UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q

(MARK ONE)

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE

SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended: SEPTEMBER 30, 2001

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 0-30235

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

Delaware	04-3257395
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
(Address of principal executive offices, including zip code)
(650) 837-7000
(Registrant's telephone number, including area code)

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 [X] No [ ]

As of October 31, 2001, there were 49,511,273 shares of the registrant's common stock outstanding.

EXELIXIS, INC.

FORM 10-Q

INDEX

PART I. FINANCIAL INFORMATION

SIGNATURE

PART I. FINANCIAL INFORMATION

Item 1. Consolidated Condensed Financial Statements

EXELIXIS, INC.
CONSOLIDATED CONDENSED BALANCE SHEETS
(IN THOUSANDS)

	SEPTEMBER 30, 2001 (unaudited)	DECEMBER 31, 2000 (1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 42,813	$ 19,552
Short-term investments	89,470	93,000
Other receivables	2,368	1,493
Inventories	-	3,612
Other current assets	2,671	1,987
Total current assets	137,322	119,644
Property and equipment, net	35,870	23,480
Related party receivables	1,021	494
Goodwill and other intangibles, net	67,454	58,674
Other assets	5,050	2,622
Total assets	$ 246,717	$ 204,914
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 11,581	$ 10,050
Line of credit	-	1,484
Current portion of capital lease obligations	6,239	3,826
Current portion of notes payable	3,589	1,664
Advances from minority shareholders	-	868
Deferred revenue	12,908	6,233
Total current liabilities	34,317	24,125
Capital lease obligations	9,881	6,341
Notes payable	828	1,635
Convertible promissory note	30,000	-
Minority interest in consolidated subsidiary	-	1,044
Other long-term liabilities	200	-
Deferred revenue	22,080	9,036
Total liabilities	97,306	42,180
Commitments		
Stockholders' equity:		
Common stock	50	47
Additional paid-in-capital	338,326	304,339
Notes receivable from stockholders	(1,624)	(1,805)
Deferred stock compensation, net	(5,355)	(10,174)
Accumulated other comprehensive income	969	365
Accumulated deficit	(182,955)	(130,038)
Total stockholders' equity	149,411	162,734
Total liabilities and stockholders' equity	$ 246,717	$ 204,914

(1) The consolidated condensed balance sheet at December 31, 2000 has been derived from the audited financial statement at that date but does not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements.

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

EXELIXIS, INC.
CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)
(unaudited)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2001	2000	2001	2000
Revenues:				
Contract and government grants	$ 9,212	$ 5,211	$ 23,649	$ 14,914
License	2,716	907	4,564	2,771
Total revenues	11,928	6,118	28,213	17,685
Operating expenses:				
Research and development (1)	22,466	13,428	59,836	37,248
General and administrative (2)	5,361	3,845	14,597	11,539
Amortization of goodwill and intangibles	1,397	-	3,673	-
Acquired in-process research and development	-	-	6,673	-
Total operating expenses	29,224	17,273	84,779	48,787
Loss from operations	(17,296)	(11,155)	(56,566)	(31,102)
Other income (expense):				
Interest and other income	1,617	2,318	5,109	4,331
Interest expense	(811)	(162)	(1,460)	(488)
Total other income	806	2,156	3,649	3,843
Net loss	$(16,490)	$ (8,999)	$(52,917)	$(27,259)
Net loss per share, basic and diluted	$ (0.35)	$ (0.22)	$ (1.15)	$ (1.00)
Shares used in computing net loss per share, basic and diluted	47,750	41,179	45,848	27,235

(1) Includes stock compensation expense of $1,136 and $2,291 in the quarters ended September 30, 2001 and 2000, respectively, and $3,936 and $8,293 in the nine-month periods ended September 30, 2001 and 2000, respectively.
(2) Includes stock compensation expense of $551 and $1,210 in the quarters ended September 30, 2001 and 2000, respectively, and $1,921 and $3,766 in the nine-month periods ended September 30,2001 and 2000, respectively.

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

EXELIXIS, INC.
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)
(unaudited)

	SIX MONTHS ENDED SEPTEMBER 30,	
	2001	2000
Cash flows from operating activities:		
Net loss	$(52,917)	$(27,259)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	7,135	3,207
Amortization of deferred stock compensation	5,857	12,059
Amortization of goodwill and other intangibles	3,673	-
Acquired in-process research and development	6,673	-
Changes in assets and liabilities:		
Other receivables	(234)	(1,363)
Other current assets	(717)	(1,337)
Related party receivables	(474)	226
Other assets	(2,731)	(532)
Accounts payable and accrued expenses	(18)	885
Deferred revenue	20,441	9,587
Net cash provided by (used in) operating activities	(13,312)	(4,707)
Cash flows from investing activities:		
Purchases of property and equipment	(8,326)	(12,970)
Proceeds from sale-leaseback of equipment	-	5,954
Cash acquired in acquisition	3,463	-
Proceeds from maturity of short-term investments	115,779	-
Purchases of short-term investments	(111,562)	(77,874)
Net cash provided by (used in) investing activities	(646)	(84,890)
Cash flows from financing activities:		
Proceeds from initial public offering, net	-	124,709
Proceeds from convertible note	30,000	-
Proceeds from issuance of common stock	10,000	-
Proceeds from exercise of stock options and warrants	384	503
Proceeds from employee stock purchase plan	1,198	-
Repayments of notes from stockholders	181	-
Principal payments on capital lease obligations	(3,162)	(570)
Principal payments on notes payable	(1,429)	(1,128)
Net cash provided by financing activities	37,172	123,514
Effect of foreign exchange rate changes on cash	47	-
Net increase in cash and cash equivalents	23,261	33,917
Cash and cash equivalents, at beginning of period	19,552	5,400
Cash and cash equivalents, at end of period	$ 42,813	$ 39,317

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

EXELIXIS, INC.
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
SEPTEMBER 30, 2001
(UNAUDITED)

NOTE 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

Exelixis, Inc. ("Exelixis" or the "Company") is a genomics-based biotechnology company focused on pharmaceutical product development through its expertise in comparative genomics and model system genetics. Company scientists have developed multiple fungal, nematode, insect, plant and vertebrate genetic systems. Exelixis' proprietary model systems and comparative genomics technologies address gene function by using biologically relevant functional genomics information very early on in the process to rapidly, efficiently and cost-effectively translate sequence data to knowledge about the function of genes and the proteins that they encode. The Company also has a significant internal cancer discovery and drug development program. Exelixis believes that its technology is broadly applicable to all life science industries including pharmaceutical, diagnostic, agricultural biotechnology and animal health. The Company has active partnerships with Aventis CropScience, Bayer, Bristol-Myers Squibb, Dow AgroSciences, Elan Pharmaceuticals, Pharmacia, Protein Design Labs and Scios.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America for interim financial information and pursuant to the instructions 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 generally accepted accounting principles for complete financial statements. In the opinion of the Company's management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the three- and nine-month periods ended September 30, 2001 are not necessarily indicative of the results that may be expected for the year ending December 31, 2001, 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 year ended December 31, 2000 included in the Company's Annual Report on Form 10-K.

Net Loss per Share

Basic and diluted net loss per share is computed by dividing the net loss for the period by the weighted average number of shares of common stock outstanding during the period. The calculation of diluted net loss per share excludes potential common stock if their effect is antidilutive. Potential common stock consists of common stock subject to repurchase, incremental common shares issuable upon the exercise of stock options and warrants and shares issuable upon conversion of the preferred stock and a convertible promissory note.

Comprehensive Income (Loss)

There are two components of other comprehensive income: unrealized gains on available-for-sale securities and foreign currency translation adjustments. For the three- and nine-month periods ended September 30, 2001, total comprehensive loss amounted to approximately $16.0 million and $52.3 million, respectively. For the three- and nine-month periods ended September 30, 2000, total comprehensive loss amounted to $8.8 million and $27.0 million, respectively.

Foreign Currency Translation

The Company's German subsidiary, Artemis Pharmaceuticals GmbH ("Artemis"), uses its local currency as its functional currency. Assets and liabilities are translated at exchange rates in effect at the balance sheet date, and income and expense amounts are translated at the average exchange rates during the period. Resulting translation adjustments are recorded directly to a separate component of stockholders' equity.

Reclassification

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

Recent Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement

of Financial Accounting Standards ("SFAS") No. 141, "Business Combinations" ("SFAS No. 141"), which establishes financial accounting and reporting for business combinations and supersedes APB Opinion No. 16, "Business Combinations," and FASB Statement No. 38, "Accounting for Preacquisition Contingencies of Purchased Enterprises." SFAS No. 141 requires that all business combinations be accounted for using one method, the purchase method. The provisions of SFAS No. 141 apply to all business combinations initiated after June 30, 2001. The adoption of SFAS No. 141 had no material impact on financial reporting and related disclosures of the Company.

In July 2001, the FASB issued SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142") which establishes financial accounting and reporting for acquired goodwill and other intangible assets and supersedes APB Opinion No. 17, "Intangible Assets." SFAS No. 142 addresses how intangible assets that are acquired individually or with a group of other assets (but not those acquired in a business combination) should be accounted for in financial statements upon their acquisition and after they have been initially recognized in the financial statements. The provisions of SFAS No. 142 are effective for fiscal years beginning after December 15, 2001. Exelixis will adopt SFAS No. 142 during the first quarter of fiscal 2002, and is in the process of evaluating the impact of implementation on its financial position and results of operations.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"), which is effective for fiscal years beginning after December 15, 2001 and interim periods within those fiscal periods. SFAS No. 144 supersedes SFAS No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" and parts of APB Opinion No. 30, "Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions relating to extraordinary items", however, SFAS No. 144 retains the requirement of Opinion 30 to report discontinued operations separately from continuing operations and extends that reporting to a component of an entity that either has been disposed of (by sale, by abandonment or in a distribution to owners) or is classified as held for sale. SFAS 144 addresses financial accounting and reporting for the impairment of certain long-lived assets and for long-lived assets to be disposed of. Management does not expect the adoption of SFAS 144 to have a material impact on the Company's financial position and results of operations.

NOTE 2. SALE OF VINIFERA OWNERSHIP INTEREST

On March 31, 2001, the Company reduced its ownership interest in Vinifera, Inc. ("Vinifera") to 19% by selling 3.0 million shares of Vinifera common stock back to Vinifera in consideration for $2.1 million in interest bearing promissory notes. The promissory notes bear an interest rate of prime plus 1% and are payable in two installments of $400,000, due no later than September 30, 2001 and February 28, 2002, respectively, and one installment of $1.3 million, due on February 28, 2006. The first installment payment due date has been extended to December 31, 2001. Due to risks associated with collection, the Company has reserved for $1.7 million of these promissory notes.

As a result of this transaction, the Company recorded the following amounts as an adjustment to goodwill recorded in connection with the acquisition of Agritope, Inc. (parent company of Vinifera), based on the operating results of Vinifera through March 31, 2001: a write-down of the value of acquired developed technology attributable to Vinifera, a gain on sale of Vinifera shares and the promissory note reserve. The net adjustment was an increase to goodwill in the amount of $675,000. Beginning April 1, 2001, the Company accounts for its remaining investment in Vinifera using the cost method.

NOTE 3. ACQUISITION OF ARTEMIS PHARMACEUTICALS GMBH

In May 2001, Exelixis acquired a majority of the outstanding capital stock of Artemis Pharmaceuticals GmbH ("Artemis"), a privately held genetics and functional genomics company organized under the laws of Germany. The transaction, which was accounted for under the purchase method of accounting, was effected through the exchange of shares of Exelixis common stock for DEM 1.00 of nominal value of Artemis capital stock, using an exchange ratio of 4.064 to one. Approximately 1.6 million shares of Exelixis common stock were issued in exchange for 78% of the outstanding capital stock of Artemis held by Artemis stockholders. In addition, Exelixis received a call option (the "Call Option") from, and issued a put option (the "Put Option") to, certain stockholders of Artemis (the "Option Holders") for the issuance of approximately 480,000 shares of Exelixis common stock in exchange for the remaining 22% of the outstanding capital stock of Artemis held by the Artemis Option Holders. Exelixis may exercise the Call Option at any time from May 14, 2001 through January 31, 2002, and the Option Holders may exercise their rights under the Put Option at any time from April 1, 2002 through May 15, 2002. The value of any shares issued pursuant to exercising the Call Option or Put Option will be added to goodwill. In connection with the acquisition of Artemis, Exelixis also issued fully vested rights to purchase approximately 187,000 additional shares of Exelixis common stock to Artemis employees in exchange for such employees' vested options formerly representing the right to purchase shares of Artemis capital stock pursuant to an Employee Phantom Stock Option Program.

The total consideration for the acquisition was approximately $22.3 million, which consisted of Exelixis common stock and options valued at $21.4 million and estimated Exelixis transaction costs of $900,000. Exelixis' transaction costs include financial advisory, legal, accounting and other fees.

Based upon an independent valuation of the tangible and intangible assets acquired, Exelixis management has completed an allocation of the total cost of the acquisition to the assets acquired and liabilities assumed as follows (in thousands):

Tangible assets acquired	$6,848
In-process research and development	6,673
Developed technology	1,240
Assembled workforce	1,332
Goodwill	9,655
Patents/core technology	571
Liabilities assumed	(4,016)
	$22,303

The Company will amortize the acquired intangible assets using the following estimated useful lives:

Developed technology	5	years
Patents/core technology	15	years
Assembled workforce	3	years
Goodwill	15	years

The valuation of the purchased in-process research and development of $6.7 million was based upon the results of an independent valuation using the income approach for each of the three significant in-process projects. The in-process projects relate primarily to the development of technologies that use vertebrate genetic model organisms, zebrafish and mice, to identify and functionally validate novel genes in vivo. These genes can be used as novel screening targets or as the basis for secreted proteins in clinically and commercially relevant diseases. The in-process projects are expected to be completed over the next 18 months. The income approach estimates the value of each acquired in-process project based on its expected future cash flows. The valuation analysis considered the contribution of the core technology as well as the percent complete of each in-process research and development project. The expected present value of the cash flows associated with the in-process research and development projects was computed using a risk adjusted rate of return of 30%, which is considered commensurate with the overall risk and percent complete of the in-process projects. The purchased in-process research and development was not considered to have reached technological feasibility, and it has no alternative future use, accordingly, it has been recorded as a component of operating expense.

The revenues, expenses, cash flows and other assumptions underlying the estimated fair value of the acquired in-process research and development involve significant risks and uncertainties. The risks and uncertainties associated with completing the acquired in-process projects include the ability to reach future research milestones since the technologies being developed are unproven, the ability to retain key personal, the ability to obtain licenses to key technology and the ability to avoid infringing on patents and propriety rights of third parties.

PRO FORMA RESULTS

The Company's historical consolidated condensed statements of operations include the results of Artemis and Agritope, Inc. (now Exelixis Plant Sciences, Inc.) subsequent to the acquisition dates of May 14, 2001 and December 8, 2000, respectively. The following unaudited pro forma financial information presents the consolidated results of the Company as if the acquisitions of Artemis and Agritope had occurred at the beginning of each period presented. Nonrecurring charges, such as acquired in-process research and development, are not reflected in the following unaudited pro forma financial information. This unaudited pro forma financial information is not intended to be indicative of future operating results (in thousands, except per share data).

	NINE MONTHS ENDED SEPTEMBER 30,	
	2001	2000
Total revenues	$ 28,469	$ 25,193
Net loss	$(49,847)	$(39,431)
Net loss per share, basic and diluted	$ (1.07)	$ (1.29)

NOTE 4. SUPPLEMENTAL STOCK OPTION PLAN

During April 2001, the Company granted approximately 545,000 supplemental stock options ("Supplemental Options") under the 2000 Equity Incentive Plan to employees (excluding officers and directors) who had stock options with exercise prices greater than $16.00 per share under the 2000 Equity Incentive Plan. The number of Supplemental Options granted were equal to 50% of the corresponding original grant held by each employee, have an exercise price of $16.00, vest monthly over a two-year period beginning April 1, 2001, and have a 27-month

term. The vesting on the corresponding original grants was halted and will resume in April 2003 following the completion of vesting of the Supplemental Options. This new grant constitutes a synthetic repricing as defined in FASB Interpretation Number 44 "Accounting for Certain Transactions Involving Stock Compensation" and will result in certain options being reported using the variable plan method of accounting for stock compensation expense until they are exercised, forfeited or expire. As of September 30, 2001, the Company has recorded no compensation expense for the Supplemental Options for the current fiscal year.

NOTE 5. COMMITMENTS

During April 2001, the Company entered into a master lease agreement with a third-party lessor for an equipment lease line of credit of up to $12.0 million, which expires on December 31, 2001. The master lease agreement provides for a periodic delivery structure. Each delivery has a payment term of 36 or 48 months depending on the type of the equipment purchased under the lease. At September 30, 2001, $5.6 million was remaining under the equipment lease line of credit. Under the master lease agreement, the Company is subject to certain financial covenants. As of September 30, 2001, the Company was in compliance with all such covenants.

NOTE 6. COLLABORATION AGREEMENTS

On May 22, 2001, the Company and Protein Design Labs, Inc. ("PDL") entered into a collaboration to discover and develop humanized antibodies for the diagnosis, prevention and treatment of cancer. The collaboration will utilize Exelixis' model organism genetics technology for the identification of new cancer drug targets and PDL's antibody and clinical development expertise to create and develop new antibody drug candidates. PDL will provide Exelixis with $4.0 million in annual research funding for two or more years and has purchased a $30.0 million convertible note. The note bears interest at 5.75%, and the interest thereon is payable annually. The note is convertible at PDL's option any time after the first anniversary of the note. The note is convertible into Exelixis common stock at a conversion price per share equal to the lower of (i) $28.175 and (ii) 110% of the Fair Market Value (as defined in the note) of a share of Exelixis common stock at the time of conversion.

On July 17, 2001, the Company and Bristol-Myers Squibb Company ("BMS") entered into a collaboration involving three agreements: (a) a Stock Purchase Agreement; (b) a Cancer Collaboration Agreement; and (c) a License Agreement. Under the terms of the collaboration, BMS (i) purchased 600,600 shares of Exelixis common stock in a private placement at a purchase price of $33.30 per share, for cash proceeds to Exelixis of approximately $20.0 million; (ii) agreed to pay Exelixis a $5.0 million upfront license fee and provide Exelixis with $3.0 million per year in research funding for a minimum of three years; and (iii) granted to Exelixis a worldwide, fully-paid, exclusive license to an analogue to Rebeccamycin developed by BMS, which is currently in Phase I and Phase II clinical studies for cancer. Due to risk and uncertainties with Rebeccamycin, and because the analogue had not reached technological feasibility and has no alternative use, the analogue was therefore assigned no value for financial reporting purposes. Exelixis has agreed to provide BMS with exclusive rights to certain potential small molecule compound drug targets in cancer identified during the term of the research collaboration. The premium in excess of fair market value of $10.0 million paid for the stock purchased by BMS is being accounted for similar to an upfront license fee and is being recognized ratably over the life of the contract.

On July 26, 2001, the Company announced the reacquisition, effective February 2002, of future rights to research programs in metabolism and alzheimer's disease previously licensed exclusively to Pharmacia Corporation ("Pharmacia"). Pharmacia will retain rights to targets under the existing agreement selected prior to the reacquisition date, subject to the payment of milestones for certain of those targets selected and royalties for future development of products against or using those targets, but will have no other obligations to make payments to the Company, including approximately $9.0 million in annual funding that would otherwise be payable for an additional two years if the Company had not elected to reacquire rights to the research at this time. As a result of this transaction, revenue recognition of upfront license fees and milestone payments has accelerated over the remaining term of the agreement. The result is an increase of approximately $1.0 million in incremental revenue for the quarter ended September 30, 2001.

In August and October 2001, the Company entered into collaboration agreements with Elan Pharmaceuticals, Inc. ("Elan") and Scios Inc. ("Scios"), respectively, to jointly design custom high-throughput screening compound libraries that Exelixis will synthesize and qualify. Both Elan and Scios will pay Exelixis a per-compound fee and both have paid a $500,000 upfront technology access fee that is creditable towards the future purchase of compounds. The upfront fees have been deferred. Revenue under these collaboration agreements will be recorded upon shipment of compounds. Each party retains rights to use the compounds in its own unique drug discovery programs and in its collaborative efforts with third parties.

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

This discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this report and the 2000 audited

consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2000. Operating results are not necessarily indicative of results that may occur in future periods.

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 achievement to be materially different from any future results, levels of activity, performance or achievements expressed or implied in or contemplated by the forward-looking statements. Words such as "believe," "anticipate," "expect," "intend," "plan," "will," "may," "should," "estimate," "predict," "potential," "continue" or the negative of such terms or other similar expressions, identify forward-looking statements. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. Our actual results could differ materially from those anticipated in such forward-looking statements as a result of several factors more fully described under the caption "Risk Factors" as well as those discussed elsewhere in this document and those discussed in our Annual Report on Form 10-K.

OVERVIEW

We believe that we are a leader in the discovery and validation of high-quality novel targets for several major human diseases, and a leader in the discovery of potential new drug therapies, specifically for cancer and other proliferative diseases. Our mission is to develop proprietary cancer products by leveraging our integrated discovery platform to increase the speed, efficiency and quality of pharmaceutical and agricultural product discovery and development.

Through our expertise in comparative genomics and model system genetics, we are able to find new drug targets that we believe would be difficult or impossible to uncover using other experimental approaches. Our pharmaceutical research identifies novel genes and proteins expressed by those genes that, when changed, either decrease or increase the activity in a specific disease pathway in a therapeutically relevant manner. These genes and proteins then represent either potential product targets or drugs that may treat disease, or prevent disease initiation or progression.

We have established commercial collaborations with Aventis CropScience, Bayer, Bristol-Myers Squibb, Dow AgroSciences, Elan Pharmaceuticals, Pharmacia, Protein Design Labs and Scios, which provide us with substantial funding, including licensing fees, research funding and milestone payments when specific objectives are met and royalties if our partners successfully develop and commercialize products. In addition, many of these collaborations provide us with access to strategic technologies and product development opportunities. Revenues from these collaborations and a few small government grants were $28.2 million for the nine months ended September 30, 2001, $24.8 million in fiscal year 2000, $10.5 million in fiscal year 1999 and $2.3 million in fiscal year 1998. Our sources of potential revenues for the next several years are likely to include upfront license and other fees, funded research payments under existing and possible future collaborative arrangements, compound deliveries and milestone payments and royalties from our collaborators based on revenues received from any products commercialized under those agreements.

We have a history of operating losses resulting principally from costs associated with research and development activities, investment in core technologies and general and administrative functions. As a result of planned expenditures for future research and development activities, including manufacturing and clinical development expenses for compounds in clinical studies, Exelixis expects to incur additional operating losses for the foreseeable future.

License, research commitment and other non-refundable payments received in connection with research collaboration agreements are generally deferred and recognized on a straight-line basis over the relevant periods specified in the agreements, generally the research term. Exelixis recognizes contract research revenues as services are performed in accordance with the terms of the agreements. Any amounts received in advance of performance are recorded as deferred revenue.

ACQUISITION OF ARTEMIS PHARMACEUTICALS

In May 2001, we acquired a majority of the outstanding capital stock of Artemis Pharmaceuticals GmbH, a privately held genetics and functional genomics company organized under the laws of Germany ("Artemis"). The transaction, which was accounted for under the purchase method of accounting, was effected through the exchange of shares of our common stock for DEM 1.00 of nominal value of Artemis capital stock, using an exchange ratio of 4.064 to one. Approximately 1.6 million shares of our common stock was issued in exchange for 78% of the outstanding capital stock of Artemis held by Artemis stockholders. In addition, we received a call option (the "Call Option") from, and issued a put option (the "Put Option") to, certain stockholders of Artemis (the "Option Holders") for the issuance of approximately 480,000 shares of our common stock in exchange for the remaining 22% of the outstanding capital stock of Artemis held by the Option Holders. We may exercise the Call Option at any time from May 14, 2001 through January 31, 2002, and the Option Holders may exercise their rights under the Put Option at any time from April 1, 2002 through May 15, 2002. The value of any shares issued pursuant to exercising the Call Option or Put Option will be added

to goodwill. In connection with the acquisition of Artemis, we also issued fully vested rights to purchase approximately 187,000 additional shares of our common stock to Artemis employees in exchange for such employees' vested options formerly representing the right to purchase shares of Artemis capital stock pursuant to an Employee Phantom Stock Option Program.

The purchase price, which for financial accounting purposes was valued at $22.3 million, was allocated to the assets acquired and the liabilities assumed based on their estimated fair values at the date of acquisition, as determined by management based upon an independent valuation. As a result of this transaction, we recorded expense associated with the purchase of in-process research and development of $6.7 million, net tangible assets of $2.8 million and intangible assets (including goodwill) of $12.8 million, the majority of which will be amortized over 15 years.

RESULTS OF OPERATIONS

REVENUES

Total revenues were $11.9 million and $28.2 million for the three- and nine-month periods ended September 30, 2001, respectively, compared to $6.1 million and $17.7 million, respectively, for the comparable periods in 2000. The increase in revenues over the 2000 levels was primarily due to new collaborations formed with Bristol-Myers Squibb and Protein Design Labs, additional contract revenues earned from our existing collaborations with Bayer, Bristol-Myers Squibb, Pharmacia and Dow AgroSciences, revenues from Aventis CropScience resulting from our December 2000 acquisition of Agritope, Inc., now Exelixis Plant Sciences, Inc., and revenues from government grants resulting from our May 2001 acquisition of Artemis. We expect revenues to continue to increase during the remainder of 2001 as additional contract revenues are earned from our existing collaborations.

RESEARCH AND DEVELOPMENT EXPENSES

Research and development expenses consist primarily of salaries and other personnel-related expenses, facilities costs, supplies and depreciation of facilities and laboratory equipment. Research and development expenses were approximately $22.5 million and $59.8 million for the three- and nine-month periods ended September 30, 2001, respectively, compared to $13.4 million and $37.2 million, respectively, for the comparable periods in 2000. The increase over the 2000 levels was due to the expansion of our research and development organization to include Exelixis Plant Sciences and Artemis Pharmaceuticals as well as to support growth in South San Francisco for new collaborations and the continued expansion of our drug discovery organization. This increase was partially offset by a decrease in non-cash stock compensation expense (as described below). We expect to continue to devote substantial resources to research and development. In addition, we expect that research and development expenses will continue to increase in absolute dollar amounts in the future as we assume the responsibility for manufacturing and clinical development of compounds and as we continue to expand our proprietary drug development efforts.

GENERAL AND ADMINISTRATIVE EXPENSES

General and administrative expenses consist primarily of personnel costs to support our worldwide activities, facilities costs and professional expenses, such as legal fees. General and administrative expenses were $5.4 million and $14.6 million for the three- and nine-month periods ended September 30, 2001, respectively, compared to $3.8 million and $11.5 million, respectively, for the comparable periods in 2000. General and administrative expenses increased year-over-year due primarily to increased staffing and other personnel-related costs required to support our expanding research and development operations, partially offset by a decrease in non-cash stock compensation expense (as described below). We expect that our general and administrative expenses will increase in absolute dollar amounts in the future as we support a larger, worldwide organization through expanding our administrative staff and adding infrastructure to support our growing research and development efforts.

STOCK COMPENSATION EXPENSE

Deferred stock compensation for options granted to our employees is the difference between the fair value for financial reporting purposes of our common stock on the date such options were granted and their exercise price. Deferred stock compensation for options granted to consultants has been determined in accordance with Statement of Financial Accounting Standards ("SFAS") No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), and is periodically remeasured as the underlying options vest in accordance with Emerging Issues Task Force No. 96-18, "Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with, Selling Goods or Services." As of September 30, 2001, we have approximately $5.4 million of remaining deferred stock compensation, net of amortization, related to stock options granted to consultants and employees.

Stock compensation expense is being recognized in accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 28, "Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans" ("FIN 28"), over the vesting periods of the related options, generally four years. We recognized stock compensation expense of $1.7 million and $5.9 million for the three- and nine-month periods ended September 30, 2001, respectively, compared to $3.5 million and $12.1 million, respectively, for the comparable periods in

2000. The decrease in stock compensation expense year-over-year primarily results from the accelerated amortization method prescribed by FIN 28.

During April 2001, we granted approximately 545,000 supplemental stock options ("Supplemental Options") under the 2000 Equity Incentive Plan to certain employees (excluding officers and directors) who had stock options with exercise prices greater than $16.00 per share under the 2000 Equity Incentive Plan. The number of Supplemental Options granted was equal to 50% of the corresponding original grant held by each employee. The Supplemental Options have an exercise price of $16.00, vest monthly over a two-year period beginning April 1, 2001, and have a 27-month term. The vesting on the corresponding original stock options was halted and will resume in April 2003 following the completion of vesting of the Supplemental Options. This new grant constitutes a synthetic repricing as defined in FASB Interpretation Number 44, "Accounting for Certain Transactions Involving Stock Compensation" and will result in certain options being reported using the variable plan method of accounting for stock compensation expense until they are exercised, forfeited or expire. For the nine months ended September 30, 2001, the cumulative compensation expense recorded for the Supplemental Options was zero.

ACQUIRED IN-PROCESS RESEARCH AND DEVELOPMENT

The valuation of the purchased in-process research and development related to the Artemis acquisition of $6.7 million was determined by management based upon the results of an independent valuation using the income approach for each of the three significant in-process projects. The in-process projects relate primarily to the development of technologies that use vertebrate genetic model organisms, zebrafish and mice, to identify and functionally validate novel genes in vivo. These genes can be used as novel screening targets or as the basis for secreted proteins in clinically and commercially relevant diseases. The in-process projects are expected to be completed over the next 18 months. The income approach estimates the value of each acquired project in-process based on its expected future cash flows. The valuation analysis considered the contribution of the core technology as well as the percent complete of each in-process research and development project. The expected present value of the cash flows associated with the in-process research and development projects was computed using a risk adjusted rate of return of 30%, which is considered commensurate with the overall risk and percent complete of the in-process projects. The purchased in-process technology was not considered to have reached technological feasibility, and it has no alternative future use, accordingly, it has been recorded as a component of operating expenses.

AMORTIZATION OF GOODWILL AND INTANGIBLES

Goodwill and intangibles result from our acquisitions of Artemis and Agritope, now renamed Exelixis Plant Sciences, Inc. Amortization of goodwill and intangibles was $1.4 million and $3.7 million for the three- and nine-month periods ended September 30, 2001, respectively, compared to none for the comparable periods in 2000.

OTHER INCOME (EXPENSE), NET

Other income (expense), net primarily consists of interest income earned on cash, cash equivalents and short-term investments, partially offset by interest expense incurred on notes payable and capital lease obligations. Net interest income was $0.8 million and $3.6 million for the three- and nine-month periods ended September 30, 2001, respectively, compared to $2.2 and $3.8 million for the comparable periods in 2000. The decrease in the current quarter is primarily the result of increased interest expense as a result of increasing capital lease arrangements and a full quarter of interest expense associated with the convertible note with PDL. In addition, there was a decrease in interest income due to lower average cash and investment balances, as well as lower interest rates on those balances. The decrease for the nine-month period ended September 30, 2001 as compared to the prior year relates to an increase in interest expense as a result of increasing capital lease arrangements and the convertible note with PDL, almost fully offset by higher interest income due to an increase in average cash and investment balances in 2001.

LIQUIDITY AND CAPITAL RESOURCES

Since inception, we have financed our operations primarily through private placements of preferred stock, loans, convertible debt, equipment lease financing and other loan facilities and payments from collaborators. In addition, during the second quarter of 2000, we completed our initial public offering raising $124.5 million in net cash proceeds. We intend to continue to use the proceeds for research and development activities, capital expenditures, working capital and other general corporate purposes. As of September 30, 2001, we had approximately $132.3 million in cash, cash equivalents and short-term investments.

Our operating activities used cash of $13.3 million for the nine months ended September 30, 2001, compared to cash used of $4.7 million for the nine months ended September 30, 2000. Cash used in operating activities related primarily to funding net operating losses, partially offset by an increase in non-cash charges related to depreciation and amortization of deferred stock compensation, goodwill, in-process research and development, and other intangible assets.

Our investing activities used cash of $0.6 million for the nine months ended September 30, 2001, compared to cash used of $84.9 million for the corresponding

period in 2000. During 2001, investing activities consisted primarily of purchases of short-term investments and property and equipment, which were partially offset by maturities of short-term investments. During 2000, our investing activities consisted of purchases of property and equipment and short-term investments. We expect to continue to make significant investments in research and development and our administrative infrastructure, including the purchase of property and equipment to support our expanding operations.

Our financing activities provided cash of $37.2 million and $123.5 million for the nine months ended September 30, 2001 and 2000, respectively. The 2001 amounts consisted primarily of proceeds from a $30.0 million convertible note entered into as part of our collaboration agreement with Protein Design Labs in May 2001 and $10.0 million in proceeds from the issuance of common stock to Bristol-Myers Squibb in July 2001. The 2000 amounts consisted primarily of proceeds from our initial public offering in April 2000.

We believe that our current cash and cash equivalents, short-term investments and committed funding to be received from collaborators will be sufficient to satisfy our anticipated cash needs for at least the next two years. However, it is possible that we will seek additional financing within this timeframe. We may raise additional funds through public or private financings, collaborative relationships, debt or other arrangements. In July 2001, we filed a registration statement on Form S-3 to offer and sell up to $150.0 million of common stock. We have no current commitments to offer or sell securities with respect to shares that may be offered or sold pursuant to that filing. We cannot assure you that additional funding, if sought, will be available or, even if available, will be available on terms favorable to us. Further, any additional equity financing may be dilutive to stockholders, and debt financing, if available, may involve restrictive covenants. Our failure to raise capital when needed may harm our business and operating results.

RECENT ACCOUNTING PRONOUNCEMENTS

In July 2001, the FASB issued SFAS No. 141 "Business Combinations" ("SFAS No. 141"), which establishes financial accounting and reporting for business combinations and supersedes APB Opinion No. 16, "Business Combinations," and FASB Statement No. 38, "Accounting for Preacquisition Contingencies of Purchased Enterprises." SFAS No. 141 requires that all business combinations be accounted for using one method, the purchase method. The provisions of SFAS No. 141 apply to all business combinations initiated after June 30, 2001. The adoption of SFAS No. 141 had no material impact on our financial reporting and related disclosures.

In July 2001, the FASB issued SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142"), which establishes financial accounting and reporting for acquired goodwill and other intangible assets and supersedes APB Opinion No. 17, "Intangible Assets." SFAS No. 142 addresses how intangible assets that are acquired individually or with a group of other assets (but not those acquired in a business combination) should be accounted for in financial statements upon their acquisition, and after they have been initially recognized in the financial statements. The provisions of SFAS No. 142 are effective for fiscal years beginning after December 15, 2001. Exelixis will adopt SFAS No. 142 during the first quarter of fiscal 2002, and is in the process of evaluating the impact of implementation on its financial position and results of operation.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"), which is effective for fiscal years beginning after December 15, 2001 and interim periods within those fiscal periods. SFAS No. 144 supersedes SFAS No. 121 "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" and parts of APB Opinion No. 30, "Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions relating to extraordinary items", however, SFAS No. 144 retains the requirement of Opinion 30 to report discontinued operations separately from continuing operations and extends that reporting to a component of an entity that either has been disposed of (by sale, by abandonment or in a distribution to owners) or is classified as held for sale. SFAS 144 addresses financial accounting and reporting for the impairment of certain long-lived assets and for long-lived assets to be disposed of. Management does not expect the adoption of SFAS 144 to have a material impact on the Company's financial position and results of operations.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our investments are subject to interest rate risk, and our interest income may fluctuate due to changes in U.S. interest rates. By policy, we limit our investments to money market instruments, debt securities of U.S. government agencies and debt obligations of U.S. corporations. We manage market risk by our diversification requirements, which limit the amount of our portfolio that can be invested in a single issuer. We manage credit risk by limiting our purchases to high quality issuers. Through our money manager, we maintain risk management control systems to monitor interest rate risk. The risk management control systems use analytical techniques, including sensitivity analysis. A hypothetical 1% adverse move in interest rates along the entire interest rate yield curve would cause an approximately $0.6 million decline in the fair value of our financial instruments at September 30, 2001.

All highly liquid investments with an original maturity of three months or less

from the date of purchase are considered cash equivalents. Exelixis views its available-for-sale portfolio as available for use in current operations. Accordingly, we have classified all investments with an original maturity date greater than three months as short-term, even though the stated maturity date may be one year or more beyond the current balance sheet date.

Due to our German operations, we have market risk exposure to adverse changes in foreign currency exchange rates. The revenues and expenses of our subsidiary, Artemis, are denominated in Deutche Marks. At the end of each period, the revenues and expenses of this subsidiary are translated into U.S. dollars using the average currency rate in effect for the period, and assets and liabilities are translated into U.S. dollars using the exchange rate in effect at the end of the period. Fluctuations in exchange rates, therefore, impact our financial condition and results of operations as reported in U.S. dollars. To date, we have not experienced any significant negative impact as a result of fluctuations in foreign currency markets. As a policy, we do not engage in speculative or leveraged transactions, nor do we hold financial instruments for trading purposes. We will periodically analyze our exposure to foreign currency fluctuations and may adjust our policies to allow for financial hedging techniques to minimize exchange rate risk.

PART II. OTHER INFORMATION

ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

(c) On July 17, 2001, Exelixis entered into a stock purchase agreement with Bristol-Myers Squibb Company, a Delaware corporation ("BMS"). In connection with a corporate collaboration and pursuant to the terms of the stock purchase agreement, Exelixis issued 600,600 shares of its common stock (the "Shares") at a purchase price of $33.30 per share to BMS in exchange for approximately $20,000,000 in cash. Pursuant to the terms of the stock purchase agreement, BMS has agreed not to offer or sell any of the Shares prior to July 17, 2002, without the prior written consent of Exelixis.

The Shares were issued to BMS in a private placement pursuant to an exemption from registration in reliance upon Section 4(2) and Rule 506 of Regulation D of the Securities Act of 1933. BMS is an "accredited investor," as such term is defined in Rule 501 of Regulation D.

On August 27, 2001, Exelixis filed a registration statement on Form S-3 (No. 333-68436) with the Securities and Exchange Commission to register the Shares for resale. The registration statement was declared effective by the Securities and Exchange Commission on October 26, 2001.

(d) In May 2000, we completed our initial public offering for aggregate proceeds of approximately $136.0 million. In connection with the offering, We paid a total of approximately $9.5 million in underwriting discounts and commissions and $2.0 million in other offering costs and expenses. After deducting the underwriting discounts and commissions and the offering costs and expenses, the net proceeds from the offering were approximately $124.5 million.

From the time of receipt through September 30, 2001, the proceeds from our initial public offering were used for research and development activities, capital expenditures, working capital and other general corporate purposes. In the future, Exelixis intends to use the net proceeds in a similar manner. As of September 30, 2001, approximately $88.6 million of the proceeds remained available and were primarily invested in short-term marketable securities.

ITEM 5. OTHER INFORMATION - RISK FACTORS

WE HAVE A HISTORY OF NET LOSSES. WE EXPECT TO CONTINUE TO INCUR NET LOSSES, AND WE MAY NOT ACHIEVE OR MAINTAIN PROFITABILITY.

We have incurred net losses each year since our inception, including a net loss of approximately $52.9 million for the nine months ended September 30, 2001. As of that date, we had an accumulated deficit of approximately $183.0 million. We expect these losses to continue and anticipate negative cash flow for the foreseeable future. The size of these 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. Our research and development expenditures and general and administrative costs have exceeded our revenues to date, and we expect to spend significant additional amounts to fund research and development in order to enhance our core technologies and undertake product development. As a result, we expect that our operating expenses will increase significantly in the near term and, consequently, we will need to generate significant additional revenues to achieve profitability. Even if we do increase our revenues and achieve profitability, we may not be able to sustain or increase profitability.

WE WILL NEED ADDITIONAL CAPITAL IN THE FUTURE, WHICH MAY NOT BE AVAILABLE TO US.

Our future capital requirements will be substantial, and will depend on many factors including:

- payments received under collaborative agreements;
- the progress and scope of our collaborative and independent research and development projects;
- our ability to successfully continue development of a recently acquired cancer compound;
- our need to expand our other proprietary product development efforts

as well as develop manufacturing and marketing capabilities to commercialize products; and

- the filing, prosecution and enforcement of patent claims.

We anticipate that our current cash and cash equivalents, short-term investments and funding to be received from collaborators will enable us to maintain our currently planned operations for at least the next two years. Changes to our current operating plan may require us to consume available capital resources significantly sooner than we expect. For example, our newly acquired cancer product from our recent relationship with Bristol-Myers Squibb will require significant resources for development that were not in our operational plans prior to acquiring the cancer product. We may be unable to raise sufficient additional capital when we need it, on favorable terms, or at all. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. 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 our ability to incur further indebtedness. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or to obtain funds by entering into financing, supply or collaboration agreements on unattractive terms.

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 administrative and operational infrastructure. As our operations expand, we expect that we will need to manage multiple locations, including additional locations outside of the United States, 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 operational, financial and management controls, reporting systems and procedures. We may not be able to successfully implement improvements to our management information and control systems in an efficient or timely manner and may discover deficiencies in existing systems and controls. In addition, acquisitions involve the integration of different financial and management reporting systems. We may not be able to successfully integrate the administrative and operational infrastructure without significant additional improvements and investments in management systems and procedures.

WE ARE DEPENDENT ON 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.

Substantially all of our revenues to date have been derived from collaborative research and development agreements. Revenues from research and development collaborations depend upon continuation of the collaborations, the achievement of milestones and royalties derived from future products developed from our 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 collaborative arrangements with other parties in the area or field of exclusivity.

We currently have continuing collaborative research agreements with Bayer, Bristol-Myers Squibb (two agreements), Dow AgroSciences, Aventis CropSciences, Protein Design Labs, Elan Pharmaceuticals and Scios. Our current collaborative agreement with Bayer is scheduled to expire in 2008, after which it will automatically be extended for one-year terms unless terminated by either party upon 12-month written notice. Our agreement permits Bayer to terminate our collaborative activities prior to 2008 upon the occurrence of specified conditions, such as the failure to agree on key strategic issues after a period of years or the acquisition of Exelixis by certain specified third parties. In addition, our agreements with Bayer are subject to termination at an earlier date if two or more of our Chief Executive Officer, Chief Scientific Officer, Agricultural Biotechnology Program Leader and Chief Informatics Officer cease to have a relationship with us within six months of each other and we are unable to find replacements acceptable to Bayer. The first of our collaborative agreements with Bristol-Myers Squibb expires in September 2002. The funded research term of the second collaborative arrangement, entered into in July 2001, expires in July 2005. Our collaborative agreement with Dow AgroSciences is scheduled to expire in July 2003, after which Dow AgroSciences has the option to renew on an annual basis. Our collaborative research arrangement with Aventis is scheduled to expire in June 2004. Aventis has the right to terminate the research arrangement prior to the expiration date, provided that it pays the annual research funding amount due for the year following termination. Thereafter, the arrangement renews annually unless Aventis terminates automatic renewal prior to the scheduled date of renewal. The Aventis arrangement is conducted through a limited liability company, Agrinomics, which is owned equally by Aventis and Exelixis. Aventis may surrender its interest in Agrinomics and terminate the related research collaboration prior to the scheduled expiration upon the payment of the subsequent year's funding commitment. Bayer and Aventis recently announced an agreement for Bayer to acquire Aventis. The acquisition is expected to close during the first quarter of 2002. At this time we are not able to predict the impact of the acquisition of Aventis on our collaboration agreement. Our agreement with Protein Design

Labs is scheduled to expire in May 2003. Protein Design Labs has a unilateral right to renew for additional twelve- and six-month periods thereafter. The five-year term of the convertible promissory note entered into as part of this arrangement is unaffected by whether or not Protein Design Labs renews. If these existing agreements are not renewed or if we are unable to enter into new collaborative agreements on commercially acceptable terms, our revenues and product development efforts may be adversely affected. In August and October of 2002, we signed agreements to deliver high-throughput-screening compounds with Elan Pharmaceuticals and Scios, respectively, which have terms of three and four years, respectively. These agreements are subject to early termination if we fail to achieve certain quality and quantity commitments.

We recently announced the reacquisition, effective February 2002, of future rights to research programs in metabolism and Alzheimer's disease previously licensed exclusively to Pharmacia Corporation. The existing agreement with Pharmacia will terminate as of that date. Pharmacia will retain rights to targets under the existing agreement selected prior to the reacquisition date, subject to the payment of milestones for certain of those targets selected and royalties for future development of products against or using those targets but will have no other obligations to make payments to us, including approximately $9.0 million in annual funding that would otherwise be payable for two years if we had not elected to reacquire rights to the research at this time. Although we anticipate entering into future collaborations involving either or both of these programs, there can be no assurance that we will be able to enter into new collaborative agreements or that such collaborations will provide revenues equal to or exceeding those otherwise obtainable under the Pharmacia collaboration.

CONFLICTS WITH OUR COLLABORATORS COULD JEOPARDIZE THE OUTCOME OF OUR COLLABORATIVE AGREEMENTS AND OUR ABILITY TO COMMERCIALIZE PRODUCTS.

We intend to conduct proprietary research programs in specific disease and agricultural product areas that are not covered by our collaborative agreements. Our pursuit of opportunities in agricultural and pharmaceutical markets could, however, 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 collaborative agreements, and we should be precluded from such internal activities. Moreover, disagreements with our collaborators could develop over rights to our intellectual property. In addition, our collaborative agreements may have provisions that give rise to disputes regarding the rights and obligations of the parties. Any conflict with our collaborators could lead to the termination of our collaborative agreements, delay collaborative activities, reduce 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.

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 obligations thereunder. Further, our collaborators may elect not to develop products arising out of our collaborative arrangements or may fail to devote sufficient resources to the development, manufacture, market or sale of such products. Certain of our collaborators could also become our 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 and may fail to lead to commercialized products.

WE ARE DEPLOYING UNPROVEN TECHNOLOGIES, AND WE MAY NOT BE ABLE TO DEVELOP COMMERCIALLY SUCCESSFUL PRODUCTS.

You must evaluate us in light of the uncertainties and complexities affecting a biotechnology company. Our technologies are still in the early stages of development. Our research and operations thus far have allowed us to identify a number of product targets for use by our collaborators and our own internal development programs. We are not certain, however, of the commercial value of any of our current or future targets, and we may not be successful in expanding the scope of our research into new fields of pharmaceutical or pesticide research, or other agricultural applications such as enhancing plant traits to produce superior crop yields, disease resistance or increased nutritional content. Significant research and development, financial resources and personnel will be required to capitalize on our technology, develop commercially viable products and obtain regulatory approval for such products.

WE HAVE NO EXPERIENCE IN DEVELOPING, MANUFACTURING AND MARKETING PRODUCTS AND MAY BE UNABLE TO COMMERCIALIZE PROPRIETARY PRODUCTS.

We recently acquired a development compound, an analog to rebeccamycin (Rebeccamycin), directed against cancer under our recent collaborative arrangement with Bristol-Myers Squibb. Clinical development of Rebeccamycin to date has been conducted by the National Cancer Institute, or the NCI, and manufacturing of this product has been the responsibility of Bristol-Myers Squibb. Rebeccamycin has recently completed Phase I clinical studies and is in Phase I and early Phase II clinical trials being conducted by the NCI. We have an agreement with the NCI to use the results of the clinical studies they have conducted and are conducting in order to determine what additional studies, if any, will be conducted by the NCI or us. There can be no assurance that we will successfully agree upon further development plans, the respective rights and

obligations of the parties to conduct additional clinical studies or the timing of such studies. In addition, there can be no assurance that the clinical studies conducted to date will support further clinical development or be accepted by the Food and Drug Administration, or FDA, in conjunction with any application for product approval submitted to the FDA for Rebeccamycin. Moreover, although Bristol-Myers Squibb has provided the NCI with sufficient quantities of Rebeccamycin to complete the existing Phase I and II clinical studies, development necessary for further clinical studies and product approval will require us to either develop internal manufacturing capabilities or retain a third party to manufacture the product. In addition, we have recently hired a new Senior Vice President responsible for clinical development of this product, as well as any new potential products that we may develop. As a result, we have limited experience in clinical development and no experience in manufacturing potential drug products. Accordingly, the development of Rebeccamycin is subject to significant risk and uncertainty, particularly with respect to our ability to successfully develop, manufacture and market Rebeccamycin as a product.

With respect to products developed against our proprietary drug targets, we will rely on our collaborators to develop and commercialize products based on our research and development efforts. We have limited or no experience in using the targets that we identify to develop our own proprietary products. Our recent success in applying our drug development capabilities to our proprietary targets in cancer are subject to significant risk and uncertainty, particularly with respect to our ability to meet currently estimated timelines and goals for completing preclinical development efforts and filing an Investigational New Drug Application, or IND, for compounds developed. In order for us to commercialize products, we would need to significantly enhance our capabilities with respect to product development, and establish manufacturing and marketing capabilities, either directly or through outsourcing or licensing arrangements. We may not be able to enter into such outsourcing or licensing agreements on commercially reasonable terms, or at all.

SINCE OUR TECHNOLOGIES HAVE MANY POTENTIAL APPLICATIONS AND WE HAVE LIMITED RESOURCES, OUR FOCUS ON A PARTICULAR AREA MAY RESULT IN OUR FAILURE TO CAPITALIZE ON MORE PROFITABLE AREAS.

We have limited financial and managerial resources. This requires us to focus on product candidates in specific industries and forego opportunities with regard to other products and industries. For example, depending on our ability to allocate resources, a decision to concentrate on a particular agricultural program may mean that we will not have resources available to apply the same technology to a pharmaceutical project. While our technologies may permit us to work in both areas, resource commitments may require trade-offs resulting in delays in the development of certain programs or research areas, which may place us at a competitive disadvantage. Our decisions impacting resource allocation may not lead to the development of viable commercial products and may divert resources from more profitable market opportunities. Moreover, our recent acquisition of Rebeccamycin will require that resources and management time be directed to clinical development and manufacturing of this potential product. There can be no assurance that allocating resources and time to these efforts will allow us to remain competitive in existing programs and potential areas of future research. The resources dedicated to the development of Rebeccamycin may limit or hinder our ability to meet currently estimated timelines and goals for completing preclinical development efforts and filing an IND for our proprietary compounds.

OUR COMPETITORS MAY DEVELOP PRODUCTS AND TECHNOLOGIES THAT MAKE OURS OBSOLETE.

The biotechnology industry is highly fragmented and is characterized by rapid technological change. In particular, the area of gene research is a rapidly evolving field. We face, and will continue to face, intense competition from large biotechnology and pharmaceutical companies, as well as academic research institutions, clinical reference laboratories and government agencies that are pursuing research activities similar to ours. Some of our competitors have entered into collaborations with leading companies within our target markets, including some of our existing collaborators. Our future success will depend on 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 staffs 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.

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 on 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. The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the U.S., and many companies have encountered significant problems in protecting and defending such rights in foreign jurisdictions. 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. 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, invalidated or fail to provide us with any competitive advantages.

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 on our ability to avoid infringing patents and proprietary rights of third parties, and not breaching 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 rely on licenses from third parties, which may not be available on commercially reasonable terms, or at all.

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 these 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.

THE LOSS OF KEY PERSONNEL OR THE INABILITY TO ATTRACT AND RETAIN ADDITIONAL PERSONNEL COULD IMPAIR OUR ABILITY TO EXPAND OUR OPERATIONS.

We are highly dependent on 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. In addition, recruiting and retaining qualified scientific personnel to perform future research and development work will be critical to our success. We do not currently have sufficient executive management and technical personnel to fully execute our business plan. There is currently a shortage of skilled executives and employees with technical expertise, and this shortage is likely to continue. As a result, competition for skilled personnel is intense and turnover rates are high. Although we believe we will be successful in attracting and retaining qualified personnel, competition for experienced scientists from numerous companies, academic and other research institutions may limit our ability to do so.

Our business operations will require additional expertise in specific industries and areas applicable to products identified and developed through our technologies. These activities will require the addition of new personnel, including management and technical personnel and the development of additional expertise by existing employees. The inability to attract such personnel or to develop this expertise could prevent us from expanding our operations in a timely manner, or at all.

OUR COLLABORATIONS WITH OUTSIDE SCIENTISTS MAY BE SUBJECT TO RESTRICTION AND CHANGE.

We work with scientific advisors and collaborators at academic and other institutions that assist us in our research and development efforts. These scientists are not our employees and may have other commitments that would limit their availability to us. Although our scientific 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 addition, although our scientific advisors and collaborators sign agreements not to disclose our confidential information, it is possible that valuable proprietary knowledge may become publicly known through them.

OUR POTENTIAL THERAPEUTIC PRODUCTS 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.

The FDA must approve any drug or biologic product before it can be marketed in the U.S. Any products resulting from our research and development efforts must also be approved by the regulatory agencies of foreign governments before the product can be sold outside the U.S. Before a new drug application or biologics license 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. The regulatory process also requires preclinical testing. 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. The clinical development and regulatory approval process is expensive and time consuming. Any failure to obtain regulatory approval could delay or prevent us from commercializing products.

Our efforts to date have been primarily limited to identifying targets. Significant research and development efforts will be necessary before any products resulting from such targets can be commercialized. If regulatory approval is granted to any of our products, this approval may impose limitations on the uses for which a product may be marketed. Further, once regulatory approval is obtained, a marketed product and its manufacturer are subject to continual review, and discovery of previously unknown problems with a product or manufacturer may result in restrictions and sanctions with respect to the product, manufacturer and relevant manufacturing facility, including withdrawal of the product from the market.

SOCIAL ISSUES MAY LIMIT THE PUBLIC ACCEPTANCE OF GENETICALLY ENGINEERED PRODUCTS, WHICH COULD REDUCE DEMAND FOR OUR PRODUCTS.

Although our technology is not dependent on genetic engineering, genetic engineering plays a prominent role in our approach to product development. For example, research efforts focusing on plant traits may involve either selective breeding or modification of existing genes in the plant under study. Public attitudes may be influenced by claims that genetically engineered products are unsafe for consumption or pose a danger to the environment. Such claims may prevent our genetically engineered products from gaining public acceptance. The commercial success of our future products will depend, in part, on public acceptance of the use of genetically engineered products including drugs and plant and animal products.

The subject of genetically modified organisms has received negative publicity, which has aroused public debate. For example, certain countries in Europe are considering regulations that may ban products or require express labeling of products that contain genetic modifications or are "genetically modified." Adverse publicity has resulted in greater regulation internationally and trade restrictions on imports of genetically altered products. If similar action is taken in the U.S., genetic research and genetically engineered products could be subject to greater domestic regulation, including stricter labeling requirements. To date, our business has not been hampered by these activities. However, such publicity in the future may prevent any products resulting from our research from gaining market acceptance and reduce demand for our products.

LAWS AND REGULATIONS MAY REDUCE OUR ABILITY TO SELL GENETICALLY ENGINEERED PRODUCTS THAT OUR COLLABORATORS OR WE DEVELOP IN THE FUTURE.

Our collaborators or we may develop genetically engineered agricultural and animal products. The field-testing, production and marketing of genetically engineered products are subject to regulation by federal, state, local and foreign governments. Regulatory agencies administering existing or future regulations or legislation may prevent us from producing and marketing genetically engineered products in a timely manner or under technically or commercially feasible conditions. In addition, regulatory action or private litigation could result in expenses, delays or other impediments to our product development programs and the commercialization of products.

The FDA has released a policy statement stating that it will apply the same regulatory standards to foods developed through genetic engineering as it applies to foods developed through traditional plant breeding. Genetically engineered food products will be subject to premarket review, however, if these products raise safety questions or are deemed to be food additives. Our products may be subject to lengthy FDA reviews and unfavorable FDA determinations if they raise questions regarding safety or our products are deemed to be food additives.

The FDA has also announced that it will not require genetically engineered agricultural products to be labeled as such, provided that these products are as safe and have the same nutritional characteristics as conventionally developed products. The FDA may reconsider or change its policies, and local or state authorities may enact labeling requirements, either of which could have a material adverse effect on our ability or the ability of our collaborators to develop and market products resulting from our efforts.

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

In addition, our collaborators may use hazardous materials in connection with our collaborative efforts. To our knowledge, their work is performed in accordance with applicable biosafety regulations. In the event of a lawsuit or investigation, however, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials use 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 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 license, milestone or other fees;
- payments of licensing fees to third parties;
- acceptance of our technologies and platforms;
- the success rate of our discovery efforts leading to milestones 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;
- general and industry-specific economic conditions that may affect our collaborators' research and development expenditures; and
- exposure to fluctuations in foreign currency.

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

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

OUR STOCK PRICE MAY BE EXTREMELY VOLATILE.

We believe the trading price of our common stock will remain highly volatile and may fluctuate substantially due to factors such as the following:

- the announcement of new products or services by us or our competitors;
- quarterly variations in our or our competitors' results of operations;
- failure to achieve operating results projected by securities analysts;
- changes in earnings estimates or recommendations by securities analysts;
- developments in the biotechnology industry;
- acquisitions of other companies or technologies; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

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

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

WE ARE EXPOSED TO RISKS ASSOCIATED WITH ACQUISITIONS.

We have made, and may in the future make, acquisitions of, or significant investments in, businesses with complementary products, services and/or

technologies. Acquisitions involve numerous risks, including, but not limited to:

- difficulties and increased costs in connection with integration of the personnel, operations, technologies and products of acquired companies;
- diversion of management's attention from other operational matters;
- the potential loss of key employees of acquired companies;
- the potential loss of key collaborators of the acquired companies;
- lack of synergy, or the inability to realize expected synergies, resulting from the acquisition;
- exposure to fluctuations in foreign currency;
- differences in foreign laws, business practices, statutes, regulations and tax provisions; 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.

IF PRODUCT LIABILITY LAWSUITS ARE SUCCESSFULLY BROUGHT AGAINST US, WE COULD FACE SUBSTANTIAL LIABILITIES THAT EXCEED OUR RESOURCES.

We may be held liable if any product our collaborators or we develop causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing or sale. Although we intend to obtain general liability and product liability insurance, this insurance may be prohibitively expensive, or may not fully cover our potential liabilities. Inability to obtain sufficient insurance coverage at an acceptable cost or to otherwise protect ourselves against potential product liability claims could prevent or inhibit the commercialization of products developed by our collaborators or us.

OUR HEADQUARTERS' FACILITIES ARE LOCATED NEAR KNOWN EARTHQUAKE FAULT ZONES, AND THE OCCURRENCE OF AN EARTHQUAKE OR OTHER CATASTROPHIC DISASTER COULD CAUSE DAMAGE TO OUR FACILITIES AND EQUIPMENT, WHICH COULD REQUIRE US TO CEASE OR CURTAIL OPERATIONS.

Given the location of our headquarters in South San Francisco, California, those facilities are vulnerable to damage from earthquakes. In addition, all of our facilities are also vulnerable to damage from other types of disasters, including fire, floods, power loss, communications failures and similar events. If any disaster were to occur, our ability to operate our business at our facilities would 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. The insurance we maintain may not be adequate to cover our losses resulting from disasters or other business interruptions. Accordingly, an earthquake or other disaster could materially and adversely harm our ability to conduct business.

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 outstanding options and warrants) in the public market, the market price of our common stock could fall. These sales also might make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deemed appropriate. In October 2000, a significant number of shares of our common stock held by existing stockholders became freely tradable, subject in some instances to the volume and other limitations of Rule 144. In addition, in connection with our recent acquisitions and corporate collaborations, we issued and registered for sale a significant number of shares of common stock. Sales of these shares and other shares of common stock held by existing stockholders could cause the market price of our common stock to decline.

SOME OF OUR EXISTING STOCKHOLDERS CAN EXERT CONTROL OVER US, AND MAY NOT MAKE DECISIONS THAT ARE IN THE BEST INTERESTS OF ALL 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 you would not approve.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

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

(b) Reports on Form 8-K

On July 18, 2001, the Company filed an Item 5 Current Report on Form 8-K announcing the signing of a collaboration agreement with Bristol-Myers Squibb.

On July 26, 2001, the Company filed an Item 5 Current Report on Form 8-K announcing the reacquisition, effective February 2002, of future rights to research programs in metabolism and alzheimer's disease previously licensed exclusively to Pharmacia Corporation.

On August 9, 2001, the Company filed a Reg FD, Item 9 Current Report on Form 8-K, in connection with the announcement of the Company's second quarter financial results.

SIGNATURE

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: November 14, 2001

EXELIXIS, INC.

/s/ Glen Y. Sato

Glen Y. Sato
Chief Financial Officer, Vice President of Legal Affairs and Secretary
(Principal Financial and Accounting Officer)

INDEX TO EXHIBITS

Exhibit Number	Description of Document
3.1	Amended and Restated Certificate of Incorporation (1)
3.2	Amended and Restated Bylaws (1)
4.1	Specimen Common Stock Certificate (1)
10.29	Form of Stock Purchase Agreement, dated as of July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company (2)
10.30*	Cancer Collaboration Agreement, dated July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company
10.31*	License Agreement, dated July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company

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(1) Filed with Exelixis' Registration Statement on Form S-1, as amended (No. 333-96335), declared effective by the Securities and Exchange Commission on April 10, 2000, and incorporated herein by reference.
(2) Filed with Exelixis' Registration Statement on Form S-3, as filed on August 27, 2001(No. 333-68436) and incorporated by reference.
* Confidential treatment requested for certain portions of this exhibit.

[*] = 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 10.30

CANCER COLLABORATION AGREEMENT

THIS CANCER COLLABORATION AGREEMENT (the "Agreement") is made and entered into as of July 17, 2001 (the "Effective Date") by and between EXELIXIS, INC., a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083 ("Exelixis"), and BRISTOL-MYERS SQUIBB COMPANY, a Delaware corporation having its principal place of business at Route 206 and Province Line Road, Princeton, NJ 08543 ("BMS"). Exelixis and BMS are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. BMS is a multinational health care company that has expertise and capability in developing and marketing human pharmaceuticals and has research and development programs.

B. Exelixis is a multinational biotechnology company that has expertise and proprietary technology relating to genetic model systems, functional genomics and computational biology and is applying such technology to discover and validate targets for drug discovery in a variety of disease areas.

C. BMS and Exelixis desire to establish a collaboration to apply such Exelixis technology and expertise to the identification and characterization of biochemical pathways and targets in specific research areas relevant to cell growth and proliferation, to generate small molecule therapeutic or prophylactic compounds directed against such targets, and to provide for the development and commercialization of novel therapeutic and prophylactic products based on such research.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings as used in this Agreement:

1.1 "ABANDONED TARGET" means [*]

1.2 "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 1.2, 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 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.

1.3 "ASSAY" means [*].

1.4 "BACK-UP COMPOUND" means [*].

1.5 "BMS COLLABORATION PRODUCT" means [*].

1.6 "BMS KNOW-HOW" means all Information Controlled by BMS (other than BMS Patents) and its Affiliates during the term of the Agreement that is necessary or reasonably useful for Exelixis to exercise the rights licensed or granted to it under Sections 5.3 and 5.5 hereof and/or to perform its obligations to the Collaboration under this Agreement.

1.7 "BMS PATENTS" means all Patents Controlled by BMS and its Affiliates, including Patents Controlled jointly with Exelixis, during the term of this Agreement that are necessary or reasonably useful for Exelixis to exercise the rights licensed or granted to it under Section 5.3 (or which may be acquired by it under Section 5.5 hereof) and/or to perform its obligations to the Collaboration under this Agreement.

1.8 "BMS PRODUCT" means [*].

1.9 "BMS SELECTED TARGET" means [*].

1.10 "BMS SOLE PRODUCT" means [*].

1.11 "COLLABORATION" means all the activities performed by or on behalf of Exelixis or BMS in the course of performing work contemplated in Article 2 or Section 3.1 or 3.5.

1.12 "COLLABORATION COMPOUND" means [*].

For clarity, any compound licensed in by BMS from Third Parties for activity

against a BMS Selected Target shall not be deemed to be a Collaboration Compound for milestone and royalty purposes hereunder unless such compound is (A) acquired as a result of the use or subsequently developed through the use, to any material extent, of any Information relating to such BMS Selected Target that Remained Confidential to Exelixis at the time of use or (B) developed in a manner or acquired as a result of activity that would otherwise have infringed a claim of an issued or published (and subsequently issued) Exelixis Patent.

BMS shall not have any development or commercialization license rights under Section 5.1(a)(iv) with respect to any compound that fails to meet the definition of a Collaboration Compound. The preceding sentence shall not be interpreted as preventing BMS from developing or commercializing, on account of its ability to modulate a target other than a BMS Selected Target, a derivative of a Lead Compound or a Back-up Compound wherein such derivative (A) was made by BMS pursuant to its license in Section 5.1(a)(iv), (B) is not a Collaboration Compound and (C) (1) for which the manufacture and use of such derivative would not infringe an EXEL Patent and (2) is not manufactured, developed or commercialized through the use of EXEL Know-How that Remains Confidential at the time of use.

1.13 "CONTROLLED" means, with respect to any gene, protein, compound, material, Information or intellectual property right, that the Party owns or has a license to such gene, protein, 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 gene, protein, 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.

1.14 "DEVELOPMENT FIELD" means [*].

1.15 "DILIGENT EFFORTS" means [*].

1.16 "DECISION POINT 1 (DP1) APPROVAL" means [*].

1.17 "DP1 ORTHOLOGUE" means [*].

1.18 "DRAFT TARGET POOL" means [*].

1.19 "ELIGIBLE TARGET" means [*].

1.20 "EXEL COMPOUND" means [*].

1.21 "EXEL KNOW-HOW" means all Information Controlled by Exelixis (other than EXEL Patents or Target Inventions invented solely or jointly by BMS) and its Affiliates during the term of the Agreement that is necessary or reasonably useful for BMS to exercise the rights licensed or granted to it under Sections 5.1 and 5.2 hereof and/or to perform its obligations to the Collaboration under this Agreement.

1.22 "EXEL PATENTS" means all Patents Controlled by Exelixis and its Affiliates (other than Patents claiming Target Inventions invented solely by BMS or jointly by BMS with Exelixis, but including Patent claiming Target Inventions invented solely by Exelixis), including Patents Controlled jointly with BMS, during the term of the Agreement that are necessary or reasonably useful for BMS to exercise the rights licensed or granted to it under Section 5.1 hereof (or which may be acquired by it under Sections 5.2(b) and 5.5 hereof) and/or to perform its obligations to the Collaboration under this Agreement.

1.23 "EXEL PRODUCT" means [*].

1.24 "EXEL SELECTED TARGET" means [*].

1.25 "GENETIC ENTRY POINT" means [*].

1.26 "GENETIC SCREEN" means [*].

1.27 "INFORMATION" means information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, 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, and patent and other legal information or descriptions.

1.28 "INVENTION" means [*].

1.29 "JOINT INVENTION" means [*].

1.30 "JOINT MANAGEMENT TEAM" or "JMT" means the committee described in Section 2.3.

1.31 "JOINT SCIENTIFIC COMMITTEE" or "JSC" means the committee described in Section 2.4.

1.32 "LEAD COMPOUND" means [*].

1.33 "MAJOR MARKET" means [*].

1.34 "MOA AGREEMENT" means the Research Collaboration and Technology Transfer Agreement between Exelixis and BMS dated September 14, 1999, as heretofore amended and as may be amended from time to time hereafter.

1.35 "MODEL SYSTEM TARGET" means [*].

1.36 "NDA" means a New Drug Application filed with the United States Food and Drug Administration in conformance with applicable laws and regulations, or the foreign equivalent of any such application in any other country.

1.37 "NET SALES" means [*].

In the event a Product or Pharmacogenomic 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 or Pharmacogenomic 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 or Pharmacogenomic Product portion of the end-user product and/or service when such Product or Pharmacogenomic 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 Pharmacogenomic 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 or Pharmacogenomic 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, it is agreed that drug delivery vehicles, adjuvants, and excipients shall not be deemed to be "active ingredients" or "active functional elements," the presence of which in a Product or Pharmacogenomic Product would be deemed to create a combination product subject to the terms of the preceding paragraph.

1.38 "PATENT" means (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 without limitation any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof and (b) pending applications for letters patent which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority 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 without limitation any continuation, division or continuation-in-part thereof and any provisional applications.

1.39 "PHARMACOGENOMIC PRODUCT" means [*].

1.40 "PHASE I CLINICAL TRIAL" means a trial on sufficient numbers of normal volunteers and patients that is designed to establish that a pharmaceutical product is safe for its intended use, and to support its continued testing in Phase II Clinical Trials.

1.41 "PHASE II CLINICAL TRIAL" means a trial on sufficient numbers of patients that is designed to establish the safety and biological activity of a pharmaceutical product for its intended use, and to define warnings, precautions and adverse reactions that are associated with the pharmaceutical product in the dosage range to be prescribed.

1.42 "PHASE III CLINICAL TRIAL" means a trial on sufficient numbers of patients that is designed to establish that a pharmaceutical product is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with the pharmaceutical product in the dosage range to be prescribed, and to support Regulatory Approval of such pharmaceutical product or label expansion of such pharmaceutical product.

1.43 "PHENOTYPIC SCREEN" means [*].

1.44 "PRODUCT" means [*].

1.45 "PTP" means [*].

1.46 "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 Commission or the Council of the European Union), 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.

1.47 "REMAINS CONFIDENTIAL" means, with respect to Information generated pursuant to the Collaboration that is used by or on behalf of a Party or its Affiliate or sublicensee, that such Information, at the time of such use, was not then in the public domain and was not then known to a Party or any of its Affiliates or licensees as a result of disclosure by a Third Party entitled to disclose same without restriction as to confidentiality.

1.48 "RESEARCH FIELD" means cancer research [*].

1.49 "RESEARCH PLAN" shall have the meaning set forth in Section 2.7.

1.50 "RESEARCH TERM" shall have the duration set forth in Section 2.6.

1.51 "REVERTED TARGET" shall have the meaning set forth in Section 3.1.

1.52 "SELECTED TARGET" means [*].

1.53 "SOLE INVENTION" means [*].

1.54 "TARGET" means [*].

1.55 "TARGET INVENTION" means [*].

1.56 "THIRD PARTY" means any entity other than (i) Exelixis, (ii) BMS or (iii) an Affiliate of either Party.

1.57 "THRESHOLD BMS PRODUCT" means [*].

1.58 "VALID CLAIM" means (a) a claim in an issued Patent, as described in Section 1.38(a), which has not (i) expired or been canceled, (ii) been declared invalid by an unreversed and unappealable 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, or (b) a claim under a pending application for a Patent, as described in Section 1.38(b), that has been pending five (5) years or less from its date of filing, and which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority for whatever reason (and from which no appeal is or can be taken), or abandoned.

2. RESEARCH PROGRAM

2.1 OVERVIEW. The general goals and intent of the Collaboration are to apply the Exelixis technology to discovering Eligible Targets that may be useful for the discovery and development of small molecule drugs for the prevention, treatment or cure of cancer. [*]. The genes arising from such research shall be used to identify human genes which encode proteins likely to be suitable for the development of a small molecule therapeutic or prophylactic products for the treatment of cancer. As set forth in more detail in Section 3.3, each Party shall [*] choose those human genes that qualify as Eligible Targets for development of a small molecule cancer drug.

2.2 MANAGEMENT STRUCTURE. The Parties agree to establish a multi-level committee structure to manage and direct the Collaboration and the relationship of the Parties in pursuing the research and development goals of this Agreement. The committee structure is intended to facilitate decision making and management of the various Collaboration activities of the Parties, and each Party agrees to use good faith, cooperative efforts to facilitate and assist the efforts of such committees. The overall management of the Collaboration with respect to work performed by the Parties under the Research Plan shall be vested in the Joint Management Team (the "JMT"), with responsibility, as further discussed in Section 2.3, for establishing the strategic direction of the Collaboration and for managing and directing the research efforts of the Parties under the Collaboration. The day-to-day management and direction of the Research Program shall be managed by the Joint Scientific Committee (the "JSC"), which shall report to and be managed by the JMT. [*]. Any dispute that cannot be resolved by the JSC for matters that come before it shall be resolved by the JMT.

2.3 JOINT MANAGEMENT TEAM.

(A) MEMBERSHIP. The Joint Management Team (the "JMT") shall be composed of four members, two members appointed by each Party. [*], each Party shall appoint two representatives from its senior management team to the JMT. Each Party may replace its JMT representatives at any time upon written notice to the other Party. Exelixis shall designate one of its representatives as Chairperson for the period from the Effective Date until the first anniversary of the Effective Date. Thereafter, the Parties shall alternately designate a Chairperson of the JMT for each subsequent contract year. The

Chairperson shall be responsible for scheduling meetings, preparing and circulating an agenda in advance of each meeting, and preparing and issuing minutes of each meeting within thirty (30) days thereafter. Any JMT member may add topics to the draft agenda.

(B) RESPONSIBILITIES. During [*], the JMT shall meet a minimum of [*] as provided in Section 2.5; thereafter, the JMT shall meet at the request of either Party, which request may be made by each Party not more than [*], unless otherwise agreed to by [*]. The JMT shall supervise and direct the JSC, evaluate the progress of research under the Research Plan and monitor compliance with the diligence provisions set forth in Sections 2.7 and 3.4, and it will make the final decisions regarding [*]. To the extent necessary to carry out its responsibilities, a Party's JMT members shall be granted access to the other Party's Confidential Information relevant to any decision required to be made by the JMT. Thus, it may be that members of the JMT, in assessing modifications to the Research Plan, assessing the results generated in the course of carrying out the Research Plan, or making determinations as required in this Section 2.3, may need to be granted access to higher levels of the proprietary or Confidential Information of the other Party than is provided to the JSC or to the employees of such Party working on the Collaboration. The JMT shall discuss in good faith and agree on the level of such access that is needed to achieve the goals and intent of the Parties.

2.4 JOINT SCIENTIFIC COMMITTEE

(A) MEMBERSHIP. The Joint Scientific Committee (the "JSC") shall be composed of four members. Each Party may invite, with the approval of the other Party (which shall not be unreasonably withheld), additional employees or consultants (provided such employees and consultants have contractual confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement) to attend one or more meetings of the JSC as ad hoc, non-voting guests. [*] each Party shall appoint two representatives to the JSC, one such representative being the individual at the Party with primary responsibility for the day-to-day management and execution of the Research Plan. The JSC will report directly to the JMT and shall take its direction from the JMT. Each Party may replace its appointed JSC representatives at any time upon written notice to the other Party. Exelixis shall designate one of its representatives as Chairperson of the JSC. The Chairperson shall be responsible for scheduling meetings, preparing and circulating an agenda in advance of each meeting, and preparing and issuing minutes of each meeting within thirty (30) days thereafter. Any JSC member may add topics to the draft agenda.

(B) RESPONSIBILITIES. During [*] the JSC shall meet at a minimum [*]. Except for decisions made by the BMS members of the JSC pursuant to Section 1.19(c), the JSC shall operate by [*]. It shall be responsible for the planning and execution of the Research Program. At its meetings, the JSC shall evaluate the data generated by the Parties in the course of carrying out the Research Plan, shall prioritize the Genetic Entry Points, shall perform those activities specifically described in this Article 2 and Article 3 and may consider modifying the Research Plan. At the next JMT meeting, the JSC shall summarize for the JMT the progress in carrying out the Research Plan since the last JMT meeting, bring to the attention of the JMT any overarching issues or significant changes in a Research Plan, and address any issues raised by the JMT at its previous meeting. The JSC shall also prioritize projects within the Research Plan. To the extent necessary to carry out its responsibilities, a Party's JSC members shall be granted access to the other Party's Confidential Information relevant to any decision required to be made by the JSC.

2.5 MEETINGS. The Parties shall endeavor to schedule meetings of the JMT and the JSC [*]. Meetings for the JSC shall be held on an alternating basis in New Jersey and in San Francisco. When possible, the meeting of the JMT should occur at the same location as the JSC meeting, with the JMT meeting occurring after the meeting of the JSC. With the consent of the representatives of each Party serving on a particular committee, other representatives of each Party may attend meetings of that committee as nonvoting observers. A meeting of a committee may be held by audio or video teleconference with the consent of each Party, provided that at least half of the minimum number of meetings for that committee shall be held in person. Meetings of a committee shall be effective only if at least one representative of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the committee meetings.

2.6 RESEARCH TERM.

(A) The Research Term shall commence on the Effective Date and shall continue, unless the Agreement is terminated pursuant to Section 10.2 or the Research Term is terminated pursuant to Section 2.6(b), until at least the third anniversary of the Effective Date. The Research Term shall automatically extend beyond the third anniversary of the Effective Date, in one-year increments, unless a Party provides written notice, [*]. The research funding commitment of BMS set forth in Section 7.2 shall remain in force until the termination of the Research Term.

(B) If, during [*], Exelixis or any Exelixis Affiliate controlling Exelixis, [*]

(C) For purposes of this Agreement, [*].

2.7 RESEARCH PLAN. The Parties have agreed in writing upon a detailed plan for the research to be carried out by the Parties during [*] and prior to the selection of each Eligible Target as a Selected Target (the "Research Plan"). The JSC shall review the Research Plan [*] and may propose to the JMT revised versions of the Research Plan that are consistent with the terms of this Agreement. The JMT shall review, revise (if necessary) and approve all such proposals for revising the Research Plan. Once approved by the JMT, such revised Research Plan shall replace the prior Research Plan. During [*], each Party shall use Diligent Efforts to perform the tasks assigned to it in the Research Plan then in effect. The Parties acknowledge and understand that the Research Plan can only be changed to add new Genetic Entry Points if the procedures set forth in Section 2.8 have been carried out.

2.8 GENETIC ENTRY POINTS. The Genetic Entry Points on which research may be conducted by Exelixis during the Research Term are listed on Exhibit 1.25. Additional Genetic Entry Points may be designated as set forth in this Section 2.8. Prioritization of work on the Genetic Entry Points shall be determined by the JSC. [*], the JSC shall review the Genetic Entry Points [*] and shall determine when a Genetic Entry Point should be re-prioritized, or removed from further research, under the Research Plan. At its sole discretion, Exelixis may designate new Genetic Entry Points in the Research Field upon which Exelixis shall commence research pursuant to the Collaboration, if consistent with the relative priority given such new Genetic Entry point by the JSC. [*].

2.9 IDENTIFICATION OF MODEL SYSTEM TARGETS. During [*], Exelixis shall use Diligent Efforts to identify, in accordance with the Research Plan, Model System Targets [*].

2.10 IDENTIFICATION OF HUMAN ORTHOLOGUES OF MODEL SYSTEM TARGETS.

(A) Exelixis shall conduct a good faith search of publicly available databases for mammalian orthologues of each Model System Target it identifies pursuant to Section 2.9. [*], Exelixis shall present to the BMS members of the JSC a list of all human orthologues newly identified by Exelixis pursuant to the preceding sentence. [*]

(B) At each JSC meeting, for each human orthologue [*] Exelixis shall present to the JSC the sequence of and a summary of the data [*].

(C) If no human orthologue has been identified for a Model System Target at the time Exelixis presents such Model system Target to the JSC, then the JSC shall decide whether further research should be done during the Research Term [*].

(D) Upon termination of the Research Term (other than due to termination of the Agreement), if any Model System Target for which no human orthologue has been identified remain, then either Party may at its own discretion and expense perform, [*] research intended to identify one or more human orthologues of such Model System Target. [*].

(E) [*].

(F) [*].

(G) [*].

2.11 IDENTIFICATION OF ELIGIBLE TARGETS.

(A) The Parties will use reasonable efforts to mutually agree [*]. [*] shall bear the costs it incurs in the course of performing the responsibilities allocated to it. [*] shall share all resulting information from such work will be shared with the other Party at or prior to the next meeting of the JSC. Upon completion of the work reasonably necessary to determine whether a human orthologue meets the Eligible Target criteria, [*] shall promptly decide and record in writing whether each such human orthologue qualifies as an Eligible Target. [*].

(B) [*].

2.12 INTERACTION WITH MOA AGREEMENT.

(A) After the Effective Date, BMS agrees that it will not provide any oncology compounds to Exelixis pursuant to the MOA Agreement or this Agreement. [*].

(B)

(I) [*]

(II) [*]

(III) [*]

(C) [*]

(D) [*]

(E) The agreements of the Parties set forth in this Section 2.12 shall bind the Parties with respect to this Agreement and the MOA Agreement. If the

Parties decide that it would be helpful to execute a formal amendment of the MOA Agreement that reflects any of these agreements, then the Parties shall draft and execute such amendment in good faith and such amendment shall be consistent with the terms of this Section 2.12.

2.13 OBLIGATIONS OF PARTIES. Exelixis and BMS shall provide the JSC and its authorized representatives with [*].

2.14 COLLABORATION GUIDELINES. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between Exelixis and BMS is that of independent contractors, and neither Party shall have the power to bind or obligate the other Party in any manner, other than as is expressly set forth in this Agreement.

2.15 CONDUCT OF RESEARCH. The Parties shall use Diligent Efforts to conduct their respective tasks throughout the Collaboration 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 to attempt to achieve their objectives as efficiently and expeditiously as reasonably practicable.

2.16 RECORDS. Each Party shall maintain complete and accurate records of all work conducted under the Collaboration and all results, data and developments made pursuant to its efforts under the Collaboration. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of the Collaboration in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes.

2.17 REPORTS. During [*] each Party shall report to the JSC no less than [*] and will submit to the other Party and the JSC a [*] written progress report summarizing the work performed under the Research Program. If reasonably necessary for a Party to perform its work under the Collaboration 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. All such reports shall be considered Confidential Information of the Party providing same.

2.18 NON-SOLICITATION. During [*], each Party and its Affiliates shall not: [*].

2.19 TARGETS PREVIOUSLY PURSUED BY ENTITY ACQUIRED BY A PARTY. Subject to Section 3.3(d):

(A) The provisions set forth in this Section 2.19 shall apply in the event that either Party (the "Acquiring Party") or an Affiliate of an Acquiring Party acquires or merges with another company (the "Acquired Entity") [*]

3. SELECTION, PURSUIT AND ABANDONMENT OF TARGETS

3.1 DRAFT TARGET POOL. Subject to Section 2.12, each Eligible Target shall be added to the Draft Target Pool upon its designation as an Eligible Target by the JSC [*].

3.2 DISCLOSURE OF DATA PRIOR TO DRAFT CHOICE.

(A) To ensure that each Party has access to all pertinent data being developed by the other Party relating to each Eligible Target in sufficient time to enable each Party to evaluate such Eligible Target before a JSC meeting in which such Eligible Target can be selected pursuant to Section 3.3, each Party shall provide a written, reasonably detailed summary of primary data arising from its research on such Eligible Target in the performance of its obligations to the Collaboration [*] to the other Party's JSC members at least [*] before such JSC meeting. [*].

(B) [*]

3.3 DRAFT CHOICE PROCEDURES.

(A) At each JSC meeting [*] the Parties shall, subject to Section 2.10(g), select Eligible Targets from the Draft Target Pool as Selected Targets. [*].

(B) [*]

(C) [*]

(D) If BMS decides to deem, as an Eligible Target, a human orthologue of a Model System Target that would not otherwise qualify as an Eligible Target solely on account of Exelixis' previous grant of an non-exclusive license of the scope described in Section 1.19(c), and BMS selects such Eligible Target as a BMS Selected Target pursuant to Section 3.3, then BMS shall have all of the rights and obligations set forth in this Agreement with respect to BMS Selected Targets, except that all exclusive licenses granted by Exelixis under Section 5.1 with respect to such BMS Selected Target shall, except for the grant under Section 5.1(a)(iii), become non-exclusive (although Exelixis shall endeavor

thereafter not to grant, subject to Article 6, additional rights with respect to small molecule modulators of such BMS Selected Target in the Development Field). [*]

(E) At the JSC meeting [*] the Parties shall select any remaining Eligible Targets from the Draft Target Pool or Validation Pool as Selected Targets. [*]

(F) The Parties may modify, by mutual written agreement, the draft choice procedures set forth in this Section 3.3.

3.4 PURSUIT OF SELECTED TARGETS.

(A) GENERAL DILIGENCE. For each Selected Target selected by a particular Party, such Party shall use good faith Diligent Efforts [*]

(B) SPECIFIC DILIGENCE. If a Party or its sublicensee [*] then such Party shall be deemed to have demonstrated Diligent Efforts with respect to [*] The foregoing shall not be construed to limit or preclude any other showing of Diligent Efforts by a Party based on actual facts and circumstances.

(C) BREACH OF DILIGENCE. Breach of the diligence obligations set forth in this Section 3.4 shall not constitute a breach of this Agreement. The sole remedy available to each Party upon the other Party's breach of the diligence obligations is that the relevant Target ceases to be a Selected Target and becomes an Abandoned Target.

3.5 EXELIXIS PARTICIPATION IN DEVELOPMENT OF BMS PRODUCTS.

(A) During [*], BMS may request in writing that Exelixis develop a high throughput assay to assess the activity of small molecule compounds with respect to a Selected Target chosen by BMS. Such request shall specify (i) the desired formatting criteria for the assay and all other material specifications for the assay and (ii) the date by which delivery, even if (i) is met, would be too late for BMS' needs (the "Assay Delivery Date"). If Exelixis wishes to develop such an assay, it shall notify BMS in writing [*] and shall indicate the date on which Exelixis anticipates commencing such work. The Parties shall agree in writing on the specific formatting criteria for the assay and all other material specifications for the assay (including without limitation, if appropriate, the acceptance period and a range of variances that is mutually agreed upon by the Parties). Unless otherwise set forth in such writing, the Assay Delivery Date shall be the date originally requested by BMS. Exelixis shall use good faith Diligent Efforts to develop such an assay and deliver it to BMS within [*] of the Assay Delivery Date.

(I) If, prior to the Assay Delivery Date, Exelixis notifies BMS that it will not be able to deliver the assay within [*] of the Assay Delivery Date and identifies a new date by which it intends to deliver the assay (the "Substitute Delivery Date"), then BMS shall have [*] to notify Exelixis in writing if it wants Exelixis to terminate development of the assay. If BMS does not so notify Exelixis, then BMS shall not reject the assay or refuse to make the milestone payment set forth in Section 7.3(b) due to the fact that the assay was not delivered within [*] of the Assay Delivery Date. BMS may nevertheless reject such assay if it is not delivered within [*] of the Substitute Delivery Date.

(II) BMS shall have [*] following Exelixis' delivery of an assay pursuant to this Section 3.5(a), to notify Exelixis in writing if BMS has determined that the delivered assay does not meet the specifications mutually agreed by the Parties pursuant to Section 3.5(a). If BMS does not so notify Exelixis within such [*] period, then the assay will be considered accepted and shall be deemed an "Assay" and BMS shall make the milestone payment set forth in Section 7.3(b) with respect to such Assay.

(III) Any and all disagreements between the Parties regarding whether a particular assay delivered by Exelixis meets the specifications mutually agreed by the Parties pursuant to Section 3.5(a) shall be handled [*].

(IV) Exelixis covenants that it will not [*]. The foregoing covenant shall not be interpreted to restrict Exelixis' ability to use Information it generated in the development of an Assay for the purposes of developing other assays, [*]

(B) During [*] BMS may request in writing that Exelixis perform high throughput screening of EXEL Compounds in one or more assays (whether developed by BMS or EXEL) that assess the activity of such compounds with respect to a Selected Target chosen by BMS and subsequently conduct lead optimization of EXEL Compounds until Exelixis identifies an analog or derivative of such compound that qualifies as a Lead Compound. Such request shall specify the assay(s) to be used, whether the entire Exelixis library or certain subsets thereof should be screened, and the criteria (including without limitation, if appropriate, a range of variances that is mutually agreed upon by the Parties) that an EXEL Compound must meet in order to be considered either a Lead Compound or a Back-up Compound for such Lead Compound. If Exelixis wishes to perform such work, it shall present BMS with a proposed detailed work plan (including specific deliverables, timetable and date on which Exelixis anticipates commencing work, and acceptance procedures) and budget for such work plan (including payment schedules) within [*] of BMS' request. If BMS wishes Exelixis to perform such

work pursuant to such budget, it shall notify Exelixis within [*] of receipt of such budget. The final detailed work plan and budget for such work plan (the "Work Plan") shall be signed by both Parties before any work is undertaken. Exelixis shall use good faith Diligent Efforts to complete the work set forth in the Work Plan; provided, that any payment that is conditioned on the performance or delivery of certain deliverables and/or performance by a certain date must be met before payment will be owed, whether or not Exelixis shall have used good faith Diligent Efforts. If such work results in the development of a Lead Compound, Exelixis shall deliver to BMS such Lead Compounds and all Back-up Compounds for such Lead Compound. In addition to all payments made by BMS pursuant to any budget agreed upon in accordance with this Section 3.5(b) (such payments shall be noncreditable and nonrefundable), BMS shall make the milestone payment set forth in Sections 7.3(c), (e) and (f) upon occurrence of the events specified therein and BMS shall make royalty payments in accordance with Section 7.4. Exelixis covenants that, with respect to each BMS Selected Target against which Exelixis screens its libraries pursuant to this Section 3.5(b), Exelixis will not [*].

3.6 TARGET ABANDONMENT.

(A) A Selected Target will become an Abandoned Target if any of the following circumstances arise: [*].

(B) If BMS [*].

(C) Each Target that becomes an Abandoned Target [*].

3.7 TARGETS OTHER THAN SELECTED TARGETS. Exelixis has no obligations to BMS with respect to and grants no licenses to BMS with respect to [*]. All such targets shall not be subject to any terms of this Agreement except for Section 5.2(a)(ii) (with respect to [*] and Section 3.1 (with respect to [*]).

3.8 RECORDS. Each Party shall maintain complete and accurate records of all scientific and development work conducted on its Selected Targets, Collaboration Compounds and Products and all results, data and developments made pursuant to its research and development efforts under this Agreement. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes.

3.9 REPORTS. Every [*], each Party will submit to the other Party a written progress report summarizing the research and development work performed by such Party on its Selected Targets.

3.10 EXPENSES. Except as set forth in Sections 3.5 and 7.2, [*] shall bear [*] associated with performing the research, development and commercialization described in Articles 2 and 3.

4. ADDITIONAL CONSIDERATION

4.1 STOCK PURCHASE AGREEMENT. BMS shall make an equity investment in Exelixis equal to a total of twenty million dollars ($20,000,000) in accordance with the terms set forth in the Stock Purchase Agreement between the Parties of even date herewith.

4.2 REBECCAMYCIN ANALOG LICENSE AGREEMENT. BMS shall grant Exelixis an exclusive license to the rebeccamycin analog ("Rebeccamycin Analog") known as BMY-027557 (with the CAS Identification No. CAS-119673-08-4) in accordance with the terms set forth in the License Agreement between the Parties of even date herewith.

5. LICENSES AND RELATED RIGHTS

5.1 LICENSES TO BMS.

(A) EXEL KNOW-HOW AND EXEL PATENTS. Subject to the terms of this Agreement (including without limitation Section 5.2 and Article 6):

(I) RESEARCH. Exelixis hereby grants BMS a non-exclusive, worldwide, royalty-free license (with the right to sublicense to its Affiliates, but without the right to sublicense to Third Parties except with prior written consent of Exelixis), under any EXEL Know-How and EXEL Patents solely (A) to perform the research tasks assigned to it pursuant to Sections 2.10(c), 2.11 and 3.1(a), and (B) to perform research, during [*] and in accordance with Sections 2.10(d) and 2.11, upon mammalian orthologues of certain Model System Targets.

(II) BMS SELECTED TARGETS. Exelixis hereby grants BMS an exclusive, worldwide, royalty-bearing (solely to the extent provided in Section 7.4) license (with the right to sublicense), under any EXEL Know-How and EXEL Patents covering the composition, manufacture, or use of one or more BMS Selected Targets, to make and use each such BMS Selected Target (A) to perform research within the Research Field upon each such BMS Selected Target, including using such BMS Selected Target to search for Collaboration Compounds, (B) to develop, and make or have made for use in the Development Field, BMS Products comprising or incorporating Collaboration Compounds, (C) to develop, following the commencement of a clinical trial of a BMS Product in the Development Field, such BMS Product for any human indication, and (D) to make, have made, use,

import, sell, offer to sell and have sold BMS Products.

(III) ASSAYS. Exelixis hereby grants BMS an exclusive, worldwide, royalty-bearing (solely to the extent provided in Section 7.4) license (with the right to sublicense), under any EXEL Know-How and EXEL Patents covering the composition or use of one or more Assays, (A) to make and have made such Assay, (B) to use each such Assay to search for, make and have made (1) Collaboration Compounds with activity against the BMS Selected Target for which such Assay was developed, and (2) compounds that lack activity against the BMS Selected Target for which such Assay was developed, (C) to develop, and make or have made, for use in the Development Field (and in any defined field licensed by BMS under Section 5.2(b)(iii)), BMS Collaboration Products, and (D) to develop, following the commencement of a clinical trial of a BMS Collaboration Product in the Development Field, such BMS Collaboration Product for any human indication. Such license shall convert to a non-exclusive license, on an Assay-by-Assay basis, on the earlier of (x) the date that is [*] after the end of the Research Term, or (y) the BMS Selected Target relating to such Assay becomes an Abandoned Target and is selected by Exelixis as an EXEL Selected Target.

(IV) LEAD COMPOUNDS/BACK-UP COMPOUNDS. Exelixis hereby grants BMS a worldwide, royalty-bearing (solely to the extent provided in Section 7.4) license (with the right to sublicense), under any EXEL Know-How and EXEL Patents during the term of this Agreement covering the composition, manufacture, or use of a Lead Compound delivered to BMS pursuant to Section 3.5(b) or a Back-up Compound for such Lead Compound, (A) to make derivatives of such Lead Compounds and Back-up Compounds, (B) to research, develop, and make or have made for use in the Development Field, BMS Collaboration Products comprising or incorporating such a Lead Compound or Back-up Compound or derivative thereof, (C) to develop, following commencement of a clinical trial of such a BMS Collaboration Product in the Development Field, such BMS Collaboration Product for any human indication, and (D) to make, have made, use, import, sell, offer to sell and have sold such BMS Collaboration Products. The foregoing license shall be (x) exclusive with respect to Lead Compound and Back-up Compounds delivered to BMS pursuant to Section 3.5(b) and BMS Collaboration Products containing such Lead Compounds or Back-up Compounds and (y) non-exclusive with respect to derivatives of Lead Compounds and Back-up Compounds delivered to BMS pursuant to Section 3.5(b) and BMS Collaboration Products containing derivatives of such Lead Compounds and Back-up Compounds. [*].

(V) PHARMACOGENOMIC USES. Exelixis hereby grants BMS a non-exclusive, worldwide, royalty-bearing (solely to the extent provided in Section 7.4) license (with the right to sublicense), under the EXEL Know-How and EXEL Patents covering the composition, manufacture or use of any Selected Target of either Party, to use such Selected Target in the research, development, manufacture, use, import, sale and offer for sale of a Pharmacogenomic Product for use (A) in connection with the research, development, manufacture, use, import, sale and offer for sale, for any indication, of a (i) BMS Product or (ii) a product that modulates the same Selected Target as such BMS Product via substantially the same molecular mechanism of action (a "Target Product"), and (B) in the labeling, promotion, and registration of any BMS Product or Target Product for any indication. Such license for a particular Pharmacogenomic Product shall be sublicensable solely (x) together with a sublicense under Section 5.1(a)(ii) with respect to a related BMS Product or (y) by BMS or its sublicensee, for the purpose of developing or commercializing a Pharmacogenomic Product for use in conjunction with a related BMS Product that BMS or its sublicensee is developing or commercializing. Provided that a sublicense is granted in accordance with the restrictions set forth in the previous sentence and such sublicense does not further limit the scope of the sublicensee's practice of the EXEL Know-How and EXEL Patents, such sublicensee may practice the full extent of the license set forth in this Section 5.1(a)(v), including making, providing, and selling Pharmacogenomic Products for use with Target Products. [*].

(VI) NEGATIVE SCREENING USING EXEL TARGETS. Exelixis hereby grants to BMS a non-exclusive, worldwide, non-royalty bearing license (without the right to sublicense except to its Affiliates) under any EXEL Patents and EXEL Know-How covering the composition, manufacture, or use of an EXEL Selected Target, to use such EXEL Selected Target solely in secondary screening assays developed by or for BMS to identify, research and develop Collaboration Compounds and BMS Products that lack the ability to inhibit, activate or otherwise modulate the activity of such EXEL Selected Target. The foregoing license does not include the right of BMS to use any assays developed by or on behalf of Exelixis with respect to EXEL Selected Targets. [*].

(VII) EXELIXIS VALIDATION PROTOCOLS AND REAGENTS. Exelixis hereby grants to BMS a non-exclusive, worldwide, royalty-free license (without the right to sublicense except to its Affiliates) under the EXEL Know-How and EXEL Patents relating to (A) the Exelixis validation protocols and reagents listed on Exhibit 5.1(a)(vii) (as updated from time to time by the JSC) and (B) all validation protocols and reagents that are developed by Exelixis in the course of performing its duties under the Research Plan, to use same for all purposes.
(VIII) IMPROVEMENTS TO BMS VALIDATION PROTOCOLS AND REAGENTS. Exelixis hereby grants to BMS a non-exclusive, worldwide, royalty-free license (with the right to sublicense) under the EXEL Know-How and EXEL Patents to use for all purposes, all improvements to the validation protocols and reagents licensed by BMS under Section 5.3(d) that incorporate or contain any of such validation protocols and reagents licensed by BMS.

(B) TARGET INVENTIONS.

(I) Subject to the terms of this Agreement, Exelixis hereby grants BMS an exclusive, worldwide, royalty-free license (with the right to sublicense), under the Target Inventions invented solely by BMS and all Patents Controlled by Exelixis that claim such Target Inventions, to use such Target Inventions for all purposes other than those for which Exelixis has exclusive rights pursuant to Section 5.3.

(II) Subject to the terms of this Agreement, Exelixis hereby grants BMS a worldwide, royalty-free license (with the right to sublicense), under the Target Inventions invented jointly by BMS and Exelixis and all Patents Controlled by Exelixis that claim such Target Inventions, to use, without any accounting or obligation to, or consent required of, Exelixis, such Target Inventions for all purposes other than those for which Exelixis has exclusive rights pursuant to Section 5.3. The foregoing license is exclusive, with respect to BMS Selected Targets, for those purposes for which BMS has exclusive rights pursuant to Section 5.1(a)(ii); such license is co-exclusive for all other permitted purposes.

(III) The license rights to a Target Invention (or Patent obtained thereon) granted under 5.1(b)(i) and (b)(ii) above shall last until the expiration of the last to expire Patent claiming a Target Invention or, if no Patent is obtained thereon, for the useful life thereof.

5.2 LICENSE LIMITATIONS AND OPTION.

(A) LICENSE LIMITATIONS.

(I) BMS hereby covenants that it will not use any EXEL Know-How (to the extent the same Remains Confidential to Exelixis at the time of use by BMS), Target Invention or EXEL Patents for a purpose other than that expressly permitted in Section 5.1. [*].

(II) Subject to Section 6.2, for each BMS Selected Target, Exelixis hereby covenants [*].

(III) For purposes of Sections 5.1(a)(ii), 5.1(a)(v) and 5.1(a)(vi), EXEL Know-How shall be limited to Information developed by or on behalf of Exelixis prior to the Effective Date or in the performance of the Collaboration and prior to the first selection by either Party of such Target as a Selected Target, and the EXEL Patents shall be limited to those that cover Inventions made by or on behalf of Exelixis prior to the Effective Date or in the performance of the Collaboration and prior to the first selection by either Party of such Target as a Selected Target. For purposes of Section 5.1(a)(i) and 5.1(a)(vii)(B), the EXEL Know-How shall be limited to Information developed by or on behalf of Exelixis prior to the Effective Date or in the performance of the Collaboration and prior to the end of the Research Term, and the EXEL Patents shall be limited to those that cover Inventions made by or on behalf of Exelixis prior to the Effective Date or in the performance of the Collaboration and prior to the end of the Research Term. For purposes of Section 5.1(a)(iii), the EXEL Know-How shall be limited to that Information developed by Exelixis in the performance of the Collaboration and prior to delivery of the Assay to BMS, and the EXEL Patents shall be limited to those that cover Inventions made in the performance of the Collaboration and prior to the delivery of the Assay to BMS. With respect solely to the derivatives non-exclusively licensed under Section 5.1(a)(iv), the EXEL Know-How so licensed shall be limited to Information developed by Exelixis in the performance of the Collaboration and prior to delivery of the relevant Lead Compound or Back-Up Compound to BMS, and the EXEL Patents so licensed shall be limited to those that cover Inventions made in the performance of the Collaboration and prior to the delivery of the relevant Lead Compound or Back-Up Compound to BMS.

(IV) Each sublicense granted by BMS, pursuant to Section 5.1(a), 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.

(B) OPTION FOR NON-EXCLUSIVE LICENSE.

(I) [*]

5.3 LICENSES TO EXELIXIS. Subject to the terms of this Agreement (including without limitation Section 5.4):

(A) RESEARCH. BMS 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 BMS) under the BMS Know-How and BMS Patents, solely (A) to perform research during the Research Term in accordance with Articles 2 and 3, and (B) to perform research, during [*] and in accordance with Sections 2.10(d) and 2.11, upon mammalian orthologues of certain Model System Targets.

(B) EXEL SELECTED TARGETS. BMS hereby grants Exelixis an exclusive, worldwide, royalty-free license (with the right to sublicense), under the BMS Know-How and BMS Patents covering the composition, manufacture, or use of one or more EXEL Selected Targets, to make and use each such EXEL Selected Targets (A) to perform research within or outside the Research Field upon each EXEL Selected Target, including using such EXEL Selected Target to search for Collaboration Compounds, and (B) to research, develop, make, have made, use, import, sell, offer to sell and have sold, for use within or outside the Development Field,

EXEL Products comprising or incorporating such Collaboration Compounds. Such license shall be subject to a retained right in BMS (sublicensable to its Affiliates only) to use and practice same for research outside the Research Field upon such EXEL Selected Target and to make and have made, and to use same, to develop BMS compounds for use outside the Development Field.

(C) TARGETS. BMS hereby grants to Exelixis a worldwide, royalty-free license (with the right to sublicense) under the BMS Know-How and BMS Patents covering the composition, manufacture, or use of a Target, to make and use each such Target: [*]. Such licenses shall be exclusive for purposes of subparts (i)-(iii) and non-exclusive for purposes of subpart (iv), and [*]. Such licenses in subparts (i) and (iv), to the extent they apply to Sole Inventions of BMS, shall be sublicensable to a Third Party for a given BMS Selected Target only if the Third Party grants or agrees to grant to Exelixis a worldwide license (with the right to sublicense), under such Third Party's know-how and patents covering the composition, manufacture, or use in oncology of such BMS Selected Target, to make and use each such BMS Selected Target to research, develop, make, have made, use, sell, offer to sell, have sold and import, for use within the Development Field, products containing small molecule modulators of such BMS Selected Target. The foregoing sublicensing limitation shall not apply to sublicensing of BMS Know-How and BMS Patents that are not Sole Inventions of BMS.

(D) VALIDATION PROTOCOLS AND REAGENTS.

(I) BMS hereby grants to Exelixis a non-exclusive, worldwide, royalty-free license (without the right to sublicense except to its Affiliates) under the BMS Know-How and BMS Patents directly relating to: (A) the BMS validation protocols and reagents listed on Exhibit 5.3(d), as updated from time to time by the JSC, and (B) all validation protocols and reagents that are developed by BMS in the performance of its duties under the Research Plan to use same for all purposes.

(II) BMS hereby grants to Exelixis a non-exclusive, worldwide, royalty-free license (with the right to sublicense) under the BMS Know-How and BMS Patents to use for all purposes, all improvements to the validation protocols and reagents licensed by Exelixis under Section 5.1(a)(vii) that incorporate or contain any of such validation protocols and reagents licensed by Exelixis.

(E) ASSAYS. So long as BMS' rights under Section 5.1(a)(iii) remain exclusive, BMS hereby grants Exelixis a non-exclusive, worldwide royalty-free license (without the right to sublicense except to its Affiliates), under the EXEL Know-How and EXEL Patents covering the composition or use of a given Assay solely to use such Assay pursuant to a Work Plan agreed to by BMS and Exelixis under Section 3.5(b) where Exelixis will use such Assay to perform high throughput screening to identify compounds which have or lack activity against the Selected Target for which such Assay was developed.

(F) NEGATIVE SCREENING USING BMS TARGETS. BMS hereby grants to Exelixis a non-exclusive, worldwide, non-royalty bearing, license (without the right to sublicense except to its Affiliates) under any BMS Patents and BMS Know-How covering the composition, manufacture, or use of an BMS Selected Target, to use such BMS Selected Target solely in secondary screening assays to identify, research and develop Collaboration Compounds that lack the ability to inhibit, activate or otherwise modulate the activity of such BMS Selected Target. The foregoing license does not include the right of Exelixis to use any assays developed by or on behalf of BMS with respect to BMS Selected Targets. [*].

(G) PHARMACOGENOMIC USES. BMS hereby grants Exelixis a non-exclusive, worldwide, royalty-free license (with the right to sublicense), under the BMS Know-How and BMS Patents covering composition, manufacture, or use of all the Selected Targets of either Party, to use such Selected Target in the research, development, manufacture, use, import, sale and offer for sale of a Pharmacogenomic Product for use (A) in connection with the research, development, manufacture, use, import, sale and offer for sale, for any indication, of an (i) EXEL Product or (ii) a Target Product, and (B) in the labeling, promotion, and registration of any EXEL Product or Target Product for any indication. Such license for a particular Pharmacogenomic Product shall be sublicensable solely (x) together with a sublicense under Section 5.3(b) with respect to a related EXEL Product or (y) by Exelixis or its sublicensee, for the purpose of developing or commercializing a Pharmacogenomic Product for use in conjunction with a related EXEL Product that Exelixis or its sublicensee is developing or commercializing. Provided that a sublicense is granted in accordance with the restrictions set forth in the previous sentence and such sublicense does not further limit the scope of the sublicensee's practice of the BMS Know-How and BMS Patents, such sublicensee may practice the full extent of the license set forth in this Section 5.3(g), including making, developing and selling Pharmacogenomic Products for use with Target Products. [*].

5.4 LICENSE LIMITATIONS.

(A) For purposes of Sections 5.3(b), 5.3(c), 5.3(f) and 5.3(g), the BMS Know-How shall be limited to that Information developed by or on behalf of BMS in the performance of the Collaboration and prior to the first selection by either Party of such Target as a Selected Target, and the BMS Patents shall be limited to those that cover Inventions made by or on behalf of BMS in the performance of the Collaboration and prior to the first selection by either

Party of such Target as a Selected Target). For purposes of Section 5.3(a) and 5.3(d)(i)(B), the BMS Know-How shall be limited to Information developed by or on behalf of BMS in the performance of the Collaboration prior to the end of the Research Term, and the BMS Patents shall be limited to those that cover Inventions made by or on behalf of BMS in the performance of the Collaboration prior to the end of the Research Term.

(B) Exelixis hereby covenants that it will not use any BMS Know-How (to the extent the same Remains Confidential to BMS at the time of use by Exelixis) or BMS Patents for a purpose other than that expressly permitted in Section 5.3.

(C) Each sublicense granted by Exelixis, pursuant to Section 5.3, 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.

5.5 RIGHTS OF FIRST NEGOTIATION.

(A) BMS RIGHT OF FIRST NEGOTIATION. [*].

(B) EXELIXIS RIGHT OF FIRST NEGOTIATION. [*].

(C) [*].

(D) [*].

(E) [*].

6. EXCLUSIVITY

6.1 EXELIXIS. During [*] (unless this Agreement is terminated sooner by Exelixis for material breach by BMS), Exelixis shall not [*]. Those EXEL Products arising from Exelixis' sole work (without any involvement of a Third Party collaborator or sublicensee) on EXEL Selected Targets shall be subject to the right of first negotiation set forth in Section 5.5(a). Those EXEL Products that are Controlled by Exelixis shall be subject to the right of first negotiation set forth in Section 5.5(a) and the foreign right of first negotiation in Section 5.5(d).

6.2 INDEPENDENT RESEARCH.

(A) Exelixis shall use Diligent Efforts to maintain exclusivity with respect to the individual elements of data and Inventions that Exelixis generates, delivers and licenses to BMS under this Agreement. Notwithstanding the foregoing, the exclusivity of any licenses granted to BMS under Sections 5.1(a)(ii) and 5.1(a)(iv) shall be subject to rights granted by Exelixis to Third Parties or retained by Exelixis for internal use, as a result of research that performed by Exelixis under the following circumstances:

(I) Subject to Section 2.12(d), Exelixis may be engaged by a Third Party to identify the target of a compound. Exelixis may reveal the identity of the target to the Third Party and grant the Third Party a license to such target under intellectual property rights Controlled by Exelixis, and the Third Party may be entitled to use the target and research results pertaining thereto for any purpose (the scope of the license depending on the terms of Exelixis' agreement with the Third Party under which it performed such work). If the target is an Eligible Target or a BMS Selected Target, Exelixis will inform the Third Party that, on account of its exclusivity obligations to another party, Exelixis is unable to perform further work on this target.

(II) Exelixis may be engaged by a Third Party to identify targets in a molecular field (the "Other Field") other than the Research Field. Such research may result in the identification of targets that are Eligible Targets or Selected Targets. Exelixis may study the role of such targets in the Other Field and may grant such Third Party licenses to use such targets in appropriate indications, which may overlap with the Development Field. [*].

(III) Exelixis may be engaged by a Third Party to perform chemistry work upon a target that, at the time Exelixis enters into the agreement with the Third Party that governs such work, is not a BMS Selected Target. Exelixis may continue such work even if the target subsequently becomes a BMS Selected Target and Exelixis may grant such Third Party a license to use compounds arising from such work for any purpose, including indications in the Development Field.

(B) Subject to Section 6.1, Exelixis may use, in research described in Section 6.2(a), the following Information generated pursuant to the Collaboration, provided that Exelixis does not INITIATE such research using: [*]. Exelixis may petition BMS at any time during the term of this Agreement to add certain Information generated pursuant to the Collaboration to the foregoing list. Such addition shall only be made upon the mutual written agreement of the Parties. For the purposes of this Section 6.2(b), the Parties acknowledge and agree that Exelixis' use of any Information specified in this Section 6.2(b) shall not be considered use in "initiating" research if, prior to the use of such Information, [*]. The foregoing shall not be interpreted as a limitation on Exelixis' right to use Information generated pursuant to the Collaboration in a manner that does not conflict with Section 6.1 and, to the extent that such Information is generated by BMS in the course of the Collaboration, the licenses granted to Exelixis in Section 5.3.

(C) Upon request of the JSC, Exelixis shall consult with the JSC from time to time regarding its procedures for seeking to avoid overlapping research activities on behalf of multiple Third Parties.

6.3 OTHER RESEARCH.

(A) Subject to Sections 5.1 and 5.5(a)(iv), the Parties understand and agree that Exelixis may use Information [*]. Since the foregoing is not independent research (as described in Section 6.2), Exelixis may initiate such research using such Information.

(B) Exelixis shall disclose to BMS all target identification and validation Information [*]. Such Information is included in the license granted to BMS in Section 5.1(a)(ii) and BMS may use such Information in accordance with such license. Similarly, Exelixis may disclose to [*] the target identification and validation Information [*]

7. COMPENSATION

7.1 LICENSE FEE. BMS shall pay Exelixis a license fee of five million dollars ($5,000,000) [*]. All license fee payments made by BMS to Exelixis pursuant to this Section 7.1 shall be noncreditable and nonrefundable.

7.2 RESEARCH SUPPORT. On the Effective Date, BMS will make a research support payment to Exelixis equal to [*]. On or prior to the commencement of each [*] during the Research Term, BMS will make a research support payment to Exelixis equal to [*]; provided that, [*]. All research support payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable.

7.3 MILESTONE PAYMENTS. All milestone payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable. Subject to the terms of this Agreement:

(A) SELECTED TARGETS. BMS shall make a milestone payment to Exelixis of [*] after BMS' selection, pursuant to Section 3.3 or 5.5(e), of (i) the sixth BMS Selected Target and (ii) each subsequent sixth BMS Selected Target (wherein the counting of BMS Selected Targets restarts at one after each group of six). Upon the last JSC meeting after the end of the Research Term, BMS shall make a milestone payment to Exelixis equal to [*].

(B) ASSAY DEVELOPMENT. For each Assay, BMS shall make a milestone payment to Exelixis of [*] after BMS' acceptance of such Assay pursuant to Section 3.5(a).

(C) PTP. For each approval by the BMS Lead Discovery Operating Committee or its successor of a PTP for a BMS Selected Target, BMS shall make a milestone payment to Exelixis of [*] after such approval.

(D) MILESTONE PAYMENT DATES [*].
(I) Each milestone payment set forth in subsections (a) and (c) of this Section 7.3 shall accrue at the time of the specified event and shall be paid within [*] after such event (the "Payment Due Date") [*]

(E) DEVELOPMENT OF LEAD COMPOUND. For each Lead Compound developed by Exelixis pursuant to Section 3.5(b), BMS shall make a milestone payment to Exelixis of [*] after BMS' acceptance of such Lead Compound.

(F) BMS PRODUCTS. For each BMS Product, BMS shall make the milestone payments set forth below to Exelixis within [*] after the achievement of each of the following events, subject to Section 7.3(g):

(I) [*] upon first administration of such BMS Product in a Phase I Clinical Trial;

(II) [*] upon first administration of such BMS Product in a Phase II Clinical Trial;

(III) [*] upon first administration of such BMS Product in a Phase III Clinical Trial;

(IV) [*] upon first acceptance of an NDA filing for such BMS Product in a Major Market; and

(V) [*] upon first receipt of Regulatory Approval for such BMS Product in a Major Market. Each milestone payment set forth in this Section 7.3(f) will be paid only once with respect to a given BMS Product, regardless of the number of indications sought or approved for such BMS Product.

(G) ADJUSTMENTS TO PRODUCT MILESTONES. If the NDA filing described in Section 7.3(f)(iv) and/or the Regulatory Approval described in Section 7.3(f)(v) for a particular BMS Product is for [*] then the amounts set forth in Section 7.3(f)(iv) and Section 7.3(f)(v) shall be [*].

(H) MILESTONE PAYMENTS FOR SECONDARY PRODUCTS. Subject to Section 5.2(b)(iii), for each Secondary Product that is in development by BMS (or its Affiliate or sublicensee), BMS shall only be obliged to make to Exelixis any applicable milestone payments set forth in Section 7.3(f) that were not made to Exelixis with respect to the Parent Product of such Secondary Product. However, if the Parent Product (as defined herein), with respect to a particular

Secondary Product, achieves Regulatory Approval, and BMS (or its Affiliate or sublicensee) continues thereafter to conduct development of such Secondary Product, then such Secondary Product shall thereafter be deemed a Second Generation Product, for which milestone payments shall be owed as provided in Section 7.3(i). For purposes of this subsection 7.3(h), a "Secondary Product" means, with respect to a BMS Product containing a particular Collaboration Compound (the "Parent Product"), any other BMS Product containing a different Collaboration Compound or Back-up Compound, respectively, that is intended to modulate the same Selected Target as the Collaboration Compound in such Parent Product, and that is developed by or on behalf of BMS or its Affiliates or sublicensee as a potential replacement for the Parent Product if the development of the Parent Product does not result in Regulatory Approval for the Parent Product. For clarity, it is understood that the term "Secondary Product" shall not include new formulations, presentations, excipients, salts, or modes of delivery of the Collaboration Compound contained in the Parent Product.

(I) SECOND GENERATION PRODUCTS. For each Second Generation Product that is developed by BMS (or its Affiliate or sublicensee), BMS shall not be obliged to make any milestone payments to Exelixis under Section 7.3(f) unless and until the first Regulatory Approval of such Second Generation Product in any Major Market. Upon any such Regulatory Approval of the Second Generation Product, BMS shall, subject to Section 7.3(g) hereof, pay to Exelixis the sum of all milestone payments owed under Section 7.3(f) for milestone events achieved by such Second Generation Product, within [*] of such Regulatory Approval, that, in the absence of this Section 7.3(i), BMS would have been obliged to make to Exelixis prior to or upon such first Regulatory Approval of such Second Generation Product (and without interest on the deferred milestone payments); provided, however, that if the Original BMS Product is no longer being marketed, due to safety problems, at the time the Second Generation Product receives such Regulatory Approval in any such Major Market, then such milestones need not be paid. For purposes of this Section 7.3, a "Second Generation Product means, with respect to a particular BMS Product that has achieved Regulatory Approval in a Major Market (the "Original BMS Product"), any BMS Product containing a Collaboration Compound that (i) is not the Collaboration Compound in the Original BMS Product, and (ii) modulates the same BMS Selected Target as the Collaboration Compound in such Original BMS Product. For clarity, it is understood that "Second Generation Product" shall not include new formulations, presentations, excipients, salts, or modes of delivery of the active ingredient contained in the Original BMS Product.

(J) BYPASSED MILESTONE PAYMENTS. Subject to Section 7.3(h), if an event which triggers a milestone payment set forth in Section 7.3(f) occurs, with respect to a particular Product, at a time prior to payment, with respect to such Product, of any of the previous milestone payments set forth in Section 7.3(f), then BMS shall pay Exelixis within [*] of such event both the milestone payment triggered by such event and all unpaid previous milestone payments.

(K) HYBRID BMS SELECTED TARGETS. For Hybrid BMS Selected Targets, the milestone payments under subsections (b)-(j) of this Section 7.3 shall only be paid with respect to those compounds that modulate the Hybrid BMS Selected Target where the clinical trial, regulatory filing or regulatory approval is for an indication in oncology or a defined field for which BMS took a license from Exelixis pursuant to Section 5.2(b).

7.4 ROYALTY PAYMENTS. BMS shall pay Exelixis royalties on Net Sales of BMS Products at the royalty rates stated below. All royalty payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable, except in the event that an audit confirms that BMS had overpaid royalties to Exelixis, in which case such overpayment will be credited against future royalties due to Exelixis, or refunded to BMS after the end of the royalty term.

(A) BMS SOLE PRODUCTS. BMS shall pay royalties to Exelixis at the rate of [*] of Net Sales of each BMS Sole Product.

(B) BMS COLLABORATION PRODUCTS.

(I) For each BMS Collaboration Product that contains a Collaboration Compound with activity against a BMS Selected Target for which Exelixis developed an Assay pursuant to Section 3.5(a) but did not deliver a Lead Compound pursuant to Section 3.5(b), BMS shall pay royalties to Exelixis at the rate of [*] of Net Sales of such BMS Collaboration Product.

(II) For each BMS Collaboration Product for which Exelixis delivered, pursuant to Section 3.5(b), a Lead Compound or Back-up Compound that (A) is the Collaboration Compound contained in such product, (B) is an Analogue of the Collaboration Compound contained in such product or (C) was used in the discovery or development of such Collaboration Compound, BMS will pay royalties to Exelixis at the rate of [*] of Net Sales of such BMS Collaboration Product.

(C) PHARMACOGENOMIC PRODUCTS. BMS shall pay royalties to Exelixis at the rate of [*] of Net Sales of each Pharmacogenomic Product.

7.5 ROYALTY ADJUSTMENTS.

(A) Subject to Section 7.5(e), BMS may deduct from the royalties it would otherwise owe pursuant to Section 7.4 for a particular BMS Product, [*]. BMS shall limit its deductions of Third Party royalty payments with respect to Patents that claim the use of a BMS Selected Target in oncology [*], to

payments made on account of sales reasonably attributable to use in such fields.

(B) Subject to Section 7.5(e), BMS may deduct, from the royalties it would otherwise owe pursuant to Section 7.4(b)(ii) for a particular BMS Collaboration Product containing a Lead Compound or Back-up Compound provided by Exelixis pursuant to Section 3.5(b), [*]. BMS shall limit its deductions of Third Party royalty payments with respect to Patents that claim the use of a Lead Compound or Back-up Compound in oncology [*], to payments made on account of sales reasonably attributable to use in such fields.

(C) Subject to Section 7.5(e), BMS may reduce the applicable royalty rate set forth in Section 7.4 by [*].

(D) Subject to Section 7.5(e), BMS may reduce the applicable royalty rate set forth in Section 7.4 by [*].

(E) Regardless of the number of royalty deductions or royalty rate reductions set forth in this Section 7.5 that may apply to a particular BMS Product, the minimum royalty rate paid by BMS pursuant to this Agreement shall be [*].

(F) For each BMS Product with activity against a Hybrid BMS Selected Target, the royalty payments under Section 7.4 (and any deductions or adjustments thereto permitted under this Section 7.5) shall be based solely on Net Sales of such product in oncology [*]. Prior to the first commercial sale of a particular BMS Product with activity against a Hybrid BMS Selected Target, the Parties shall agree in writing upon the methodology to be used to allocate the Net Sales of such product between (i) the Net Sales attributable to use in oncology [*] and (ii) the Net Sales attributable to use in the principle indication(s) specified in the DP1 Approval for such Hybrid BMS Selected Target.

7.6 QUARTERLY PAYMENTS. All royalties due under Section 7.4 shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant quarter for which royalties are due.

7.7 TERM OF ROYALTIES. Exelixis' right to receive royalties under Section 7.4 shall expire on a country-by-country basis upon the later of (i) [*] from the first commercial sale of such BMS Product in such country, or (ii) expiration of the last to expire patent or patent application in such country Controlled by Exelixis or BMS claiming the BMS Product or Collaboration Compound contained therein or the manufacture, use or sale of such BMS Product or Collaboration Compound.

7.8 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.

7.9 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 U.S. dollars.

7.10 TAXES. Exelixis shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, BMS will (i) deduct those taxes from the remittable payment, (ii) pay the taxes to the proper taxing authority, and (iii) send evidence of the obligation together with proof of tax payment to Exelixis within [*] following that tax payment.

7.11 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.

7.12 SUBLICENSES. In the event BMS grants licenses or sublicenses to others to sell Products which are subject to royalties under Section 7.4, 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 BMS, and BMS 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 BMS.

7.13 FOREIGN EXCHANGE. Conversion of sales recorded in local currencies to U.S. dollars will be performed in a manner consistent with BMS' normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a widely accepted source of published exchange rates.

7.14 RECORDS; INSPECTION. BMS 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 will 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 once each calendar year, at reasonable time and on reasonable notice. Inspections conducted under this Section 7.14 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 and any unpaid amounts (plus

interest) that are discovered will be paid promptly by BMS.

7.15 INTEREST. If BMS 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 [*]

8. INTELLECTUAL PROPERTY

8.1 OWNERSHIP.

(A) Inventorship of all Target Inventions, Sole Inventions and Joint Inventions will be determined under the patent laws of the United States.

(B) Exelixis shall own the entire right, title and interest in and to any and all Target Inventions and Patents and other intellectual property rights claiming or covering or appurtenant to such Target Inventions. BMS shall and hereby transfers and assigns to Exelixis any and all right, title and interest to all Target Inventions and Patents and other intellectual property rights claiming or covering or appurtenant to such Target Inventions. Once a Patent issues covering a Target Invention, the Parties patent counsel will discuss [*].

(C) Each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents covering such Sole Inventions. BMS and Exelixis shall each own an undivided one-half interest in and to any and all Joint Inventions and Patents and other intellectual property rights claiming or covering or appurtenant to such Joint Inventions. BMS and Exelixis as joint owner each shall have the right to exploit and to grant licenses under such Joint Inventions (without an accounting or obligation to, or consent required from, the other Party), unless otherwise specified in this Agreement.

8.2 DISCLOSURE. Each Party shall submit a written report to the JMT within [*] of the end of each quarter describing any Target Invention, Sole Invention or Joint Invention arising during the prior quarter in the course of the Collaboration which it believes may be patentable. The JMT shall decide whether to file a patent application for a Joint Invention, as discussed in Section 8.3(a).

8.3 PATENT PROSECUTION AND MAINTENANCE; ABANDONMENT.

(A) The JMT shall establish the patent strategy for all Joint Inventions arising from the Collaboration, taking into consideration Exelixis' good faith obligations to BMS and Third Parties relating to patent strategy for Targets and Model System Targets. [*] shall direct the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Patents covering Target Inventions ("Target Patents"). Each Party shall direct the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Patents covering its Sole Inventions. The JMT shall supervise, and shall assign, on a Joint Invention-by-Joint Invention basis, one Party to be responsible for, the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Patents covering such Joint Invention consistent with such strategy. The JMT shall provide each Party with (i) drafts of any new patent application that covers a Joint Invention prior to filing that application, allowing adequate time for review and comment by the Party if possible; provided, however, the JMT shall not be obligated to delay the filing of any patent application; and (ii) copies of all correspondence from any and all patent offices concerning patent applications covering Joint Inventions and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. The Party that, pursuant to this Section 8.3(a), has the right to direct the filing, prosecution and maintenance of a Patent covering a Sole Invention or Target Invention shall also have the right to select the in-house or outside counsel (who shall be reasonably acceptable to the other Party) who will perform the aforementioned filing, prosecution and maintenance-associated activities. The Parties shall mutually agree on the in-house or outside counsel who will perform the filing, prosecution and maintenance of Joint Inventions.

(B) BMS shall bear [*] associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of Patents covering (1) its Sole Inventions (other than those exclusively licensed to Exelixis under Section 5.3(b)), (2) the Sole Inventions of Exelixis that are exclusively licensed to BMS under any of Sections 5.1(a)(ii)-(iv), (3) the Joint Inventions that are exclusively licensed to BMS under any of Sections 5.1(a)(ii)-(iv), and (4) the Target Inventions that are exclusively or co-exclusively licensed to BMS under any of Sections 5.1(a)(ii)-(iv) or 5.1(b); provided that:

(I) if Exelixis or a Third Party licensee of Exelixis is practicing (A) a particular Exelixis Sole Invention or Joint Invention outside the scope of any of the licenses set forth in any of Sections 5.1(a)(ii)-(iv), (B) a particular BMS Sole Invention inside the scope of the license set forth in Section 5.3(c), (C) a particular Exelixis Sole Invention inside the scope of the licenses set forth in Sections 5.1(a)(ii) or 5.1(a)(iv) (where expressly permitted by this Agreement), or (D) a particular Target Invention outside the scope of any of the licenses set forth in any of Sections 5.1(a)(ii)-(iv) or 5.1(b) or within the scope of a co-exclusive license retained by it under Section 5.1(b)(ii), and such Invention is covered by a Patent for which BMS

would otherwise bear [*], then, subject to (b)(ii) below, Exelixis and BMS shall [*]; and

(II) if any Target Invention, Sole Invention of Exelixis or Joint Invention covered by (b) above is part of a patent application or patent that covers other inventions that are not subject to (b) above and that are not licensed to BMS under any of Sections 5.1(a)(ii)-(iv) or 5.1(b), then the Parties shall [*].

(C) Exelixis and BMS shall [*].

(D) Exelixis shall bear [*] associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of Patents covering (1) its Sole Inventions (other than those exclusively licensed to BMS under any of Sections 5.1(a)(ii)-(iv)), (2) the Sole Inventions of BMS exclusively licensed to Exelixis under Section 5.3(b), (3) the Joint Inventions exclusively licensed to Exelixis under Section 5.3(b), and (4) the Target Inventions (other than those exclusively or co-exclusively licensed to BMS under any of Sections 5.1(a)(ii)-(iv) or 5.1(b)); provided that:

(I) if BMS or a Third Party licensee of BMS is practicing a particular BMS Sole Invention or Joint Invention outside the scope of the licenses set forth in Section 5.3, then Exelixis and such Invention is covered by a Patent for which Exelixis would otherwise bear [*], then, subject to (d)(ii) below, the Parties shall [*]; and

(II) if any Target Invention, Sole Invention of BMS or Joint Invention covered by (d) above is part of a patent application or patent that covers other inventions that are not subject to (d) above and that are not licensed to Exelixis under Section 5.3(b), then the Parties shall [*].

(E) (1) If a Party elects not to [*], such Party shall inform the other Party in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable), and, if the other Party assumes [*], then the assuming Party will [*].

(II) If a Party is the assignee or owner of a Patent (other than a Joint Patent) that is licensed to the other Party under any of Sections 5.1(a)(ii)-(iv), 5.1(b), 5.3(b) or 5.3(c), and such owning Party does not wish to [*], such owning Party shall inform the other Party in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable). If the other Party assumes [*], then the assuming Party will [*].

(III) If a Party is the licensee of a Patent (other than a Joint Patent) under any of Sections 5.1(a)(ii)-(iv), 5.1(b), 5.3(b) or 5.3(c), and such Party does not wish to [*], such Party shall inform the other Party in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable), and shall [*].

(F) Each Party shall provide to the other Party, on a semi-annual basis, a patent report that includes the serial number, docket number and status of each Patent for which, pursuant to Section 8.3(a), such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention, Joint Invention or Target Invention. At the same time, each Party shall provide to the other a reasonably detailed estimate of [*]. The Parties through their patent counsel will discuss [*].

8.4 ENFORCEMENT OF PATENT RIGHTS.

(A) ENFORCEMENT OF BMS SOLE PATENTS.

(I) ENFORCEMENT BY EXELIXIS. In the event that in-house counsel for either Party becomes aware of a suspected infringement of any Patent claiming a Sole Invention of BMS [*] such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a BMS Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Subject to the rights of any Third Party licensees of such Patent, Exelixis shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by Exelixis or required by law, and [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a BMS Sole Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

(II) ENFORCEMENT BY BMS. If Exelixis elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(a)(i) and so notifies BMS, then BMS may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own

direction and control. Exelixis will reasonably assist BMS [*] in any action or proceeding being prosecuted or defended by BMS, if so requested by BMS or required by law, and [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of any such BMS Sole Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(B) ENFORCEMENT OF EXELIXIS SOLE PATENTS.

(I) ENFORCEMENT BY BMS. In the event that in-house counsel for either Party becomes aware of a suspected infringement, by a Third of a Patent claiming a Sole Invention of Exelixis [*] such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a small molecule oncology product against such BMS Selected Target, BMS shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control; provided, that this right shall not apply to utility patents in a defined field to which BMS exercised an option under Section 5.2(b). Exelixis will reasonably assist BMS [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by BMS or required by law, and [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of any such Exelixis Sole Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(II) ENFORCEMENT BY EXELIXIS. If BMS elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(b)(i) and so notifies Exelixis, or if such suspected infringement of an Exelixis Sole Patent does not involve a Third Party developing, using, making or selling a small molecule oncology product against such BMS Selected Target then, Exelixis may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in any action or proceeding being prosecuted or defended by Exelixis, if so requested by Exelixis or required by law, and [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, with respect to small molecules, of an Exelixis Sole Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

(C) ENFORCEMENT OF TARGET PATENTS.

(I) BMS TARGET PATENTS

(1) ENFORCEMENT BY BMS. In the event that in-house counsel of either Party becomes aware of a suspected infringement of a Patent claiming a Target Invention [*] such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a BMS Target Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a small molecule oncology product against such BMS Selected Target, BMS shall have the right, but shall not be obligated, to bring an infringement action against such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by BMS or required by law, and [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a BMS Target Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(2) ENFORCEMENT BY EXELIXIS. If BMS elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(c)(i)(1) and so notifies Exelixis, or if such suspected infringement of a BMS Target Patent does not involve a Third Party developing, using, making or selling a small molecule oncology product against such BMS Selected Target, then Exelixis may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in any action or proceeding being prosecuted or defended by Exelixis, if so requested by Exelixis or required by law, and Exelixis will [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the

enforceability, with respect to small molecules, of a BMS Target Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld. This Section 8.4(c)(i)(2) shall not apply to any BMS Target Patent that does not have any claim that pertains to the areas in which Exelixis has rights pursuant to Section 5.3.

(II) EXEL TARGET PATENTS

(1) ENFORCEMENT BY EXELIXIS. In the event that in-house counsel of either Party becomes aware of a suspected infringement of a Patent claiming a Target Invention [*] such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a EXEL Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Exelixis shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by Exelixis or required by law, and Exelixis will [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of an EXEL Target Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

(2) ENFORCEMENT BY BMS. If Exelixis elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(c)(ii)(1) and so notifies BMS, then, subject to the rights of any Third Party licensors of such Patent to Exelixis, BMS may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in any action or proceeding being prosecuted or defended by BMS, if so requested by BMS or required by law, and BMS will [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability of, an EXEL Target Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld. This Section 8.4(c)(ii)(2) shall not apply to any EXEL Target Patent that does not have any claim that pertains to the areas in which BMS has rights pursuant to Section 5.1.

(III) OTHER TARGET PATENTS.

(1) ENFORCEMENT BY EXELIXIS. In the event that in-house counsel of either Party becomes aware of a suspected infringement of a Patent that claims a Target Invention but is not a BMS Target Patent or an EXEL Target Patent (for purposes of this Section 8.4 only, an "Other Target Patent"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of an Other Target Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Exelixis shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by Exelixis or required by law, and Exelixis will [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense.

(2) ENFORCEMENT BY BMS. If Exelixis elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(c)(iii)(1) and so notifies BMS, then BMS may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in any action or proceeding being prosecuted or defended by BMS, if so requested by BMS or required by law, and BMS will [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or adversely affects the enforceability of an Other Target Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(D) ENFORCEMENT OF JOINT PATENTS.

(I) BMS JOINT PATENTS.

(1) ENFORCEMENT BY BMS. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention [*] such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a BMS Joint Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing

independent of this Agreement. BMS shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by BMS or required by law, and BMS will [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a BMS Joint Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(2) ENFORCEMENT BY EXELIXIS. If BMS elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(d)(i)(1) and so notifies Exelixis, then Exelixis may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in any action or proceeding being prosecuted or defended by Exelixis, if so requested by Exelixis or required by law, and Exelixis will [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a BMS Joint Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

(II) EXEL JOINT PATENTS.

(1) ENFORCEMENT BY EXELIXIS. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention [*] such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of an EXEL Joint Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Exelixis shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by Exelixis or required by law, and Exelixis will [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an EXEL Joint Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

(2) ENFORCEMENT BY BMS. If Exelixis elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(d)(ii)(1) and so notifies BMS, then, subject to the rights of any Third Party licensors of such Patent to Exelixis, BMS may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in any action or proceeding being prosecuted or defended by BMS, if so requested by BMS or required by law, and BMS will [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an EXEL Joint Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(III) OTHER JOINT PATENTS.

(1) ENFORCEMENT BY BMS. In the event that in-house counsel for either Party becomes aware of a suspected infringement of a Patent that claims a Joint Invention but is not a BMS Joint Patent or an EXEL Joint Patent (for purposes of this Section 8.4 only, an "Other Joint Patent"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of an Other Joint Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. BMS shall have the right, but shall not be obligated, to prosecute an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by BMS or required by law, and BMS will [*]. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld.

(2) ENFORCEMENT BY EXELIXIS. If BMS elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(d)(iii)(1) and so notifies Exelixis, then Exelixis may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] in any

action or proceeding being prosecuted or defended by Exelixis, if so requested by Exelixis or required by law, and Exelixis will [*]. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

(E) GENERAL PROVISIONS RELATING TO ENFORCEMENT OF PATENTS.

(I) WITHDRAWAL. If either Party brings such an action or defends such a proceeding under this Section 8.4 and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify the other Party and the other Party may substitute itself for the withdrawing Party under the terms of this Section 8.4 at its own expense.

(II) RECOVERIES. In the event either Party exercises the rights conferred in this Section 8.4 and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared [*]. If after such reimbursement any funds shall remain from such damages or other sums recovered, and such funds shall be [*].

8.5 DEFENSE OF THIRD PARTY CLAIMS.

(A) If a claim is brought by a Third Party that any activity related to work performed by a Party under the Collaboration infringes the intellectual property rights of such Third Party, each Party will give prompt written notice to the other Party of such claim. If the Third Party claim arises from Exelixis' activities under the Collaboration, Exelixis shall control and bear the expense of its own defense and, except as set forth in Section 8.5(b), Exelixis shall [*]. Exelixis shall not enter into a settlement agreement with such Third Party without the written consent of BMS, which shall not be unreasonably withheld. If the Third Party claim arises from BMS' activities under the Collaboration, BMS shall control and bear the expense of its own defense and, except as set forth in Section 8.5(b), BMS shall [*]. BMS shall not enter into a settlement agreement with such Third Party without the written consent of Exelixis, which shall not be unreasonably withheld.

(B) The [*] of Exelixis under Section 8.5(a) shall not apply to alleged infringement of Third Party technology rights by Exelixis in the course of performing work under this Agreement where (i) prior to the conduct of such work Exelixis submitted to the JMT a written description of the Third Party technology in question and the work that Exelixis proposed to conduct, (ii) the JMT approved Exelixis' conduct of such work, and (iii) the alleged infringement arose by reason of such work. The [*] of BMS under Section 8.5(a) shall not apply to alleged infringement of Third Party technology rights by BMS in the course of performing work under this Agreement where (i) prior to the conduct of such work BMS submitted to the JMT a written description of the Third Party technology in question and the work that BMS proposed to conduct, (ii) the JMT approved BMS' conduct of such work, and (iii) the alleged infringement arose by reason of such work. In either such case, each Party shall [*]. In any event, neither Party shall be required to conduct any work under this Agreement which it believes may infringe Third Party rights.

8.6 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 8.

9. CONFIDENTIALITY

9.1 NONDISCLOSURE OF CONFIDENTIAL INFORMATION. All Information disclosed by one Party to the other Party pursuant to this Agreement shall be "Confidential Information" for all purposes hereunder. The Parties agree that for a period of [*] after the end of the Research Term or [*] after receipt of such Confidential Information (whichever period is longer), a Party receiving Confidential Information of the other Party will (i) use commercially reasonable 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, except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder, and (ii) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement (it being understood that this subsection (ii) shall not create or imply any rights or licenses not expressly granted under Article 5 hereof).

9.2 EXCEPTIONS. The obligations in Section 9.1 shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(A) 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; 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 Confidential Information.

9.3 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:

(A) Filing or prosecuting Patents relating to Target Inventions, Sole Inventions, Joint Inventions or Products;

(B) Regulatory filings;

(C) Prosecuting or defending litigation;

(D) Complying with applicable governmental regulations; and

(E) Disclosure, in connection with the performance of this Agreement, to Affiliates, potential collaborators, partners, and licensees (including potential co-marketing and copromotion 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 9. 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 9.3(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 9. 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.

9.4 TERMINATION OF PRIOR AGREEMENTS. This Agreement supersedes the Mutual Confidential Disclosure Agreement between Exelixis and BMS dated December 5, 2000 and the amendments thereto dated January 11, 2001 and February 7, 2001. All Information exchanged between the Parties under such earlier Agreement shall be deemed Confidential Information and shall be subject to the terms of this Article 9.

9.5 PUBLICITY. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as Exhibit 9.5. 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 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.

9.6 PUBLICATIONS. Neither Party shall publish or present the results of studies carried out under this Agreement without the opportunity for prior review by the other Party. Subject to Section 9.3, each Party agrees to provide the other Party the opportunity to review any proposed abstracts, manuscripts or presentations (including verbal presentations) which relate to any Selected Target 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 JMT will 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 9.1. Nothing contained in this Section 9.6 shall prohibit the inclusion of Confidential Information of the nonfiling Party necessary for a patent application, provided the nonfiling 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 JMT.

10. TERM AND TERMINATION

10.1 TERM. This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with Section 10.2 or by mutual written agreement, or until the expiration of the last royalty payment obligation with respect to any Product, as provided in Section 7.4. Termination of the Research Term shall not constitute termination of this Agreement; termination of this Agreement shall result in termination of the Research Term.

10.2 TERMINATION FOR MATERIAL BREACH.

(A) If either Party believes that the other is in material breach of this Agreement (including without limitation any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in Article 7, the allegedly breaching Party shall have [*] to either cure such breach or, if cure cannot be reasonably effected within such [*] period, to deliver to the other Party a plan for curing such breach which is reasonably sufficient to effect a cure. Such a plan shall set forth a program for achieving cure as rapidly as practicable. Following delivery of such plan, the breaching Party shall use Diligent Efforts to carry out the plan and cure the breach. For any breach arising from a failure to make a payment set forth in Article 7, the allegedly breaching Party shall have [*] to cure such breach.

(B) If the Party receiving notice of breach fails to cure such breach within the [*] (as applicable), or the Party providing the notice reasonably determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon [*] advance written notice, provided, that if the breach applies only to a given Selected Target, a given Product, Pharmacogenomic Product, a given Lead Compound/Back-Up Compound, or to the license rights granted to a Party under any of subsections 5.1(a)(iv)-(v), 5.1(a)(vii)-(viii), 5.3(d), or 5.3(g), the non-breaching Party may only terminate the breaching Party's rights with respect to such Selected Target, Product, Pharmacogenomic Product, Lead Compound/Back-Up Compound, or the license rights granted to a Party under such subsection. Notwithstanding the foregoing, a Party may terminate this Agreement upon the third or any subsequent such termination of the other Party's rights with respect to a given Selected Target, a given Product, Pharmacogenomic Product, a given Lead Compound/Back-Up Compound, or the license rights granted to the other Party under any of subsections 5.1(a)(iv)-(v), 5.1(a)(vii)-(viii), 5.3(d), or 5.3(g).

(C) If a Party gives notice of termination under this Section 10.2 and the other Party disputes whether such notice was proper, then the issue of whether this Agreement has been terminated shall be resolved in accordance with Section 13.1. If as a result of such dispute resolution process it is determined that the notice of termination was proper, then such termination shall be deemed to have been effective if the breaching Party fails thereafter to cure such breach in accordance with the determination made in the resolution process under Section 13.1 within the time period set forth in Section 10.2(a) for the applicable breach following such determination. If as a result of such dispute resolution process it is determined that the notice of termination was improper, then no termination shall have occurred and this Agreement shall have remained in effect.

10.3 EFFECT OF TERMINATION; SURVIVAL.

(A) In the event of termination of this Agreement for any reason other than material breach pursuant to Section 10.2 or by mutual agreement, the following provisions of this Agreement shall survive: Articles 1, 4, 9, 12 and 13, and Sections 2.16, 2.18, 3.8, 3.10, 5.1, 5.2(a), 5.3, 5.4, 6.2(a) (except for the last sentence of 6.2(a)(ii)), 6.2(b), 6.3(a), 7.14, 7.15, 8.1, 8.3, 8.4, 8.5, 10.3, and 11.3.

(B) In the event of termination of this Agreement pursuant to Section 10.2, the provisions of this Agreement referenced in Section 10.3(a) shall survive (except that Sections 8.3 and 8.4 shall survive only with respect to Joint Inventions); provided, however, that any licenses granted under this Agreement in favor of the breaching Party shall terminate, other than (A) the license rights granted to BMS under Section 5.1(b) (which shall survive even if Exelixis is the terminating Party, unless such termination is due to BMS' breach of such license), (B) the license rights granted to BMS under Section 5.1(a)(viii) (which shall survive even if Exelixis is the terminating Party, unless such termination is due to BMS' breach of such license), and (C) the license rights granted to Exelixis under Section 5.3(d)(ii) (which shall survive even if BMS is the terminating Party, unless such termination is due to Exelixis' breach of such license). In such case, the non-breaching Party shall continue to hold the licenses granted hereunder, subject to the milestone and royalties set forth herein (which relevant provisions shall survive termination). If BMS terminates this Agreement pursuant to Section 10.2 on account of Exelixis' breach, then Section 5.2(b)(v) shall survive such termination, subject to the milestone and royalties set forth herein.

(C) 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.

11. REPRESENTATIONS AND COVENANTS

11.1 MUTUAL AUTHORITY. Exelixis and BMS each represents and warrants to the other that: (i) it has the authority and right to enter into and perform this Agreement, (ii) 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 (iii) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

11.2 RIGHTS IN TECHNOLOGY. During [*], each Party will use commercially reasonable efforts to maintain (but without an obligation to renew) and not to breach any agreements with Third Parties that provide a grant of rights from such Third Party to a Party that are Controlled by such Party and are licensed or become subject to a license from such Party to the other Party under Article 5 or 6. Each Party agrees to provide promptly the other Party with notice of any such alleged breach. As of the Effective Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

11.3 PERFORMANCE BY AFFILIATES. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates, provided, however, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates in research under this Agreement or with respect to Collaboration Compounds, (i) the restrictions of this Agreement which apply to the activities of a Party with respect to Selected Targets and Collaboration Compounds shall apply equally to the activities of such Affiliate, and (ii) 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 5) as if such intellectual property had been developed by the Party.

11.4 THIRD PARTY RIGHTS.

(A) Except as already disclosed, each Party represents and warrants to the other Party that, to its knowledge as of the Effective Date, its performance of work under the Collaboration as contemplated by this Agreement shall not infringe the patent, trade secret or other intellectual property rights of any Third Party. Each Party represents and warrants to the other Party that, to its knowledge as of the Effective Date, it will not violate a contractual or fiduciary obligation owed to such Third Party (including without limitation misappropriation of trade secrets) to perform its work under the Collaboration as contemplated by this Agreement.

(B) Except as already disclosed, Exelixis represents and warrants to BMS that, to its knowledge as of the Effective Date, the research conducted by it to identify the Targets listed in Exhibit 1.28 did not infringe the patent, trade secret or other intellectual property rights of any Third Party. Exelixis represents and warrants to BMS that, to its knowledge as of the Effective Date, it did not violate a contractual or fiduciary obligation owed to such Third Party (including without limitation misappropriation of trade secrets) in conducting its research to identify the Targets listed in Exhibit 1.28.

11.5 NOTICE OF INFRINGEMENT OR MISAPPROPRIATION. [*] represents and warrants to [*] that, as of the Effective Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any third party in relation to any technology to be used in connection with the Collaboration.

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

12.1 MUTUAL INDEMNIFICATION. Subject to Section 12.4, each Party hereby agrees to indemnify, defend and hold the other Party, its Affiliates, its licensees, and its and their officers, directors, employees, consultants, contractors, sublicensees and agents (collectively, the "Indemnitees") harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Indemnitee as to any such Claim (as defined in this Section 12.1) until the indemnifying Party has acknowledged that it will provide indemnification hereunder with respect to such Claim as provided below, (collectively, "Damages") resulting from claims, suits, proceedings or causes of action ("Claims") brought by such Third Party against such Indemnitee based on: (a) a breach of warranty by the indemnifying Party contained in this Agreement; (b) breach of this Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of a Party, its Affiliates or (sub)licensees, or their respective employees, contractors or agents in the performance of this Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including without limitation misappropriation of trade

secrets).

12.2 INDEMNIFICATION BY BMS. Subject to Section 12.4, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, agents and employees from and against any and all suits, claims, actions, demands, liabilities, expenses and/or loss, including reasonable legal expenses and reasonable attorneys' fees ("Losses") resulting directly or indirectly from the manufacture, use, handling, storage, sale or other disposition of BMS Selected Targets, Collaboration Compounds or BMS Products by BMS or its Affiliates, agents or sublicensees except to the extent such Losses result from (a) a breach of warranty by Exelixis contained in this Agreement; (b) breach of this Agreement or applicable law by Exelixis; (c) negligence or willful misconduct by Exelixis, its Affiliates or (sub)licensees, or their respective employees, contractors or agents in the performance of this Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by Exelixis to a Third Party (including without limitation misappropriation of trade secrets).

12.3 INDEMNIFICATION BY EXELIXIS. Subject to Section 12.4, Exelixis hereby agrees to indemnify, defend and hold harmless BMS and its directors, agents and employees from and against any and all suits, claims, actions, demands, liabilities, expenses and/or loss, including reasonable legal expenses and reasonable attorneys' fees ("Losses") resulting directly or indirectly from the manufacture, use, handling, storage, sale or other disposition of EXEL Selected Targets, Collaboration Compounds or EXEL Products by Exelixis or its Affiliates, agents or sublicensees except to the extent such Losses result from: (a) a breach of warranty by BMS contained in this Agreement; (b) breach of this Agreement or applicable law by BMS; (c) negligence or willful misconduct by BMS, its Affiliates or (sub)licensees, or their respective employees, contractors or agents in the performance of this Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by BMS to a Third Party (including without limitation misappropriation of trade secrets).

12.4 CONDITIONS TO INDEMNIFICATION. As used herein, "Indemnitee" shall mean a party entitled to indemnification under the terms of Section 12.1, 12.2 or 12.3. It shall be a condition precedent to an Indemnitee's right to seek indemnification under such Section 12.1, 12.2 or 12.3:

(I) shall inform the indemnifying Party under such applicable Section of a Claim as soon as reasonably practicable after it receives notice of the Claim;

(II) shall, if the indemnifying Party acknowledges that such Claim 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 Claim (including the right to settle the claim solely for monetary consideration); provided, that the indemnifying Party shall seek the prior written consent (not to be unreasonably withheld or delayed) of any such Indemnitee as to any settlement which would 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

(III) shall 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 Claim. Provided that an Indemnitee has complied with the foregoing, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Claim. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Claim using attorneys of its/his/her choice and at its/his/her expense. In no event may an Indemnitee settle or compromise any Claim for which it /he/she intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party, or the indemnification provided under such Section 12.1, 12.2 or 12.3 as to such Claim shall be null and void.

12.5 LIMITATION OF LIABILITY. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO SECTIONS 8.5(a), 12.1, 12.2 AND 12.3, AND EXCEPT FOR BREACH OF SECTION 9.1 HEREOF, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF THE LIABLE PARTY. For clarification, the foregoing sentence shall not be interpreted to limit or to expand the express rights specifically granted in the sections of this Agreement.

12.6 COLLABORATION DISCLAIMER. EXCEPT AS PROVIDED IN ARTICLE 11 ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, TARGETS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY BMS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO EXELIXIS PURSUANT TO THE TERMS OF THIS AGREEMENT. EXCEPT AS PROVIDED IN ARTICLE 11 ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN,

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, TARGETS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THIS AGREEMENT.

13. MISCELLANEOUS

13.1 DISPUTE RESOLUTION. In the event of any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, other than a dispute addressed in Section 13.3, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Chief Scientific Officer of Exelixis and the Senior Vice President, Drug Discovery and Exploratory Development of BMS (or if either foregoing position does not exist at such time, the closest successor in title to such position) and, if not resolved by such individuals, by referring the disputed matter to the President of Exelixis and the President of the BMS Pharmaceutical Group or their designees. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within 20 days after such notice, such representatives of the scientific management of the Parties shall meet for attempted resolution by good faith negotiations. If such representatives are unable to resolve such dispute within thirty (30) days of their first meeting for such negotiations, then said Officers shall meet within twenty (20) days thereafter for attempted resolution by good faith negotiations. If the Officers are unable to resolve such dispute within thirty (30) days of their first meeting for such negotiations, either Party may seek to have such dispute resolved in any United States 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 United States, then in any other jurisdiction or venue permitted by applicable law. To the extent permitted by law, the Party that seeks such judicial resolution hereby consents to the other Party's forum of choice.

13.2 GOVERNING LAW. Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of California, as applied to agreements executed and performed entirely in the State of California by residents of the State of California, without regard to conflicts of law rules provided, however, that resolution of all disputes arising out of or related to the performance, enforcement or breach of Section 2.18 of this Agreement and any remedies relating thereto shall be governed by and construed under the substantive laws of the State of New York, as applied to agreements executed and performed entirely in the State of New York by residents of the State of New York, without regard to its conflicts of law rules.

13.3 PATENTS AND TRADEMARKS. Any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of any Patent rights covering the manufacture, use or sale of any Product or of any trademark rights related to any Product shall be submitted to a court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

13.4 ENTIRE AGREEMENT; AMENDMENT. This Agreement and the MOA Agreement set 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, except for the MOA Agreement. 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.

13.5 EXPORT CONTROL. This Agreement is made subject to any restrictions concerning the export of products or technical information from the United States of America or other countries which may be imposed upon or related to Exelixis or BMS from time to time. Each Party agrees that it will not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity.

13.6 BANKRUPTCY.

(A) All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("Title 11"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "Bankrupt Party") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitation, a Title 11 Trustee) shall, at the election of the Bankrupt Party made within 60 days after the commencement of the case (or, if no such election is made, immediately upon the

request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party including, where applicable and without limitation, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

(B) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitations, a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 13.6, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(C) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including, without limitation, Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including, without limitation, under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including without limitation for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of licensed products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this Section 13.6 shall be subject to the licenses set forth elsewhere in this Agreement and the payment obligations of this Agreement, which shall be deemed to be royalties for purposes of Title 11.

13.7 FORCE MAJEURE. Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the control of the Parties, including without limitation, an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe; provided, however, the payment of invoices due and owing hereunder shall not be delayed by the payer because of a force majeure affecting the payer.

13.8 NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail, postage prepaid, express delivery service or personally delivered. 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: Chief Executive Officer

With a copy to: Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Robert L. Jones, Esq.

For BMS: Bristol-Myers Squibb Pharmaceutical Research Institute
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Senior Vice President - Drug Discovery

With a copy to: Bristol-Myers Squibb Pharmaceutical Research Institute

Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Vice President and Senior Counsel - BMSPRI

13.9 CONSENTS NOT UNREASONABLY WITHHELD OR DELAYED. Whenever provision is made in this Agreement for either Party to secure the consent or approval of the other, that consent or approval shall not unreasonably be withheld or delayed, and whenever in this Agreement provisions are made for one Party to object to or disapprove a matter, such objection or disapproval shall not unreasonably be exercised.

13.10 MAINTENANCE OF RECORDS. 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.

13.11 UNITED STATES DOLLARS. References in this Agreement to "Dollars" or "$" shall mean the legal tender of the United States of America.

13.12 NO STRICT CONSTRUCTION. This Agreement has been prepared jointly and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

13.13 ASSIGNMENT. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, 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

13.13 shall be null and void and of no legal effect.

13.14 ELECTRONIC DATA INTERCHANGE. If both Parties elect to facilitate business activities hereunder by electronically sending and receiving data in agreed formats (also referred to as Electronic Data Interchange or "EDI") in substitution for conventional paper-based documents, the terms and conditions of this Agreement shall apply to such EDI activities.

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

13.16 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.

13.17 SEVERABILITY. If any one or more of the provisions of this Agreement is 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.

13.18 HEADINGS. The headings for each article and section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular article or section.

13.19 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.

{Rest of Page Intentionally Left Blank}

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers as of the date and year first above written.

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Elliott Sigal
- --

EXELIXIS, INC.

By: /s/ Geoffrey Duyk

Title: Sr. Vice President Drug Discovery & Exploratory Development

Title: CSO

Date: July 17, 2001

Date: 7/20/01

50.

Exhibit 1.25-1.

[*] = 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
GENETIC ENTRY POINTS
[*]

2.

Exhibit 5.1(a)(vii)-1.

EXHIBIT 1.28
[*]

EXHIBIT 5.1(A)(VII)

[*]

EXHIBIT 5.3(D)
[*]

EXHIBIT 9.5

PRESS RELEASE

Contacts:

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Exelixis, Inc.
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abitting@exelixis.com

Patricia Doykos Duquette
Public Affairs
Bristol-Myers Squibb
(609) 252-3390
patricia.duquette@bms.com

BRISTOL-MYERS SQUIBB AND EXELIXIS ENTER PIONEERING CANCER-FIGHTING ALLIANCE

DRUG DISCOVERY COLLABORATION TARGETS NEW FRONTIER OF TUMOR SUPPRESSOR GENES

PRINCETON, N.J. and SOUTH SAN FRANCISCO, Calif.- July XX, 2001 - Bristol- Myers Squibb Company (NYSE: BMY) and Exelixis, Inc. (NASDAQ: EXEL) today announced a broad collaboration and licensing agreement to create a new generation of cancer drugs that selectively target tumor suppressor genes -- genes that prevent tumors from developing. Tumor suppressor genes have long been viewed as promising targets in fighting cancer, but it remains extremely difficult to develop drugs that work against them.

In a cooperative effort that will leverage each company's technology and expertise in the fields of genomics and target validation, Exelixis will identify and validate molecular targets that trigger cell death in cancer cells, while leaving normal cells unharmed. Bristol- Myers Squibb will then further validate these targets in human models.

Each company will have the option to obtain exclusive worldwide rights to equal numbers of validated targets arising from the collaboration. These rights will enable them to pursue the development of novel, small-molecule drugs. Bristol-Myers Squibb may also use Exelixis' expertise in assay development, high throughput screening, medicinal chemistry and preclinical pharmacology for the development of small-molecules directed against several of the selected targets.

"As the worldwide leader in oncology drug development, we will continue to push the R&D envelope to extend and enhance the lives of cancer patients," said Peter S. Ringrose, Ph.D., chief scientific officer and president, Pharmaceutical Research Institute, Bristol-Myers Squibb. "This creative partnership with Exelixis will help us continue to be on the cutting edge of cancer drug development, and we believe this is what it will take to realize a new era of treatment."

"Tumor suppressor genes represent a new frontier for the treatment of cancer and until recently, they have been intractable as drug targets for pharmaceuticals," said Elliott Sigal, M.D., Ph.D., senior vice president, Drug Discovery and Exploratory Development, Bristol-Myers Squibb. "In this collaboration, we will be targeting the basic mechanisms that can lead to cancer. This is a novel approach to alleviating the true bottleneck of drug development in the post-genomics era."

As part of the collaboration, Exelixis will receive an exclusive worldwide license to develop and commercialize a selected analogue of the Bristol-Myers Squibb anticancer compound, rebeccamycin. The rebeccamycin analogue has shown activity against cancers in ongoing Phase I and early Phase II clinical trials being conducted by the National Cancer Institute under a Clinical Trials Agreement. Bristol-Myers Squibb has agreed to provide access to its internal clinical development prowess to support Exelixis in the development of this compound. Each party has certain rights of first negotiation with respect to cancer compounds that result from the targets validated in the collaboration and that the companies elect to license out. In addition, Bristol-Myers Squibb will make an equity investment in Exelixis.

"Bristol-Myers Squibb has been an excellent partner, and we look forward to establishing this new relationship with them," commented George A. Scangos, Ph.D., president and chief executive officer of Exelixis. "This collaboration, which we believe is valued $200 million, provides us not only with working capital, but significant upside in the form of milestones and royalties and a clinical stage product that will enable us to build our clinical development infrastructure." Dr. Scangos added, "When taken together with our recent PDL collaboration, we believe our cancer strategy demonstrates our ability to significantly leverage our core research into multiple product opportunities both for ourselves and our partners."

Bristol-Myers Squibb is an $18 billion pharmaceutical and related heath care products
company whose mission is to extend and enhance human life. For more information, please visit the company's web site at www.bms.com.

Exelixis, Inc. is a leading genomics-based drug discovery company focused on product development through its expertise in comparative genomics and model system genetics. These technologies provide a rapid, efficient and cost

effective way to move from DNA sequence data to knowledge about the function of genes and the proteins they encode. The company's technology is broadly applicable to all life sciences industries including pharmaceutical, diagnostic, agricultural biotechnology and animal health. Exelixis has partnerships with Aventis, Bayer, Bristol-Myers Squibb, Pharmacia, Protein Design Labs and Dow AgroSciences and is building its internal development program in the area of oncology. For more information, please visit the company's web site at www.exelixis.com.

This press release contains certain forward-looking statements regarding Bristol-Myers Squibb within the meaning of the Private Securities Litigation Reform Act of 1995 that may be identified by terminology such as "anticipates," and "expects" and other words or terms of similar expression or meaning. Such forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes and results to differ materially from current expectations. These factors include, among other things, uncertainties relating to clinical trials and product development, unexpected regulatory delays or government regulation generally. For further details and a discussion of these and other risks and uncertainties, see Bristol-Myers Squibb's Securities and Exchange Commission filings, including the company's 2000 annual report on Form 10-K. Bristol-Myers Squibb undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise.

This press release contains forward-looking statements regarding Exelixis, Inc. These forward-looking statements are based upon Exelixis' current expectations. Forward-looking statements involve risks and uncertainties. Exelixis' actual results and the timing of events could differ materially from those anticipated in its forward-looking statements as a result of many factors, including Exelixis' ability to successfully assume the development and manufacturing of the rebeccamycin analogue in order to obtain the value ascribed to it under the collaboration; the timing and expenses associated with the implementation of development and manufacturing efforts for the rebeccamycin analogue; and Exelixis' ability to successfully achieve milestones and royalties derived from future Bristol-Myers Squibb products developed against selected Exelixis targets under the collaboration. These and other risk factors are discussed under "Risk Factors" and elsewhere in Exelixis' Annual Report on Form 10-K for the year ended December 31, 2000 and other SEC reports. Exelixis expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in its expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

CONFERENCE CALL INFORMATION ADDED HERE.

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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.

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CANCER COLLABORATION AGREEMENT
BETWEEN
EXELIXIS, INC.
AND
BRISTOL-MYERS SQUIBB COMPANY

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EXHIBIT 10.31

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of July 17, 2001 (the "Effective Date") by and between EXELIXIS, INC., a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083 ("Exelixis"), and BRISTOL-MYERS SQUIBB COMPANY, a Delaware corporation having its principal place of business at Route 206 and Province Line Road, Princeton, NJ 08543 ("BMS"). Exelixis and BMS are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

BACKGROUND

A. BMS is the owner of the compound Rebeccamycin (as defined below); and

B. As part of the consideration for the Cancer Collaboration Agreement between BMS and Exelixis dated July 17, 2001 ("CCA"), and the Stock Purchase Agreement between BMS and Exelixis dated July 17, 2001, BMS desires to grant to Exelixis, and Exelixis desires to receive, a license to develop and commercialize Rebeccamycin based on the terms and conditions set forth below.

NOW THEREFORE, BMS and Exelixis agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings as used in 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 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 "BMS KNOW-HOW" means all Information Controlled by BMS or its Affiliates as of the Effective Date that relates to Rebeccamycin or to its manufacture or use, including without limitation: (i) cell lines, including without limitation [*], and related media; (ii) technical data; (iii) preclinical data; (iv) protocols and clinical trial information; (v) methods of manufacturing; (vi) quality assurance and stability data; (vii) all adverse events data; and (viii) regulatory filings. For sake of clarity, no trademarks or tradenames Controlled by BMS are included in the BMS Know-How.

1.3 "BMS PATENT RIGHTS" means (i) the Listed Patent Rights, (ii) all other United States and foreign patents and patent applications Controlled by BMS or its Affiliates as of the Effective Date that would be infringed by the manufacture, importation, use, offer for sale or sale of Rebeccamycin by an unlicensed Third Party, and (iii) all continuations, divisions, reissues, extensions, substitutions, re-examinations, patents of addition, supplementary protection certificates and foreign equivalents of the patents and patent applications described in (ii).

1.4 "CONTROL" or "CONTROLLED" means, with respect to any material, particular item of Information or intellectual property right, (i) that the Party owns and has the ability to grant to the other Party the licenses to such item provided for herein, without violating the terms of any agreement or other arrangement with any Third Party, and/or (ii) that the Party has a license to such item and has the ability to grant to the other Party the licenses to such item provided for herein, without violating the terms of any agreement or other arrangement with any Third Party.

1.5 "IND" means an Investigational New Drug application, as defined in the U.S. Food, Drug and Cosmetics Act and the regulations promulgated thereunder, or any corresponding or equivalent foreign application, registration or certification.

1.6 "INFORMATION" means information, material, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, databases, inventions, practices, methods, techniques, specifications, formulations, formulae, cell lines, cell media, knowledge, know-how, skill, experience, manufacturing materials, financial data, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, quality assurance data, stability data, studies and procedures, and patent and other legal information or descriptions.

1.7 "LISTED PATENT RIGHTS" means (i) the patents and patent applications listed in Exhibit 1.7 and (ii) all continuations, continuations-in-part, divisions, reissues, extensions, substitutions, re-examinations, patents of

addition, supplementary protection certificates and foreign equivalents of such patents and patent applications.

1.8 "PRODUCT" means (i) Rebeccamycin, (ii) any product containing or comprising Rebeccamycin, and (iii) any formulation of (i) or (ii).

1.9 "REBECCAMYCIN" means the rebeccamycin analog compound known as BMY-027557, with the CAS Identification No. CAS-119673-08-4 and CAS nomenclature 1 anosyl)-5H-indolo[2,3-a]pyrrolo[3,4-c]carbazole-5,7(6H)-dione.

1.10 "THIRD PARTY" means any person or entity other than Exelixis, BMS or an Affiliate of Exelixis or BMS.

2. LICENSES AND OBLIGATIONS

2.1 LICENSES TO EXELIXIS.

2.1.1 EXCLUSIVE LICENSE. BMS hereby grants to Exelixis a worldwide, exclusive, irrevocable (except as provided in Section 7.5), Exelixis, fully paid, royalty-free license (with the right to sublicense), under BMS Patent Rights and BMS Know-How, to make, have made, use, develop, test, sell, offer for sale and import Products. For clarity, the foregoing license excludes those BMS Patent Rights and BMS Know-How which are licensed to Exelixis under Section 2.1.2.

2.1.2 NON-EXCLUSIVE LICENSE. BMS hereby grants to Exelixis a worldwide, non-exclusive, irrevocable, fully paid, royalty-free license (with the right to sublicense), under (i) the BMS Patent Rights described in Sections 1.3(ii) and (iii) to which BMS only has non-exclusive rights, and (ii) the BMS Know-How to which BMS only has non-exclusive rights, to make, have made, use, develop, test, sell, offer for sale and import Products.

2.2 LICENSE TO BMS. Exelixis hereby grants to BMS and its Affiliates a worldwide, non-exclusive, fully paid, royalty-free license, under BMS Patent Rights and BMS Know-How, to make, have made, use, and test Rebeccamycin solely for internal pre-clinical research purposes (x) to profile or test the activity of compounds other than Rebeccamycin or (y) to synthesize compounds that are not Rebeccamycin.

2.3 NEGATIVE COVENANTS. Except as provided in Section 2.2, BMS and/or its Affiliates shall not (itself or directly or indirectly with a Third Party) make, have made, use, develop, test, sell, offer for sale and import Products during the term of this Agreement.

2.4 TRANSFER OF BMS KNOW-HOW.

2.4.1 Within [*] of the Effective Date, BMS shall (i) commence and use commercially reasonable efforts thereafter to disclose to Exelixis in an orderly fashion as promptly as reasonably practicable all BMS Know-How that is in the possession of BMS or its Affiliates, and (ii) commence and use commercially reasonable efforts thereafter to transfer to Exelixis in an orderly fashion as promptly as reasonably practicable all such BMS Know-How that relates to Rebeccamycin; provided, that the foregoing shall not apply to BMS manufacturing Know-How, which BMS shall be obliged to disclose pursuant to Section 2.6. The Parties agree and acknowledge that BMS may retain one or more copies of BMS Know-How that also pertain to compounds other than Rebeccamycin and may use such BMS Know-How for purposes outside the scope of the license granted in Section 2.1.1 or within the scope of the license granted in Section 2.2. [*] shall bear its own expenses in connection with this Section 2.4.1; provided, that Exelixis shall reimburse BMS for [*].

2.4.2 [*], during normal business hours, BMS shall at reasonable times permit Exelixis and its representatives to have full and complete access to all contracts, data and records relating to Rebeccamycin in BMS' possession, and BMS shall provide Exelixis and its representatives an opportunity to meet and discuss with the individuals who have material knowledge pertaining to such Rebeccamycin contracts, data and records and who are officers and employees of BMS and its Affiliates.

2.5 CLINICAL TRIAL DEVELOPMENT.

2.5.1 [*], BMS shall use commercially reasonable efforts to provide, over a mutually agreed time frame, reasonable assistance to Exelixis with respect to: (i) the design of clinical trials for Products; (ii) the selection of investigators and end points for clinical trials of Products; (iii) the selection of contract research organizations for clinical trials of Products; and (iv) providing access to multinational cooperative study groups for clinical trials of Products. It is understood that such assistance will generally be provided through a monthly teleconference scheduled at mutually convenient times. No travel, other than to NCI Steering Committee meetings where reasonably necessary, shall be required of BMS without its prior consent. [*] shall bear its own expenses in connection with this Section 2.5.1; provided, that Exelixis shall reimburse BMS for [*]. [*], BMS shall promptly provide to Exelixis any notices or other communications regarding Third Party claims arising from clinical trials based on use of the Products prior to the Effective Date.

2.5.2 Subject to the consent of the National Cancer Institute ("NCI"), BMS hereby assigns to Exelixis, and Exelixis agrees to accept such assignment

of, all of BMS' rights, obligations and interests in and under the "Agreement Between Pharmaceutical Industry and the Division of Cancer Treatment, NCI for the Clinical Development of Diethylaminorebeccamycin" between BMS and NCI dated December 20, 1993 (the "NCI Agreement"). [*], BMS shall send the NCI a letter that informs NCI of the license between BMS and Exelixis and that requests NCI to send a letter assigning to Exelixis all of BMS' rights, obligations and interests in and under the NCI Agreement. [*], BMS: (i) use commercially reasonable efforts to facilitate the assignment to Exelixis of all of BMS' rights, obligations and interests in and under the NCI Agreement; and agrees to (ii) request that NCI perform whatever actions are needed to give Exelixis (A) the right to review NCI's clinical trial data relating to Products, including without limitation the amending of NCI's informed consents regarding clinical trials of Products, (B) the right to cross-reference NCI's IND for Rebeccamycin, and (C) the ability to formulate Rebeccamycin using formulation technology developed or used by NCI pursuant to its work on Rebeccamycin. [*] shall bear its own expenses in connection with this Section 2.5.2; provided, that Exelixis shall reimburse BMS for [*].

2.5.3 Effective upon the date on which BMS' interest in the NCI Agreement is assigned to Exelixis and consented to by NCI (the "Assignment Date")

(A) BMS shall retain all liability for its failure to fulfill any obligations under the NCI Agreement that accrued prior to the Assignment Date.

(B) Exelixis shall assume all liability for (i) its failure to fulfill any obligations under the NCI Agreement that accrued after to the Assignment Date, and (ii) any loss, claim, damage or liability resulting from Exelixis' activities under the NCI Agreement after to the Assignment Date. Following the Assignment Date, Exelixis covenants and agrees to perform and fully discharge in a timely manner all obligations under the NCI Agreement.

2.5.4 Following the Effective Date of this Agreement the Assignment Date: (x) BMS covenants and agrees to perform and fully discharge in until a timely manner all obligations required of it under the NCI Agreement; and (y) Exelixis shall assume all liability for any loss, claim, damage or liability resulting from BMS' activities under the NCI Agreement after to the Assignment Date, except to the extent attributable to a breach by BMS of its obligations in (x).

2.6 IDENTIFICATION OF MANUFACTURER. [*], BMS shall (i) recommend to Exelixis candidates for a Third Party manufacturer for the supply of Rebeccamycin to Exelixis, and (ii) disclose a sufficient amount of BMS Know-How related to the manufacture of Rebeccamycin to enable Exelixis to select a Third Party manufacturer for the supply of Rebeccamycin to Exelixis. At the request of Exelixis, BMS shall, subject to the execution by a Third Party manufacturer of an appropriate license and confidentiality agreement with Exelixis, promptly transfer to such Third Party manufacturer chosen by Exelixis all useful BMS Know-How that relates to the manufacture of Rebeccamycin and advise such Third Party manufacturer concerning the manufacture of Rebeccamycin. [*] shall bear its own expenses in connection with this Section 2.6; provided, that Exelixis shall reimburse BMS for [*]. It is not expected that BMS will be required to provide on-site advice in connection with the foregoing, and provision of advice by BMS with respect to its manufacturing Know-How shall not require BMS to provide on-site support, unless BMS agrees to same in advance and is reimbursed for its [*]. If Exelixis requests BMS to transfer BMS Know-How concerning the manufacture of Rebeccamycin to one other Third Party manufacturer in addition to the Third Party manufacturer described above in this Section 2.6, then BMS shall transfer such BMS Know-How to such additional Third Party Manufacturer provided that [*].

2.7 NON-SOLICITATION AND NON-HIRE. For [*], Exelixis will not, without the prior written consent of BMS: [*] Nothing in this Section 2.7 shall prohibit a general solicitation made by newspaper or other media.

3. CONFIDENTIALITY

3.1 NONDISCLOSURE OF CONFIDENTIAL INFORMATION. For all purposes hereunder, "Confidential Information" shall mean all Information disclosed by one Party to the other Party (i) prior to the Effective Date and relating to Rebeccamycin or Products, or (ii) pursuant to this Agreement. The Parties agree that for a period of [*] after a disclosure of an item of Confidential Information is made hereunder, a Party receiving such item of Confidential Information of the other Party will (i) use commercially reasonable efforts to maintain in confidence such item of 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 item of Confidential Information to any Third Party without prior written consent of the other Party, except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder, and (ii) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement.

3.2 EXCEPTIONS. The obligations in Section 3.1 shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(A) 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; 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 Confidential Information.

3.3 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:

(A) Filing or prosecuting patents relating to Products;

(B) Regulatory filings;

(C) Prosecuting or defending litigation;

(D) Complying with applicable governmental regulations; and

(E) Disclosure, in connection with the performance of this Agreement, to Affiliates, sublicensees, research collaborators, 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 3. 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 investment bankers, investors, and potential investors, 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 3. In addition, a copy of this Agreement may be filed by Exelixis with the Securities and Exchange Commission in connection with any public offering of Exelixis securities. In connection with any such filing, Exelixis 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.

4. REPRESENTATIONS AND WARRANTIES

4.1 MUTUAL WARRANTIES. Exelixis and BMS each represents and warrants to the other that (i) it has the authority and right to enter into and perform this Agreement, (ii) 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 (iii) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

4.2 BMS WARRANTIES. BMS represents and warrants to Exelixis as of the Effective Date that

4.2.1 BMS has the full right and power to grant the licenses set forth in Section 2.1 in the manner and to the extent set forth in this Agreement (including Exelixis' right to further sublicense), free and clear of any adverse assignment, grant or other encumbrances inconsistent with such grant;

4.2.2 The individuals listed on Exhibit 4.2 are the individuals employed by BMS who would be reasonably likely to have the most current knowledge within BMS with respect to manufacture and clinical development, and intellectual property issues, related to Rebeccamycin and Products and the carrying out of the NCI Agreement;

4.2.3 To the knowledge of the BMS individuals listed on Exhibit 4.2: (a) BMS and its Affiliates have not infringed any issued patents within the United States of any Third Party or misappropriated any trade secrets of any Third Party with respect to the manufacture (to the extent manufactured or formulated by BMS) of, or the use in the treatment of cancer of, (i) Rebeccamycin, or (ii) the Product being tested in human clinical trials; (b) BMS has not entered into any agreement with any Third Party pursuant to which royalties would be owed to such Third Party with respect to the manufacture, use or sale of Rebeccamycin; and (c) neither BMS nor an Affiliate has received any written notice or other written communication alleging that Rebeccamycin infringes or misappropriates the intellectual property rights of a Third Party;

4.2.4 BMS owns all right, title and interest to the patents and patent applications listed in Exhibit 1.7 and, to the knowledge of the individuals listed on Exhibit 4.2, all inventors of the inventions claimed in each patent or patent application are identified on such patent or patent application;

4.2.5 BMS has provided Exelixis with complete copies of all summaries provided by NCI to BMS of clinical trial data relating to Products;

4.2.6 There are no regulatory filings in the U.S. or abroad with respect to Rebeccamycin that are Controlled by BMS or its Affiliates; and

4.2.7 To the knowledge of the BMS individuals listed on Exhibit 4.2, NCI does not Control any patents or patent application that claim (i) methods of formulating Rebeccamycin, or (ii) Rebeccamycin formulations. For clarity, the representations and warranties concerning intellectual property rights under Sections 4.2.3, 4.2.4, and 4.2.7 do not create, and shall not be interpreting as requiring an obligation for BMS to perform any additional patent searches at any time prior to the Effective Date other than those already made by BMS in the ordinary course of its business

4.3 NO ADDITIONAL REPRESENTATIONS.

4.3.1 Exelixis acknowledges that, upon completion of the activities described in Section 2.4.2, it and its representatives will have been permitted full and complete access to the contracts, data and records relating to Rebeccamycin that it has desired or requested to see or review, and that it and its representatives will have had a opportunity to meet with the officers and employees of BMS and its Affiliates to discuss Rebeccamycin. For the avoidance of doubt, Exelixis' access to such information and its opportunity to meet with such personnel shall not limit its right to make a claim for indemnification under Article 6.

4.3.2 Exelixis acknowledges that BMS, its Affiliates, and its and their directors, officers, employees, agents or contractors have not made any representation or warranty, expressed or implied, as to the accuracy or completeness of any information regarding Rebeccamycin and its development or commercialization, as currently conducted or planned, except as expressly set forth in this Agreement. BMS, its Affiliates, and its and their directors, officers, employees, agents or contractors shall not have or be subject to any liability to Exelixis or any other Person resulting from the provision to Exelixis, or Exelixis' use of, any such information, documents or material made available to Exelixis in any "data rooms", management presentations or in any other form in expectation of the transactions contemplated hereby except to the extent such information, documents or materials is included in the representations or warranties of BMS expressly set forth in Article 4 of this Agreement, provided that all such information, documents or material be made available in their original state, without redaction or alteration.

4.3.3 Except as expressly set forth in the representations and warranties set forth in Sections 4.1 and 4.2 of this Agreement, (i) there are no representations or warranties by BMS of any kind, express or implied, with respect to Rebeccamycin (including without limitation its research, development or commercialization), (ii) Exelixis is taking the license rights granted hereunder "as is", "where is" and "with all faults" (except for the liabilities retained by BMS pursuant to Section 2.5.3(a)), and (iii) BMS NEITHER MAKES OR EXTENDS ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY PRODUCT OR ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY REASON OF THE MANUFACTURE, USE OR SALE OF ANY PRODUCT.

4.4 SURVIVAL OF REPRESENTATIONS. The representations and warranties contained in this Agreement (including the Schedules) and in any other document delivered in connection herewith shall survive solely for purposes of Article 6 hereof and shall terminate at the third anniversary of the Effective Date.

5. PATENT RIGHTS

5.1 PATENT PROSECUTION, MAINTENANCE AND ENFORCEMENT.

5.1.1 PATENT PROSECUTION AND MAINTENANCE. Exelixis shall have the first right to control, at its expense and in its sole discretion, the preparation, filing, prosecution and maintenance of the Listed Patent Rights and for conducting any interferences, reexaminations, reissues, oppositions, or request for patent term extension relating thereto. At the reasonable request of Exelixis, BMS shall provide reasonable assistance to Exelixis in matters pertaining to the preparation, filing, prosecution and maintenance of the Listed Patent Rights, including without limitation any interferences, reexaminations, reissues, oppositions, or request for patent term extension relating thereto, and [*]. If Exelixis elects not to maintain or enforce any Listed Patent Right and so notifies BMS, then BMS may maintain or enforce such Listed Patents Right at its own expense, in its own name and entirely under its own direction and control.

5.1.2 ENFORCEMENT OF PATENT RIGHTS BY EXELIXIS. If either Party becomes aware of a suspected infringement of the Listed Patent Rights, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Exelixis shall have the right, but shall not be obligated, to bring an infringement action at its own expense, in its own name, and entirely under its own direction and control. BMS will reasonably assist Exelixis [*] 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 Exelixis to bring such action. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such

action or defense which restricts the scope or affects the enforceability of Listed Patent Rights may be entered into by Exelixis without the prior consent of BMS, which consent shall not be unreasonably withheld.

5.1.3 ENFORCEMENT OF PATENT RIGHTS BY BMS. If Exelixis elects not to bring any action for infringement described in Section 5.1.2 and so notifies BMS, then, BMS may bring such action or defend such proceeding at its own expense, in its own name, and entirely under its own direction and control. Exelixis will reasonably assist BMS [*] in any action or proceeding being prosecuted or defended by BMS, if so requested by BMS or required by law. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of Listed Patent Rights may be entered into by BMS without the prior consent of Exelixis, which consent shall not be unreasonably withheld

5.2 INFRINGEMENT CLAIMS. If an allegation is made or claim is brought by a Third Party that any activity related to a Product infringes the intellectual property rights of such Third Party, each Party will give prompt written notice to the other Party of such claim.

6. INDEMNIFICATION

6.1 BMS. BMS shall indemnify, defend and hold harmless Exelixis, its Affiliates, and their respective directors, officers and employees (each an "Exelixis Indemnitee") from and against any and all liabilities, damages, losses, costs or expenses (including attorneys' and professional fees and other expenses of litigation and/or arbitration) ("Liabilities") resulting from a claim, suit or proceeding made or brought by a Third Party against an Exelixis Indemnitee arising from or occurring as a result of (i) any breach of the representations and warranties set forth in Section 4.1 or 4.2, (ii) any claims based on injury to a Third Party (including death) arising from the manufacture of Products by BMS and their use prior to the Effective Date, and (iii) any liability retained by BMS pursuant to Section 2.5.3(a), except to the extent that Liabilities resulting from (i), (ii), or (iii) were caused by the gross negligence or willful misconduct of Exelixis.

6.2 EXELIXIS. Exelixis shall indemnify, defend and hold harmless BMS, its Affiliates, and their respective directors, officers and employees (each a "BMS Indemnitee") from and against any and all Liabilities resulting from a claim, suit or proceeding made or brought by a Third Party against a BMS Indemnitee, arising from or occurring as a result of (i) any breach of the representations and warranties set forth in Section 4.1, (ii) subject to Section 6.1, any research, development, marketing, sale, promotion, and other commercialization activities related to any Products by or for Exelixis or its licensees after the Effective Date, (iii) the manufacture of any Products by or for Exelixis or its licensees after the Effective Date or the use of any Products after the Effective Date by any person or entity, and (iv) any liability retained by Exelixis pursuant to Section 2.5.3(b), except to the extent that Liabilities resulting from (i), (ii), (iii) or (iv) were caused by the gross negligence or willful misconduct of BMS.

6.3 PROCEDURE. In the event that a Party indemnified hereunder (an "Indemnitee") intends to claim indemnification under this Article 6, such Indemnitee shall promptly notify the other Party (the "Indemnitor") in writing of such alleged Liability. The Indemnitor shall have the sole right to control the defense and settlement thereof. The Indemnitees shall cooperate with the Indemnitor and its legal representatives in the investigation of any action, claim or liability covered by this Article 6. The Indemnitee shall not, except at its own cost and risk, voluntarily make any payment or incur any expense with respect to any claim or suit without the prior written consent of the Indemnitor, which the Indemnitor shall not be required to give. The Indemnitor shall not be required to provide indemnification with respect to a Liability the defense of which is prejudiced by the failure to give notice by the Indemnitee or the failure of the Indemnitee to cooperate with the Indemnitor or where the Indemnitee settles or compromises a Liability without the written consent of the Indemnitor. Each Party shall cooperate with each other in resolving any claim or liability with respect to which one party is obligated to indemnify the other under this Agreement, including without limitation, by making commercially reasonable efforts to mitigate or resolve any such claim or liability

6.4 LIMITATIONS ON LIABILITY.

6.4.1 BMS and Exelixis each acknowledges and agrees that its sole and exclusive remedy with respect to any and all claims and causes of action relating to this Agreement (other than claims of, or causes of action arising from, fraud or relating to breaches of covenants requiring performance after the Effective Date) shall be pursuant to the indemnification provisions set forth in this Article 6, the termination provisions as provided in Article 7 and/or, where and to the extent permitted by applicable law, specific performance.
6.4.2 Notwithstanding any provision herein, a Party shall in no event be liable to the other Party or its Affiliates, officers, directors, employees, stockholders, agents or representatives for any indirect, consequential or punitive damages (including, but not limited to, lost profits, loss of use, damage to goodwill or loss of business), unless such damages (i) are owed under the liable Party's indemnification obligations under Article 6, (ii) breach of Article 3, or (iii) are due to the gross negligence or willful misconduct of the liable Party.

7. TERM AND TERMINATION

7.1 TERM. The term of this Agreement shall commence on the Effective Date and continue until the Agreement is terminated pursuant to Section 7.2.

7.2 MATERIAL BREACH. In the event one Party has materially breached in the performance of any of its obligations hereunder, and such breach has continued for [*] after written notice thereof was provided to the breaching Party by the non-breaching Party, the non-breaching Party may terminate this Agreement. Any termination shall become effective at the end of such [*] period unless the breaching Party has cured any such breach prior to the expiration of the [*] period.

7.3 BANKRUPTCY.

7.3.1 All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("Title 11"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "Bankrupt Party") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitation, a Title 11 Trustee) shall, at the election of the Bankrupt Party made within 60 days after the commencement of the case (or, if no such election is made, immediately upon the request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party including, where applicable and without limitation, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

7.3.2 If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitations, a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 7.3, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

7.3.3 All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including, without limitation, Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including, without limitation, under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including without limitation for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of licensed products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this Section 7.3 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.

7.4 EFFECT OF TERMINATION OR EXPIRATION. Termination or expiration of this Agreement for any reason shall not release either Party hereto from any liability which, at the time of such termination or expiration, has already accrued to the other Party or which is attributable to a period prior to such termination or expiration or preclude either Party from pursuing any rights and remedies it may have hereunder or at law or in equity with respect to any breach of, or default under, this Agreement. It is understood and agreed that monetary damages may not be a sufficient remedy for any breach of this Agreement and that the non-breaching Party may be entitled to specific performance as a partial remedy for any such breach.

7.5 SURVIVAL. Articles 1, 3, 4 (where the Agreement is terminated by

Exelixis), 5, 6, and 8 and Sections 2.1 (except where terminated by BMS for material breach under Section 7.2 by Exelixis of its obligations under Sections 2.5.3, 2.5.4, 2.7, or 6.2, breach of its representations and warranties under Section 4.1), 2.6, 7.4, and 7.5 of this Agreement shall survive expiration or termination of this Agreement for any reason.

8. MISCELLANEOUS

8.1 GOVERNING LAW. Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of California, as applied to agreements executed and performed entirely in the State of California by residents of the State of California, without regard to conflicts of law rules; provided, however, that resolution of all disputes arising out of or related to the performance, enforcement or breach of Section 2.7 of this Agreement and any remedies relating thereto shall be governed by and construed under the substantive laws of the State of New York, as applied to agreements executed and performed entirely in the State of New York by residents of the State of New York, without regard to conflicts of law rules.

8.2 PATENTS. Any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of any BMS Patent Rights covering the manufacture, use or sale of any Products shall be submitted to a court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

8.3 CONSENTS NOT UNREASONABLY WITHHELD OR DELAYED. Whenever provision is made in this Agreement for either Party to secure the consent or approval of the other, that consent or approval shall not unreasonably be withheld or delayed, and whenever in this Agreement provisions are made for one Party to object to or disapprove a matter, such objection or disapproval shall not unreasonably be exercised.

8.4 MAINTENANCE OF RECORDS. 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.

8.5 INDEPENDENT CONTRACTORS. The relationship of the Parties hereto is that of independent contractors. The Parties hereto are not deemed to be agents, partners or joint venturers of the others for any purpose as a result of this Agreement or the transactions contemplated thereby.

8.6 ASSIGNMENT. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except a Party may make such an assignment without the other Party's consent to an Affiliate or to a successor to substantially all of the business of such Party, 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 shall, in a writing to the other Party, expressly assume performance of such rights and/or obligations. 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 8.6 shall be null and void and of no legal effect.

8.7 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

8.8 NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail, postage prepaid, express delivery service or personally delivered. 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: Chief Executive Officer

With a copy to: Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Robert L. Jones, Esq.

For BMS: Bristol-Myers Squibb Pharmaceutical Research Institute
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Senior Vice President - External Development

With a copy to: Bristol-Myers Squibb Pharmaceutical Research Institute
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Vice President and Senior Counsel - BMSPRI

8.9 FORCE MAJEURE. Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is

prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the control of the Parties, including without limitation, an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe; provided, however, the payment of invoices due and owing hereunder shall not be delayed by the payer because of a force majeure affecting the payer.

8.10 ADVICE OF COUNSEL. BMS and Exelixis have each consulted counsel of their choice regarding this Agreement, and each acknowledges and agrees that this Agreement shall not be deemed to have been drafted by one Party or another and shall be construed accordingly.

8.11 COMPLIANCE WITH LAWS. Subject to Article 3, Party shall use reasonable efforts to furnish to the other Party any information reasonably requested or required by that Party during the term of this Agreement or any extensions hereof to enable that Party to comply with the requirements of any U.S. or foreign federal, state and/or government agency that is consistent with the license rights granted hereunder.

8.12 FURTHER ASSURANCES. At any time or from time to time on and after the date of this Agreement, either Party shall at the request of the other Party hereto (i) subject to the provisions of Article 3, deliver to the requesting Party any records, data or other documents consistent with the provisions of this Agreement, and (ii) execute, and deliver or cause to be delivered, all such consents, documents or further instruments of transfer or license.

8.13 RETAINED RIGHTS; NO FURTHER RIGHTS. Only the licenses granted pursuant to the express terms of this Agreement shall be of any legal force or effect. No other license rights shall be granted or created by implication, estoppel or otherwise.

8.14 SEVERABILITY. In the event that any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect without said provision. In such event, the Parties shall in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which shall most nearly approximate the intent of the Parties in entering this Agreement.

8.15 WAIVER. It is agreed that no waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

8.16 COMPLETE AGREEMENT. This Agreement, along with the CCA, the Stock Purchase Agreement between BMS and Exelixis dated July 17, 2001, and the NCI Agreement, constitutes the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and all prior agreements respecting the subject matter hereof, either written or oral, expressed or implied, are superseded hereby, merged and canceled, and are null and void and of no effect. No amendment or change hereof or addition hereto shall be effective or binding on either of the Parties hereto unless reduced to writing and duly executed on behalf of both Parties. For clarity, the termination of this Agreement does not affect in any way either the CCA or the Stock Purchase Agreement between BMS and Exelixis dated July 17, 2001.

8.17 USE OF NAME. Except as required by law, neither Party shall use the name or trademarks of the other Party without the prior written consent of such other Party.

8.18 HEADINGS. The captions to the several sections and articles hereof are not a part of this Agreement, but are included merely for convenience of reference only and shall not affect its meaning or interpretation.

8.19 COUNTERPARTS. This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

[Rest of Page Intentionally Left Blank]

IN WITNESS WHEREOF, BMS and Exelixis have executed this Agreement by their respective duly authorized representatives as of the Effective Date.

BRISTOL-MYERS SQUIBB COMPANY	EXELIXIS, INC.
By: /s/ Elliott Sigal	By: /s/ Geoffrey Duyk
Title: Sr. Vice President Drug Discovery & Exploratory Development	Title: CSO

Date: July 17, 2001 Date: 7/20/01

[*] = 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 1.7

PATENTS (BMY-027557 Rebaccamycin Analog)

COUNTRY DESIGNATION	PATENT NUMBER	EXPIRATION DATE
United States [*]	4,785,085	Nov. 21, 2006
United States [*]	4,808,613	Nov. 21, 2006
Australia	614068	Nov. 12, 2007
Austria	0269025	Nov. 20, 2007
Belgium	0269025	Nov. 20, 2007
Canada	1287349	Aug. 6, 2008
China	23842	Nov. 20, 2002
Cyprus Republic	0269025	Nov. 20, 2007
Czech Republic	265248	Nov. 17, 2002
Denmark	165986	Nov. 20, 2007
European Patent	0269025	Nov. 20, 2007
Finland	86189	Nov. 18, 2007
France	0269025	Nov. 20, 2007
Germany	0269025	Nov. 20, 2007
Great Britain	0269025	Nov. 20, 2007
Greece	0269025	Nov. 20, 2007
Hong Kong	490/1993	Nov. 20, 2007
Hungary	201773	Nov. 20, 2007
Ireland	60595	Nov. 20, 2007
Israel	84515	Nov. 18, 2007
Italy	0269025	Nov. 20, 2007
South Korea	42361	Nov. 20, 2007
Luxembourg	0269025	Nov. 20, 2007
Malaysia	MY102722A	Sept.30, 2007
Mexico	181199	Nov. 21, 2006
Netherlands	0269025	Nov. 20, 2007
New Zealand	222544	Nov. 13, 2007
Norway	167741	Nov. 20, 2007
Portugal	86188	Nov. 20, 2007
Singapore	0269025	Nov. 20, 2007
South Africa	87/8714	Nov. 20, 2007
Spain	0269025	Nov. 20, 2007
Sweden	0269025	Nov. 20, 2007
Switzerland	0269025	Nov. 20, 2007
Taiwan	049467	Nov. 18, 2005

PATENTS (BMY-027557 REBECCAMYCIN ANALOG SOLUTION)

COUNTRY DESIGNATION	PATENT NUMBER	EXPIRATION DATE

United States [*]	5,496,809	March 5, 2013
Australia	618896	May 9, 2010
Austria	0397147	May 9, 2010
Belgium	0397147	May 9, 2010
Canada	2015632	Apr. 27, 2010
China	90102658	May 9, 2005
Czech Republic	283416	May 7, 2010
Denmark	0397147	May 9, 2010
European Patent	0397147	May 9, 2010
Finland	95777	May 7, 2010
France	0397147	May 9, 2010
Germany	0397147	May 9, 2010
Great Britain	0397147	May 9, 2010
Greece	0397147	May 9, 2010
Hong Kong	1005033A	May 9, 2010
Hungary	206627	May 10, 2010
Ireland	66515	May 9, 2010
Israel	94312	May 7, 2010
Italy	0397147	May 9, 2010
Japan	1918587	May 9, 2010
South Korea	054248	May 8, 2010
Liechtenstein	0397147	May 9, 2010
Luxembourg	0397147	May 9, 2010
Malaysia	MY105696	Nov. 30, 2009
Netherlands	0397147	May 9, 2010
New Zealand	233512	May 1, 2010
Norway	176390	May 9, 2010
Portugal	93991	Sep. 2, 2011
Russian Fed	2053766	May 8, 2010
South Africa	90/3535	May 9, 2010
Spain	0397147	May 9, 2010
Sweden	0397147	May 9, 2010
Switzerland	0397147	May 9, 2010
Taiwan	061465	Mar. 20, 2008

2.

1.

EXHIBIT 4.2

INDIVIDUALS

[*]

[*] = 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.

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