Cell Factory Special Confidential Information to any Third Party or to any other employee or agent of Agrigenetics or its Affiliates, and (ii) does not use the Cell Factory Special Confidential Information for any purpose other than conducting the Cell Factory Special Consulting Services, which efforts shall include informing [*] of the foregoing nondisclosure and nonuse obligations.

(c) **Exceptions.** The conditions and obligations in Section 9.11(b) above shall not apply with respect to any portion of the Cell Factory Special Confidential Information that:

(i) is or was publicly disclosed by EPS or its Affiliates, either before or after it is disclosed to [*] hereunder;

(ii) was known to [*] , without obligation to keep it confidential, prior to disclosure by EPS or its Affiliates, as shown by competent written evidence;

(iii) is or was subsequently disclosed to [*] by Agrigenetics or its Affiliates, or by a Third Party, in each case without obligation to keep it confidential;

(iv) is or was published by a Third Party or otherwise becomes publicly available or enters the public domain through no fault of [*] , either before or after it is disclosed to him; or

(v) has been or is independently developed by Agrigenetics or its Affiliates without the aid, application or use of the Cell Factory Special Confidential Information, as shown by competent written evidence.

(d) **Authorized Disclosure**. The Parties acknowledge that [*] may disclose the Cell Factory Special Confidential Information to the extent such disclosure is requested or required by operation of law or court order, provided that [*] gives EPS or its Affiliates as much prior notice as is reasonably practicable and legally permissible and discloses only such information as he is obligated to disclose."

1.13 Section 9.12 is added to the Agreement to read in its entirety as follows:

"**9.12 Disclosures Made by [*] .** Information disclosed by [*] to Agrigenetics or its Affiliates in the course of [*] performance of the Research Program Special Consulting Services (except to the extent that such information constitutes a Research Invention) or his role as EPS' primary contact regarding Research Program implementation pursuant to Section 2.5 shall be considered the Confidential Information of EPS, and Agrigenetics and its Affiliates shall have the confidentiality obligations set forth in Section 9.1. Information disclosed by [*] to EPS or its Affiliates in the course of [*] performance of the Research Program Special Consulting Services (except to the extent that such information constitutes a Research Invention) or Cell Factory Special Consulting Services shall not be considered the Confidential Information of Agrigenetics, and EPS and its Affiliates shall not have any confidentiality obligations with respect thereto pursuant to Section 9.1."

1.14 Section 10.5(a) of the Agreement is amended to read in its entirety as follows:

"(a) The following provisions of this Agreement shall survive any expiration or termination of this Agreement, regardless of cause: Articles 1, 9 (except for Sections 9.9(a) and (b)), 12 and 14 and Sections 6.3(d), 6.5 (with respect to Additional Purchased Asset 3 if this Agreement is terminated pursuant to Section 10.4(a)), 6.6, 6.7, 6.8, 6.9, 7.1, 7.4, 7.5, 7.6, 8.4(c), 8.6, 8.7, 10.4(a), 10.4(c) and 10.5."

1.15 Section 14.2 ("Notices") shall be amended to delete "Vice President of Research" and replace it with "Director, Plant Trait Discovery".

1.16 Exhibit B ("Joint Management Team Members") shall be amended to (a) remove [*] and replace him with [*] and (b) remove [*] and replace him with [*] .

[*] = 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.

1.17 Exhibit E ("Personnel Committee") shall be amended to delete [*] and add [*] .

1.18 With respect to the letter from EPS to Agrigenetics, Exelixis, Dow and DAS dated September 4, 2007 regarding the Key Personnel List (the "Key Personnel Letter"), Appendix B of the Key Personnel Letter shall be amended as of the Third Amendment Effective Date to delete [*] and to add [*] .

1.19 The Parties shall use commercially reasonable efforts to negotiate and enter into, no later than [*] , a future amendment to the Agreement which includes the following terms:

(a) a process will be specified to effectuate [*] , which will include [*] no later than [*] ;

(b) Section 8.5 of the Agreement will be amended to require [*] and to require [*] ;

(c) Section 8.4(c) of the Agreement will be amended to apply to [*] ; and

(d) the PDX Facility Lease (as defined in the APA) will be [*] , Sections 5.2(a) 6.1(b)(i), 6.2(b)(iii) and 6.3(b)(ii) of the Agreement will be amended to reflect the effects of [*] , and Agrigenetics will pay EPS [*] on or before [*] to reimburse EPS for [*] .

2. MISCELLANEOUS

2.1 **Full Force and Effect.** This Amendment amends the terms of the Agreement and is deemed incorporated into the Agreement. The provisions of the Agreement, as amended by this Amendment, remain in full force and effect.

2.2 **Entire Agreement.** The Transactional Agreements, including the Agreement as amended by this Amendment, set forth the entire understanding of the Parties hereto relating to the subject matter thereof and supersede all prior agreements and understandings among or between any of the parties hereto relating to the subject matter thereof.

2.3 **Counterparts.** This Amendment may be executed in two (2) counterparts, each of which shall constitute an original and both of which, when taken together, shall constitute one agreement. The exchange of a fully executed Amendment (in counterparts or otherwise) by electronic transmission, including by email, or facsimile shall be sufficient to bind the Parties to the terms and conditions of this Amendment.

[*] = 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.

[Signature Page Follows]

[*] = 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.

IN WITNESS WHEREOF, Agrigenetics and EPS have executed this Amendment by their respective duly authorized representatives as of the Third Amendment Effective Date.

AGRIGENETICS, INC.

By: /s/ Daniel R. Kittle
Name: Daniel R. Kittle, Ph.D.
Title: VP R&D

EXELIXIS PLANT SCIENCES, INC.

By: /s/ George Scangos
Name: George Scangos
Title: President and Chief Executive Officer

The undersigned hereby acknowledges, and agrees to be bound by, the terms of the foregoing Amendment:

DOW AGROSCIENCES LLC

By: /s/ William A. Kleschick
William A. Kleschick, Ph.D.
Global Leader, Discovery Research

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

[*] = 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.

FOURTH AMENDMENT TO THE CONTRACT RESEARCH AGREEMENT

This **FOURTH AMENDMENT TO THE CONTRACT RESEARCH AGREEMENT** (the "**Amendment**") is made and entered into by and between **AGRIGENETICS, INC.**, a Delaware corporation having its principal place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268 ("**Agrigenetics**") and **EXELIXIS PLANT SCIENCES, INC.**, a Delaware corporation having its principal place of business at 16160 SW Upper Boones Ferry Road, Portland, Oregon 97224 ("**EPS**"). Agrigenetics and EPS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Agrigenetics, Mycogen Corporation, EPS and Exelixis, Inc. (**"Exelixis"**) are parties to a Contract Research Agreement effective as of September 4, 2007, as amended by the First Amendment effective as of January 1, 2008, the Second Amendment effective as of October 27, 2008 and the Third Amendment effective as of July 1, 2009 (the "**Agreement**"), under which Agrigenetics engaged EPS to conduct certain research pursuant to a Research Plan.

B. Agrigenetics and EPS desire to amend the Agreement in accordance with Section 14.10 of the Agreement to expand the Research Budget to include funding by Agrigenetics for [*].

NOW, THEREFORE, the Parties agree as follows:

1. FOURTH AMENDMENT OF THE AGREEMENT

The parties hereby agree to amend the terms of the Agreement as provided below, effective as of July 1, 2009 (the "**Fourth Amendment Effective Date**"). Where the Agreement is not explicitly amended, the terms of the Agreement will remain in force. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the same meanings as such terms are given in the Agreement.

1.1 Section 2.7 is amended by adding the following sentence to the end of such section:

"As of the Fourth Amendment Effective Date, EPS is performing Innovation Program No. 1 and has received approval to perform Innovation Program No. 2. The Parties hereby agree that [*]. As such, the rights and obligations of the Parties that pertain to Key Personnel, including without limitation the rights and obligations set forth in Article 8 of this Agreement, shall apply to such individuals."

1.2 Section 8.9 is added to the Agreement to read in its entirety as follows:

"8.9 [*]:

Pursuant to the **FOURTH AMENDMENT TO THE CONTRACT RESEARCH AGREEMENT EFFECTIVE AS OF JULY 1, 2009** (the **"Fourth Amendment"**), EPS agrees to hire [*]. The attached Exhibit 2B provides a description of the [*]. The Parties hereby agree that [*]. As such, the rights and obligations of the Parties that pertain to Key Personnel, including without limitation the rights and obligations set forth in Article 8 of this Agreement, shall apply to such individuals. While Agrigenetics desires EPS to [*], EPS may hire people for such positions in its discretion based on program needs as long as [*]. [*] as is specified below in **Section 6.2(a)**, as amended by the Fourth Amendment. Agrigenetics acknowledges that EPS is currently in active discussions regarding [*] and the Parties agree that neither EPS or Agrigenetics will [*] while such [*] discussions are ongoing. However, should such [*] discussions cease, EPS may immediately [*]. In the event that [*], EPS shall have no obligation to [*]."

1.3 Section 6.2(a)(i)(3) is amended by adding the following sentence:

"Pursuant to the Second Amendment to this Agreement, Agrigenetics shall pay EPS [*] on or before [*]. Agrigenetics shall make an additional payment of [*] to EPS within [*] of receipt of an invoice from EPS with respect to the [*]. Agrigenetics shall pay EPS [*] on or before each of [*]."

1.4 Section 6.2(a)(i)(4) is replaced in its entirety with the following:

"**(4)** the Estimated Annual FTE Payment for the fourth Contract Year shall be [*] for the approximately [*] FTEs engaged in the Research Program; and"

1.5 Section 6.2(a)(i)(5) is replaced in its entirety with the following:

"**(5)** the Estimated Annual FTE Payment for the fifth Contract Year shall be [*] for the approximately [*] FTEs engaged in the Research Program."

2. MISCELLANEOUS

2.1 **Full Force and Effect.** This Amendment amends the terms of the Agreement and is deemed incorporated into the Agreement. The provisions of the Agreement, as amended by this Amendment, remain in full force and effect.

[*] = 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.

2.2 **Entire Agreement.** The Transactional Agreements, including the Agreement as amended by this Amendment, set forth the entire understanding of the parties hereto relating to the subject matter thereof and supersede all prior agreements and understandings among or between any of the parties hereto relating to the subject matter thereof.

2.3 **Counterparts.** This Amendment may be executed in two (2) counterparts, each of which shall constitute an original and both of which, when taken together, shall constitute one agreement. The exchange of a fully executed Amendment (in counterparts or otherwise) by electronic transmission, including by email, or facsimile shall be sufficient to bind the Parties to the terms and conditions of this Amendment.

[Signature page follows]

[*] = 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.

IN WITNESS WHEREOF, Agrigenetics and EPS have executed this Amendment by their respective duly authorized representatives as of the Fourth Amendment Effective Date.

AGRIGENETICS, INC.

By: /s/ Daniel R. Kittle
Daniel R. Kittle, Ph.D.
Vice President

EXELIXIS PLANT SCIENCES, INC.

By: /s/ George Scangos
Name: George Scangos
Title: President and
Chief Executive Officer

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

Exhibit 2B

[*]

[*] = 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 31.1

CERTIFICATION

I, George A. Scangos, Ph.D., Chief Executive Officer of Exelixis, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q 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 officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) 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.

Date: July 30, 2009

/s/ George A. Scangos
George A. Scangos, Ph.D.
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Frank Karbe, Chief Financial Officer of Exelixis, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q 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 officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) 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.

Date: July 30, 2009

/s/ Frank Karbe

Frank Karbe
Executive Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), George A. Scangos, Chief Executive Officer of Exelixis, Inc. (the "Company"), and Frank Karbe, Chief Financial Officer of the Company, each hereby certifies, to his knowledge, that:

1. The Company's Quarterly Report on Form 10-Q for the period ended July 3, 2009 (the "Periodic Report"), to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 30th day of July, 2009.

/s/ George A. Scangos
George A. Scangos, Ph.D.
President and Chief Executive Officer
(Principal Executive Officer)

/s/ Frank Karbe
Frank Karbe
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)