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

FORM 10-Q

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

For the quarterly period ended July 1, 2011

Or

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

For the transition period from _____ to _____

Commission File Number: 000-30235

Exelixis, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**04-3257395**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

210 East Grand Ave.
South San Francisco, CA 94080
(Address of Principal Executive Offices) (Zip Code)

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

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

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

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

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

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

As of July 29, 2011, there were 128,974,387 shares of the registrant's common stock outstanding.

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EXELIXIS, INC.

QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED JULY 1, 2011

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

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

	June 30, 2011 (unaudited)	December 31, 2010 (1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 75,280	$ 97,440
Marketable securities	187,502	65,224
Other receivables	6,363	5,896
Prepaid expenses and other current assets	14,555	14,926
Total current assets	283,700	183,486
Restricted cash and investments	4,199	6,399
Long-term investments	86,574	87,314
Property and equipment, net	11,903	15,811
Goodwill	63,684	63,684
Other assets	4,122	4,096
Total assets	$ 454,182	$ 360,790
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 2,298	$ 2,046
Accrued compensation and benefits	8,159	6,555
Accrued clinical trial liabilities	28,761	30,975
Other accrued liabilities	15,569	15,026
Current portion of notes payable and bank obligations	7,628	8,848
Current portion of convertible loans	28,900	28,900
Current portion of restructuring	2,624	7,294
Deferred revenue	99,603	100,297
Total current liabilities	193,542	199,941
Long-term portion of notes payable and bank obligations	86,574	87,314
Long-term portion of convertible loans	87,288	83,396
Long-term portion of restructuring	7,478	6,987
Other long-term liabilities	8,445	9,005
Deferred revenue	152,670	202,472
Total liabilities	535,997	589,115
Commitments		
Stockholders' deficit:		
Common stock	128	109
Additional paid-in-capital	1,148,588	953,608
Accumulated other comprehensive income	(13)	12
Accumulated deficit	(1,230,518)	(1,182,054)
Total stockholders' deficit	(81,815)	(228,325)
Total liabilities and stockholders' deficit	$ 454,182	$ 360,790

(1) The condensed consolidated balance sheet at December 31, 2010 has been derived from the audited consolidated financial statements at that date but does not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements.

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Revenues:				
Contract	$ 8,327	$ 12,308	$ 20,737	$ 32,048
License	22,492	24,542	45,281	49,107
Collaboration reimbursements	1,343	10,746	2,038	8,640
Total revenues	32,162	47,596	68,056	89,795
Operating expenses:				
Research and development	42,901	54,237	88,593	118,988
General and administrative	8,783	9,571	17,948	18,406
Restructuring charge	(1,514)	9,419	3,253	25,484
Total operating expenses	50,170	73,227	109,794	162,878
Loss from operations	(18,008)	(25,631)	(41,738)	(73,083)
Other income (expense):				
Interest income and other, net	1,197	393	1,381	709
Interest expense	(4,164)	(673)	(8,107)	(1,285)
Gain on sale of business	—	3,297	—	7,797
Total other income (expense), net	(2,967)	3,017	(6,726)	7,221
Net loss	$ (20,975)	$ (22,614)	$ (48,464)	$ (65,862)
Net loss per share, basic and diluted	$ (0.16)	$ (0.21)	$ (0.40)	$ (0.61)
Shares used in computing basic and diluted loss per share amounts	128,245	108,476	120,768	108,226

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

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

	Six Months Ended June 30,	
	2011	2010
Cash flows from operating activities:		
Consolidated net loss	$ (48,464)	$ (65,862)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,929	5,873
Stock-based compensation expense	6,435	11,281
Impairment of assets due to restructuring	510	2,481
Gain on sale of business	—	(7,797)
Accretion of debt discount	3,816	—
Other	1,782	1,653
Changes in assets and liabilities:		
Other receivables	(467)	5,836
Prepaid expenses and other current assets	485	(1,429)
Other assets	232	(1,701)
Accounts payable and other accrued expenses	186	(3,626)
Restructure liability	(4,180)	11,135
Other long-term liabilities	(560)	(1,029)
Deferred revenue	(50,496)	(35,290)
Net cash used in operating activities	(86,792)	(78,475)
Cash flows from investing activities:		
Purchases of property and equipment	(568)	(831)
Proceeds from sale of property and equipment	—	168
Proceeds on sale of business	—	8,600
Decrease in restricted cash and investments	2,200	45
Proceeds from maturities of marketable securities	66,407	72,030
Proceeds from sale of marketable securities	—	12,780
Purchases of marketable securities	(189,436)	(103,563)
Net cash used in investing activities	(121,397)	(10,771)
Cash flows from financing activities:		
Proceeds from issuance of common stock	179,377	—
Proceeds from exercise of stock options and warrants	7,626	1,004
Proceeds from employee stock purchase plan	987	2,122
Proceeds from note payable and bank obligations	2,589	162,508
Principal payments on notes payable and bank obligations	(4,550)	(5,981)
Net cash provided by financing activities	186,029	159,653
Net (decrease) increase in cash and cash equivalents	(22,160)	70,407
Cash and cash equivalents, at beginning of period	97,440	86,796
Cash and cash equivalents, at end of period	$ 75,280	$ 157,203

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

EXELIXIS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2011
(unaudited)

NOTE 1. Organization and Summary of Significant Accounting Policies

Organization

Exelixis, Inc. ("Exelixis," "we," "our" or "us") is a biotechnology company committed to developing small molecule therapies for the treatment of cancer. We are focusing our resources and development efforts exclusively on cabozantinib (XL184), our most advanced compound, in order to maximize the therapeutic and commercial potential of this compound. We believe cabozantinib has the potential to be a high-quality, broadly-active, differentiated pharmaceutical product that can make a meaningful difference in the lives of patients. Cabozantinib inhibits MET, VEGFR2 and RET, proteins that are key drivers of tumor growth and/or vascularization. Cabozantinib is being evaluated in a broad development program encompassing multiple cancer indications. We have also developed a portfolio of other novel compounds that we believe have the potential to address serious unmet medical needs, most of which are being advanced by partners as part of collaborations.

Basis of Presentation

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

Exelixis has adopted a 52- or 53-week fiscal year that ends on the Friday closest to December 31st of each year. Fiscal year 2010, a 52-week year, ended on December 31, 2010, and fiscal year 2011, a 52-week year, will end on December 30, 2011. For convenience, references in these Condensed Consolidated Financial Statements and Notes as of and for the fiscal quarters ended July 2, 2010 and July 1, 2011 are indicated as ended June 30, 2010 and 2011, respectively.

Operating results for the three- and six-month periods ended June 30, 2011 are not necessarily indicative of the results that may be expected for the fiscal year ending December 30, 2011 or for any future period. These financial statements and notes should be read in conjunction with the consolidated financial statements and notes thereto for the fiscal year ended December 31, 2010 included in our Annual Report on Form 10-K filed with the SEC on February 22, 2011.

Basis of Consolidation

The consolidated financial statements include the accounts of Exelixis and those of our wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated.

Use of Estimates

The preparation of the consolidated financial statements is in conformity with GAAP, which requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. On an on-going basis, management evaluates its estimates including, but not limited to, those related to revenue recognition, long-lived assets, derivative instruments, accrued liabilities, and share-based compensation. Exelixis bases its estimates on historical experience and on various other market-specific and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ materially from those estimates.

Cash and Investments

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

All marketable securities are classified as available-for-sale and are carried at fair value. We view our available-for-sale portfolio as available for use in current operations. Accordingly, we have classified certain investments as short-term marketable securities, even though the stated maturity date may be one year or more beyond the current balance sheet date. Available-for-sale securities are stated at fair value based upon quoted market prices of the securities. We have classified certain investments as cash and cash equivalents or marketable securities that collateralize loan balances; however, they are not restricted to withdrawal. Funds that

are used to collateralize equipment lines of credit that extend for over 12 months have been classified as long-term investments, in accordance with the loan arrangement. Unrealized gains and losses on available-for-sale investments are reported as a separate component of stockholders' deficit. Realized gains and losses, net, on available-for-sale securities are recorded in our Consolidated Statement of Operations as Interest income and other, net. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are recorded in our Consolidated Statements of Operations as Interest income and other, net.

The following summarizes available-for-sale securities included in cash and cash equivalents and restricted cash and investments as of June 30, 2011 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$138,242	$ —	$ —	$138,242
Commercial paper	34,135	4	—	34,139
Corporate bonds	114,324	68	(64)	114,328
U.S. Government sponsored enterprises	20,702	—	(13)	20,689
Municipal bonds	36,165	1	(9)	36,157
Variable rate demand notes	10,000	—	—	10,000
Total	$353,568	$ 73	$ (86)	$353,555

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
As reported:				
Cash and cash equivalents	$ 75,296	$ —	$ (16)	$ 75,280
Marketable securities	187,499	73	(70)	187,502
Restricted cash and investments	4,199	—	—	4,199
Long-term investments	86,574	—	—	86,574
Total	$353,568	$ 73	$ (86)	$353,555

As of June 30, 2011, all securities that were in an unrealized loss position had been so for less than one year and the unrealized losses were not attributed to credit risk. Based on the scheduled maturities of our marketable securities, we concluded that the unrealized losses in our investment securities are not other-than-temporary, as it is more likely than not that we will hold these investments for a period of time sufficient for a recovery of our cost basis.

The following summarizes available-for-sale securities included in cash and cash equivalents and restricted cash and investments as of December 31, 2010 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$171,048	$ —	$ —	$171,048
Commercial paper	19,283	—	—	19,283
Corporate bonds	36,869	18	(10)	36,877
U.S. Government sponsored enterprises	18,811	5	—	18,816
Municipal bonds	10,913	—	(1)	10,912
Total	$256,924	$ 23	$ (11)	$256,936

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
As reported:				
Cash and cash equivalents	$ 98,001	$ —	$ (2)	$ 97,999
Marketable securities	65,210	23	(9)	65,224
Restricted cash and investments	6,399	—	—	6,399
Long-term investments	87,314	—	—	87,314
Total	$256,924	$ 23	$ (11)	$256,936

The following summarizes available-for-sale securities included in cash and cash equivalents and restricted cash and investments as of June 30, 2011 by contractual maturity (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Mature in less than one year	$323,026	$ 41	$ (57)	$323,010
Mature in one to two years	30,542	32	(29)	30,545
Total	$353,568	$ 73	$ (86)	$353,555

As of December 31, 2010, all of our available-for-sale-securities matured in less than one year.

Foreign Currency Forward Contract

We have entered into foreign currency forward contracts to reduce our net exposure to Eurodollar currency fluctuations. On March 30, 2011, we entered into a new foreign contract for a notional amount of $7.0 million that will expire in December 2011. The fair value of the foreign currency contract is estimated based on pricing models using readily observable inputs from actively quoted markets. As of June 30, 2011 and December 31, 2010, the fair values of the foreign currency forward contracts held were at losses of approximately $0.2 million. The net unrealized gain or loss on our foreign currency forward contracts, neither of which has been designated as a hedge, is recorded in our Consolidated Statements of Operations as Interest income and other, net.

Fair Value Measurements

The fair value of our financial instruments reflects the amounts that would be received upon sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). The fair value hierarchy has the following three levels:

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

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

Level 3—unobservable inputs.

Our financial instruments are valued using quoted prices in active markets or based upon other observable inputs. The following table sets forth the fair value of our financial assets that were measured on a recurring basis as of June 30, 2011 and December 31, 2010, respectively (in thousands):

As of June 30, 2011:

	Level 1	Level 2	Level 3	Total
Money market funds	$138,242	$ —	$ —	$138,242
Commercial paper	—	34,139	—	34,139
Corporate bonds	—	114,328	—	114,328
U.S. Government sponsored agencies	—	20,689	—	20,689
Municipal bonds and Variable Rate Demand Notes	—	46,157	—	46,157
Total	$138,242	$215,313	$ —	$353,555

As of December 31, 2010:

	Level 1	Level 2	Level 3	Total
Money market funds	$171,048	$ —	$ —	$171,048
Commercial paper	—	19,283	—	19,283
Corporate bonds	—	36,877	—	36,877
U.S. Government sponsored enterprises	—	18,816	—	18,816
Municipal bonds and Variable Rate Demand Notes	—	10,912	—	10,912
Foreign currency forward contract	—	(156)	—	(156)
Total	$171,048	$85,732	$ —	$256,780

We have estimated the fair value of our long-term debt instruments, where possible, using the net present value of the payments discounted at an interest rate that is consistent with our current borrowing rate for similar long-term debt. However, due to the unique structure of our 2010 financing agreement with entities affiliated with Deerfield Management Company L.P. (“Deerfield”) and the current non-liquid market in structured notes, there is no practicable method to determine the fair value of this instrument. See “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Certain Factors Important to Understanding Our Financial Condition and Results of Operations—Deerfield Facility” and “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Cash Requirements” for details on the structure and terms of our 2010 financing with Deerfield. The estimated fair value of our outstanding debt, excluding our 2010 financing with Deerfield, was as follows (in thousands):

	June 30, 2011	December 31, 2010
GlaxoSmithKline loan	$ 27,996	$ 26,693
Equipment lines of credit	14,129	16,064
Silicon Valley Bank loan	77,480	77,480
Total	$119,605	$ 120,237

At June 30, 2011 and December 31, 2010, the book value of our debt outstanding, including our 2010 financing with Deerfield, was $210.4 million and $208.5 million, respectively. Our payment commitments associated with these debt instruments are fixed during the corresponding terms and are comprised of interest payments, principal payments or a combination thereof. The fair value of our debt will fluctuate with movements of interest rates, increasing in periods of declining rates of interest, and declining in periods of increasing rates of interest.

Long-Lived Assets

The carrying value of our long-lived assets is reviewed for impairment whenever events or changes in circumstances indicate that the asset may not be recoverable. An impairment loss would be recognized when estimated future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. Long-lived assets include property and equipment and identified intangible assets. In the six months ended June 30, 2011 and June 30, 2010, we wrote down property and equipment in the amount of approximately $0.5 million and $2.5 million, respectively, in connection with our 2010 and 2011 restructuring plans. See Note 5 for further information on the restructuring plans.

Concentration of Credit Risk

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

Net Loss Per Share

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

As of June 30, 2011 and 2010, our potential common stock included the following shares, all of which have been excluded from the computation of diluted net loss per share because their impact is antidilutive:

	June 30, 2011	June 30, 2010
Shares related to our GlaxoSmithKline loan	3,283,155	13,860,850
Shares issuable upon the exercise of outstanding stock options	17,623,468	23,246,874
Shares issuable pursuant to the vesting of RSUs	1,362,074	2,318,174
Shares issuable upon the exercise of outstanding warrants	1,441,215	2,250,000
Total antidilutive shares	23,709,912	41,675,898

Collaboration Arrangements

Collaborative agreement reimbursement revenues or collaboration cost-sharing expenses are recorded as earned or owed based on the performance requirements by both parties under the respective contracts. In December 2008, we entered into a worldwide collaboration with Bristol-Myers Squibb Company ("Bristol-Myers Squibb") for the development of cabozantinib and XL281. However, on June 18, 2010, we regained full rights to develop and commercialize cabozantinib under the collaboration agreement following receipt of notice from Bristol-Myers Squibb of its decision to terminate the collaboration, solely as to cabozantinib, on a worldwide basis. Prior to the termination of the collaboration with Bristol-Myers Squibb as to cabozantinib, both parties were actively involved with compound development and certain research and development expenses were partially reimbursable to us on a net basis by compound. On an annual basis, amounts owed by Bristol-Myers Squibb to us, net of amounts reimbursable to Bristol-Myers Squibb by us for the development of cabozantinib and XL281, were recorded as collaboration reimbursement revenues. Conversely, research and development expenses would include the net settlement of amounts we owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred in connection with the development of cabozantinib, less amounts reimbursable to us by Bristol-Myers Squibb for the development of both cabozantinib and XL281. On July 8, 2011, we received written notification from Bristol-Myers Squibb of its decision to terminate the collaboration in its entirety. See Note 4 for further information. Due to this termination, which will be effective as of the end of the day on October 8, 2011, we will present reimbursement payments as collaboration reimbursement revenues through the quarter ending December 31, 2011 at which point we do not expect to record any further collaboration cost-sharing expense or collaboration reimbursement revenues under our current collaborations. Revenues and expenses from collaborations that are not co-development agreements are recorded as contract revenues or research and development expenses in the period incurred.

Foreign Currency Translation and Remeasurement

Assets and liabilities denominated in currencies other than the functional currency are remeasured using exchange rates in effect at the end of the period and related gains or losses are recorded in interest income and other, net. Gains and losses on the remeasurement of foreign currency assets and liabilities were not material for the periods presented.

Recent Accounting Pronouncements

In October 2009, the FASB issued ASU No. 2009-13, Revenue Recognition – *Multiple Deliverable Revenue Arrangements* ("ASU 2009-13"). ASU 2009-13 provides application guidance on whether multiple deliverables exist, how the deliverables should be separated and how the consideration should be allocated to one or more units of accounting. This update establishes a selling price hierarchy for determining the selling price of a deliverable. The selling price used for each deliverable will be based on vendor-specific objective evidence, if available, third-party evidence if vendor-specific objective evidence is not available, or estimated selling price if neither vendor-specific or third-party evidence is available. Under ASU 2009-13, we may be required to exercise considerable judgment in determining the estimated selling price of delivered items under new agreements and our revenue under new agreements may be more accelerated as compared to the prior accounting standard. We adopted this guidance beginning January 1, 2011, and expect that this adoption could have a material impact on our financial statements going forward.

In June 2011, Accounting Standards Codification Topic 220, *Comprehensive Income* was amended to increase the prominence of items reported in other comprehensive income. Accordingly, a company can present all non-owner changes in stockholders' equity either in a single continuous statement of comprehensive income or in two separate but consecutive statements. We plan to adopt this guidance as of January 1, 2012 on a retrospective basis and do not expect the adoption thereof to have a material effect on our consolidated financial statements.

NOTE 2. Comprehensive Loss

Comprehensive loss represents consolidated net loss plus any unrealized gains and losses on available-for-sale securities not reflected in our Consolidated Statements of Operations. Comprehensive loss was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Consolidated net loss	$ (20,975)	$ (22,614)	$ (48,464)	$ (65,862)
Unrealized losses on available-for-sale securities, net of taxes	18	(81)	(25)	(138)
Comprehensive loss	$ (20,957)	$ (22,695)	$ (48,489)	$ (66,000)

NOTE 3. Stock-Based Compensation

We recorded and allocated employee stock-based compensation expenses as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Research and development expense	$ 1,431	$ 3,023	$ 3,179	$ 6,672
General and administrative expense	1,369	1,738	2,701	3,590
Restructuring-related stock-based compensation expense	—	(34)	449	961
Total employee stock-based compensation expense	$ 2,800	$ 4,727	$ 6,329	$ 11,223

We use the Black-Scholes option pricing model to value our stock options. The expected life computation is based on historical exercise patterns and post-vesting termination behavior. We considered implied volatility as well as our historical volatility in developing our estimate of expected volatility. The fair value of employee share-based payments awards was estimated using the following assumptions and weighted average fair values:

	Stock Options Three Months Ended June 30,		Employee Stock Purchase Plan Three Months Ended June 30,	
	2011	2010	2011	2010
Weighted average fair value of awards	$ 7.03	$ 3.50	$ 3.41	$ 2.01
Risk-free interest rate	2.17%	2.14%	0.12%	0.21%
Dividend yield	0%	0%	0%	0%
Volatility	65%	74%	69%	68%
Expected life	6.0 years	5.2 years	0.5 years	0.5 years

	Stock Options Six Months Ended June 30,		Employee Stock Purchase Plan Six Months Ended June 30,	
	2011	2010	2011	2010
Weighted average fair value of awards	$ 7.03	$ 3.60	$ 2.44	$ 1.96
Risk-free interest rate	2.17%	2.25%	0.14%	0.18%
Dividend yield	0%	0%	0%	0%
Volatility	65%	70%	67%	63%
Expected life	6.0 years	5.2 years	0.5 years	0.5 years

A summary of all stock option activity for the six months ended June 30, 2011 is presented below:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at December 31, 2010	19,630,030	$ 7.52		
Granted	150,000	11.66		
Exercised	(1,295,542)	5.89		
Cancelled	(861,020)	10.74		
Options outstanding at June 30, 2011	17,623,468	$ 7.51	4.75 years	$35,591,462
Exercisable at June 30, 2011	14,510,742	$ 7.70	4.31 years	$27,387,969

As of June 30, 2011, $8.8 million of total unrecognized compensation expense related to employee stock options was expected to be recognized over a weighted-average period of 1.80 years.

A summary of all RSU activity for the six months ended June 30, 2011 is presented below:

	Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
RSUs outstanding at December 31, 2010	2,172,431	$ 7.31		
Awarded	38,350	11.75		
Released	(498,783)	7.48		
Forfeited	(349,924)	7.45		
Awards outstanding at June 30, 2011	1,362,074	$ 7.34	1.39 years	$12,490,219

As of June 30, 2011, $6.9 million of total unrecognized compensation expense related to employee RSUs was expected to be recognized over a weighted-average period of 2.69 years.

NOTE 4. Collaborations

Bristol-Myers Squibb

2008 Cancer Collaboration

In December 2008, we entered into a worldwide collaboration with Bristol-Myers Squibb for cabozantinib and XL281 (BMS-908662), a RAF inhibitor. Upon effectiveness of the collaboration agreement in December 2008, Bristol-Myers Squibb made a nonrefundable upfront cash payment of $195.0 million for the development and commercialization rights to both programs. The agreement required Bristol-Myers Squibb to make additional license payments to us of $45.0 million, which were received during 2009.

On July 8, 2011, we and one of our wholly-owned subsidiaries received written notification from Bristol-Myers Squibb of its decision to terminate the Amended and Restated Collaboration Agreement dated as of April 15, 2011 by and between us and Bristol-Myers Squibb, which amended and restated the Collaboration Agreement dated as of December 11, 2008 between us and Bristol-Myers Squibb (the “2008 Agreement”), on a worldwide basis as to XL281. The termination is being made pursuant to the terms of the Amended and Restated Collaboration Agreement dated as of April 15, 2011 and will be effective as of the end of the day on October 8, 2011. Bristol-Myers Squibb informed us that the termination was based upon Bristol-Myers Squibb’s review of XL281 in the context of Bristol-Myers Squibb’s overall research and development priorities and pipeline products. Upon the effectiveness of the termination, Bristol-Myers Squibb’s license relating to XL281 will terminate and rights to XL281 will revert to us, and we will be entitled to receive, subject to certain terms and conditions, licenses from Bristol-Myers Squibb to research, develop and commercialize XL281. We plan to wind down ongoing activities related to XL281 following the termination and do not currently expect to further research, develop or commercialize XL281 following the wind-down.

Under the 2008 Agreement, we and Bristol-Myers Squibb originally had agreed to co-develop cabozantinib and Bristol-Myers Squibb also received an exclusive worldwide license to develop and commercialize XL281. On June 18, 2010, we received a notice from Bristol-Myers Squibb of its decision to terminate the 2008 Agreement solely as to cabozantinib, on a worldwide basis, pursuant to the terms of the 2008 Agreement. We continued to carry out certain clinical trials of XL281 under the 2008 Agreement, and Bristol-Myers Squibb was responsible for funding all future development of XL281, including our activities. We were eligible for development and regulatory milestones of up to $315.0 million on XL281, sales performance milestones of up to $150.0 million and double-digit royalties on worldwide sales of XL281.

For purposes of recognizing up-front license fees received under the 2008 Agreement, prior to receiving the termination notification from Bristol-Myers Squibb in July 2011, we were recognizing revenue through April 2014. As a result of the termination, the estimated research term will now end as of the end of the day on October 8, 2011. Accordingly, we expect to accelerate the remaining deferred revenue balance and estimate that we will recognize an aggregate of approximately $109.9 million and $10.4 million in revenue in the third and fourth fiscal quarters of 2011, respectively, relating to the up-front license fees under the 2008 Agreement.

Amounts attributable to programs under the 2008 Agreement consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Exelixis research and development expenses (1)	$ 1,286	$ 19,217	$ 1,897	$ 40,475
Net amount due from (owed to) collaboration partner	1,343	10,746	2,038	8,640

(1) Total research and development expenses attributable to us include direct third party expenditures plus estimated internal personnel costs and are calculated in accordance with the terms of the particular collaboration.

sanofi-aventis

In May 2009, we entered into a global license agreement with sanofi-aventis for XL147 and XL765 and a broad collaboration for the discovery of inhibitors of phosphoinositide-3 kinase ("PI3K") for the treatment of cancer. The license agreement and collaboration agreement became effective on July 7, 2009. In connection with the effectiveness of the license and collaboration, on July 20, 2009, we received upfront payments of $140.0 million ($120.0 million for the license and $20.0 million for the collaboration), less applicable withholding taxes of $7.0 million, for a net receipt of $133.0 million. We expect to receive a refund payment from the French government in 2011 with respect to the withholding taxes previously withheld.

Under the license agreement, sanofi-aventis received a worldwide exclusive license to XL147 and XL765, which are in phase 1, phase 1b/2 and phase 2 clinical trials, and has sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities. sanofi-aventis is responsible for funding all development activities with respect to XL147 and XL765, including our activities. Following the effectiveness of the license agreement, we had been conducting the majority of the clinical trials for XL147 and XL765 at the expense of sanofi-aventis. As provided for under the license agreement, however, the parties agreed to transition all future development activities for these compounds to sanofi-aventis. The transition was substantially completed by the end of June 2011. As a result of the transition of development activities to sanofi-aventis, we expect to no longer receive reimbursements from sanofi-aventis with respect to XL147 and XL765 and we have reduced our headcount commensurately such that no further material operating expenses will be incurred in connection with these programs going forward.

Under the collaboration agreement, the parties agreed to combine efforts in establishing several pre-clinical PI3K programs and jointly share responsibility for research and preclinical activities related to isoform-selective inhibitors of PI3K-a and -ß. sanofi-aventis will continue to provide us with guaranteed annual research and development funding during the research term and is responsible for funding all development activities for each product following approval of the investigational new drug application filed with the applicable regulatory authorities for such product. We are entitled to receive guaranteed research funding of $21.0 million over three years to cover certain of our costs under the collaboration agreement. sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of any products arising from the collaboration; however, we may be requested to conduct certain clinical trials at sanofi-aventis' expense. The research term under the collaboration is three years, although sanofi-aventis has the right to extend the term for an additional one-year period upon prior written notice.

For both the license and the collaboration combined, we will be eligible to receive development, regulatory and commercial milestones of over $1.0 billion in the aggregate, as well as royalties on sales of any products commercialized under the license or collaboration.

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

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

NOTE 5: Restructurings

During 2010, we implemented two restructuring plans that resulted in an overall reduction in our workforce by 386 employees. In March 2011, we implemented an additional restructuring plan that resulted in the termination of 24 employees, for an aggregate reduction in headcount resulting from the 2010 and 2011 restructuring plans of 410 employees. Of these reductions in headcount, 11 employees are continuing to provide service through various dates in 2011. The restructuring plans are a consequence of our decision to focus our resources and development efforts on the late-stage development and commercialization of cabozantinib. Further personnel reductions are expected to be made through the end of 2012 as we complete our obligations under collaboration agreements and withdraw resources from completed projects.

In connection with the 2010 and 2011 restructuring plans, we have recorded aggregate restructuring charges of $36.0 million, of which $19.6 million related to termination benefits and $16.3 million related to facility charges and the impairment of various assets. In connection with these restructuring plans, $4.8 million was recorded during the first quarter of 2011, of which $3.5 million was associated with lease-exit costs in connection with the exit and potential sublease of a single floor of a building we lease at 170 Harbor Way, South San Francisco, California ("Building 170"). In July 2011, we entered into two sublease agreements for Building 170. As a result of these activities, we updated our estimated charge for all of our facilities to better reflect the actual sublease terms. As a result of this revision, we recorded a reduction to our restructuring liability of $1.7 million during the three months ended June 30,

2011. The balance of our restructuring charges taken during the first half of 2011 primarily related to termination benefits for employees as well as the impairment of excess equipment and other assets, offset by any auction proceeds that we have received from the sale of such assets.

With respect to our restructuring plans, we expect to incur an additional restructuring charge of $6.5 million relating to the sublease of Building 170 and a building we lease at 249 East Grand Avenue, South San Francisco, California that we exited and subleased in 2010 ("Building 249"), plus additional restructuring charges of up to $17 million in connection with the anticipated exit of an additional facility in South San Francisco, California. We expect to record $0.1 million of additional termination benefits and the majority of the facility-related charges discussed above as they are determined during the fiscal year ending December 31, 2011.

As of June 30, 2011, the 2010 and 2011 restructuring plans had resulted in aggregate cash expenditures of $20.7 million. We expect to pay an additional $8.5 million, net of cash received from our subtenant, for Building 249 and an additional $7.3 million, net of cash received from our subtenants, for Building 170. In addition, we expect to make cash expenditures of $1.0 million relating to termination benefits and up to $22 million relating to facility charges in connection with the anticipated exit of an additional facility in South San Francisco, California. We expect the termination benefits to be paid during the third and fourth quarters of 2011 and the facility costs to be paid through 2017, or the end of our lease term.

The total outstanding restructuring liability is included in Current portion of restructuring and Long-term portion of restructuring on our Condensed Consolidated Balance Sheet and is based upon restructuring charges recognized as of June 30, 2011 in connection with the 2010 and 2011 plans. As of June 30, 2011, the components of these liabilities are summarized in the following table (in thousands):

	Employee Severance And Other Benefits	Facility Charges	Asset Impairment	Legal and Other Fees	Total
Balance as of December 31, 2010	$ 5,523	$ 8,688	$ —	$ 70	$14,281
Restructuring charge recorded in the six months ended June 30, 2011	1,927	1,841	(542)	27	3,253
Cash payments	(5,940)	(1,409)	397	(16)	(6,968)
Adjustments or non-cash credits including stock compensation expense	(526)	(83)	145	—	(464)
Ending accrual balance as of June 30, 2011	$ 984	$ 9,037	$ —	$ 81	$10,102

NOTE 6. Sale of Shares of Common Stock

In March 2011, we completed a public offering of 17.3 million shares of our common stock pursuant to a shelf registration statement previously filed with the SEC, which the SEC declared effective on May 8, 2009. We received approximately $179.4 million in net proceeds from the offering after deducting the underwriting discount and related offering expenses.

NOTE 7. Debt

Silicon Valley Bank Loan and Security Agreement

In December 2007, we entered into a third loan modification agreement to the loan and security agreement originally entered into in May 2002 with Silicon Valley Bank. The terms associated with the original line of credit under the May 2002 agreement and the subsequent loan modifications were not modified. The December 2007 loan modification agreement provided for an additional equipment line of credit in the amount of up to $30.0 million with a draw down period of approximately 2 years. Each advance must be repaid in 48 equal, monthly installments of principal, plus accrued interest, at an annual rate of 0.75% fixed. In December 2009, we amended the agreement and extended the draw down period on the line of credit for an additional 18 months through June 2011 and increased the principal amount of the line of credit from $30.0 million to $33.6 million. Pursuant to the terms of the amendment, we were required to make minimum draws of $2.5 million every 6 months through June 2011, for total additional draws of $7.5 million. The loan facility required security in the form of a non-interest bearing certificate of deposit account with the bank, in an amount equal to at least 100% of the outstanding obligations under the line of credit. In June 2008, we drew down $13.6 million under this agreement, in December 2009, we drew down $5.0 million, and we drew down an additional $2.5 million in each of June 2010, December 2010 and June 2011 in accordance with the terms of the modified agreement. In accordance with the amended loan terms, the line of credit has expired and we have no further draw down obligations under the line of credit.

The total outstanding obligation under all lines of credit with Silicon Valley Bank as of June 30, 2011 and December 31, 2010 is $14.2 million and $16.1 million, respectively. The total collateral balance as of June 30, 2011 and December 31, 2010 is $14.9 million and $16.9 million, respectively, and is reflected in our Condensed Consolidated Balance Sheet as Cash and cash equivalents and Marketable securities as the deposit account is not restricted as to withdrawal.

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

The following discussion and analysis contains forward-looking statements. These statements are based on our current expectations, assumptions, estimates and projections about our business and our industry, and involve known and unknown risks, uncertainties and other factors that may cause our or our industry's results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied in, or contemplated by, the forward-looking statements. Words such as "believe," "anticipate," "expect," "intend," "plan," "focus," "goal," "objective," "will," "may," "could," "would," "estimate," "predict," "potential," "continue," "encouraging," or the negative of such terms or other similar expressions identify forward-looking statements. Our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include those discussed in Part II, Item 1A of this Form 10-Q, as well as those discussed elsewhere in this report.

This discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this report and the financial statements and accompanying notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, filed with the Securities and Exchange Commission, or SEC, on February 22, 2011. Operating results are not necessarily indicative of results that may occur in future periods. We undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

Overview

We are a biotechnology company committed to developing small molecule therapies for the treatment of cancer. We are focusing our resources and development efforts exclusively on cabozantinib (XL184), our most advanced compound, in order to maximize the therapeutic and commercial potential of this compound. We believe cabozantinib has the potential to be a high-quality, broadly-active, differentiated pharmaceutical product that can make a meaningful difference in the lives of patients. We have also established a portfolio of other novel compounds that we believe have the potential to address serious unmet medical needs, most of which are being advanced by partners as part of collaborations.

Cabozantinib inhibits MET, VEGFR2 and RET, proteins that are key drivers of tumor growth and/or vascularization. Cabozantinib is being evaluated in a broad development program encompassing multiple cancer indications. The current clinical program for cabozantinib is focused on the treatment of metastatic castration-resistant prostate cancer and ovarian cancer, based on encouraging interim data that has emerged from a randomized discontinuation trial investigating cabozantinib in nine distinct tumor types. Cabozantinib is also being studied in an ongoing global phase 3 registration trial in medullary thyroid cancer, known as the EXAM trial. We expect to release top-line results from the EXAM trial around the end of the third quarter of 2011 and plan to initiate a rolling submission of a new drug application, or NDA, for cabozantinib in medullary thyroid cancer in the fourth quarter 2011 by submitting with the United States Food and Drug Administration, or FDA, key parts of the NDA, including the preclinical and chemistry, manufacturing and controls information. We expect to complete the NDA filing in the first quarter of 2012. Cabozantinib is eligible for a rolling submission as a result of the FDA's granting Fast Track designation for cabozantinib in medullary thyroid cancer. Assuming a positive outcome of the EXAM trial and approval of our NDA by the FDA, we currently anticipate a commercial launch of cabozantinib for the treatment of medullary thyroid cancer in the second half of 2012.

Based on the strength of our expertise in biology, drug discovery and development, we have established collaborations with leading pharmaceutical and biotechnology companies, including Bristol-Myers Squibb Company, or Bristol-Myers Squibb, sanofi-aventis, Genentech, Inc. (a wholly owned member of the Roche Group), GlaxoSmithKline and Daiichi Sankyo Company Limited for the majority of the remaining compounds and programs in our portfolio. Pursuant to these collaborations, we have out-licensed compounds or programs to a partner for further development and commercialization, generally have no further unfunded cost obligations related to such compounds or programs and may be entitled to receive research funding, milestones and royalties or a share of profits from commercialization. With respect to our partnered compounds, we are eligible to receive potential milestone payments under our collaborations totaling approximately $2.9 billion in the aggregate on a non-risk adjusted basis, of which 12.3% are related to clinical development milestones, 46.2% are related to regulatory milestones and 41.5% are related to commercial milestones.

Our strategy is to aggressively advance cabozantinib through development toward commercialization. In doing so, we will pursue a pragmatic development plan focused on those cancer indications where we believe cabozantinib has the greatest near-term therapeutic and commercial potential. We are aggressively managing our expenses to preserve our cash resources and ensure we are appropriately dedicating those resources towards successfully executing our strategy.

As part of our ongoing effort to manage costs and our strategy to focus our resources and development efforts on our most advanced compound, cabozantinib, we implemented two restructuring plans during 2010 and an additional restructuring plan in March 2011 that resulted in an overall reduction in our workforce by 410 employees. Personnel reductions were made across our entire

organization, including discovery, development and general and administrative departments. We expect to make additional reductions through the end of 2012 as we complete our obligations under collaboration agreements and withdraw resources from completed projects. With the exception of activities related to cabozantinib, we are discontinuing efforts with respect to all of our compounds and programs that are not funded by partners pursuant to collaboration agreements and are actively pursuing collaborations or other external opportunities for the continued development of these compounds and programs. Discovery and clinical activities under various collaborations will continue to be funded by partners until we complete our contractual obligations.

Cabozantinib

Cabozantinib is a first-in-class inhibitor of tumor growth, metastasis and angiogenesis that simultaneously targets MET, VEGFR2 and RET, which are key kinases involved in the development and progression of many cancers. It has recently been shown in preclinical models that treatment with selective inhibitors of VEGF signaling can result in tumors that are more invasive and aggressive compared to control treatment. In preclinical studies, upregulation of MET has been shown to occur in concert with development of invasiveness after selective anti-VEGF therapy, and may constitute a mechanism of acquired or evasive resistance to agents that target VEGF signaling without inhibiting MET. Accordingly, treatment with cabozantinib in similar preclinical studies resulted in tumors that were less invasive and aggressive compared to control or selective anti-VEGF treatment. Therefore, we believe that cabozantinib has the potential for improving outcomes in a range of indications, including those where selective anti-VEGF therapy has shown minimal or no activity.

The current clinical program for cabozantinib is focused on the treatment of metastatic castration-resistant prostate cancer and ovarian cancer, based on encouraging interim data that has emerged from a randomized discontinuation trial, or RDT, investigating cabozantinib in nine distinct tumor types. Data from the RDT were released at the American Society of Clinical Oncology, or ASCO, Annual Meeting in June 2010 and demonstrated broad activity for cabozantinib across multiple tumor types, in particular, metastatic castration-resistant prostate, ovarian, non-small cell lung and hepatocellular cancers. Updated interim data presented at the 22nd EORTC-NCI-AACR Symposium on Molecular Targets and Cancer Therapeutics in November 2010, or the 2010 EORTC Symposium, at the ASCO 2011 Genitourinary Cancers Symposium in February 2011, and at the 2011 ASCO Annual Meeting in June 2011 suggest that cabozantinib has a novel and differentiated clinical profile in metastatic castration-resistant prostate cancer and other solid tumors. The data presented indicate that cabozantinib has shown novel activity against bone and soft tissue lesions in patients with metastatic castration-resistant prostate cancer. In addition, we have observed resolution of metastatic bone lesions on bone scan in patients with metastatic breast cancer, renal cell carcinoma, thyroid cancer and melanoma. It will be a priority for us to generate additional data in the various other cohorts of the RDT, including ovarian cancer, melanoma, breast cancer, non-small cell lung cancer and hepatocellular cancer, to support further prioritization of our clinical and commercial options. In addition, we are conducting ongoing exploratory clinical trials for cabozantinib in other tumor types, including renal cell carcinoma. Objective tumor responses have been observed in patients with cabozantinib in 12 of 13 unique tumor types investigated to date, reflecting the broad potential clinical activity and commercial opportunity with this new agent.

We also are focusing our efforts on our ongoing phase 3 clinical trial of cabozantinib as a potential treatment for medullary thyroid cancer. This registration trial was initiated in July 3, 2008 following agreement between the FDA and us on the trial design through the FDA's Special Protocol Assessment process. We expect to release top-line results from the EXAM trial around the end of the third quarter of 2011.

In January 2011, we announced that the FDA granted orphan drug designation to cabozantinib for the treatment of follicular, medullary and anaplastic thyroid carcinoma, and metastatic or locally advanced papillary thyroid cancer. Orphan drug status is granted to treatments for diseases that affect fewer than 200,000 people in the U.S. and provides the benefits of potential market exclusivity for the orphan-designated product for the orphan designated indication for seven years, tax credits of up to 50% of the qualified clinical trial expenses and a waiver of FDA application user fees.

In April 2011, the FDA designated cabozantinib as a Fast Track development program for patients with unresectable, locally advanced or metastatic medullary thyroid carcinoma. The Fast Track process is designed to facilitate the development, and expedite the review of drugs to treat serious diseases and fill an unmet medical need. A drug that receives Fast Track designation is eligible for rolling review, which means that a drug company can submit completed sections of its NDA for review by the FDA. In addition, most drugs that receive Fast Track designation are likely to be considered appropriate to receive a priority review.

We plan to initiate a rolling submission of an NDA for cabozantinib in medullary thyroid cancer in the fourth quarter 2011 by submitting with the FDA key parts of the NDA, including the preclinical and chemistry, manufacturing and controls information. We expect to complete the NDA filing in the first quarter of 2012. Assuming a positive outcome of the EXAM trial and approval of our NDA by the FDA, we currently anticipate a commercial launch of cabozantinib for the treatment of medullary thyroid cancer in the second half of 2012.

In June 2011, we submitted to the FDA the protocol for a planned pivotal trial for cabozantinib in castration-resistant prostate cancer using an endpoint of pain reduction and bone scan response (XL184-306) for consideration of a Special Protocol

Assessment. Our goal is to initiate this trial by the end of 2011. We are also planning two additional pivotal trials in castration-resistant prostate cancer for overall survival and bone metastasis-free survival (XL184-307 and XL184-308), respectively, and expect to initiate both of these trials in 2012.

Recent Development

Termination of Collaboration Agreement with Bristol-Myers Squibb for XL281

On July 8, 2011, we and one of our wholly-owned subsidiaries received written notification from Bristol-Myers Squibb of its decision to terminate the Amended and Restated Collaboration Agreement dated as of April 15, 2011 by and between us and Bristol-Myers Squibb, which amended and restated the Collaboration Agreement dated as of December 11, 2008 between us and Bristol-Myers Squibb, or the 2008 Agreement, on a worldwide basis as to XL281. The termination is being made pursuant to the terms of the Amended and Restated Collaboration Agreement dated as of April 15, 2011 and will be effective as of the end of the day on October 8, 2011. Bristol-Myers Squibb informed us that the termination was based upon Bristol-Myers Squibb's review of XL281 in the context of Bristol-Myers Squibb's overall research and development priorities and pipeline products. Upon the effectiveness of the termination, Bristol-Myers Squibb's license relating to XL281 will terminate and rights to XL281 will revert to us, and we will be entitled to receive, subject to certain terms and conditions, licenses from Bristol-Myers Squibb to research, develop and commercialize XL281. We plan to wind down ongoing activities related to XL281 following the termination and do not currently expect to further research, develop or commercialize XL281 following the wind-down.

Under the 2008 Agreement, we and Bristol-Myers Squibb originally had agreed to co-develop cabozantinib and Bristol-Myers Squibb also received an exclusive worldwide license to develop and commercialize XL281. On June 18, 2010, we received a notice from Bristol-Myers Squibb of its decision to terminate the 2008 Agreement solely as to cabozantinib, on a worldwide basis, pursuant to the terms of the 2008 Agreement. We continued to carry out certain clinical trials of XL281 under the 2008 Agreement, and Bristol-Myers Squibb was responsible for funding all future development of XL281, including our activities. We were eligible for development and regulatory milestones of up to $315.0 million on XL281, sales performance milestones of up to $150.0 million and double-digit royalties on worldwide sales of XL281.

For purposes of recognizing up-front license fees received under the 2008 Agreement, prior to receiving the termination notification from Bristol-Myers Squibb in July 2011, we were recognizing revenue through April 2014. As a result of the termination, the estimated research term will now end as of the end of the day on October 8, 2011. Accordingly, we expect to accelerate the remaining deferred revenue balance and estimate that we will recognize an aggregate of approximately $109.9 million and $10.4 million in revenue in the third and fourth fiscal quarters of 2011, respectively, relating to the up-front license fees under the 2008 Agreement.

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

Successful development of drugs is inherently difficult and uncertain. Our business requires significant investments in research and development over many years, often for products that fail during the research and development process. Our long-term prospects depend upon our ability, particularly with respect to cabozantinib, and the ability of our partners to successfully commercialize new therapeutics in highly competitive areas such as cancer treatment. Our financial performance is driven by many factors, including those described below.

Clinical Development of Cabozantinib and Other Product Candidates

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

On June 18, 2010, we regained full rights to develop and commercialize cabozantinib under our collaboration agreement with Bristol-Myers Squibb following receipt of notice from Bristol-Myers Squibb of its decision to terminate the 2008 collaboration, solely as to cabozantinib, on a worldwide basis. Bristol-Myers Squibb informed us that the termination was based upon its review of cabozantinib in the context of Bristol-Myers Squibb's overall research and development priorities and pipeline products. On June 28, 2010, in connection with the termination, we received a $17.0 million transition payment from Bristol-Myers Squibb in satisfaction of its obligations under the collaboration agreement to continue to fund its share of development costs for cabozantinib for a period of three months following the notice of termination. As a result of the termination, Bristol-Myers Squibb's license relating to cabozantinib terminated and its rights to cabozantinib reverted to us, and we received, subject to certain terms and conditions, licenses from Bristol-Myers Squibb to research, develop and commercialize cabozantinib.

We are focusing our resources and development efforts on the development of cabozantinib. However, the product candidate may fail to show adequate safety or efficacy in clinical testing. Furthermore, predicting the timing of the initiation or completion of

clinical trials is difficult, and our trials may be delayed due to many factors, including factors outside of our control. The future development path of cabozantinib depends upon the results of each stage of clinical development. We expect to incur increased expenses for the development of cabozantinib as it advances in clinical development.

With the exception of activities related to cabozantinib, we are discontinuing efforts with respect to all of our compounds and programs that are not funded by partners pursuant to collaboration agreements and are actively pursuing collaborations or other external opportunities for the continued development of these compounds and programs. Discovery and clinical activities under various collaborations are expected to continue at funded levels until we complete our contractual obligations.

Limited Sources of Revenues

We have no pharmaceutical products that have received marketing approval, and we have generated no revenues to date from the sale of such products. We do not expect to generate revenues from the sale of pharmaceutical products in the near term and expect that all of our near-term revenues, such as research and development funding, license fees and milestone payments and royalty revenues, will be generated from collaboration agreements with our current and potential future partners. Milestones under these agreements may be tied to factors that are outside of our control, such as significant clinical or regulatory events with respect to compounds that have been licensed to our partners.

Liquidity

As of June 30, 2011, we had $353.6 million in cash and cash equivalents, marketable securities and long-term investments, which included restricted cash and investments of $4.2 million and approximately $95.0 million of cash and cash equivalents and marketable securities that we are required to maintain on deposit with Silicon Valley Bank pursuant to covenants in our loan and security agreement with Silicon Valley Bank. We anticipate that our current cash and cash equivalents, marketable securities, long-term investments and funding that we expect to receive from existing collaborators will enable us to maintain our operations for a period of at least 12 months following the filing date of this report. However, our future capital requirements will be substantial and depend on many factors, including the following:

- the progress and scope of the development activity with respect to cabozantinib;
- whether we repay amounts outstanding under our loan and security agreement with GlaxoSmithKline in cash or shares of our common stock;
- whether we elect to pay cash or to issue shares of our common stock in respect of any conversion of our principal, prepayments or payments of interest in connection with the secured convertible notes we issued to entities affiliated with Deerfield Management Company, L.P., or Deerfield, under a note purchase agreement;
- whether we elect to prepay the amounts advanced under our loan from Silicon Valley Bank;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements;
- the degree to which we conduct funded development activity on behalf of partners to whom we have out-licensed compounds; and
- whether we enter into new collaboration agreements, licensing agreements or other arrangements (including, in particular, with respect to cabozantinib) that provide additional capital.

Our minimum liquidity needs are also determined by financial covenants in our loan and security agreement with GlaxoSmithKline, our loan and security agreement with Silicon Valley Bank and our note purchase agreement with Deerfield, as well as other factors, which are described under “—Liquidity and Capital Resources—Cash Requirements”.

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

Deerfield Facility

On June 2, 2010, we entered into a note purchase agreement with Deerfield pursuant to which, on July 1, 2010, we sold to Deerfield an aggregate of $124.0 million initial principal amount of our secured convertible notes due June 2015 for an aggregate purchase price of $80.0 million, less closing fees and expenses of approximately $2.0 million. The outstanding principal amount of the notes bears interest in the annual amount of $6.0 million, payable quarterly in arrears. We will be required to make mandatory prepayments on the notes on an annual basis in 2013, 2014 and 2015 equal to 15% of certain payments from our collaborative arrangements received during the prior fiscal year, subject to a maximum annual prepayment amount of $27.5 million and, for payments due in January 2013 and 2014, a minimum prepayment amount of $10.0 million. We may also prepay all or a portion (not less than $5.0 million) of the principal amount of the notes at an optional prepayment price based on a discounted principal amount (during the first three years of the term, subject to a prepayment premium) determined as of the date of prepayment, plus accrued and unpaid interest, plus in the case of a prepayment of the full principal amount of the notes (other than prepayments upon the occurrence

of specified transactions relating to a change of control or a substantial sale of assets), all accrued interest that would have accrued between the date of such prepayment and the next anniversary of the note purchase agreement. In lieu of making any optional or mandatory prepayment in cash, at any time after July 1, 2011, subject to certain limitations (including a cap on the number of shares issuable under the note purchase agreement), we have the right to convert all or a portion of the principal amount of the notes into, or satisfy all or any portion of the optional prepayment amounts or mandatory prepayment amounts (other than the first $10.0 million of mandatory prepayments required in 2013 and 2014) with shares of our common stock. Additionally, in lieu of making any payment of accrued and unpaid interest in respect of the notes in cash, at any time after July 1, 2011, subject to certain limitations, we may elect to satisfy any such payment with shares of our common stock. The number of shares of our common stock issuable upon conversion or in settlement of principal and interest obligations will be based upon the discounted trading price of our common stock over a specified trading period. Upon certain changes of control of our company, a sale or transfer of assets in one transaction or a series of related transactions for a purchase price of more than $400 million or a sale or transfer of more than 50% of our assets, Deerfield may require us to prepay the notes at the optional prepayment price, plus accrued and unpaid interest and any other accrued and reimbursable expenses, or the Put Price. Upon an event of default, Deerfield may declare all or a portion of the Put Price to be immediately due and payable.

We also entered into a security agreement in favor of Deerfield which provides that our obligations under the notes will be secured by substantially all of our assets except intellectual property. The note purchase agreement and the security agreement include customary representations and warranties and covenants made by us, including restrictions on the incurrence of additional indebtedness.

sanofi-aventis

In May 2009, we entered into a global license agreement with sanofi-aventis for XL147 and XL765 and a broad collaboration for the discovery of inhibitors of phosphoinositide-3 kinase, or PI3K, for the treatment of cancer. The license agreement and collaboration agreement became effective on July 7, 2009. In connection with the effectiveness of the license and collaboration, on July 20, 2009, we received upfront payments of $140.0 million ($120.0 million for the license and $20.0 million for the collaboration), less applicable withholding taxes of $7.0 million, for a net receipt of $133.0 million. We expect to receive a refund payment from the French government in 2011 with respect to the withholding taxes previously withheld.

Under the license agreement, sanofi-aventis received a worldwide exclusive license to XL147 and XL765, which are in phase 1, phase 1b/2 and phase 2 clinical trials, and has sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities. sanofi-aventis is responsible for funding all development activities with respect to XL147 and XL765, including our activities. Following the effectiveness of the license agreement, we had been conducting the majority of the clinical trials for XL147 and XL765 at the expense of sanofi-aventis. As provided for under the license agreement, however, the parties agreed to transition all future development activities for these compounds to sanofi-aventis. The transition was substantially completed by the end of June 2011. As a result of the transition of development activities to sanofi-aventis, we expect to no longer receive reimbursements from sanofi-aventis with respect to XL147 and XL765 and we have reduced our headcount commensurately such that no further material operating expenses will be incurred in connection with these programs going forward.

Under the collaboration agreement, the parties agreed to combine efforts in establishing several pre-clinical PI3K programs and jointly share responsibility for research and preclinical activities related to isoform-selective inhibitors of PI3K-a and -ß. sanofi-aventis will continue to provide us with guaranteed annual research and development funding during the research term and is responsible for funding all development activities for each product following approval of the investigational new drug application filed with the applicable regulatory authorities for such product. We are entitled to receive guaranteed research funding of $21.0 million over three years to cover certain of our costs under the collaboration agreement. sanofi-aventis will have sole responsibility for all subsequent clinical, regulatory, commercial and manufacturing activities of any products arising from the collaboration; however, we may be requested to conduct certain clinical trials at sanofi-aventis' expense. The research term under the collaboration is three years, although sanofi-aventis has the right to extend the term for an additional one-year period upon prior written notice.

For both the license and the collaboration combined, we will be eligible to receive development, regulatory and commercial milestones of over $1.0 billion in the aggregate, as well as royalties on sales of any products commercialized under the license or collaboration.

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

The collaboration will automatically terminate under certain circumstances upon the expiration of the research term, in which case all licenses granted by the parties to each other would terminate and revert to the respective party, subject to sanofi-aventis' right to receive, under certain circumstances, the first opportunity to obtain a license from us to any isoform-selective PI3K inhibitor. In

addition, sanofi-aventis may, upon certain prior written notice to us, terminate the collaboration in whole or as to certain products following expiration of the research term, in which case we would receive, subject to certain terms, conditions and potential payment obligations by us, licenses from sanofi-aventis to research, develop and commercialize such products.

Restructuring Plans

During 2010, we implemented two restructuring plans that resulted in an overall reduction in our workforce by 386 employees. In March 2011, we implemented an additional restructuring plan that resulted in the termination of 24 employees, for an aggregate reduction in headcount resulting from the 2010 and 2011 restructuring plans of 410 employees. Of these reductions in headcount, 11 employees are continuing to provide service through various dates in 2011. The restructuring plans are a consequence of our decision to focus our resources and development efforts on the late-stage development and commercialization of cabozantinib. Further personnel reductions are expected to be made through the end of 2012 as we complete our obligations under collaboration agreements and withdraw resources from completed projects.

In connection with the 2010 and 2011 restructuring plans, we have recorded aggregate restructuring charges of $36.0 million, of which $19.6 million related to termination benefits and $16.3 million related to facility charges and the impairment of various assets. In connection with these restructuring plans, $4.8 million was recorded during the first quarter of 2011, of which $3.5 million was associated with lease-exit costs in connection with the exit and potential sublease of a single floor of a building we lease at 170 Harbor Way, South San Francisco, California, or Building 170. In July 2011, we entered into two sublease agreements for Building 170. As a result of these activities, we updated our estimated charge for all of our facilities to better reflect the actual sublease terms. As a result of this revision, we recorded a reduction to our restructuring liability of $1.7 million during the three months ended June 30, 2011. The balance of our restructuring charges taken during the first half of 2011 primarily related to termination benefits for employees as well as the impairment of excess equipment and other assets, offset by any auction proceeds that we have received from the sale of such assets.

With respect to our restructuring plans, we expect to incur an additional restructuring charge of $6.5 million relating to the sublease of Building 170 and a building we lease at 249 East Grand Avenue, South San Francisco, California that we exited and subleased in 2010, or Building 249, plus additional restructuring charges of up to $17 million in connection with the anticipated exit of an additional facility in South San Francisco, California. We expect to record $0.1 million of additional termination benefits and the majority of the facility-related charges discussed above as they are determined during the fiscal year ending December 31, 2011.

As of June 30, 2011, the 2010 and 2011 restructuring plans had resulted in aggregate cash expenditures of $20.7 million. We expect to pay an additional $8.5 million, net of cash received from our subtenant, for Building 249 and an additional $7.3 million, net of cash received from our subtenants, for Building 170. In addition, we expect to make cash expenditures of $1.0 million relating to termination benefits and up to $22 million relating to facility charges in connection with the anticipated exit of one additional facility in South San Francisco, California. We expect the termination benefits to be paid during the third and fourth quarters of 2011 and the facility costs to be paid through 2017, or the end of our lease term.

The restructuring charges that we expect to incur in connection with the restructuring plans are subject to a number of assumptions, and actual results may materially differ. We may also incur other material charges not currently contemplated due to events that may occur as a result of, or associated with, the restructuring plan.

GlaxoSmithKline Loan Repayment Obligations

In October 2002, we entered into a collaboration with GlaxoSmithKline to discover and develop novel therapeutics in the areas of vascular biology, inflammatory disease and oncology. As part of the collaboration, we entered into a loan and security agreement with GlaxoSmithKline, pursuant to which we borrowed $85.0 million for use in our efforts under the collaboration. The loan bears interest at a rate of 4.0% per annum and is secured by certain intellectual property, technology and equipment created or utilized pursuant to the collaboration. On October 27, 2010, we paid approximately $37.0 million in cash to GlaxoSmithKline as the second of three installments of principal and accrued interest due under the loan agreement. After giving effect to all repayments made, as of June 30, 2011, the aggregate principal and interest outstanding under the loan was $36.5 million. The final installment of principal and accrued interest under the loan is due October 27, 2011. Repayment of all or any of the amounts advanced to us under the loan agreement may, at our election, be made in the form of our common stock at fair market value, subject to certain conditions, or cash. In the event the market price for our common stock is depressed, we may not be able to repay the loan in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to repay the loan may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding to satisfy our repayment obligations. There can be no assurance that we will have sufficient funds to repay amounts outstanding under the loan when due or that we will satisfy the conditions to our ability to repay the loan in shares of our common stock.

Critical Accounting Estimates

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

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

Revenue Recognition

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

Revenues from license fees and milestone payments primarily consist of up-front license fees and milestone payments received under various collaboration agreements. We initially recognize upfront fees received from third party collaborators as unearned revenues and then recognize these amounts on a ratable basis over the expected term of the research collaboration. Therefore, any changes in the expected term of the research collaboration will impact revenue recognition for the given period. For example, in the fourth quarter of 2010, in association with the new ROR agreement with Bristol-Myers Squibb, the estimated research term under our 2007 cancer collaboration with Bristol-Myers Squibb was extended from December 2011 until April 2014, resulting in an extension in the period over which we recognized milestone revenues and a decrease in the milestone revenues recognized each quarter. Often, the total research term is not contractually defined and an estimate of the term of our total obligation must be made. For example, under the 2008 cancer collaboration with Bristol-Myers Squibb, we originally estimated our term to be through August 2013, which is the estimated term of our performance obligations for XL281. We estimated that this would be the period over which we would be obligated to perform services and therefore the appropriate term with which to ratably recognize any license fees. During the fourth quarter of 2010, this estimate was extended to April 2014 as a result of the decision with Bristol-Myers Squibb to complete additional phase 1 trial programs for XL281. As a result of the termination of the 2008 cancer collaboration with Bristol-Myers Squibb, which will be effective as of the end of the day on October 8, 2011, the estimated research term will now end as of the end of the day on October 8, 2011. Accordingly, we expect to accelerate the remaining deferred revenue balance and estimate that we will recognize an aggregate of approximately $109.9 million and $10.4 million in revenue in the third and fourth fiscal quarters of 2011, respectively, relating to the up-front license fees under the 2008 cancer collaboration. License fees are classified as license revenues in our consolidated statement of operations.

Although milestone payments are generally non-refundable once the milestone is achieved, we recognize milestone revenues on a straight-line basis over the expected research term of the arrangement. This typically results in a portion of a milestone being recognized on the date the milestone is achieved, with the balance being recognized over the remaining research term of the agreement. In certain situations, we may receive milestone payments after the end of our period of continued involvement. In such circumstances, we would recognize 100% of the milestone revenues when the milestone is achieved. Milestones are classified as contract revenues in our consolidated statement of operations.

Collaborative agreement reimbursement revenues consist of research and development support received from collaborators and are recorded as earned based on the performance requirements by both parties under the respective contracts. Under the 2008 cancer collaboration with Bristol-Myers Squibb and prior to its termination by Bristol-Myers Squibb as to cabozantinib, certain research and development expenses were partially reimbursable to us. On an annual basis, amounts owed by Bristol-Myers Squibb to us, net of amounts reimbursable to Bristol-Myers Squibb by us for the development of cabozantinib and XL281, are recorded as collaboration reimbursement revenues. Conversely, research and development expenses may include the net settlement of amounts we owe Bristol-Myers Squibb for research and development expenses that Bristol-Myers Squibb incurred in connection with the development of cabozantinib, less amounts reimbursable to us by Bristol-Myers Squibb on the development of both cabozantinib and XL281. In annual periods when net research and development funding payments were payable to Bristol-Myers Squibb, these payments were presented as collaboration cost-sharing expenses. Reimbursements under co-development agreements were classified as collaboration reimbursement revenues, while reimbursements under other arrangements were classified as contract revenues in our consolidated statement of operations. With respect to Bristol-Myers Squibb, revenues from the 2008 cancer collaboration will continue to be reflected as collaboration reimbursement revenues until the expiration of this agreement on October 8, 2011. Following this date, we will no longer expect to report collaboration cost-sharing expenses or collaboration reimbursement revenues with respect to any of our current collaborations.

Some of our research and licensing arrangements have multiple deliverables in order to meet our customer's needs. For example, the arrangements may include a combination of intellectual property rights and research and development services. Multiple element revenue agreements are evaluated to determine whether the delivered item has value to the customer on a stand-alone basis and whether objective and reliable evidence of the fair value of the undelivered item exists. Deliverables in an arrangement that do not meet the separation criteria are treated as one unit of accounting for purposes of revenue recognition. Generally, the revenue recognition guidance applicable to the final deliverable is followed for the combined unit of accounting. For certain arrangements, the period of time over which certain deliverables will be provided is not contractually defined. Accordingly, management is required to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. For example, in 2008, under our collaboration with GlaxoSmithKline, we accelerated $18.5 million in previously deferred revenue as a result of the development term concluding on the earliest scheduled end date of October 27, 2008, instead of the previously estimated end date of October 27, 2010.

Clinical Trial Accruals

All of our clinical trials have been performed by third-party contract research organizations, or CROs, and other vendors. We accrue costs for clinical trial activities performed by CROs based upon the estimated amount of work completed on each study. For clinical trial expenses, the significant factors used in estimating accruals include the number of patients enrolled, the number of active clinical sites, and the duration for which the patients will be enrolled in the study. We monitor patient enrollment levels and related activities to the extent possible through internal reviews, correspondence with CROs and review of contractual terms. We base our estimates on the best information available at the time. However, additional information may become available to us which will allow us to make a more accurate estimate in future periods. In this event, we may be required to record adjustments to research and development expenses in future periods when the actual level of activity becomes more certain. Such increases or decreases in cost are generally considered to be changes in estimates and will be reflected in research and development expenses in the period first known.

Stock Option Valuation

Our estimate of compensation expense requires us to determine the appropriate fair value model and a number of complex and subjective assumptions including our stock price volatility, employee exercise patterns, future forfeitures and related tax effects. The most significant assumptions are our estimates of the expected volatility and the expected term of the award. We have limited historical information available to support the underlying estimates of certain assumptions required to value stock options. The value of a stock option is derived from its potential for appreciation. The more volatile the stock, the more valuable the option becomes because of the greater possibility of significant changes in stock price. Because there is a market for options on our common stock, we have considered implied volatilities as well as our historical realized volatilities when developing an estimate of expected volatility. The expected option term also has a significant effect on the value of the option. The longer the term, the more time the option holder has to allow the stock price to increase without a cash investment and thus, the more valuable the option. Further, lengthier option terms provide more opportunity to exploit market highs. However, empirical data shows that employees, for a variety of reasons, typically do not wait until the end of the contractual term of a nontransferable option to exercise. Accordingly, companies are required to estimate the expected term of the option for input to an option-pricing model. As required under the accounting rules, we review our valuation assumptions at each grant date and, as a result, from time to time we will likely change the valuation assumptions we use to value stock based awards granted in future periods. The assumptions used in calculating the fair value of share-based payment awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our stock-based compensation expense could be materially different in the future. In addition, we are required to estimate the expected forfeiture rate and recognize expense only for those shares expected to vest. If our actual forfeiture rate is materially different from our estimate, the stock-based compensation expense could be significantly different from what we have recorded in the current period. As of June 30, 2011, $8.8 million of total unrecognized compensation expense related to stock options was expected to be recognized over a weighted-average period of 1.80 years in addition to $6.9 million of total unrecognized compensation expense relating to restricted stock units, which was expected to be recognized over 2.69 years. See Note 3 of the Notes to Consolidated Financial Statements for a further discussion on stock-based compensation.

Restructuring Charges

We record costs and liabilities associated with exit and disposal activities at fair value in the period in which the cost or liability is incurred. Restructuring charges consist of charges related to employee severance and benefits, lease termination costs, equipment write-downs and other restructuring related charges. Charges related to employee severance and benefits are determined based on the estimated severance and fringe benefit charge for identified employees. Our facility charges are based upon our ability to vacate certain of our facilities and the timing and nature of potential future sublease rates. Based on our future equipment needs, we have disposed of certain assets no longer in use and recorded a charge to impair the book value to an amount relative to our expected future use of the remaining assets.

If the actual amounts differ from our estimates, the amount of restructuring charges could be materially impacted. See Note 5 of the Notes to Consolidated Financial Statements for a further discussion on our restructuring plans.

Fiscal Year Convention

We have adopted a 52- or 53-week fiscal year that ends on the Friday closest to December 31st of each year. Fiscal year 2010, a 52-week year, ended on December 31, 2010, and fiscal year 2011, a 52-week year, will end on December 30, 2011. For convenience, references in this report as of and for the fiscal quarters ended July 2, 2010 and July 1, 2011 and as of the fiscal year ending December 30, 2011 are indicated as ended June 30, 2010 and 2011 and as ending December 31, 2011, respectively.

Results of Operations

Revenues

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Contract revenue:				
Research and development funding	$ 3.7	$ 10.9	$ 13.6	$ 22.1
Milestones	4.6	1.4	7.2	10.0
License revenue and amortization of upfront payments	22.5	24.6	45.3	49.1
Collaboration reimbursements	1.4	10.7	2.0	8.6
Total revenues	$ 32.2	$ 47.6	$ 68.1	$ 89.8
Dollar decrease	$ 15.4		$ 21.7	
Percentage decrease	32.4%		24.2%	

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Bristol-Myers Squibb	$ 17.5	$ 27.2	$ 34.4	$ 41.3
sanofi-aventis	12.5	19.7	31.0	39.4
Genentech	2.0	—	2.0	7.0
Boehringer Ingelheim	0.2	0.7	0.7	2.1
Total revenues	$ 32.2	$ 47.6	$ 68.1	$ 89.8
Dollar decrease	$ 15.4		$ 21.7	
Percentage decrease	32.4%		24.2%	

The decrease in revenues for the three and six months ended June 30, 2011, as compared to the comparable periods for the prior year, was primarily due to the decrease in reimbursement revenue as a result of the termination of our 2008 cancer collaboration agreement with Bristol Myers-Squibb with respect to cabozantinib in 2010. In addition, there was a decrease of $7.2 million and $8.4 million for the three and six months ended June 30, 2011, respectively, related to our May 2009 collaboration agreement with sanofi-aventis for XL147 and XL765 due to the transfer of substantially all development activities relating to these compounds to sanofi-aventis in 2011. Furthermore, there was a decrease in Genentech revenue relating to the one-time milestone payments of $2.0 million in 2011 for the Notch agreement and $7.0 million in 2010 for the MEK agreement, as well as a decrease in license revenue related to our amended 2007 and 2008 collaboration agreements with Bristol-Myers Squibb (in the case of the 2008 collaboration agreement, solely in relationship to XL281). As a result of the extension of the duration of our performance obligations under the XL281 agreement, revenue recognition in the current period, related to the upfront payments previously received, was reduced. These decreases were partially offset by our 2011 collaboration with Bristol-Myers Squibb for TGR5 and ROR Gamma.

Total collaboration reimbursement revenue consisted of research and development expenses and reimbursements related to our 2008 cancer collaboration agreement with Bristol Myers-Squibb for cabozantinib and XL281. To the extent that net annual research and development funding payments were expected to be received from Bristol-Myers Squibb, these payments would have been presented as collaboration reimbursement revenues. In years when net research and development funding payments were expected to be payable to Bristol-Myers Squibb, these payments would have been presented as collaboration cost-sharing expense. For the three

and six months ended June 30 2010, we recorded collaboration reimbursement revenues from Bristol-Myers Squibb of $10.7 million and $8.6 million, respectively. For the year ending December 31, 2011 we expect to record only collaboration reimbursement revenues with respect to the work we are conducting for XL281. Following the complete termination of the 2008 cancer collaboration with Bristol-Myers Squibb, which will be effective as of the end of the day on October 8, 2011, we do not expect any further collaboration reimbursement revenues or collaboration cost-sharing expenses to be recorded with respect to this agreement for either cabozantinib or XL281.

Research and Development Expenses

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Research and development expenses	$ 42.9	$ 54.2	$ 88.6	$ 119.0
Dollar decrease	$ 11.3		$ 30.4	
Percentage decrease	20.9%		25.5%	

The decrease for the three and six months ended June 30, 2011, as compared to the comparable periods in 2010, resulted primarily from the following:

- Personnel—Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, decreased by $4.9 million, or 38%, and $12.8 million, or 42%, respectively, primarily due to the reduction in headcount resulting from our 2010 and 2011 restructuring plans.
- General Corporate Costs—There was a decrease of $2.1 million, or 22%, and $4.6 million, or 23%, respectively, in the allocation of general corporate costs (such as facility costs, property taxes and insurance) to research and development, primarily as a result of a decrease in personnel and the exit of certain facilities in San Diego and South San Francisco, as a result of our 2010 and 2011 restructuring plans, and the resulting decrease in costs to be allocated.
- Laboratory Supplies—Laboratory supplies decreased by $1.4 million, or 80%, and $4.5 million, or 81%, respectively, primarily due to the decrease in headcount and other cost cutting measures as a result of our 2010 and 2011 restructuring plans.
- Stock-Based Compensation—Stock-based compensation expense decreased by $1.6 million, or 52%, and $3.5 million, or 52%, respectively, as a result of our reduction in headcount from our 2010 and 2011 restructuring plans.

We do not track total research and development expenses separately for each of our research and development programs. We group our research and development expenses into three categories: drug discovery, development and other. Our drug discovery group utilizes a variety of high-throughput technologies to enable the rapid discovery, optimization and extensive characterization of lead compounds such that we are able to select development candidates with the best potential for further evaluation and advancement into clinical development. Drug discovery expenses relate primarily to personnel expense, lab supplies and general corporate costs. Our development group leads the development and implementation of our clinical and regulatory strategies and prioritizes disease indications in which our compounds may be studied in clinical trials. Development expenses relate primarily to clinical trial, personnel and general corporate costs. The other category primarily includes stock-based compensation expense.

In addition to reviewing the three categories of research and development expenses described above, we principally consider qualitative factors in making decisions regarding our research and development programs. Such factors include enrollment in clinical trials for our drug candidates, the results of and data from clinical trials, the potential indications for our drug candidates, the therapeutic and commercial potential for our drug candidates and competitive dynamics. We also make our research and development decisions in the context of our overall business strategy, which historically included the pursuit of commercial collaborations with major pharmaceutical and biotechnology companies for the development of our drug candidates. As noted under “—Overview,” we are focusing our resources and development efforts exclusively on cabozantinib in order to maximize the therapeutic and commercial potential of this compound. Our strategy is to aggressively advance cabozantinib through development toward commercialization, and as a result, we expect nearly all of our future research and development expenses to relate to the clinical development of cabozantinib.

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

	Three Months Ended June 30,		Six Months Ended June 30,		Inception to date (1)
	2011	2010	2011	2010	
Drug discovery	$ 4.5	$ 13.2	$ 10.3	$ 33.8	$ 448.9
Development	36.3	37.4	74.3	76.8	655.3
Other	2.1	3.6	4.0	8.4	98.1
Total	$ 42.9	$ 54.2	$ 88.6	$ 119.0	$1,202.3

(1) Inception is as of January 1, 2006, the date on which we began tracking research and development expenses by category.

While we do not track total research and development expenses separately for each program, beginning in fiscal 2006, we began tracking third party expenditures directly relating to each program as a way of monitoring external costs. Our third party research and development expenditures relate principally to our clinical trial and related development activities, such as preclinical and clinical studies and contract manufacturing, and represent only a portion of the costs related to each program. Third party expenditures for programs initiated prior to the beginning of fiscal 2006 have not been tracked from project inception, and therefore such expenditures from the actual inception for most of our programs are not available. We do not accumulate on a program-specific basis internal research and development expenses, such as salaries and personnel expenses, facilities overhead expenses and external costs not directly attributable to a specific project. Nevertheless, we believe that third party expenditures by program provide a reasonable estimate of the percentage of our total research and development expenses that are attributable to each such program. For the six months ended June 30, 2011, the programs representing the greatest portion of our external third party research and development expenditures were cabozantinib (85%), XL765 (6%), XL147 (5%), and XL281 (4%). The expenses for these programs were primarily included in the development category of our research and development expenses and exclude the impact of any amounts reimbursed by our partners.

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

We do not have reliable estimates of total costs for a particular drug candidate to reach the market. Our potential therapeutic products are subject to a lengthy and uncertain regulatory process that may involve unanticipated additional clinical trials and may not result in receipt of the necessary regulatory approvals. Failure to receive the necessary regulatory approvals would prevent us from commercializing the product candidates affected. In addition, clinical trials of our potential products may fail to demonstrate safety and efficacy, which could prevent or significantly delay regulatory approval.

General and Administrative Expenses

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
General and administrative expenses	$ 8.8	$ 9.6	$ 17.9	$ 18.4
Dollar decrease	$ 0.8		$ 0.5	
Percentage decrease	8.2%		2.5%	

The decrease in general and administrative expenses for the three and six months ended June 30, 2011, as compared to the comparable period in 2010, was primarily due to a decrease in facility and personnel costs relating to our 2010 and 2011 restructuring plans. This decrease was offset by a decrease in allocation of general corporate costs to research and development also as a result of the reduction in headcount from our 2010 and 2011 restructuring plans, in addition to an increase in marketing and promotional expenses relating to cabozantinib.

Restructuring Charge

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Restructuring charge	$ (1.5)	$ 9.4	$ 3.3	$ 25.5
Dollar change	$ 10.9		$ 22.2	
Percentage change	116%		87%	

As part of our ongoing efforts to manage costs and our strategy to focus our resources and development efforts on cabozantinib, we implemented two restructuring plans during 2010 that resulted in an overall reduction of our workforce by 386 employees. In March 2011, we implemented an additional restructuring plan that resulted in the termination of 24 employees, for an aggregate reduction in headcount resulting from the 2010 and 2011 restructuring plans of 410 employees. The restructuring charge taken in 2010 primarily related to termination benefits for the initial reduction in 243 positions in March 2010, while the restructuring charge taken in 2011 related primarily to facility charges in association with the exit and potential sublease of Building 170. In July 2011, we entered into two sublease agreements for Building 170. As a result of these activities, we updated our estimated charge for all of our facilities to better reflect the actual sublease terms. As a result of this revision, we recorded a reduction to our restructuring liability of $1.7 million during the period ended June 30, 2011, offset by additional employee related termination benefits. As a result of our 2010 and 2011 restructuring plans, we expect to incur additional restructuring charges, primarily related to facility costs, through the end of 2017.

Total Other Income (Expense), Net

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Total other income (expense), net	$ (3.0)	$ 3.0	$ (6.7)	$7.2
Dollar change	$ (6.0)		$ (13.9)	
Percentage change	Not meaningful		Not meaningful	

Total other income (expense), net consists primarily of interest income earned on our marketable securities and gains on sales of businesses, offset by interest expense incurred on our notes payable, bank obligations, capital lease obligations, convertible notes and loans and our credit facility. The change in total other income for the three and six months ended June 30, 2011, as compared to the comparable periods in 2010, was primarily due to the recording of gains relating to the sale of our plant trait business and the sale of our cell factory business in 2010. In addition, we had increased interest expense in 2011 as a result of our entry into a note purchase agreement with Deerfield in June 2010 and a $1.0 million gain on the sale of XL647 materials in 2011.

Liquidity and Capital Resources

Sources and Uses of Cash

The following table summarizes our cash flow activities for the six months ended June 30, 2011 and 2010, respectively (dollar amounts presented in thousands):

	Six Months Ended June 30,	
	2011	2010
Consolidated net loss	$ (48,464)	$ (65,862)
Adjustments to reconcile net loss to net cash provided by operating activities	16,472	13,491
Changes in operating assets and liabilities	(54,800)	(26,104)
Net cash used in operating activities	(86,792)	(78,475)
Net cash used in investing activities	(121,397)	(10,771)
Net cash provided by financing activities	186,029	159,653
Net (decrease) increase in cash and cash equivalents	(22,160)	70,407
Cash and cash equivalents, at beginning of period	97,440	86,796
Cash and cash equivalents, at end of period	$ 75,280	$ 157,203

To date, we have financed our operations primarily through the sale of equity, payments and loans from collaborators and banks, debt-financing arrangements and equipment financing facilities. We have also financed certain of our research and development activities under our agreements with various collaborators. As of June 30, 2011, we had $353.6 million in cash and cash equivalents, marketable securities and long-term investments, which included restricted cash and investments of $4.2 million and approximately $95.0 million of cash and cash equivalents and marketable securities that we are required to maintain on deposit with Silicon Valley Bank pursuant to covenants in our loan and security agreement with Silicon Valley Bank.

Operating Activities

Our operating activities used cash of $86.8 million for the six months ended June 30, 2011, compared to cash used of $78.5 million for the comparable period in 2010. Cash used by operating activities for the 2011 period related primarily to our net loss of $48.5 million, in addition to a $50.5 million reduction in deferred revenue and a decrease in our restructuring liability of $4.2 million as we made severance payments relating to our 2010 and 2011 restructuring activities. These increases in cash used were partially offset by non-cash charges totaling $16.5 million relating to stock-based compensation, depreciation and amortization, accretion of implied interest under our 2010 note purchase agreement with Deerfield, impairment of assets due to our 2010 and 2011 restructuring plans, and other non-cash changes.

Cash used by operating activities for the 2010 period related primarily to our net loss attributable to Exelixis, Inc. of $65.9 million, in addition to a $35.3 million reduction in deferred revenue and a gain on the sale of our plant trait and cell factory businesses of $7.8 million. These increases in cash used were partially offset by non-cash charges totaling $19.6 million relating to stock-based compensation, depreciation and amortization, and asset impairment as a result of our March 2010 restructuring and a related restructuring charge of $11.1 million relating to Building 249.

Investing Activities

Our investing activities used cash of $121.4 million for the six months ended June 30, 2011, compared to cash used of $10.8 million for the comparable period in 2010. Cash used by investing activities for the 2011 period was primarily driven by the purchase of $189.4 million of marketable securities. This use of cash was partially offset by proceeds from the maturity of marketable securities of $66.4 million and a decrease in restricted cash of $2.2 million.

Cash used by investing activities for the 2010 period was primarily driven by the purchase of $103.6 million of marketable securities and certificates of deposit, partially offset by proceeds from the maturity of marketable securities of $72.0 million in addition to the sale of investments prior to maturity of $12.8 million and an additional gain of $8.6 million associated with our 2007 sale of our plant trait business and the sale of our cell factory business in 2010. The proceeds provided by the sale and maturity of our investments were used to fund our operations.

Financing Activities

Our financing activities provided cash of $186.0 million for the six months ended June 30, 2011, compared to cash provided of $159.7 million for the comparable period in 2010. Cash provided by our financing activities for the 2011 period was due to proceeds from the issuance of 17.3 million shares of common stock for net proceeds of $179.4 million, proceeds from the exercise of stock options of $7.6 million and $2.6 million from our Silicon Valley Bank loan agreement. These increases were partially offset by cash used for principal payments on notes payable and bank obligations of $4.6 million. Cash provided by our financing activities for the 2010 period was primarily due to our loan agreements with Silicon Valley Bank and Deerfield for proceeds of $162.5 million as well as proceeds from employee option exercises of $2.1 million offset by principal payments on notes payable and bank obligations of $6.0 million.

We finance property and equipment purchases through equipment financing facilities, such as bank notes payable. Proceeds from collaboration loans and common stock issuances are used for general working capital purposes, such as research and development activities and other general corporate purposes. Over the next several years, we are required to make certain payments on notes and our loan from GlaxoSmithKline.

Cash Requirements

We have incurred net losses since inception, including a net loss of $21.0 million and $48.5 million for three and six months ended June 30, 2011, respectively. While we expect to be in a net income position for 2011, as a result of the acceleration of deferred revenue under our terminated collaboration with Bristol Myers-Squibb for XL281, we anticipate negative operating cash flow for the foreseeable future. As of June 30, 2011, we had $353.6 million in cash and cash equivalents, marketable securities and long-term investments, which included restricted cash and investments of $4.2 million and approximately $95.0 million of cash and cash equivalents and marketable securities that we are required to maintain on deposit with Silicon Valley Bank pursuant to covenants in our loan and security agreement with Silicon Valley Bank. We anticipate that our current cash and cash equivalents, marketable securities, long-term investments and funding that we expect to receive from existing collaborators will enable us to maintain our operations for a period of at least 12 months following the filing date of this report. However, our future capital requirements will be substantial and will depend on many factors that may require us to use available capital resources significantly earlier than we currently anticipate. These factors include:

- the cabozantinib development program—We are focusing our resources and development efforts on cabozantinib, our most advanced compound, which is being studied in a variety of tumor types, with the goal of rapidly commercializing the compound. The current clinical program for cabozantinib is focused on the treatment of metastatic castration-resistant prostate cancer and ovarian cancer, based on encouraging interim data that has emerged from the RDT. Data from the RDT were released at the ASCO Annual Meeting in June 2010 and demonstrated broad activity for cabozantinib across multiple tumor types, in particular, metastatic castration-resistant prostate, ovarian, non-small cell lung and hepatocellular cancers. Updated interim data presented at the 2010 EORTC Symposium, at the ASCO 2011 Genitourinary Cancers Symposium in February 2011, and at the 2011 ASCO Annual Meeting in June 2011, suggest that cabozantinib has a novel and differentiated clinical profile in metastatic castration-resistant prostate cancer and other solid tumors. The data presented indicate that cabozantinib has shown novel activity against bone and soft tissue lesions in metastatic castration-resistant prostate cancer. In addition, we have observed resolution of metastatic bone lesions on bone scan in patients with metastatic breast cancer, renal cell carcinoma, thyroid cancer and melanoma. It will be a priority for us to generate additional data in the various other cohorts of the RDT, including ovarian cancer, melanoma, breast cancer, non-small cell lung cancer and hepatocellular cancer, to support further prioritization of our clinical and commercial options. Objective tumor responses have been observed in patients with cabozantinib in 12 of 13 unique tumor types investigated to date, reflecting the broad potential clinical activity and commercial opportunity with this new agent. We also are focusing our efforts on EXAM, our ongoing phase 3 clinical trial of cabozantinib as a potential treatment for medullary thyroid cancer. In addition, we are conducting ongoing exploratory clinical trials for cabozantinib in other tumor types, including renal cell carcinoma. Our development plan for cabozantinib is dependent on the extent of our available financial resources. There can be no assurance that we will have sufficient financial resources independently or through other arrangements to fund a broad development plan for cabozantinib. If adequate funds are not available, we may be required to delay, discontinue or elect not to pursue one or more trials for cabozantinib;
- repayment of our loan from GlaxoSmithKline—In October 2002, we entered into a collaboration agreement with GlaxoSmithKline. As part of the collaboration, we entered into a loan and security agreement with GlaxoSmithKline, pursuant to which we borrowed $85.0 million for use in our efforts under the collaboration. The loan bears interest at a rate of 4.0% per annum and is secured by certain intellectual property, technology and equipment created or utilized pursuant to the collaboration. On October 27, 2010, we paid approximately $37.0 million in cash to GlaxoSmithKline as the second of three installments of principal and accrued interest due under the loan agreement. As of June 30, 2011, the aggregate principal and interest outstanding under the loan was $36.5 million. The final installment of principal and accrued interest under the loan is due on October 27, 2011. Repayment of all or any of the amounts advanced to us under the loan agreement may, at our election, be made in the form of our common stock at fair market value, subject to certain conditions, or cash. In the event the market price for our common stock is depressed, we may not be able to repay the loan in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to repay the loan may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding to satisfy our repayment obligations. However, there can be no assurance that we will have sufficient funds to repay amounts outstanding under the loan when due or that we will satisfy the conditions to our ability to repay the loan in shares of our common stock;
- repayment of the notes under our note purchase agreement with Deerfield—On June 2, 2010, we entered into a note purchase agreement with Deerfield, pursuant to which, on July 1, 2010, we sold to Deerfield an aggregate of $124.0 million initial principal amount of our secured convertible notes, due June 2015, for an aggregate purchase price of $80.0 million, less closing fees and expenses. The outstanding principal amount of the notes bears interest in the annual amount of $6.0 million, payable quarterly in arrears. We will be required to make mandatory prepayments on the notes on an annual basis in 2013, 2014 and 2015 equal to 15% of certain payments from our collaborative arrangements received during the prior fiscal year, subject to a maximum annual prepayment amount of $27.5 million and, for payments due in January 2013 and 2014, a minimum prepayment amount of $10.0 million. We may also prepay all or a portion (not less than $5.0 million) of the principal amount of the notes at an optional prepayment price based on a discounted principal

amount (during the first three years of the term, subject to a prepayment premium) determined as of the date of prepayment, plus accrued and unpaid interest, plus in the case of a prepayment of the full principal amount of the notes (other than prepayments upon the occurrence of specified transactions relating to a change of control or a substantial sale of assets), all accrued interest that would have accrued between the date of such prepayment and the next anniversary of the note purchase agreement. In lieu of making any optional or mandatory prepayment in cash, at any time after July 1, 2011, subject to certain limitations, we have the right to convert all or a portion of the principal amount of the notes into, or satisfy all or any portion of the optional prepayment amounts or mandatory prepayment amounts (other than the first $10.0 million of mandatory prepayments required in 2013 and 2014) with shares of our common stock. Additionally, in lieu of making any payment of accrued and unpaid interest in respect of the notes in cash, at any time after July 1, 2011, subject to certain limitations, we may elect to satisfy any such payment with shares of our common stock. The number of shares of our common stock issuable upon conversion or in settlement of principal and interest obligations will be based upon the discounted trading price of our common stock over a specified trading period. In the event the market price for our common stock is depressed, we may not be able to convert the principal amount of the notes or satisfy our payment obligations in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to convert the notes or satisfy our payment obligations may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding to satisfy our repayment obligations. There can be no assurance that we will have sufficient funds to repay the notes or satisfy our payment obligations under the note purchase agreement when due or that we will comply with the conditions to our ability to convert the principal amount of the notes into or satisfy our payment obligations with shares of our common stock;

- repayment of our loan from Silicon Valley Bank—On June 2, 2010, we amended our loan and security agreement with Silicon Valley Bank to provide for a new seven-year term loan in an amount of $80.0 million. The principal amount outstanding under the term loan accrues interest at 1.0% per annum, which interest is due and payable monthly. We are required to repay the term loan in one balloon principal payment, representing 100% of the principal balance and accrued and unpaid interest, on May 31, 2017. We have the option to prepay all, but not less than all, of the amounts advanced under the term loan, provided that we pay all unpaid accrued interest thereon that is due through the date of such prepayment and the interest on the entire principal balance of the term loan that would otherwise have been paid after such prepayment date until the maturity date of the term loan. In accordance with the terms of the loan and security agreement, we are also required to maintain on deposit an amount equal to at least 100% of the outstanding principal balance of the term loan at all times as support for our obligations under the loan and security agreement. As a result, although the proceeds of the new term loan improve our ability to comply with minimum working capital and cash covenants imposed by our debt instruments with GlaxoSmithKline and Deerfield and thus provide us with more flexibility to use our other cash resources, the proceeds of the term loan cannot directly be used to satisfied our other obligations without causing a default under our loan and security agreement with Silicon Valley Bank;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements;
- the degree to which we conduct funded development activity on behalf of partners to whom we have out-licensed compounds;
- whether we enter into new collaboration agreements, licensing agreements or other arrangements (including, in particular, with respect to cabozantinib) that provide additional capital;
- our ability to control costs;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the amount of our cash and cash equivalents and marketable securities that serve as collateral for bank lines of credit;
- future clinical trial results;
- our need to expand our product and clinical development efforts;
- our ability to share the costs of our clinical development efforts with third parties;
- the cost and timing of regulatory approvals;
- the cost of clinical and research supplies of our product candidates;
- the effect of competing technological and market developments;
- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights; and
- the cost of any acquisitions of or investments in businesses, products and technologies.

One or more of these factors or changes to our current operating plan may require us to use available capital resources significantly earlier than we anticipate. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We may seek to raise funds through the sale of equity or debt securities or through external borrowings. In

addition, we may enter into additional strategic partnerships or collaborative arrangements for the development and commercialization of our compounds. However, we may be unable to raise sufficient additional capital when we need it, on favorable terms or at all. The sale of equity or convertible debt securities in the future may be dilutive to our stockholders, and debt-financing arrangements may require us to pledge certain assets and enter into covenants that would restrict certain business activities or our ability to incur further indebtedness, and may contain other terms that are not favorable to our stockholders or us. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or obtain funds by entering into financing, supply or collaboration agreements on unattractive terms or we may be required to relinquish rights to technology or product candidates or to grant licenses on terms that are unfavorable to us.

We may need to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. As described below, the terms of our debt owed to GlaxoSmithKline, Deerfield and Silicon Valley Bank each contain covenants requiring us to maintain specified cash balances or levels of working capital:

- GlaxoSmithKline—Our loan and security agreement with GlaxoSmithKline contains financial covenants pursuant to which our "working capital" (the amount by which our current assets exceed our current liabilities as defined by the agreement, which excludes restricted cash and deferred revenue) must not be less than $25.0 million and our "cash and investments" (total cash, cash equivalents and investments as defined by the agreement, which excludes restricted cash) must not be less than $50.0 million. As of June 30, 2011, our "working capital" was $189.8 million and our "cash and investments" were $349.4 million. If we default on the financial covenants under the loan and security agreement, GlaxoSmithKline may, among other remedies, declare immediately due and payable all obligations under the loan and security agreement. Outstanding borrowings and accrued interest under the loan and security agreement totaled $36.5 million at June 30, 2011. The final installment of principal and accrued interest under the loan is due on October 27, 2011.
- Deerfield—Our note purchase agreement with Deerfield contains an event of default that would be triggered if our "cash and cash equivalents" fall below $10.0 million as of December 30, 2011, subject to a cure period. Upon such an event of default, Deerfield may declare all or a portion of the Put Price to be immediately due and payable. "Cash and cash equivalents" for purposes of our note purchase agreement includes our total cash, cash equivalents and short-term and long-term marketable securities. As of June 30, 2011, our "cash and cash equivalents" were $353.6 million.
- Silicon Valley Bank—Our loan and security agreement with Silicon Valley Bank requires that we maintain $80.0 million at all times on deposit in a non-interest bearing demand deposit account(s) as support for our obligations under the loan and security agreement. If the balance on our deposit account(s) falls below $80.0 million for more than 10 days, Silicon Valley Bank may declare all or part of the obligations under the loan and security agreement to be immediately due and payable and stop advancing money or extending credit to us. Our loan and security agreement with Silicon Valley Bank also contains similar deposit covenants with respect to funds drawn under our equipment lines of credit.

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

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our market risks at June 30, 2011 have not changed significantly from those discussed in Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2010, filed with the Securities and Exchange Commission on February 22, 2011. Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and our long-term debt. We have estimated the effects on our interest rate sensitive assets and liabilities based on a one percentage point hypothetical adverse change in interest rates as of June 30, 2011 and December 31, 2010. As of June 30, 2011 and December 31, 2010, a decrease in the interest rates of one percentage point would have had a net adverse change in the fair value of interest rate sensitive assets and liabilities of $8.3 million and $9.7 million, respectively.

In addition, we have exposure to fluctuations in certain foreign currencies in countries in which we conduct clinical trials. Most of our foreign expenses incurred are associated with establishing and conducting clinical trials for cabozantinib and various other compounds in our pipeline at sites outside of the United States. Our agreements with the foreign sites that conduct such clinical trials generally provide that payments for the services provided will be calculated in the currency of that country, and converted into U.S. dollars using various exchange rates based upon when services are rendered or the timing of invoices. When the U.S. dollar weakens against foreign currencies, the U.S. dollar value of the foreign-currency denominated expense increases, and when the U.S. dollar strengthens against these currencies, the U.S. dollar value of the foreign-currency denominated expense decreases. As of June 30, 2011 and December 31, 2010, approximately $3.2 million and $3.1 million, respectively, of our clinical accrual balance related to foreign currencies. As of June 30, 2011 and December 31, 2010, an adverse change of one percentage point in the in foreign currency exchange rates would have resulted in a net loss of $32 thousand and $31 thousand, respectively.

ITEM 4. CONTROLS AND PROCEDURES

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

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

PART II. OTHER INFORMATION

ITEM 1A. RISK FACTORS

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

We have marked with an asterisk (*) those risk factors below that reflect substantive changes from the risk factors included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed with the Securities and Exchange Commission on February 22, 2011.

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

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

We will need to raise additional capital to:

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

As of June 30, 2011, we had $353.6 million in cash and cash equivalents, marketable securities and long-term investments, which included restricted cash and investments of $4.2 million and approximately $95.0 million of cash and cash equivalents and marketable securities that we are required to maintain on deposit with Silicon Valley Bank pursuant to covenants in our loan and security agreement with Silicon Valley Bank. We anticipate that our current cash and cash equivalents, marketable securities, long-term investments and funding that we expect to receive from existing collaborators will enable us to maintain our operations for a period of at least 12 months following the filing date of this report. However, our future capital requirements will be substantial and will depend on many factors that may require us to use available capital resources significantly earlier than we currently anticipate. These factors include:

- the cabozantinib development program—We are focusing our resources and development efforts on cabozantinib, our most advanced compound, which is being studied in a variety of tumor types, with the goal of rapidly commercializing the compound. The current clinical program for cabozantinib is focused on the treatment of metastatic castration-resistant prostate cancer and ovarian cancer, based on encouraging interim data that has emerged from the RDT. Data from the RDT were released at the ASCO Annual Meeting in June 2010 and demonstrated broad activity for cabozantinib across multiple tumor types, in particular, metastatic castration-resistant prostate, ovarian, non-small cell lung and hepatocellular cancers. Updated interim data presented at the 2010 EORTC Symposium, at the ASCO 2011 Genitourinary Cancers Symposium in February 2011, and at the 2011 ASCO Annual Meeting in June 2011, suggest that cabozantinib has a novel and differentiated clinical profile in metastatic castration-resistant prostate cancer and other solid tumors. The data presented indicate that cabozantinib has shown novel activity against bone and soft tissue lesions in metastatic castration-resistant prostate cancer. In addition, we have observed resolution of metastatic bone lesions on bone scan in patients with metastatic breast cancer, renal cell carcinoma, thyroid cancer and melanoma. It will be a priority for us to generate additional data in the various other cohorts of the RDT, including ovarian cancer, melanoma, breast cancer, non-small cell lung cancer and hepatocellular cancer, to support further prioritization of our clinical and commercial options. Objective tumor responses have been observed in patients with cabozantinib in 12 of 13 unique tumor types investigated to date, reflecting the broad potential clinical activity and commercial opportunity with this new agent. We also are focusing our efforts on EXAM, our ongoing phase 3 clinical trial of cabozantinib as a potential treatment for medullary thyroid cancer. In addition, we are conducting ongoing exploratory clinical trials for cabozantinib in other tumor types, including renal cell carcinoma. Our development plan for cabozantinib is dependent on the extent of our available financial resources. There can be no assurance that we will have sufficient financial resources independently or through other arrangements to fund a broad development plan for cabozantinib. If adequate funds are not available, we may be required to delay, discontinue or elect not to pursue one or more trials for cabozantinib;
- repayment of our loan from GlaxoSmithKline—In October 2002, we entered into a collaboration agreement with GlaxoSmithKline. As part of the collaboration, we entered into a loan and security agreement with GlaxoSmithKline pursuant to which we borrowed $85.0 million for use in our efforts under the collaboration. The loan bears interest at a rate of 4.0% per annum and is secured by certain intellectual property, technology and equipment created or utilized

pursuant to the collaboration. On October 27, 2010, we paid approximately $37.0 million in cash to GlaxoSmithKline as the second of three installments of principal and accrued interest due under the loan agreement. As of June 30, 2011, the aggregate principal and interest outstanding under the loan was $36.5 million. The final installment of principal and accrued interest under the loan is due on October 27, 2011. Repayment of all or any of the amounts advanced to us under the loan agreement may, at our election, be made in the form of our common stock at fair market value, subject to certain conditions, or cash. In the event the market price for our common stock is depressed, we may not be able to repay the loan in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to repay the loan may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding to satisfy our repayment obligations. However, there can be no assurance that we will have sufficient funds to repay amounts outstanding under the loan when due or that we will satisfy the conditions to our ability to repay the loan in shares of our common stock;

- repayment of the notes under our note purchase agreement with Deerfield—On June 2, 2010, we entered into a note purchase agreement with entities affiliated with Deerfield Management Company, L.P., or Deerfield, pursuant to which, on July 1, 2010, we sold to Deerfield an aggregate of $124.0 million initial principal amount of our secured convertible notes, due June 2015, for an aggregate purchase price of $80.0 million, less closing fees and expenses. The outstanding principal amount of the notes bears interest in the annual amount of $6.0 million, payable quarterly in arrears. We will be required to make mandatory prepayments on the notes on an annual basis in 2013, 2014 and 2015 equal to 15% of our collaborative arrangements received during the prior fiscal year, subject to a maximum annual prepayment amount of $27.5 million and, for payments due in January 2013 and 2014, a minimum prepayment amount of $10.0 million. We may also prepay all or a portion (not less than $5.0 million) of the principal amount of the notes at an optional prepayment price based on a discounted principal amount (during the first three years of the term, subject to a prepayment premium)
  determined as of the date of prepayment, plus accrued and unpaid interest, plus in the case of a prepayment of the full principal amount of the notes (other than prepayments upon the occurrence of specified transactions relating to a change of control or a substantial sale of assets), all accrued interest that would have accrued between the date of such prepayment and the next anniversary of the note purchase agreement. In lieu of making any optional or mandatory prepayment in cash, at any time after July 1, 2011, subject to certain limitations, we have the right to convert all or a portion of the principal amount of the notes into, or satisfy all or any portion of the optional prepayment amounts or mandatory prepayment amounts (other than the first $10.0 million of mandatory prepayments required in 2013 and 2014) with shares of our common stock. Additionally, in lieu of making any payment of accrued and unpaid interest in respect of the notes in cash, at any time after July 1, 2011, subject to certain limitations, we may elect to satisfy any such payment with shares of our common stock. The number of shares of our common stock issuable upon conversion or in settlement of principal and interest obligations will be based upon the discounted trading price of our common stock over a specified trading period. In the event the market price for our common stock is depressed, we may not be able to convert the principal amount of the notes or satisfy our payment obligations in full using shares of our common stock due to restrictions in the agreement on the number of shares we may issue. In addition, the issuance of shares of our common stock to convert the notes or satisfy our payment obligations may result in significant dilution to our stockholders. As a result, we may need to obtain additional funding to satisfy our repayment obligations. There can be no assurance that we will have sufficient funds to repay the notes or satisfy our payment obligations under the note purchase agreement when due or that we will comply with the conditions to our ability to convert the principal amount of the notes into or satisfy our payment obligations with shares of our common stock;
- repayment of our loan from Silicon Valley Bank—On June 2, 2010, we amended our loan and security agreement with Silicon Valley Bank to provide for a new seven-year term loan in an amount of $80.0 million. The principal amount outstanding under the term loan accrues interest at 1.0% per annum, which interest is due and payable monthly. We are required to repay the term loan in one balloon principal payment, representing 100% of the principal balance and accrued and unpaid interest, on May 31, 2017. We have the option to prepay all, but not less than all, of the amounts advanced under the term loan, provided that we pay all unpaid accrued interest thereon that is due through the date of such prepayment and the interest on the entire principal balance of the term loan that would otherwise have been paid after such prepayment date until the maturity date of the term loan. In accordance with the terms of the loan and security agreement, we are also required to maintain on deposit an amount equal to at least 100% of the outstanding principal balance of the term loan at all times as support for our obligations under the loan and security agreement. As a result, although the proceeds of the new term loan improve our ability to comply with minimum working capital and cash covenants imposed by our debt instruments with GlaxoSmithKline and Deerfield and thus provide us with more flexibility to use our other cash resources, the proceeds of the term loan cannot directly be used to satisfied our other obligations without causing a default under our loan and security agreement with Silicon Valley Bank;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements;
- the degree to which we conduct funded development activity on behalf of partners to whom we have out-licensed compounds;

- whether we enter into new collaboration agreements, licensing agreements or other arrangements (including, in particular, with respect to cabozantinib) that provide additional capital;
- our ability to control costs;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the amount of our cash and cash equivalents and marketable securities that serve as collateral for bank lines of credit;
- future clinical trial results;
- our need to expand our product and clinical development efforts;
- our ability to share the costs of our clinical development efforts with third parties;
- the cost and timing of regulatory approvals;
- the cost of clinical and research supplies of our product candidates;
- the effect of competing technological and market developments;
- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights; and
- the cost of any acquisitions of or investments in businesses, products and technologies.

One or more of these factors or changes to our current operating plan may require us to use available capital resources significantly earlier than we anticipate. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We may seek to raise funds through the sale of equity or debt securities or through external borrowings. In addition, we may enter into additional strategic partnerships or collaborative arrangements for the development and commercialization of our compounds. However, we may be unable to raise sufficient additional capital when we need it, on favorable terms or at all. The sale of equity or convertible debt securities in the future may be dilutive to our stockholders, and debt-financing arrangements may require us to pledge certain assets and enter into covenants that would restrict certain business activities or our ability to incur further indebtedness, and may contain other terms that are not favorable to our stockholders or us. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or obtain funds by entering into financing, supply or collaboration agreements on unattractive terms or we may be required to relinquish rights to technology or product candidates or to grant licenses on terms that are unfavorable to us.

We may need to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. As described above under “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Cash Requirements,” the terms of our debt owed to GlaxoSmithKline, Deerfield and Silicon Valley Bank each contain covenants requiring us to maintain specified cash balances or working capital. The failure to comply with these covenants could result in an acceleration of the underlying debt obligations. If we cannot raise additional capital in order to remain in compliance with such covenants or if we are unable to renegotiate such covenants and the lender exercises its remedies under the agreement, we would not be able to operate under our current operating plan.

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

We have incurred net losses since inception, including a net loss of $21.0 million and $48.5 million for the three and six months ended June 30, 2011, respectively. As of that date, we had an accumulated deficit of $1,230.5 million. While we expect to be in a net income position for 2011, as a result of the acceleration of deferred revenue under our terminated collaboration with Bristol Myers-Squibb for XL281, we anticipate negative operating cash flow for the foreseeable future. We have not yet completed the development, including obtaining regulatory approval, of cabozantinib or any other product candidates and, consequently, have not generated revenues from the sale of pharmaceutical products. We have derived substantially all of our revenues to date from collaborative research and development agreements. Revenues from research and development collaborations depend upon continuation of the collaborations, research funding, the achievement of milestones and royalties we earn from any future products developed from the collaborative research. If research funding we receive from collaborators decreases, 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. The amount of our net losses will depend, in part, on the rate of growth, if any, in our license and contract revenues and on the level of our expenses. These losses have had and will continue to have an adverse effect on our stockholders’ equity and working capital. Our research and development expenditures and general and administrative expenses have exceeded our revenues to date, and we expect to spend significant additional amounts to fund the development of cabozantinib. As a result, we expect to continue to incur substantial operating expenses, and, consequently, we will need to generate significant additional revenues to achieve profitability. Because of the numerous risks and uncertainties associated with developing drugs, we are unable to predict the extent of any future losses or when we will become profitable, if at all.

We may not realize the expected benefits of our initiatives to control costs.

Managing costs is a key element of our business strategy. Consistent with this element of our strategy, on December 1, 2010 we implemented a restructuring that will result in a reduction of our workforce by approximately 65% over a two-year period. We anticipate that we will incur restructuring charges through the end of 2017 as we implement this restructuring.

We are still assessing our ability to sublease certain of our facilities in light of the workforce reduction as well as the potential for sublease income. Estimates for sublease income would require significant assumptions regarding the time required to contract with subtenants, the amount of idle space we would be able to sublease and potential future sublease rates. If we are able to vacate certain of our facilities, we would need to continue to update our estimate of the lease exist costs in our financial statements until we were able to negotiate an exit to the lease or negotiate a sublease for the remaining term of the lease.

If we experience excessive unanticipated inefficiencies or incremental costs in connection with restructuring activities, such as unanticipated inefficiencies caused by reducing headcount, we may be unable to meaningfully realize cost savings and we may incur expenses in excess of what we anticipate. Either of these outcomes could prevent us from meeting our strategic objectives and could adversely impact our results of operations and financial condition.

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

Most of our foreign expenses incurred are associated with establishing and conducting clinical trials for cabozantinib. The amount of expenses incurred will be impacted by fluctuations in the currencies of those countries in which we conduct clinical trials. Our agreements with the foreign sites that conduct such clinical trials generally provide that payments for the services provided will be calculated in the currency of that country, and converted into U.S. dollars using various exchange rates based upon when services are rendered or the timing of invoices. When the U.S. dollar weakens against foreign currencies, the U.S. dollar value of the foreign-currency denominated expense increases, and when the U.S. dollar strengthens against these currencies, the U.S. dollar value of the foreign-currency denominated expense decreases. Consequently, changes in exchange rates may affect our results of operations.

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

Our cash and cash equivalents are maintained in highly liquid investments with remaining maturities of 90 days or less at the time of purchase. Our short-term and long-term investments consist primarily of readily marketable debt securities with remaining maturities of more than 90 days at the time of purchase. While as of the date of this filing we are not aware of any downgrades, material losses, or other significant deterioration in the fair value of our cash equivalents, short-term investments or long-term investments since June 30, 2011, no assurance can be given that a deterioration in conditions of the global credit and financial markets would not negatively impact our current portfolio of cash equivalents or investments or our ability to meet our financing objectives.

Risks Related to Development of Cabozantinib

We are dependent on the successful development and commercialization of cabozantinib.

The success of our business is dependent upon the successful development and commercialization of cabozantinib. As part of our strategy, we intend to dedicate all of our proprietary resources to advance cabozantinib as aggressively as feasible. Our ability to realize the value of our investment is contingent on, among other things, successful clinical development, regulatory approval and market acceptance of cabozantinib. If we encounter difficulties in the development of cabozantinib due to any of the factors discussed in this “Risk Factors” section or otherwise, or we do not receive regulatory approval and are unable to commercialize cabozantinib, we will not have the resources necessary to continue our business in its current form.

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

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

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

- cabozantinib may not prove to be efficacious or may cause, or potentially cause, harmful side effects;

- negative or inconclusive clinical trial results may require us to conduct further testing or to abandon projects that we had expected to be promising;
- our competitors may subsequently discover other compounds or therapies that we believe show significantly improved safety or efficacy compared to cabozantinib;
- patient registration or enrollment in our clinical testing may be lower than we anticipate, resulting in the delay or cancellation of clinical testing; and
- regulators or institutional review boards withhold authorization of, or delay, suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or their determination that participating patients are being exposed to unacceptable health risks.

If we were to have significant delays in or termination of our clinical testing of cabozantinib as a result of any of the events described above or otherwise, our expenses could increase or our ability to generate revenues from cabozantinib could be impaired, either of which could adversely impact our financial results.

We have limited experience in conducting clinical trials and may not be able to rapidly or effectively continue the further development of cabozantinib or meet current or future requirements of the United States Food and Drug Administration, or FDA, including those identified based on our discussions with the FDA. Our planned clinical trials may not begin on time, or at all, may not be completed on schedule, or at all, may not be sufficient for registration of cabozantinib or may not result in an approvable product.

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

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

Any delay could limit our ability to generate revenues, cause us to incur additional expense and cause the market price of our common stock to decline significantly. Our partners may experience similar risks with respect to the compounds we have outlicensed to them. If any of the events described above were to occur with such programs or compounds, the likelihood of receipt of milestones and royalties under such collaboration agreements could decrease.

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

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

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

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

Our third-party manufacturers may not be able to comply with the GMP regulations, other applicable FDA regulatory requirements or similar regulations applicable outside of the United States. Additionally, if we are required to enter into new supply arrangements, we may not be able to obtain approval from the FDA of any alternate supplier in a timely manner, or at all, which could delay or prevent the clinical development and commercialization of cabozantinib. Failure of our third-party manufacturers or us to obtain approval from the FDA or to comply with applicable regulations could result in sanctions being imposed on us, including fines, civil penalties, delays in or failure to grant marketing approval of cabozantinib, injunctions, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products and compounds, operating restrictions and criminal prosecutions, any of which could have a significant adverse affect on our business.

Materials necessary to manufacture cabozantinib may not be available on commercially reasonable terms, or at all, which may delay its development and commercialization.

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

Risks Related to Our Relationships with Third Parties

We are dependent upon our collaborations with major companies, which subjects us to a number of risks.

We have established collaborations with leading pharmaceutical and biotechnology companies, including Bristol-Myers Squibb, sanofi-aventis, Genentech, GlaxoSmithKline and Daiichi Sankyo, for the development and ultimate commercialization of a significant number of compounds generated from our research and development efforts. We continue to pursue collaborations for selected unpartnered preclinical and clinical programs and compounds. Our dependence on our relationships with existing collaborators for the development and commercialization of our compounds subjects us to, and our dependence on future collaborators for development and commercialization of additional compounds will subject us to, a number of risks, including:

- we are not able to control the amount and timing of resources that our collaborators will devote to the development or commercialization of drug candidates or to their marketing and distribution;
- we may not be able to control the amount and timing of resources that our potential future collaborators may devote to the development or commercialization of drug candidates or to their marketing and distribution;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a drug candidate, repeat or conduct new clinical trials or require a new formulation of a drug candidate for clinical testing;
- disputes may arise between us and our collaborators that result in the delay or termination of the research, development or commercialization of our drug candidates or that result in costly litigation or arbitration that diverts management’s attention and resources;
- collaborators may experience financial difficulties;
- collaborators may not be successful in their efforts to obtain regulatory approvals in a timely manner, or at all;
- collaborators may not properly maintain or defend our intellectual property rights or may use our proprietary information in such a way as to invite litigation that could jeopardize or invalidate our proprietary information or expose us to potential litigation;
- business combinations or significant changes in a collaborator’s business strategy may adversely affect a collaborator’s willingness or ability to complete its obligations under any arrangement;
- a collaborator could independently move forward with a competing drug candidate developed either independently or in collaboration with others, including our competitors;
- we may be precluded from entering into additional collaboration arrangements with other parties in an area or field of exclusivity;

- future collaborators may require us to relinquish some important rights, such as marketing and distribution rights; and
- collaborations may be terminated (as occurred with respect to cabozantinib and XL281, that were previously subject to our 2008 collaboration with Bristol-Myers Squibb) or allowed to expire, which would delay the development and may increase the cost of developing our drug candidates.

If any of these risks materialize, our product development efforts could be delayed and otherwise adversely affected, which could adversely impact our business, operating results and financial condition.

If we are unable to continue current collaborations and achieve milestones or royalties, our revenues would suffer.*

We have derived substantially all of our revenues to date from collaborative research and development agreements. Revenues from research and development collaborations depend upon continuation of the collaborations, the achievement of milestones and royalties we earn from any future products developed from the collaborative research. If we are unable to successfully achieve milestones or royalties, or our collaborators fail to develop successful products, we will not earn the revenues contemplated under such collaborative agreements.

If any of these agreements is terminated early (as occurred with respect to cabozantinib and XL281, which were previously subject to our 2008 collaboration with Bristol-Myers Squibb), whether unilaterally or by mutual agreement, our revenues could suffer. Most of our collaboration agreements contain early termination provisions. In addition, from time to time we review and assess certain aspects of our collaborations, partnerships and agreements and may amend or terminate, either by mutual agreement or pursuant to any applicable early termination provisions, such collaborations, partnerships or agreements if we deem them to be no longer in our economic or strategic interests. We may not be able to enter into new collaboration agreements on similar or superior financial terms to offset the loss of revenues from the termination or expiration of any of our existing or recently terminated arrangements.

We may be unable to establish collaborations for selected preclinical and clinical compounds.

Our strategy includes the pursuit of new collaborations with leading pharmaceutical and biotechnology companies for the development and ultimate commercialization of selected preclinical and clinical programs and compounds, particularly those drug candidates for which we believe that the capabilities and resources of a partner can accelerate development and help to fully realize their therapeutic and commercial potential. We face significant competition in seeking appropriate collaborators, and these collaborations are complex and time consuming to negotiate and document. We may not be able to negotiate additional collaborations on acceptable terms, or at all. We are unable to predict when, if ever, we will enter into any additional collaborations because of the numerous risks and uncertainties associated with establishing additional collaborations. If we are unable to negotiate additional collaborations, we may not be able to realize value from a particular drug candidate, particularly those drug candidates as to which we believe a broad development program is appropriate or for which we have determined not to continue to utilize our own resources to develop. As a result, our revenues, capital resources and product development efforts could be adversely affected.

Risks Related to Regulatory Approval of Cabozantinib

Cabozantinib is 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 this product candidate.

Cabozantinib, as well as the activities associated with the research, development and commercialization of the product candidate, are subject to extensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Failure to obtain regulatory approval for cabozantinib would prevent us from commercializing this product candidate. We have not received regulatory approval to market cabozantinib in any jurisdiction and have only limited experience in preparing and filing the applications necessary to gain regulatory approvals. The process of obtaining regulatory approvals is expensive, and often takes many years, if approval is obtained at all, and can vary substantially based upon the type, complexity and novelty of the product candidates involved. Before a new drug application, or NDA, can be submitted to the FDA, the product candidate must undergo extensive clinical trials, which can take many years and requires substantial expenditures. Any clinical trial may fail to produce results satisfactory to the FDA. For example, the FDA could determine that the design of a clinical trial is inadequate to produce reliable results. The regulatory process also requires preclinical testing, and data obtained from preclinical and clinical activities are susceptible to varying interpretations. The FDA has substantial discretion in the approval process and may refuse to approve any NDA or decide that our data is insufficient for approval and require additional preclinical, clinical or other studies. For example, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent regulatory approval of cabozantinib.

In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review. Changes in regulatory approval policy, regulations or statutes or the process for regulatory review during the development or approval periods of cabozantinib may cause delays in the approval or rejection of an application.

Even if the FDA or a comparable authority in another country approves cabozantinib, the approval may impose significant restrictions on the indicated uses, conditions for use, labeling, distribution, advertising, promotion, marketing and/or production of cabozantinib and may impose ongoing requirements for post- approval studies, including additional research and development and clinical trials. These agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

Risks Related to Commercialization of Cabozantinib

The commercial success of cabozantinib will depend upon the degree of market acceptance of the product candidate among physicians, patients, health care payors, private health insurers and the medical community.

Our ability to commercialize cabozantinib will be highly dependent upon the extent to which the product candidate gains market acceptance among physicians; patients; health care payors, such as Medicare and Medicaid; private health insurers, including managed care organizations and group purchasing organizations, and the medical community. If cabozantinib does not achieve an adequate level of acceptance, we may not generate adequate product revenues, if at all, and we may not become profitable. The degree of market acceptance of cabozantinib, if approved for commercial sale, will depend upon a number of factors, including:

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

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

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

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

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

Another factor that may affect the pricing of drugs is proposed congressional action regarding drug reimportation into the United States. For example, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 gives discretion to the Secretary of Health and Human Services to allow drug reimportation into the United States under some circumstances from foreign countries, including countries where the drugs are sold at a lower price than in the United States. Proponents of drug reimportation may attempt to pass legislation, which would allow direct reimportation under certain circumstances. If legislation or regulations were passed allowing the reimportation of drugs, it could decrease the price we receive for cabozantinib, thereby negatively affecting our revenues and prospects for profitability.

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

Current healthcare laws and regulations and future legislative or regulatory reforms to the healthcare system may affect our ability to sell cabozantinib profitably.

The U.S. and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the U.S. and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the U.S., the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, or collectively, PPACA, became law in the U.S. PPACA substantially changes the way healthcare is financed by both governmental and private insurers and significantly affects the pharmaceutical industry. Among the provisions of PPACA of greatest importance to the pharmaceutical industry are the following:

- an annual, nondeductible fee on any entity that manufactures or imports certain branded prescription drugs and biologic agents, apportioned among these entities according to their market share in certain government healthcare programs, beginning in 2011;
- an increase in the rebates a manufacturer must pay under the Medicaid Drug Rebate Program, retroactive to January 1, 2010, to 23.1% and 13% of the average manufacturer price for branded and generic drugs, respectively;
- a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D, beginning in 2011;
- extension of manufacturers' Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations, effective March 23, 2010;
- expansion of eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals beginning in April 2010 and by adding new mandatory eligibility categories for certain individuals with income at or below 133% of the Federal Poverty Level beginning in 2014, thereby potentially increasing manufacturers' Medicaid rebate liability;
- expansion of the entities eligible for discounts under the Public Health Service pharmaceutical pricing program, effective in January 2010;
- new requirements to report certain financial arrangements with physicians, including reporting any "transfer of value" made or distributed to prescribers and other healthcare providers, effective March 30, 2013, and reporting any investment interests held by physicians and their immediate family members during the preceding calendar year;
- a new requirement to annually report drug samples that manufacturers and distributors provide to physicians, effective April 1, 2012;
- a licensure framework for follow-on biologic products; and
- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

We anticipate that the PPACA, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and an additional downward pressure on the price that we receive for any approved product, and could seriously harm our business. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors.

We also cannot be certain that cabozantinib will successfully be placed on the list of drugs covered by particular health plan formularies, nor can we predict the negotiated price for cabozantinib, which will be determined by market factors. Many states have also created preferred drug lists and include drugs on those lists only when the manufacturers agree to pay a supplemental rebate. If cabozantinib is not included on these preferred drug lists, physicians may not be inclined to prescribe it to their Medicaid patients, thereby diminishing the potential market for cabozantinib.

As a result of the PPACA and the trend towards cost-effectiveness criteria and managed healthcare in the United States, third-party payors are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement of new drugs. They may also refuse to provide any coverage of uses of approved products for medical indications other than those for which the FDA has granted market approvals. As a result, significant uncertainty exists as to whether and how much third-party payors will reimburse for newly-approved drugs, which in turn will put pressure on the pricing of drugs. Further, we do not have experience in ensuring approval by applicable third-party payors outside of the United States for coverage and reimbursement of cabozantinib. We also anticipate pricing pressures in connection with the sale of our products due to the trend toward managed healthcare, the increasing influence of health maintenance organizations and additional legislative proposals.

Our competitors may develop products and technologies that make cabozantinib obsolete.*

The biotechnology industry is highly fragmented and is characterized by rapid technological change. In particular, the area of kinase-targeted therapies is a rapidly evolving and competitive field. We face, and will continue to face, intense competition from biotechnology and pharmaceutical companies, as well as academic research institutions, clinical reference laboratories and government agencies that are pursuing research activities similar to ours. Some of our competitors have entered into collaborations with leading companies within our target markets, including some of our existing collaborators. In addition, significant delays in the development of cabozantinib could allow our competitors to bring products to market before us, which would impair our ability to commercialize cabozantinib. Our future success will depend upon our ability to maintain a competitive position with respect to technological advances. Any products that are developed through our technologies will compete in highly competitive markets. Further, our competitors may be more effective at using their technologies to develop commercial products. Many of the organizations competing with us have greater capital resources, larger research and development staff and facilities, more experience in obtaining regulatory approvals and more extensive product manufacturing and marketing capabilities. As a result, our competitors may be able to more easily develop technologies and products that would render our technologies and products, and those of our collaborators, obsolete and noncompetitive. There may also be drug candidates of which we are not aware at an earlier stage of development that may compete with cabozantinib. In addition, if cabozantinib is successfully developed, it may compete with existing therapies that have long histories of use, such as chemotherapy and radiation treatments in cancer indications. Examples of potential competition for cabozantinib include: AstraZeneca's development-stage RET, VEGFR and EGFR inhibitor, vandetanib; Algeta's development-stage alpha-pharmaceutical, Alpharadin (Radium-223); other VEGF pathway inhibitors, including Genentech's bevacizumab; and other MET inhibitors, including Pfizer's crizotinib, ArQule's ARQ197, GlaxoSmithKline's foretinib (XL880) and Genentech's Met MAb.

We may not be able to manufacture cabozantinib in commercial quantities, which would prevent us from commercializing the product candidate.

To date, cabozantinib has been manufactured in small quantities for preclinical and clinical trials. If cabozantinib is approved by the FDA or other regulatory agencies for commercial sale, we will need to manufacture it in larger quantities. We may not be able to successfully increase the manufacturing capacity, whether in collaboration with third-party manufacturers or on our own, for cabozantinib in a timely or economic manner, or at all. Significant scale-up of manufacturing may require additional validation studies, which the FDA must review and approve. If we are unable to successfully increase the manufacturing capacity for cabozantinib, the regulatory approval or commercial launch of the product candidate may be delayed or there may be a shortage in supply. Cabozantinib requires precise, high-quality manufacturing. The failure to achieve and maintain these high manufacturing standards, including the incidence of manufacturing errors, could result in patient injury or death, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could seriously hurt our business.

Risks Related to Our Intellectual Property

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

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

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

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

Our commercial success depends in part upon our ability to avoid infringing patents and proprietary rights of third parties and not to breach any licenses that we have entered into with regard to our technologies. Other parties have filed, and in the future are likely to file, patent applications covering genes and gene fragments, techniques and methodologies relating to model systems and products and technologies that we have developed or intend to develop. If patents covering technologies required by our operations are issued to others, we may have to obtain licenses from third parties, which may not be available on commercially reasonable terms, or at all, and may require us to pay substantial royalties, grant a cross-license to some of our patents to another patent holder or redesign the formulation of a product candidate so that we do not infringe third-party patents, which may be impossible to obtain or could require substantial time and expense.

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

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

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

Risks Related to Employees and Location

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

We are highly dependent upon the principal members of our management and scientific staff, the loss of whose services might adversely impact the achievement of our objectives and the continuation of existing collaborations. Also, we may not have sufficient personnel to execute our business plan. Retaining and, where necessary, recruiting qualified clinical and scientific personnel will be critical to support activities related to advancing our clinical and preclinical development programs, and supporting our collaborative arrangements and our internal proprietary research and development efforts. The restructuring plans that we implemented in 2010 and

additional and planned personnel reductions through 2012 could have an adverse impact on our ability to retain and recruit qualified personnel. Competition is intense for experienced clinical personnel, and we may be unable to retain or recruit clinical personnel with the expertise or experience necessary to allow us to pursue collaborations, develop our products and core technologies or expand our operations to the extent otherwise possible. Further, all of our employees are employed "at will" and, therefore, may leave our employment at any time.

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

We work with scientific and clinical advisors and collaborators at academic and other institutions that assist us in our research and development efforts. These advisors and collaborators are not our employees and may have other commitments that limit their availability to us. Although these advisors and collaborators generally agree not to do competing work, if a conflict of interest between their work for us and their work for another entity arises, we may lose their services. In such a circumstance, we may lose work performed by them, and our development efforts with respect to the matters on which they were working may be significantly delayed or otherwise adversely affected. In addition, although our advisors and collaborators sign agreements not to disclose our confidential information, it is possible that valuable proprietary knowledge may become publicly known through them.

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

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

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

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

Risks Related to Environmental and Product Liability

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

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

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

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

We may be held liable if any product we or our collaborators develop causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing or sale. Regardless of merit or eventual outcome, product liability claims could result in decreased demand for our product candidates, injury to our reputation, withdrawal of patients from our clinical trials, substantial monetary awards to trial participants and the inability to commercialize any products that we may develop. These claims might be

made directly by consumers, health care providers, pharmaceutical companies or others selling or testing our products. We have obtained limited product liability insurance coverage for our clinical trials in the amount of $10.0 million per occurrence and $10.0 million in the aggregate. However, our insurance may not reimburse us or may not be sufficient to reimburse us for expenses or losses we may suffer. Moreover, if insurance coverage becomes more expensive, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. If we obtain marketing approval for cabozantinib, we intend to expand our insurance coverage to include the sale of commercial products, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, juries have awarded large judgments in class action lawsuits for claims based on drugs that had unanticipated side effects. In addition, the pharmaceutical and biotechnology industries, in general, have been subject to significant medical malpractice litigation. A successful product liability claim or series of claims brought against us could harm our reputation and business and would decrease our cash reserves.

Risks Related to Our Common Stock

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

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

- the scope of our research and development activities;
- recognition of upfront licensing or other fees or revenues;
- payments of non-refundable upfront or licensing fees, or payment for cost-sharing expenses, to third parties;
- acceptance of our technologies and platforms;
- the success rate of our efforts leading to milestone payments and royalties;
- the introduction of new technologies or products by our competitors;
- the timing and willingness of collaborators to further develop or, if approved, commercialize our product outlicensed to them;
- our ability to enter into new collaborative relationships;
- the termination or non-renewal of existing collaborations;
- the timing and amount of expenses incurred for clinical development and manufacturing cabozantinib;
- adjustments to expenses accrued in prior periods based on management's estimates after the actual level of activity relating to such expenses becomes more certain;
- the impairment of acquired goodwill and other assets;
- the impact of our restructuring plans; and
- general and industry-specific economic conditions that may affect our collaborators' research and development expenditures.

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

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

Our stock price may be extremely volatile.

The trading price of our common stock has been highly volatile, and we believe the trading price of our common stock will remain highly volatile and may fluctuate substantially due to factors such as the following, many of which we cannot control:

- adverse results or delays in our or our collaborators' clinical trials;
- announcement of FDA approval or non-approval, or delays in the FDA review process, of cabozantinib or our collaborators' product candidates or those of our competitors or actions taken by regulatory agencies with respect to our, our collaborators' or our competitors' clinical trials;

- the timing of achievement of our clinical, regulatory, partnering and other milestones, such as the commencement of clinical development, the completion of a clinical trial, the filing for regulatory approval or the establishment of collaborative arrangements for one or more of our outlicensed programs and compounds;
- actions taken by regulatory agencies with respect to cabozantinib or our clinical trials for cabozantinib;
- the announcement of new products by our competitors;
- quarterly variations in our or our competitors' results of operations;
- developments in our relationships with our collaborators, including the termination or modification of our agreements;
- conflicts or litigation with our collaborators;
- litigation, including intellectual property infringement and product liability lawsuits, involving us;
- failure to achieve operating results projected by securities analysts;
- changes in earnings estimates or recommendations by securities analysts;
- financing transactions;
- developments in the biotechnology or pharmaceutical industry;
- sales of large blocks of our common stock or sales of our common stock by our executive officers, directors and significant stockholders;
- departures of key personnel or board members;
- developments concerning current or future collaborations;
- FDA or international regulatory actions;
- third-party reimbursement policies;
- disposition of any of our subsidiaries, technologies or compounds; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

These factors, as well as general economic, political and market conditions, may materially adversely affect the market price of our common stock. Excessive volatility may continue for an extended period of time following the filing date of this report.

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

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

If our stockholders sell substantial amounts of our common stock (including shares issued upon the exercise of options and warrants or upon vesting of restricted stock units and shares issued under our employee stock purchase plan) in the public market, the market price of our common stock could fall. These sales also might make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate.

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

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

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

Provisions in our corporate charter and bylaws may discourage, delay or prevent an acquisition of our company, a change in control, or attempts by our stockholders to replace or remove members of our current Board of Directors. Because our Board of

Directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. These provisions include:

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

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

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

On April 25, 2011, we issued an aggregate of 47,101 shares of common stock pursuant to cashless exercises of warrants issued to an accredited investor transferee that were originally issued to Symphony Evolution Holdings LLC in June 2006 and June 2009 in connection with a clinical development financing arrangement. The warrants issued in June 2006 were exercisable for an aggregate of 68,720 shares of common stock and had an exercise price of $8.90 per share. The number of shares issued upon exercise of the June 2006 warrants was reduced by an aggregate of 49,262 shares to effect the cashless exercise of such warrants in accordance with their terms. The warrants issued in June 2009 were exercisable for an aggregate of 58,785 shares of common stock and had an exercise price of $6.05 per share. The number of shares issued upon exercise of the June 2009 warrants was reduced by an aggregate of 31,142 shares to effect the cashless exercise of such warrants in accordance with their terms.

On May 12, 2011, we issued an aggregate of 68,217 shares of common stock pursuant to cashless exercises of warrants issued to an accredited investor transferee that were originally issued to Symphony Evolution Holdings LLC in June 2006 in connection with a clinical development financing arrangement. The warrants were exercisable for an aggregate of 294,101 shares of common stock and had an exercise price of $8.90 per share. The number of shares issued upon exercise was reduced by an aggregate of 225,884 shares to effect the cashless exercise of such warrants in accordance with their terms.

On May 13, 2011, we issued an aggregate of 40,906 shares of common stock pursuant to cashless exercises of warrants issued to an accredited investor transferee that were originally issued to Symphony Evolution Holdings LLC in June 2006 in connection with a clinical development financing arrangement. The warrants were exercisable for an aggregate of 176,356 shares of common stock and had an exercise price of $8.90 per share. The number of shares issued upon exercise was reduced by an aggregate of 135,450 shares to effect the cashless exercise of such warrants in accordance with their terms.

On May 27, 2011, we issued an aggregate of 3,361 shares of common stock pursuant to cashless exercises of warrants issued to an accredited investor transferee that were originally issued to Symphony Evolution Holdings LLC in June 2006 in connection with a clinical development financing arrangement. The warrants were exercisable for an aggregate of 15,009 shares of common stock and had an exercise price of $8.90 per share. The number of shares issued upon exercise was reduced by an aggregate of 11,648 shares to effect the cashless exercise of such warrants in accordance with their terms.

On June 30, 2011, we issued an aggregate of 36,848 shares of common stock pursuant to cashless exercises of warrants issued to an accredited investor transferee that were originally issued to Symphony Evolution Holdings LLC in June 2006 in connection with a clinical development financing arrangement. The warrants were exercisable for an aggregate of 176,356 shares of common stock and had an exercise price of $8.90 per share. The number of shares issued upon exercise was reduced by an aggregate of 139,508 shares to effect the cashless exercise of such warrants in accordance with their terms.

All of the shares of common stock identified above were issued pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended, or the Securities Act, afforded by Section 3(a)(9) of the Securities Act. We received no cash proceeds from such issuances of common stock.

ITEM 6. EXHIBITS

(a) Exhibits

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

SIGNATURES

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

Date: August 4, 2011

EXELIXIS, INC.

/s/ Frank Karbe

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

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EXHIBIT INDEX

Exhibit Number	Exhibit Description	Incorporation by Reference				Filed Herewith
		Form	File Number	Exhibit/ Appendix Reference	Filing Date	
2.2*	Share Sale and Transfer Agreement, dated November 20, 2007, by and between Taconic Farms, Inc. and Exelixis, Inc.	10-K	000-30235	2.3	2/25/2008	
3.1	Amended and Restated Certificate of Incorporation of Exelixis, Inc.	10-K	000-30235	3.1	3/10/2010	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc.	10-K	000-30235	3.2	3/10/2010	
3.3	Amended and Restated Bylaws of Exelixis, Inc.	8-K	000-30235	3.1	10/4/2007	
4.1	Specimen Common Stock Certificate.	S-1, as amended	333-96335	4.1	2/7/2000	
4.2	Form of Warrant, dated June 13, 2006, to purchase 750,000 shares of Exelixis, Inc. common stock in favor of Symphony Evolution Holdings LLC.	8-K	000-30235	4.1	6/15/2006	
4.3	Form of Warrant, dated June 10, 2009, to purchase 500,000 shares of Exelixis, Inc. common stock in favor of Symphony Evolution Holdings LLC.	10-Q, as amended	000-30235	4.4	7/30/2009	
4.4*	Warrant Purchase Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC.	10-Q	000-30235	10.8	8/9/2005	
4.5*	Form Warrant to Purchase Common Stock of Exelixis, Inc. issued or issuable to Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited	8-K	000-30235	4.9	6/9/2008	
4.6	Form of Common Stock Agreement and Warrant Certificate	S-3, as amended	333-158792	4.17	4/24/2009	
4.7	Form of Preferred Stock Agreement and Warrant Certificate	S-3, as amended	333-158792	4.18	4/24/2009	
4.8	Form of Debt Securities Warrant Agreement and Warrant Certificate	S-3, as amended	333-158792	4.19	4/24/2009	
4.9	Form of Senior Debt Indenture	S-3, as amended	333-158792	4.13	5/28/2009	
4.10	Form of Subordinated Debt Indenture	S-3, as amended	333-158792	4.14	5/28/2009	
4.11	Form of Note, dated July 1, 2010, in favor of Deerfield Private Design International, L.P.	10-Q	000-30235	10.1 (Exhibit A-1)	8/5/2010	
4.12	Form of Note, dated July 1, 2010, in favor of Deerfield Private Design Fund, L.P.	10-Q	000-30235	10.1 (Exhibit A-2)	8/5/2010	
10.1†	Exelixis, Inc. 2000 Non-Employee Directors' Plan.					X
10.2†	Exelixis, Inc. 2011 Equity Incentive Plan	8-K	000-30235	10.1	5/24/2011	
10.3†	Form of Stock Option Agreement under the Exelixis, Inc. 2011 Equity Incentive Plan					X
10.4†	Form of Restricted Stock Unit Agreement under the Exelixis, Inc. 2011 Equity Incentive Plan					X

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Exhibit Number	Exhibit Description	Incorporation by Reference				Filed Herewith
		Form	File Number	Exhibit/ Appendix Reference	Filing Date	
10.5**	Amended and Restated Collaboration Agreement, dated April 15, 2011, by and between Exelixis, Inc. Exelixis Patent Company, LLC and Bristol-Myers Squibb Company (amending and restating the Collaboration Agreement, dated December 15, 2006, by and between Exelixis, Inc. and Bristol-Myers Squibb Company).					X
10.6**	Amended and Restated Collaboration Agreement, dated April 15, 2011, by and between Exelixis, Inc. Exelixis Patent Company, LLC and Bristol-Myers Squibb Company (amending and restating the Collaboration Agreement, dated December 11, 2008, by and between Exelixis, Inc. and Bristol-Myers Squibb Company).					X
10.7**	Amended and Restated License Agreement, dated April 15, 2011, by and between Exelixis, Inc. Exelixis Patent Company, LLC and Bristol-Myers Squibb Company (amending and restating the License Agreement, dated October 8, 2006, by and between Exelixis, Inc. and Bristol-Myers Squibb Company).					X
10.8**	Amended and Restated Collaboration Agreement, dated April 15, 2011, by and between Exelixis, Inc. Exelixis Patent Company, LLC and Bristol-Myers Squibb Company (amending and restating the Collaboration Agreement, dated October 8, 2010, by and between Exelixis, Inc. and Bristol-Myers Squibb Company).					X
31.1	Certification required by Rule 13a-14(a) or Rule 15d-14(a).					X
31.2	Certification required by Rule 13a-14(a) or Rule 15d-14(a).					X
32.1‡	Certification by the Chief Executive Officer and the Chief Financial Officer of Exelixis, Inc., as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).					X
101.INS#	XBRL Instance Document					X
101.SCH#	XBRL Taxonomy Extension Schema Document					X
101.CAL#	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.LAB#	XBRL Taxonomy Extension Labels Linkbase Document					X
101.PRE#	XBRL Taxonomy Extension Presentation Linkbase Document					X

† Management contract or compensatory plan.

* Confidential treatment granted for certain portions of this exhibit.

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

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

Pursuant to applicable securities laws and regulations, we are deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and are not subject to liability under any anti-fraud provisions of the federal securities laws as long as we have made a good faith attempt to comply with the submission requirements and promptly amend the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. In accordance with Rule 406T of Regulation S-T, the information in these exhibits is furnished and deemed not filed or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, as amended, except as expressly set forth by specific reference in such filing.

Exelixis, Inc.

2000 Non-Employee Directors' Stock Option Plan

Adopted by the Board of Directors on January 27, 2000
Approved By Stockholders March 15, 2000
Amended By the Board of Directors on February 24, 2004
Approved By Stockholders April 8, 2004
Amended By the Board of Directors on February 6, 2008
Amended By the Board of Directors on December 1, 2010
Amended By the Board of Directors on May 18, 2011

1. PURPOSE.

(a) Eligible Option Recipients. The persons eligible to receive Options are the Non-Employee Directors of the Company.

(b) Available Options. The purpose of the Plan is to provide a means by which Non-Employee Directors may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Nonstatutory Stock Options.

(c) General Purpose. The Company, by means of the Plan, seeks to retain the services of its Non-Employee Directors, to secure and retain the services of new Non-Employee Directors and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. DEFINITIONS.

(a) *"Affiliate"* means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(b) *"Annual Grant"* means an Option granted annually to all Non-Employee Directors who meet the specified criteria pursuant to subsection 6(b) of the Plan.

(c) *"Annual Meeting"* means the annual meeting of the stockholders of the Company.

(d) *"Board"* means the Board of Directors of the Company.

(e) *"Calculation Date"* means the last day of each fiscal year of the Company.

(f) *"Code"* means the Internal Revenue Code of 1986, as amended.

(g) *"Committee"* means a committee of one or more members of the Board appointed by the Board in accordance with subsection 3(c).

(h) *"Common Stock"* means the common stock of the Company.

(i) *"Company"* means Exelixis, Inc., a Delaware corporation.

(j) *"Consultant"* means any person, including an advisor, (i) engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services or (ii) who is a member of the Board of Directors of an Affiliate. However, the term "Consultant" shall not include either Directors of the Company who are not compensated by the Company for their services as Directors or Directors of the Company who are merely paid a director's fee by the Company for their services as Directors.

(k) "*Continuous Service*" means that the Optionholder's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Optionholder's Continuous Service shall not be deemed to have terminated merely because of a change in the capacity in which the Optionholder renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Optionholder renders such service, provided that there is no interruption or termination of the Optionholder's Continuous Service. For example, a change in status from a Non-Employee Director of the Company to a Consultant of an Affiliate or an Employee of the Company will not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave.

(l) "*Diluted Shares Outstanding*" means the number of outstanding shares of Common Stock on the Calculation Date, plus the number of shares of Common Stock issuable on the Calculation Date assuming the conversion of all outstanding preferred stock and convertible notes, and the additional number of dilutive Common Stock equivalent shares outstanding as the result of any options or warrants outstanding during the fiscal year, calculated using the treasury stock method.

(m) "*Director*" means a member of the Board of Directors of the Company.

(n) "*Disability*" means the permanent and total disability of a person within the meaning of Section 22(e)(3) of the Code.

(o) "*Employee*" means any person employed by the Company or an Affiliate. Mere service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute "employment" by the Company or an Affiliate.

(p) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

(q) "*Fair Market Value*" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined in good faith by the Board.

(r) "*Initial Grant*" means an Option granted to a Non-Employee Director who meets the specified criteria pursuant to subsection 6(a) of the Plan.

(s) "*IPO Date*" means the effective date of the initial public offering of the Common Stock.

(t) "*Non-Employee Director*" means a Director who is not an Employee.

(u) "*Nonstatutory Stock Option*" means an Option not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(v) "*Officer*" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(w) *"Option"* means a Nonstatutory Stock Option granted pursuant to the Plan.

(x) *"Option Agreement"* means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(y) *"Optionholder"* means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(z) *"Plan"* means this Exelixis, Inc. 2000 Non-Employee Directors' Stock Option Plan.

(aa) *"Rule 16b-3"* means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(bb) *"Securities Act"* means the Securities Act of 1933, as amended.

3. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration to a Committee, as provided in subsection 3(c).

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine the provisions of each Option to the extent not specified in the Plan.

(ii) To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or an Option as provided in Section 12.

(iv) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company that are not in conflict with the provisions of the Plan.

(c) Delegation to Committee. The Board may delegate administration of the Plan to a Committee or Committees of one (1) or more members of the Board, and the term "Committee" shall apply to any person or persons to whom such authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

4. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to the provisions of subsection 4(b) relating to automatic increases to the share reserve, the provisions of subsection 4(c) relating to reversion of shares of Common Stock to the share reserve and the provisions of Section 11 relating to adjustments upon changes in the Common

Stock, the Common Stock that may be issued pursuant to Stock Awards shall not exceed in the aggregate five hundred thousand (500,000) shares of Common Stock.

(b) Automatic Increase. For a period of ten (10) years, the share reserve specified in subsection 4(a) automatically shall be increased on the Calculation Date by the greater of that number of shares of Common Stock equal to 0.75% of the Diluted Shares Outstanding or that number of shares of Common Stock that have been made subject to Options granted under the Plan during the prior 12-month period; provided, however, that the Board may provide for a lesser number at any time prior to the Calculation Date.

(c) Reversion of Shares to the Share Reserve. If any Option shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the shares of Common Stock not acquired under such Option shall revert to and again become available for issuance under the Plan. If the Company repurchases any unvested shares of Common Stock acquired under the Plan, the repurchased shares of Common Stock shall revert to and again become available for issuance under the Plan.

(d) Source of Shares. The shares of Common Stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. ELIGIBILITY.

The Options as set forth in section 6 automatically shall be granted under the Plan to all Non-Employee Directors.

6. NON-DISCRETIONARY GRANTS.

(a) Initial Grants. Without any further action of the Board, each Non-Employee Director shall be granted the following Options:

(i) On the IPO Date, each person who is then a Non-Employee Director automatically shall be granted an Initial Grant to purchase Twenty-five Thousand (25,000) shares of Common Stock on the terms and conditions set forth herein.

(ii) After the IPO Date, each person who is elected or appointed for the first time to be a Non-Employee Director automatically shall, upon the date of his or her initial election or appointment to be a Non-Employee Director by the Board or stockholders of the Company, be granted an Initial Grant to purchase Twenty-five Thousand (25,000) shares of Common Stock on the terms and conditions set forth herein.

(b) Annual Grants. On the day following each Annual Meeting each person who is then a Non-Employee Director automatically shall be granted an Annual Grant to purchase Fifteen Thousand (15,000) shares of Common Stock on the terms and conditions set forth herein.

7. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as required by the Plan. Each Option shall contain such additional terms and conditions, not inconsistent with the Plan, as the Board shall deem appropriate. Each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) Term. No Option granted before May 18, 2011 shall be exercisable after the expiration of ten (10) years from the date it was granted. No Option granted on or after May 18, 2011 shall be exercisable after the expiration of seven (7) years from the date it was granted.

(b) Exercise Price. The exercise price of each Option shall be one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(c) Consideration. The purchase price of Common Stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (i) in cash at the time the Option is exercised or (ii) at the discretion of the Board at the time of the grant of the Option or subsequently (1) by delivery to the Company of other Common Stock, (2) according to a deferred payment or other similar arrangement with the Optionholder or (3) in any other form of legal consideration that may be acceptable to the Board. Unless otherwise specifically provided in the Option, the purchase price of Common Stock acquired pursuant to an Option that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes). At any time that the Company is incorporated in Delaware, payment of the Common Stock's "par value," as defined in the Delaware General Corporation Law, shall not be made by deferred payment.

In the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement.

(d) Transferability. An Option shall not be transferable except by will or by the laws of descent and distribution and to such further extent as permitted by the Rule as to Use of Form S-8 specified in the General Instructions of the Form S-8 Registration Statement under the Securities Act, and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(e) Exercise and Vesting. Options shall be exercisable immediately upon grant. Options shall vest as follows:

(i) Initial Grants shall provide for vesting of 1/4th of the shares 12 months after the date of the grant and 1/48th of the shares each month thereafter.

(ii) Annual Grants shall provide for vesting of 1/12th of the shares each month after the date of the grant.

(f) Termination of Continuous Service. In the event an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) years following the termination of the Optionholder's Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

(g) Extension of Termination Date. If the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in subsection 7(a) or (ii) the expiration of a period of three (3) years after the

termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

(h) Disability of Optionholder. In the event an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date three (3) years following such termination or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.

(i) Death of Optionholder. In the event (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the three-month period after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise the Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the Option upon the Optionholder's death, but only within the period ending on the earlier of (1) the date three (3) years following the date of death or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

8. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Options, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Options.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Options and to issue and sell shares of Common Stock upon exercise of the Options; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Option or any stock issued or issuable pursuant to any such Option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Options unless and until such authority is obtained.

9. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to Options shall constitute general funds of the Company.

10. MISCELLANEOUS.

(a) Stockholder Rights. No Optionholder shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Option unless and until such Optionholder has satisfied all requirements for exercise of the Option pursuant to its terms.

(b) No Service Rights. Nothing in the Plan or any instrument executed or Option granted pursuant thereto shall confer upon any Optionholder any right to continue to serve the Company as a Non-Employee Director or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(c) Investment Assurances. The Company may require an Optionholder, as a condition of exercising or acquiring stock under any Option, (i) to give written assurances satisfactory to the Company as to the Optionholder's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (ii) to give written assurances satisfactory to the Company stating that the Optionholder is acquiring the stock subject to the Option for the Optionholder's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (iii) the issuance of the shares upon the exercise or acquisition of stock under the Option has been registered under a then currently effective registration statement under the Securities Act or (iv) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

(d) Withholding Obligations. The Optionholder may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of stock under an Option by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Optionholder by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares from the shares of the Common Stock otherwise issuable to the Optionholder as a result of the exercise or acquisition of stock under the Option, provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company owned and unencumbered shares of the Common Stock.

11. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) Capitalization Adjustments. If any change is made in the stock subject to the Plan, or subject to any Option, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted in the class(es) and maximum number of securities subject both to the Plan pursuant to subsection 4(a) and to the nondiscretionary Options specified in Section 5, and the outstanding Options will be appropriately adjusted in the class(es) and number of securities and price per share of stock subject to such outstanding Options. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)

(b) Change in Control—Dissolution or Liquidation. In the event of a dissolution or liquidation of the Company, then all outstanding Options shall terminate immediately prior to such event.

(c) Change in Control—Asset Sale, Merger, Consolidation or Reverse Merger. In the event of (i) a sale, lease or other disposition of all or substantially all of the assets of the Company, (ii) a merger or consolidation in which the Company is not the surviving corporation or (iii) a reverse merger in which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, then any surviving corporation or acquiring corporation shall assume any Options outstanding under the Plan or shall substitute similar options (including an option to acquire the same consideration paid to the stockholders in the transaction described in this subsection 11(c) for those

outstanding under the Plan). In the event any surviving corporation or acquiring corporation refuses to assume such Options or to substitute similar options for those outstanding under the Plan, then with respect to Options held by Optionholders whose Continuous Service has not terminated, the vesting of such Options and any shares of Common Stock acquired under such Options (and, if applicable, the time during which such Options may be exercised) shall be accelerated in full, and the Options shall terminate if not exercised at or prior to such event. With respect to any other Options outstanding under the Plan, such Options shall terminate if not exercised prior to such event.

(d) Change in Control—Securities Acquisition. In the event of an acquisition by any person, entity or group within the meaning of Section 13(d) or 14(d) of the Exchange Act, or any comparable successor provisions (excluding any employee benefit plan, or related trust, sponsored or maintained by the Company or an Affiliate) of the beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act, or comparable successor rule) of securities of the Company representing at least fifty percent (50%) of the combined voting power entitled to vote in the election of Directors and provided that such acquisition is not a result of, and does not constitute a transaction described in, subsection 11(c) hereof, then with respect to Options held by Optionholders whose Continuous Service has not terminated, the vesting of such Options and any shares of Common Stock acquired under such Options (and, if applicable, the time during which such Options may be exercised) shall be accelerated in full.

12. AMENDMENT OF THE PLAN AND OPTIONS.

(a) Amendment of Plan. The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 11 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Rule 16b-3 or any Nasdaq or securities exchange listing requirements.

(b) Stockholder Approval. The Board may, in its sole discretion, submit any other amendment to the Plan for stockholder approval.

(c) No Impairment of Rights. Rights under any Option granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Optionholder and (ii) the Optionholder consents in writing.

(d) Amendment of Options. The Board at any time, and from time to time, may amend the terms of any one or more Options; provided, however, that the rights under any Option shall not be impaired by any such amendment unless (i) the Company requests the consent of the Optionholder and (ii) the Optionholder consents in writing.

13. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Option granted while the Plan is in effect except with the written consent of the Optionholder.

14. EFFECTIVE DATE OF PLAN.

The Plan shall become effective on the IPO Date, but no Option shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

15. CHOICE OF LAW.

All questions concerning the construction, validity and interpretation of this Plan shall be governed by the law of the State of Delaware, without regard to such state's conflict of laws rules.

EXELIXIS, INC.
2011 EQUITY INCENTIVE PLAN

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Notice of Grant of Stock Option ("***Grant Notice***") and this Option Agreement and in consideration of your services, Exelixis, Inc. (the "***Company***") has granted you an option under its 2011 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Your option is granted to you effective as of the Date of Grant set forth in the Grant Notice. This Option Agreement shall be deemed to be agreed to by the Company and you upon the signing or electronically accepting by you of the Grant Notice to which it is attached. Capitalized terms not explicitly defined in this Option Agreement shall have the same meanings given to them in the Plan. In the event of any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan shall control. The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows.

1. VESTING. Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES. In the event that you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (*i.e.*, a "***Non-Exempt Employee***"), you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant specified in your Grant Notice, notwithstanding any other provision of your option.

4. METHOD OF PAYMENT. Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or by any of the following methods ***unless prohibited by your Grant Notice***:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. Notwithstanding the

foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(c) Subject to the consent of the Company at the time of exercise, if the Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from you to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided further, however, that shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter to the extent that (1) shares are used to pay the exercise price pursuant to the "net exercise," (2) shares are delivered to you as a result of such exercise, and (3) shares are withheld to satisfy tax withholding obligations.

5. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

6. SECURITIES LAW COMPLIANCE. Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

7. TERM. You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three (3) months after the termination of your Continuous Service for any reason other than Cause, Disability or death, *provided that* if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option shall not expire until the earlier of the expiration date indicated in your Grant Notice (the ***"Expiration Date"***) or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service; and *provided further* that if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six (6) months after the Date of Grant specified in your Grant Notice, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option shall not expire until the earlier of (x) the later of (A) the date that is seven (7) months after the Date of Grant specified in your Grant Notice or (B) the date that is three (3) months after the termination of your Continuous Service, or (y) the Expiration Date;

(c) twelve (12) months after the termination of your Continuous Service due to your Disability;

(d) eighteen (18) months after your death if you die during your Continuous Service; or

(e) the Expiration Date indicated in your Grant Notice.

Notwithstanding the foregoing, if you die during the period provided in Section 7(b) or 7(c) above, the term of your option shall not expire until the earlier of eighteen (18) months after your death or the Expiration Date indicated in your Grant Notice.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three (3) months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

8. EXERCISE.

(a) You may exercise the vested portion of your option during its term by delivering a notice (in a form designated by the Company) or taking such other action as the Company may require together with delivering the exercise price to the Secretary of the Company, or to such other person as the Company may designate (such as any broker designated by the Company to effect option exercises) during regular business hours, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the date of your option grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

9. TRANSFERABILITY. Except as otherwise provided in this Section 9, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

(a) Certain Trusts. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust, provided that you and the trustee enter into transfer and other agreements required by the Company.

(b) Domestic Relations Orders. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your option pursuant to a domestic relations order that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order to help ensure the required information is contained within the domestic relations order. If this option is an Incentive Stock Option, this option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) Beneficiary Designation. By delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect option exercises, designate a third party who, in the event of your death, shall thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate shall be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

10. OPTION NOT A SERVICE CONTRACT.

(a) Your Continuous Service with the Company or an Affiliate is not for any specified term and may be terminated by you or by the Company or an Affiliate at any time, for any reason, with or without cause and with or without notice. Nothing in this Option Agreement (including, but not limited to, the vesting of your option pursuant to the schedule set forth in Section 1 herein or the issuance of the shares upon exercise of your option), the Plan or any covenant of good faith and fair dealing that may be found implicit in this Option Agreement or the Plan shall: (i) confer upon you any right to continue in the employ of, or affiliation with, the Company or an Affiliate; (ii) constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or affiliation; (iii) confer any right or benefit under this Option Agreement or the Plan unless such right or benefit has specifically accrued under the terms of this Option Agreement or Plan; or (iv) deprive the Company of the right to terminate you at will and without regard to any future vesting opportunity that you may have.

(b) By accepting this option, you acknowledge and agree that the right to continue vesting in the option pursuant to the schedule set forth in Section 1 is earned only by continuing as an employee, director or consultant at the will of the Company (not through the act of being hired, being granted this option or any other award or benefit) and that the Company has the right to reorganize, sell, spin-out or otherwise restructure one or more of its businesses or Affiliates at any time or from time to time, as it deems appropriate (a “reorganization”). You

further acknowledge and agree that such a reorganization could result in the termination of your Continuous Service, or the termination of Affiliate status of your employer and the loss of benefits available to you under this Option Agreement, including but not limited to, the termination of the right to continue vesting in the option. You further acknowledge and agree that this Option Agreement, the Plan, the transactions contemplated hereunder and the vesting schedule set forth herein or any covenant of good faith and fair dealing that may be found implicit in any of them do not constitute an express or implied promise of continued engagement as an employee or consultant for the term of this Option Agreement, for any period, or at all, and shall not interfere in any way with your right or the Company's right to terminate your Continuous Service at any time, with or without cause and with or without notice.

11. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize any required withholding from the Common Stock issuable to you and/or otherwise agree to make adequate provision in cash for any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or any Affiliate which arise in connection with the exercise of your option (the "***Withholding Taxes***"). Additionally, the Company may, in its sole discretion, satisfy all or any portion of the Withholding Taxes obligation relating to your option by any of the following means or by a combination of such means: (i) withholding from any compensation otherwise payable to you by the Company; (ii) causing you to tender a cash payment; or (iii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the exercise of your option with a Fair Market Value (measured as of the date of exercise) equal to the amount of such Withholding Taxes; provided, however, that the number of such shares of Common Stock so withheld shall not exceed the amount necessary to satisfy the Company's required tax withholding obligations using the minimum statutory withholding rates for federal, state, local and foreign tax purposes, including payroll taxes, that are applicable to supplemental taxable income.

(b) If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to this Section 11 shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock unless such obligations are satisfied.

12. TAX CONSEQUENCES. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

13. NOTICES. Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. Notwithstanding the foregoing, the Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

14. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

15. OTHER DOCUMENTS. You hereby acknowledge receipt or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Plan prospectus. In addition, you acknowledge receipt of the Company's insider trading policy including the policy permitting officers and directors to sell shares only during certain "window" periods, in effect from time to time.

16. MISCELLANEOUS.

(a) The rights and obligations of the Company under your option shall be transferable to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by the Company's successors and assigns. Your rights and obligations under your option may only be assigned with the prior written consent of the Company.

(b) You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your option.

(c) You acknowledge and agree that you have reviewed your option in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your option, and fully understand all provisions of your option.

(d) This Option Agreement shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(e) All obligations of the Company under the Plan and this Option Agreement shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

17. SEVERABILITY. If all or any part of this Option Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of this Option Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Option Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

18. EFFECT ON OTHER EMPLOYEE BENEFIT PLANS. The value of the option subject to this Option Agreement shall not be included as compensation, earnings, salaries, or other similar terms used when calculating the Employee's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

19. CHOICE OF LAW. The interpretation, performance and enforcement of this Option Agreement will be governed by the law of the state of California without regard to such state's conflicts of laws rules.

20. AMENDMENT. This Option Agreement may not be modified, amended or terminated except by an instrument in writing, signed by you and by a duly authorized representative of the Company. Notwithstanding the foregoing, this Option Agreement may be amended solely by the Board by a writing which specifically states that it is amending this Option Agreement, so long as a copy of such amendment is delivered to you, and provided that no such amendment adversely affecting your rights hereunder may be made without your written consent. Without limiting the foregoing, the Board reserves the right to change, by written notice to you, the provisions of this Option Agreement in any way it may deem necessary or advisable to carry out the purpose of the grant as a result of any change in applicable laws or regulations or any future law, regulation, ruling, or judicial decision, provided that any such change shall be applicable only to rights relating to that portion of your option which is then subject to restrictions as provided herein.

EXELIXIS, INC.
2011 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AGREEMENT

Pursuant to the Restricted Stock Unit Grant Notice ("***Grant Notice***") and this Restricted Stock Unit Agreement and in consideration of your services, Exelixis, Inc. (the "***Company***") has awarded you a Restricted Stock Unit Award (the "***Award***") under its 2011 Equity Incentive Plan (the "***Plan***"). Your Award is granted to you effective as of the Date of Grant set forth in the Grant Notice for this Award. This Restricted Stock Unit Award Agreement shall be deemed to be agreed to by the Company and you upon the signing or electronically accepting by you of the Restricted Stock Unit Grant Notice to which it is attached. Capitalized terms not explicitly defined in this Restricted Stock Unit Agreement shall have the same meanings given to them in the Plan. In the event of any conflict between the terms in this Restricted Stock Unit Agreement and the Plan, the terms of the Plan shall control. The details of your Award, in addition to those set forth in the Grant Notice and the Plan, are as follows.

1. GRANT OF THE AWARD. This Award represents the right to be issued on a future date the number of shares of the Company's Common Stock as indicated in the Grant Notice. As of the Date of Grant, the Company will credit to a bookkeeping account maintained by the Company for your benefit (the "***Account***") the number of shares of Common Stock subject to the Award. Except as otherwise provided herein, you will not be required to make any payment to the Company (other than past and future services to the Company) with respect to your receipt of the Award, the vesting of the shares or the delivery of the underlying Common Stock.

2. VESTING. Subject to the limitations contained herein, your Award will vest, if at all, in accordance with the vesting schedule provided in the Grant Notice, provided that vesting will cease upon the termination of your Continuous Service. Upon such termination of your Continuous Service, the shares credited to the Account that were not vested on the date of such termination will be forfeited at no cost to the Company and you will have no further right, title or interest in or to such underlying shares of Common Stock.

3. NUMBER OF SHARES.

(a) The number of shares subject to your Award may be adjusted from time to time for Capitalization Adjustments.

(b) Any shares, cash or other property that becomes subject to the Award pursuant to this Section 3, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other shares covered by your Award.

(c) Notwithstanding the provisions of this Section 3, no fractional shares or rights for fractional shares of Common Stock shall be created pursuant to this Section 3. The Board shall, in its discretion, determine an equivalent benefit for any fractional shares or fractional shares that might be created by the adjustments referred to in this Section 3.

4. SECURITIES LAW COMPLIANCE. Notwithstanding anything to the contrary contained herein, you may not be issued any shares under your Award unless the shares of Common Stock subject to your Award are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Your Award also must comply with other applicable laws and regulations governing the Award, and you will not receive such shares if the Company determines that such receipt would not be in material compliance with such laws and regulations.

5. TRANSFERABILITY. Except as otherwise provided in this Section 5, your Award is not transferable, except by will or by the laws of descent and distribution. In addition to any other limitation on transfer created by applicable securities laws, you agree not to assign, hypothecate, donate, encumber or otherwise dispose of any interest in any of the shares of Common Stock subject to the Award until the shares are issued to you in accordance with Section 6 of this Agreement. After the shares have been issued to you, you are free to assign, hypothecate, donate, encumber or otherwise dispose of any interest in such shares provided that any such actions are in compliance with the provisions herein and applicable securities laws.

(a) Certain Trusts. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your Award to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the Award is held in the trust, provided that you and the trustee enter into transfer and other agreements required by the Company.

(b) Domestic Relations Orders. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your Award pursuant to a domestic relations order that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this Award with the Company prior to finalizing the domestic relations order to help ensure the required information is contained within the domestic relations order.

(c) Beneficiary Designation. By delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to receive any distribution of Common Stock to which you were entitled at the time of your death pursuant to this Agreement. In the absence of such a designation, your executor or administrator of your estate shall be entitled to receive any distribution of Common Stock to which you were entitled at the time of your death.

6. DATE OF ISSUANCE.

(a) The Company will deliver to you a number of shares of the Company's Common Stock equal to the number of vested shares subject to your Award, including any additional shares received pursuant to Section 3 above that relate to those vested shares on the applicable vesting date(s). However, if a scheduled delivery date falls on a date that is not a business day, such delivery date shall instead fall on the next following business day.

(b) Notwithstanding the foregoing, in the event that (i) you are subject to the Company's insider trading policy including the policy permitting officers and directors to sell shares only during certain "window" periods, in effect from time to time (collectively the ***"Policy"***), you are subject to a lock-up agreement (a "***Lock-Up Agreement"***) with one or more underwriters or placement agents in connection with an offering or other placement of securities by the Company, or you are otherwise prohibited from selling shares of the Company's Common Stock in the public market and any shares covered by your Award are scheduled to be delivered on a day (the "***Original Distribution Date***") that (A) does not occur during an open "window period" applicable to you or a day on which you are permitted to sell shares of the Company's common stock covered by your Award pursuant to a written plan that meets the requirements of Rule 10b5-1 under the Exchange Act, as determined by the Company in accordance with the Policy, (B) occurs within a period during which transactions in Company securities by you are prohibited under the terms of a Lock-Up Agreement (a ***"Lock-Up Period"***) or (C) does not occur on a date when you are otherwise permitted to sell shares of the Company's common stock on the open market, and (ii) the Company elects not to satisfy its tax withholding obligations by withholding shares from your distribution, then such shares shall not be delivered on such Original Distribution Date and shall instead be delivered, as applicable, on the (X) the first business day of the next occurring open "window period" applicable to you pursuant to the Policy (regardless of whether you are still providing Continuous Service at such time), (Y) the first business day immediately following the end of the Lock-Up Period, or (Z) the next business day on which you are not otherwise prohibited from selling shares of the Company's Common Stock in the open market, but in no event later than the fifteenth (15th) day of the third calendar month of the calendar year following the calendar year in which the Original Distribution Date occurs. The form of such delivery (*e.g.*, a stock certificate or electronic entry evidencing such shares) shall be determined by the Company.

7. DIVIDENDS. You shall receive no benefit or adjustment to your Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment as provided in the Plan; provided, however, that this sentence shall not apply with respect to any shares of Common Stock that are delivered to you in connection with your Award after such shares have been delivered to you.

8. RESTRICTIVE LEGENDS. The shares issued under your Award shall be endorsed with appropriate legends determined by the Company.

9. AWARD NOT A SERVICE CONTRACT.

(a) Your Continuous Service with the Company or an Affiliate is not for any specified term and may be terminated by you or by the Company or an Affiliate at any time, for any reason, with or without cause and with or without notice. Nothing in this Restricted Stock Unit Agreement (including, but not limited to, the vesting of your Award pursuant to the schedule set forth in Section 2 herein or the issuance of the shares subject to your Award), the Plan or any covenant of good faith and fair dealing that may be found implicit in this Restricted Stock Unit Agreement or the Plan shall: (i) confer upon you any right to continue in the employ of, or affiliation with, the Company or an Affiliate; (ii) constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or affiliation;

(iii) confer any right or benefit under this Restricted Stock Unit Agreement or the Plan unless such right or benefit has specifically accrued under the terms of this Agreement or Plan; or (iv) deprive the Company of the right to terminate you at will and without regard to any future vesting opportunity that you may have.

(b) By accepting this Award, you acknowledge and agree that the right to continue vesting in the Award pursuant to the schedule set forth in Section 2 is earned only by continuing as an employee, director or consultant at the will of the Company (not through the act of being hired, being granted this Award or any other award or benefit) and that the Company has the right to reorganize, sell, spin-out or otherwise restructure one or more of its businesses or Affiliates at any time or from time to time, as it deems appropriate (a "reorganization"). You further acknowledge and agree that such a reorganization could result in the termination of your Continuous Service, or the termination of Affiliate status of your employer and the loss of benefits available to you under this Restricted Stock Unit Agreement, including but not limited to, the termination of the right to continue vesting in the Award. You further acknowledge and agree that this Restricted Stock Unit Agreement, the Plan, the transactions contemplated hereunder and the vesting schedule set forth herein or any covenant of good faith and fair dealing that may be found implicit in any of them do not constitute an express or implied promise of continued engagement as an employee or consultant for the term of this Agreement, for any period, or at all, and shall not interfere in any way with your right or the Company's right to terminate your Continuous Service at any time, with or without cause and with or without notice.

10. WITHHOLDING OBLIGATIONS.

(a) On or before the time you receive a distribution of the shares subject to your Award, or at any time thereafter as requested by the Company, you hereby authorize any required withholding from the Common Stock issuable to you and/or otherwise agree to make adequate provision in cash for any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or any Affiliate which arise in connection with your Award (the "***Withholding Taxes***"). Additionally, the Company may, in its sole discretion, satisfy all or any portion of the Withholding Taxes obligation relating to your Award by any of the following means or by a combination of such means: (i) withholding from any compensation otherwise payable to you by the Company; (ii) causing you to tender a cash payment; or (iii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the Award with a Fair Market Value (measured as of the date shares of Common Stock are issued to you pursuant to Section 6) equal to the amount of such Withholding Taxes; provided, however, that the number of such shares of Common Stock so withheld shall not exceed the amount necessary to satisfy the Company's required tax withholding obligations using the minimum statutory withholding rates for federal, state, local and foreign tax purposes, including payroll taxes, that are applicable to supplemental taxable income.

(b) Unless the tax withholding obligations of the Company and/or any Affiliate are satisfied, the Company shall have no obligation to deliver to you any Common Stock.

(c) In the event the Company's obligation to withhold arises prior to the delivery to you of Common Stock or it is determined after the delivery of Common Stock to you that the amount of the Company's withholding obligation was greater than the amount withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

11. UNSECURED OBLIGATION. Your Award is unfunded, and as a holder of a vested Award, you shall be considered an unsecured creditor of the Company with respect to the Company's obligation, if any, to issue shares pursuant to this Agreement. You shall not have voting or any other rights as a stockholder of the Company with respect to the shares to be issued pursuant to this Agreement until such shares are issued to you pursuant to Section 6 of this Agreement. Upon such issuance, you will obtain full voting and other rights as a stockholder of the Company. Nothing contained in this Agreement, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind or a fiduciary relationship between you and the Company or any other person.

12. OTHER DOCUMENTS. You hereby acknowledge receipt or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Plan prospectus. In addition, you acknowledge receipt of the Policy.

13. NOTICES. Any notices provided for in your Award or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. Notwithstanding the foregoing, the Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this Award by electronic means or to request your consent to participate in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

14. MISCELLANEOUS.

(a) The rights and obligations of the Company under your Award shall be transferable to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by the Company's successors and assigns. Your rights and obligations under your Award may only be assigned with the prior written consent of the Company.

(b) You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your Award.

(c) You acknowledge and agree that you have reviewed your Award in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your Award, and fully understand all provisions of your Award.

(d) This Agreement shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(e) All obligations of the Company under the Plan and this Agreement shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

15. GOVERNING PLAN DOCUMENT. Your Award is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your Award, and is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. Except as expressly provided herein, in the event of any conflict between the provisions of your Award and those of the Plan, the provisions of the Plan shall control.

16. SEVERABILITY. If all or any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

17. EFFECT ON OTHER EMPLOYEE BENEFIT PLANS. The value of the Award subject to this Agreement shall not be included as compensation, earnings, salaries, or other similar terms used when calculating the Employee's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

18. CHOICE OF LAW. The interpretation, performance and enforcement of this Agreement will be governed by the law of the state of California without regard to such state's conflicts of laws rules.

19. AMENDMENT. This Agreement may not be modified, amended or terminated except by an instrument in writing, signed by you and by a duly authorized representative of the Company. Notwithstanding the foregoing, this Agreement may be amended solely by the Board by a writing which specifically states that it is amending this Agreement, so long as a copy of such amendment is delivered to you, and provided that no such amendment adversely affecting your rights hereunder may be made without your written consent. Without limiting the foregoing, the Board reserves the right to change, by written notice to you, the provisions of this Agreement in any way it may deem necessary or advisable to carry out the purpose of the grant as a result of any change in applicable laws or regulations or any future law, regulation, ruling, or judicial decision, provided that any such change shall be applicable only to rights relating to that portion of the Award which is then subject to restrictions as provided herein.

Exhibit 10.5

[*] = 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.

AMENDED AND RESTATED COLLABORATION AGREEMENT

THIS AMENDED AND RESTATED COLLABORATION AGREEMENT (the "**Agreement**") is made and entered into as of April 15, 2011 (the "**Effective Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EXEL**"), **EXELIXIS PATENT COMPANY, LLC.**, a Delaware limited liability company having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EPC**"), and **BRISTOL-MYERS SQUIBB COMPANY,** a Delaware corporation headquartered at 345 Park Avenue, New York, New York, 10154 ("**BMS**"). EXEL and EPC and BMS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". EXEL and EPC are sometimes referred to collectively as "**Exelixis**."

RECITALS

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

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

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

D. BMS and EXEL are parties to a collaboration agreement that established such collaboration, entered into on December 15, 2006, as amended, (such agreement, the "Collaboration Agreement"), the execution date of such agreement, the "Execution Date", and the effective date of such agreement, the "Original Effective Date").

E. On event date herewith, EXEL is assigning to its wholly owned subsidiary, EPC, the patents relating to compounds that developed under this Agreement.

F. BMS, EXEL and EPC wish to amend and restate the Collaboration Agreement to account for such change of patent ownership.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.27 "Development Costs" means the costs incurred by a Party or for its account, during the term and pursuant to this Agreement, that are specifically identifiable (or reasonably allocable) to the Development of a Co-Developed Product in the Co-Development Territory and that are directed to achieving or maintaining Regulatory Approval of such Co-Developed Product in the Co-Development Territory. The Development Costs shall include amounts that a Party pays to Third Parties involved in the Development of a Co-Developed Product ([*]), and all internal costs incurred by a Party in connection with the Development of such Co-Developed Product. Development Costs include the following: (a) preclinical costs such as toxicology and formulation development, test method development, delivery system development, stability testing and statistical analysis; (b) Clinical Costs; (c) expenses related to adverse event reporting; (d) Manufacturing Costs for a Co-Developed Product for use in preclinical and clinical activities including the manufacture, purchase or packaging of comparators or placebo for use in Clinical Trials (with the manufacturing costs for comparators or placebo to be determined in the same manner as Manufacturing Costs are determined for any Product), as well as the direct costs and expenses of disposal of drugs and other supplies used in such Clinical Trials and any associated release testing and QA/QC development costs; (e) [*] incurred in connection with [*], to the extent provided therein; and (f) development of the Manufacturing process for a Co-Developed Product (including with respect to any excipients or any active pharmaceutical ingredient included in such Co-Developed Products) and related scale-up, manufacturing process validation, manufacturing process improvements, and qualification and validation of Third Party contract manufacturers; (g) regulatory expenses relating to Development activities for the purpose of obtaining Regulatory Approval for an indication for a Co-Developed Product; (h) costs of real property rented specifically for Development activities (to the extent actually used); and (i) other out-of pocket development expenses including, without limitation institutional and advisory review boards, investigator meetings, quality of life studies, epidemiology and outcomes research.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.48 "Joint Invention" means any Invention invented or discovered jointly by or on behalf of the employee(s), contractor(s) or agent(s) of BMS on one hand, and EXEL and/or EPC on the other hand (and/or their Affiliates).

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

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

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

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

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

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

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

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

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

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

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

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

1.61 "Manufacturing" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, inspection, receiving, holding and shipping of Lead Compounds, Program Backups, Collaboration Compounds, Products, or any raw materials

or packaging materials with respect thereto, or any intermediate of any of the foregoing, including process and cost optimization, process qualification and validation, commercial manufacture, stability and release testing, quality assurance and quality control. For clarity, "**Manufacture**" has a correlative meaning.

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

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

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

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

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

1.63 "Medical Education Activities" means activities designed to ensure or improve appropriate medical use of, conduct medical education of, or further research regarding, a Co-Promotion Product sold in the U.S., including by way of example: (a) activities of medical sales liaisons; (b) grants to support continuing medical education, symposia, or research related to a Co-Promotion Product in the U.S. (excluding Phase IV Clinical Trials and Development

activities conducted for purposes of obtaining an initial Regulatory Approval for an indication for a Co-Promotion Product in the U.S.); (c) development, publication and dissemination of publications relating to Co-Promotion Product in the U.S., as well as medical information services provided in response to inquiries communicated via sales representatives or received by letter, phone call or email; and (d) conducting advisory board meetings or other consultant programs, the purpose of which is to obtain advice and feedback related to the Development or Commercialization of a Co-Promotion Product in the U.S.

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

1.65 "Net Sales" means the amount invoiced or otherwise billed by BMS or its Affiliate or sublicensee for sales or other commercial disposition of a Product to a Third Party purchaser, less the following to the extent included in such billing or otherwise actually allowed or incurred with respect to such sales: (a) discounts, including cash, trade and quantity discounts, price reduction programs, retroactive price adjustments with respect to sales of a product, charge-back payments and rebates granted to managed health care organizations or to federal, state and local governments (or their respective agencies, purchasers and reimbursers) or to trade customers, including but not limited to, wholesalers and chain and pharmacy buying groups; (b) credits or allowances actually granted upon rejections or returns of Products, including for recalls or damaged goods; (c) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Products, to the extent billed; (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of a Product; (e) bad debts relating to sales of Products that are actually written off by BMS in accordance with GAAP during the applicable calculation period; (f) costs due to the factoring of receivables; and (g) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Products, including value-added taxes, or other governmental charges otherwise measured by the billing amount, when included in billing, as adjusted for rebates and refunds, but specifically excluding taxes based on net income of the seller; provided that all of the foregoing deductions are calculated in accordance with generally accepted accounting principles consistently applied throughout the Party's organization.

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

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

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

In the event a Product is sold as an end-user product consisting of a combination of active functional elements or as a combined product and/or service, Net Sales, for purposes of

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

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

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

1.68 "Phase I Clinical Trial" means a clinical trial of a Product on sufficient numbers of normal volunteers and/or patients that is designed to establish that such Product is safe for its

intended use, can be delivered in a dose(s) that is therapeutically useful, and to support its continued testing in Phase II Clinical Trials.

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

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

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

1.72 "Phase III Clinical Trial" means a clinical trial of a Product on sufficient numbers of patients that is designed to establish that such Product is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed, and to support Regulatory Approval of such Product or label expansion of such Product.

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

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

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

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

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

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

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

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

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

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

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

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

1.85 "Sales and Marketing Costs" means the [*] costs that are [*] the sales and marketing of a Co-Promotion Product in the U.S., including: (a) activities directed to the advertising and marketing of a Co-Promotion Product; (b) professional education (to the extent not performed by sales representatives), including launch meetings; (c) costs of advertising,

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

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

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

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

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

1.90 "Territory" means the world.

1.91 "Third Party" means any entity other than: (a) EXEL; (b) EPC; (c) BMS; or (d) an Affiliate of any of the foregoing Party.

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

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

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

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

1.96 "Valid Claim" means (a) a claim in an issued Patent that has not: (i) expired or been canceled; (ii) been declared invalid by an unreversed and unappealable or unappealed decision of a court or other appropriate body of competent jurisdiction; (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; or (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement of the Parties; or (b) a claim under an application for a Patent that has been pending for [*] for [*], and, in any case, which has not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), or abandoned.

Additional Definitions

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

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

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

2. MANAGEMENT OF COLLABORATION

2.1 General. For the purpose of this Article 2, EXEL and EPC shall be deemed collectively as one (1) "Party."

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

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

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

2.2 Joint Executive Committee.

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

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

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

(ii) coordinate the Parties' activities hereunder;

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

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

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

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

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

(viii) provide a forum for dispute resolution; and

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

2.3 Joint Development and Regulatory Committee.

(a) Formation and Purpose. EXEL and BMS shall establish the JDC within [*] after the earlier of: (i) [*]; or (ii) [*]. Subject to **Sections 2.1(b) and 2.7(c)**, the JDC shall oversee, coordinate and expedite the Development of, and the making of regulatory filings for, each Committee-Governed Product worldwide in order to obtain Regulatory Approvals (or compendia listings, as applicable). The JDC will also facilitate the flow of information with respect to Development activities being conducted for each Product and oversee Development activities required to support Regulatory Approvals (or compendia listings, as applicable). The JDC shall have the membership and shall operate by the procedures set forth in **Section 2.7**.

(b) Specific Responsibilities of the JDC. In support of its responsibility for overseeing, coordinating and expediting the Development of, and regulatory filings for, each Committee-Governed Product, but subject to **Sections 2.1(b) and 2.7(c)**, the JDC shall, in particular, and solely with respect to Committee Governed Products:

(i) monitor Development activities;

(ii) prepare the Global Development Plan and each Annual Development Plan;

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

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

(v) design, in collaboration with the JCC, pharmacoeconomic studies or Phase IV Clinical Trials;

(vi) monitor and coordinate all regulatory actions, communications and submissions for Products, including establishing the schedule and implementation strategy for all regulatory filings for Products;

(vii) provide on a quarterly basis updates on its activities and achievements to the JEC for review and comment;

(viii) pursuant to **Section 3.6(b)**, review and determine whether the definition of Identified Target(s) for each applicable Lead Op Program, Provisional Collaboration Program and Collaboration Program need to be modified; and

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

2.4 Joint Commercialization Committee.

(a) Formation and Purpose. EXEL and BMS shall establish the JCC within [*] after [*], which Committee shall, subject to **Sections 2.1(b) and 2.7(c)**, oversee: (i) the Commercialization strategy of each Co-Promotion Product in the Co-Development Territory; and (ii) the Commercialization of Co-Promotion Products in the U.S. including the marketing, sales and distribution of each Co-Promotion Product in the U.S. The JCC shall have the membership and shall operate by the procedures set forth in **Section 2.7**.

(b) Specific Responsibilities of the JCC. In support of its responsibilities as described in clause (a) above, the JCC shall, subject to **Sections 2.1(b) and 2.7(c)**, perform the following activities solely with respect to Co-Promotion Products:

(i) prepare the Global Commercialization Strategy and the U.S. Commercialization Plan, and any updates thereto;

(ii) review the allocation of Commercialization responsibilities between the Parties to ensure consistency with the terms of this Agreement, the Global Commercialization Strategy, and the U.S. Commercialization Plan;

(iii) coordinate and oversee the Parties' plans for labeling, branding and selecting trademarks for each Product;

(iv) review life cycle management opportunities;

(v) review pricing and reimbursement strategies with respect to Products in the Royalty Territory and

(vi) With respect to Co-Promotion Products in the U.S. only:

(1) review and approve advertising materials and strategies and promotional materials developed by a Party for the Parties' Sales Representatives;

(2) approve the selection of major or key marketing vendors (e.g., public relations and advertising agencies and medical education agencies);

(3) approve pricing and reimbursement, patient assistance, vendor return and co-pay strategies;

(4) design, in collaboration with the JDC, pharmacoeconomic studies or Phase IV Clinical Trials;

(5) approve market research plans;

(6) approve and coordinate all sales force activities, including training, number, proportion of time to be devoted to promotion, and territory alignment;

(7) approve packaging designs, and oversee educational and professional symposia, and speaker and peer-to-peer activity programs;

(8) discuss a range of suggested prices at which a Co-Promotion Product will be sold to unaffiliated Third Parties and any discount strategies for such Co-Promotion Product (it being understood that BMS will determine all pricing and reimbursement terms for Co-Promotion Products sold to customers);

(9) review of each Party's reports pertaining to its Sales and Marketing Costs; and

(10) review early access and compassionate use programs.

(c) Available Resources. Except as otherwise provided in **Article 6** or any applicable Co-Promotion Agreement, the JCC shall, in allocating responsibilities between BMS and EXEL with respect to Commercialization activities for Co-Promotion Products under this Agreement in the United States: (i) endeavor to take advantage of the respective resources, capabilities and expertise of EXEL and BMS; and (ii) endeavor to: (A) maintain, to the extent reasonably practical and commercially appropriate, continuity in functions and commitments of personnel and physical resources of BMS and EXEL; (B) avoid duplication of efforts by BMS and EXEL; and (C) foster efficient use by BMS and EXEL of resources and personnel, consistent with this Agreement and the applicable Global Commercialization Strategy and the applicable U.S. Commercialization Plan. For clarity, BMS shall be solely responsible for the Commercialization of each Product in the Royalty Territory and for each Royalty-Bearing Product in the United States.

2.5 Joint Research Committee. EXEL and BMS shall establish the JRC within [*] after the Original Effective Date, which Committee shall, subject to **Sections 2.1(b) and 2.7(c)**, oversee the discovery efforts with respect to Screening Programs, Lead Op Programs, Provisional Collaboration Programs and Collaboration Programs, as described in **Article 3**, including work performed by BMS on Provisional Collaboration Programs in accordance with **Section 3.4(a)**. The JRC shall have the membership and shall operate by the procedures set forth in **Section 2.7**, and shall disband subsequent to the Research Term or otherwise at the direction

of the JEC. Without limiting the generality of the foregoing, the JRC shall have the specific responsibilities set forth below:

(a) provide a forum to allow BMS to review and comment with respect to discovery and pre-clinical Development activities and for EXEL to report progress with respect to discovery and pre-clinical Development activities;

(b) make decisions with respect to: (i) which targets will become Screening Targets, Lead Op Candidates and Lead-Op Programs; (ii) which Screening Targets, Lead Op Candidates, Lead-Op Targets and Collaboration Candidates will be terminated; and (iii) which compounds will become Program Leads;

(c) review [*] proposed by BMS, and discuss the progress of Lead-Op Candidates, Development Candidates and Collaboration Candidates in relation to those [*]; and

(d) pursuant to **Section 3.6(b)**, review and determine whether the definition of Identified Target(s) for each applicable Lead Op Program, Provisional Collaboration Program and Collaboration Program need to be modified.

2.6 Joint Finance Committee. EXEL and BMS shall establish a JFC within [*] subsequent to the [*]. The JFC shall provide support to all other Committees with respect to accounting and financial matters relating to Committee-Governed Products. The JFC shall have the membership and shall operate by the procedures set forth in **Section 2.7**.

2.7 General Committee Membership and Procedures.

(a) Membership. Each Committee shall be composed of such number of representatives as may be agreed by the Parties. Each of BMS and EXEL shall designate representatives with appropriate expertise to serve as members of each Committee, and each representative may serve on more than one Committee as appropriate in view of the individual's expertise. Each Party may replace its Committee representatives at any time upon written notice to the other Party. Each Committee shall have co-chairpersons. BMS and EXEL shall each select from their representatives a co-chairperson for each of the Committees, and each Party may change its designated co-chairpersons from time to time upon written notice to the other Party. The Alliance Managers shall be responsible for calling meetings, preparing and circulating an agenda in advance of each meeting of such Committee, and preparing and issuing minutes of each meeting within [*] thereafter; provided that a Committee co-chairperson shall call a meeting of the applicable Committee promptly upon the written request of the other co-chairperson to convene such a meeting. The minutes of each meeting shall, among other things, record all matters acted upon and approved or disapproved by the Committee, actions to be taken, and any matters the Committee failed to resolve. Such minutes will not be finalized until both Alliance Managers review and confirm in writing the accuracy of such minutes.

(b) Meetings. Each Committee shall hold meetings at such times as it elects to do so, but in no event shall such meetings be held less frequently than once every [*] for the JRC and once every [*] for the JDC, the JCC, and the JFC, and once every [*] for the JEC. Each

Committee shall meet alternately at EXEL's facilities in South San Francisco, California, and BMS' facilities in Princeton, New Jersey, or at such other locations as the Parties may agree. The Alliance Managers shall, and other employees of each Party involved in the Development, Manufacture or Commercialization of any Product may as needed, attend meetings of each Committee (as nonvoting participants unless they are members of such Committee), and consultants, representatives or advisors involved in the Development, Manufacture or Commercialization of any Product may attend meetings of each Committee as nonvoting observers; *provided* that such Third Party representatives are under obligations of confidentiality and non-use applicable to the Confidential Information of each Party that are at least as stringent as those set forth in **Article 11**, and in the case of non-employees of a Party, subject to the consent of the other Party, which shall not be unreasonably withheld or delayed. Each Party shall be responsible for all of its own expenses of participating in any Committee (including in any Working Group). Meetings of any Committee may be held by audio or video teleconference with the consent of each Party, which shall not be unreasonably withheld or delayed; *provided* that at least [*] per year of such Committee shall be held in person. No action taken at any meeting of a Committee shall be effective unless a representative of each Party is participating.

(c) Decision-Making.

(i) Voting on Committee Decisions. Subject to **Section 2.1(b)**, each Party's designees on a Committee shall, collectively, have one (1) vote (the "**Party Vote**") on all matters brought before the Committee, which Party Vote shall be determined by [*] of such Party's designees present (in person or otherwise) at the meeting. Except as expressly provided in this **Section 2.7(c)** and subject to **Section 2.1(b)**, each Committee shall operate as to matters within its jurisdiction by unanimous Party Vote. All decisions of a Committee shall be documented in writing in the minutes of the applicable Committee meeting by the Alliance Managers, and, to the extent applicable, included on the target status list described in **Section 3.9**.

(ii) Operational Decisions. Before selection by BMS of a Collaboration Program pursuant to exercise of BMS' Co-Development Option, day-to-day operational level decisions concerning the identification, optimization, non-clinical development and clinical development (up through IND submission) of Collaboration Compound shall be made by EXEL, except as expressly stated in this Agreement. Following selection by BMS of a Collaboration Program pursuant to exercise of BMS' Co-Development Option, day-to-day operational level decisions concerning the Development and Commercialization of Products in such Collaboration Program shall be made by the Party to which responsibility for such decisions has been allocated under the Agreement (each such decision, a "**Party Implementation Matter**"). Unless otherwise directed by the appropriate Committee(s), [*] shall be the lead Party, and shall be primarily responsible for, all Development, regulatory activities and Manufacturing and, subject to [*], Commercialization activities with respect to a Product. Any disputes with respect to a Party Implementation Matter shall first be referred to the Alliance Managers, and, if the dispute is not resolved within [*] after such referral to the Alliance Managers, then it shall, upon written notice by a Party to the other, be referred for resolution as follows: (A) disputes between designees of BMS and EXEL with respect to Development and Regulatory Approval matters shall be referred to the JDC for resolution; and (B) disputes

between designees of BMS and EXEL with respect to Commercialization shall be referred to the JCC for resolution. In each case, except for Appealable Matters, the Committee to which such matter is referred shall have final decision-making authority with respect to such matter, and [*] shall [*] with respect to such matter, [*].

(iii) Disagreements on Committees. Except for: (A) matters outside the jurisdiction and authority of the Committees as provided in **Section 2.1(b)**; and (B) any Party Implementation Matter (other than Appealable Matters), and in any event without limiting the other rights and obligations of the Parties under this Agreement, any disagreement between the designees of BMS and EXEL on the JDC, JCC, JRC or JFC as to matters within such Committee's jurisdiction shall, at the election of either Party, be addressed, first, with the Alliance Managers, and, if the dispute is not resolved within [*] after such referral to the Alliance Managers, then it shall, upon written notice by a Party to the other, be submitted to the JEC for resolution (except that (1) any disputes arising from the JFC shall be submitted to the Committee to which such dispute relates (i.e., the JRC, JDC, or the JCC), and (2) prior to the creation of the JEC, disputes at the JRC shall be referred to management of the Parties as set forth in the following sentence). If the JEC (or JRC, prior to the creation of the JEC) does not resolve any such matter submitted to it for resolution within [*] after such submission, or in the event of any disagreement between the designees of BMS and EXEL on the JEC (or JRC, prior to the creation of the JEC) with respect to any other matter within its jurisdiction, then, subject to **Section 2.1(b)**, the JEC (or JRC, prior to the creation of the JEC) shall submit the respective positions of the Parties with respect to such matter for discussion in good faith by the Chief Executive Officer of EXEL and either the Head of R&D or Head of U.S. Operations of BMS (depending on the nature of the dispute). If such individuals are not able to mutually agree upon the resolution to such matter within [*] after submission of the matter to them, then: (X) [*], the [*], subject to **Section** [*]; [*] (Y) [*], the [*], subject to **Section** [*].

(iv) [*] Decisions. [*] right to [*] pursuant to **Section** [*] (**"[*] Decisions"**) shall be subject to the following limitations:

(1) All [*] Decisions shall be made in good faith, with due regard for the impact of such decisions on Collaboration Compounds. No such decision by [*] shall violate or breach any term or condition of this Agreement. [*] shall make all [*] Decisions only after [*] (through its JEC or JRC members, as applicable) on such matters and the proposed [*] Decision.

(2) [*] shall [*]: (A) on matters that would [*]; (B) on any decision that would [*]; (C) any decision that would [*]; (D) on [*]; (E) on which [*] (F) on [*]; (G) on [*] for Collaboration Compounds within the associated [*]; (H) on [*]; (I) to [*]; (J) on [*] in [*]; (K) whether to [*]; or (J) decisions described in **Section** [*]. Resolution of disputes relating to the foregoing matters shall [*] (except as otherwise expressly set forth in this Agreement).

(v) [*] Decisions. [*] right to [*] (**"[*] Decisions"**) shall be subject to the following limitations:

(1) All [*] Decisions shall be made in good faith, with due regard for the impact of such decisions on Products [*], and, consistent in all material respects with the applicable Approved Plan and the terms of this Agreement. No such decision [*] shall violate or breach any term or condition of this Agreement. [*] shall make all [*] Decisions only after [*] (through its JEC or JRC members, as applicable) on such matters and [*], and in the case of [*] Decision made pursuant to **Section** [*]**,** only after [*] and the [*] on such matters.

(2) [*] shall [*]: (A) on any decision that would [*]; (B) any decision that would amend, violate or breach any provision of this Agreement; (C) on which [*] within the associated [*]; (D) on the decision to [*] (except to the extent provided for in **Section** [*]); (E) to adjust the [*]; (F) on the [*]; (G) on matters related to the determination of [*]; or (H) whether [*]. Resolution of disputes relating to the foregoing matters shall [*] (except as otherwise expressly set forth in this Agreement).

(d) Meeting Agendas and Minutes. Each Party shall disclose to the other proposed agenda items along with appropriate information at least [*] in advance of each meeting of the applicable Committee; *provided* that under exigent circumstances requiring Committee input, a Party may provide its agenda items to the other Party within a shorter period of time in advance of the meeting, or may propose that there not be a specific agenda for a particular meeting, so long as such other Party consents to such later addition of such agenda items or the absence of a specific agenda for such Committee meeting.

(e) Multiple JDCs and JCCs at the Discretion of the JEC. The JEC may determine that a separate JDC and/or JCC be formed for each Provisional Collaboration Program or Collaboration Program. In such event, the Parties will appoint representatives to such additional committees and such committees will be subject to the all of the applicable terms and conditions of this Agreement with respect to the JDC and the JCC, in each case, solely with respect to the Provisional Collaboration Program or Collaboration Program to which such Committees relate.

(f) Working Groups. From time to time, the JEC, JDC, JCC, JRC or JFC may establish and delegate duties to other committees, sub-committees or directed teams (each, a "**Working Group**") on an "as-needed" basis to oversee particular projects or activities, which delegation shall be reflected in the minutes of the meetings of the applicable Committee. Each such Working Group shall be constituted and shall operate as the JEC, JDC, JCC, JRC or JFC, as the case may be, determines. The Working Groups may be established on an ad hoc basis for purposes of a specific project, for the life of a Product, or on such other basis as the applicable Committee may determine. Each Working Group and its activities shall be subject to the oversight, review and approval of, and shall report to, the Committee that established such Working Group. In no event shall the authority of the Working Group exceed that specified for the relevant Committee in this **Article 2**. Any disagreement between the designees of BMS and EXEL on a Working Group shall be referred to the applicable Committee for resolution.

(g) Interactions Between Committees and Internal Teams. The Parties recognize that each Party possesses an internal structure (including various committees, teams and review boards) that will be involved in administering such Party's activities under this

Agreement. Each Committee shall establish procedures to facilitate communications between such Committee or Working Group and the relevant internal committee, team or board of each of the Parties in order to maximize the efficiency of the Collaboration, including by requiring appropriate members of such Committee to be available at reasonable times and places and upon reasonable prior notice for making appropriate oral reports to, and responding to reasonable inquiries from, the relevant internal committee, team or board.

2.8 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint a single individual to act as a single point of contact between the Parties to assure a successful Collaboration (each, an "**Alliance Manager**"). Each Party may change its designated Alliance Manager from time to time upon written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by written notice to the other Party.

(b) Responsibilities. The Alliance Managers shall use good faith efforts to attend all Committee meetings and support the co-chairpersons of each Committee in the discharge of their responsibilities. Alliance Managers shall be nonvoting participants in such Committee meetings, unless they are also appointed members of such Committee pursuant to **Section 2.7(a)**. An Alliance Manager may bring any matter to the attention of any Committee if such Alliance Manager reasonably believes that such matter warrants such attention. Each Alliance Manager shall be charged with creating and maintaining a collaborative work environment within and among the Committees. In addition, each Alliance Manager: (i) will be the point of first referral in all matters of conflict resolution; (ii) will coordinate the relevant functional representatives of the Parties in developing and executing strategies and plans for the Products in an effort to ensure consistency and efficiency throughout the world; (iii) will provide a single point of communication for seeking consensus both internally within the respective Parties' organizations and between the Parties regarding key strategy and plan issues; (iv) will identify and bring disputes to the attention of the appropriate Committee in a timely manner; (v) will plan and coordinate cooperative efforts and internal and external communications (including the preparation of the target status list described in **Section 3.9**); and (vi) will take responsibility for ensuring that governance activities, such as the conduct of required Committee meetings and production of meeting minutes, occur as set forth in this Agreement, and that relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

2.9 Collaboration Guidelines.

(a) General. Each Party, in working with the other to Develop and Commercialize each Product and otherwise as set forth herein, shall assign responsibilities for the various operational aspects of the Collaboration to those portions of its organization that have the appropriate resources, expertise and responsibility for such functions and, consistent with this Agreement, treat each Product as if it were a proprietary product solely of its own organization. In all matters related to the Collaboration, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to realize the full economic potential of each Product (taking into account the risks and costs of further Development and Commercialization).

(b) Independence. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between EXEL, EPC and BMS is that of independent contractors and none of the Parties shall have the power to bind or obligate any other Parties in any manner.

2.10 Reports Relating to Reporting-Only Products. Beginning [*] after the first existence of a Reporting-Only Product or a Royalty-Bearing Product, and every [*] thereafter during the term of the Agreement, BMS shall submit to EXEL a written progress report [*] the research and development performed by BMS on Reporting-Only Products. If reasonably [*] for EXEL to exercise its rights under this Agreement, EXEL may request that BMS provide more detailed information and data regarding such reports by BMS, and BMS shall promptly provide EXEL with information and data as is reasonably related to such request, at EXEL's expense. All such reports shall be considered Confidential Information of BMS.

2.11 Overview of Accounting.

(a) Development Costs and Allowable Expenses. For purposes of determining Development Costs and Allowable Expenses, any expense allocated by either Party to a particular category under Development Costs or Allowable Expenses for a particular Co-Promotion Product shall not be allocated to another category under Development Costs or Allowable Expenses for such Co-Promotion Product. Each Party agrees to determine Development Costs and Allowable Expenses for Co-Promotion Products using its standard accounting procedures, consistently applied, to the maximum extent practical as if such Co-Promotion Product were a solely owned Product of such Party, except as specifically provided in this Agreement. The Parties also recognize that such procedures may change from time to time and that any such changes may affect the definition of Development Costs or Allowable Expenses. The Parties agree that, where such changes are economically material to either Party, and consistent with GAAP, adjustments shall be made to compensate the affected Party to preserve the same economics as reflected under this Agreement under such Party's accounting procedures in effect as of the date on which the activity in question (e.g., Development, Commercialization or Manufacturing) first commences under this Agreement. Where the change is or would be material to the other Party, the Party proposing to make the change shall provide the other Party with an explanation for the proposed change and an accounting of the effect of the change on the relevant expense category. Should the Parties disagree on the adjustment, the matter shall be placed before the JFC to resolve. Transfers between a Party and its Affiliates (or between its Affiliates) shall not have effect for purposes of calculating revenues, costs, profits, royalties or other payments or expenses under this Agreement.

(b) Affiliates. If either Party enters into any agreement with any of its Affiliates for the provision of materials or services pursuant to this Agreement, all costs incurred for the provision of such materials or services that are shared by the Parties under this Agreement shall be accounted for on the basis of the cost thereof to such Affiliate and not on the basis of any higher transfer price in effect between such Party and such Affiliate.

2.12 Compliance with Law. Each Party hereby covenants and agrees to comply with applicable law in performing its activities connected with the Development, manufacture and Commercialization (as applicable) of each Product.

2.13 Records. Each of EXEL and BMS shall maintain complete and accurate records of all work conducted under the Collaboration and all results, data and developments made pursuant to its efforts under the Collaboration. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of the Collaboration in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each of EXEL and BMS shall maintain such records for a period of [*] after such records are created; provided that the following records may be maintained for a longer period, in accordance with each such Party's internal policies on record retention, provided that in no case shall such period be shorter than [*] from the date of creation of such records: (a) scientific notebooks; and (b) any other records that such other Party reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Either such Party shall have the right to review and copy such records of the other Party at reasonable times to the extent [*] for it to conduct its obligations or enforce its rights under this Agreement

3. DISCOVERY PROGRAM

3.1 Overview.

(a) Programs. During the Research Term, EXEL shall be responsible for conducting the [*]. EXEL will devote to each program similar resources (including comparably qualified and experienced personnel) and funding as it does to internal programs at a similar stage of discovery or pre-clinical development, with the goal of delivering not less than six (6) Provisional Collaboration Programs for possible exercise by BMS of up to three (3) of its Co-Development Options.

(b) BMS Co-Development Option. BMS shall have the [*] option to select each Provisional Collaboration Program as a Collaboration Program for collaborative Development and Commercialization under this Agreement (the **"Co-Development Option"**); *provided*, *however*, that in no event would BMS be permitted to select more than three (3) Collaboration Programs pursuant to this Co-Development Option. The Co-Development Option shall be exercisable solely in accordance with the remainder of this **Article 3**.

3.2 Screening Programs.

(a) In General. During each year of the Research Term, as described in more detail below, EXEL shall conduct programs as part of the Collaboration ("**Screening Programs**") in which EXEL will [*]. As of the Execution Date, BMS and EXEL shall mutually agree to the initial prioritized list of up to [*] Screening Targets for the [*] Research Term, which shall be listed in **Exhibit 3.2**. No later than at the last JRC meeting prior to the [*], EXEL will share its list of planned screening targets for the [*] Research Term and, within [*] subsequent to the date upon which such planned screening targets are shared, BMS shall select up to [*] such

prioritized targets as Screening Targets for the [*] Research Term, which shall be added to the table described in **Section 3.9**; provided that BMS may [*] Screening Targets and up to [*] such targets [*] Screening Targets by mutual agreement of BMS and EXEL. If at the start of the [*] Research Term, or during any quarter thereafter, and subject to **Section 3.2(c)**, the number of Lead Op Candidates has dropped below [*], then EXEL shall conduct at least [*] Screening Programs in each subsequent calendar quarter, with the Screening Targets for such new Screening Programs [*] or, [*] added to the table described in **Section 3.9**. Such [*] shall continue until such time as either: (A) [*]; or (B) there [*]. Each quarter during the [*] Research Term, the JRC (by mutual agreement) may [*], in which case the Alliance Managers shall reflect such [*] pursuant to **Section 3.9**.

(b) Completion of Screening; Lead Op Candidates. After a given Screening Program has become a Completed Screening Program, [*] (such Completed Screening Program, if [*], becomes a "**Lead Op Candidate**"). If the [*], then the target(s) associated with such Lead Op Program shall become a "**Lead Op Target(s)**." If the [*], not to maintain such Lead Op Candidate(s) within the Collaboration, then the Screening Target(s) associated with such advanced Screening Program shall no longer be Screening Target(s) but shall instead be "**Rejected Screening Target(s)**", subject to **Section 8.6(b)**. Otherwise, such Lead Op Candidate(s) shall remain Lead Op Candidate(s) (pending a future decision by: (i) [*]. For clarity, EXEL may, [*], [*] into a [*], provided that: (I) EXEL will maintain an [*] (by mutual agreement) [*]; and (II) [*] will remain subject to the terms and conditions of this Agreement, including without limitation **Section** [*]; provided that BMS may [*] at any time prior to the [*], and (for clarity) [*] be deemed to be either (1) [*] a Lead Op Program pursuant to **Section** [*], or (2) [*] with respect to such Lead Op Program for purposes of **Section [*]** and or **Section [*]**.

(c) Removal of Lead Op Candidates. Notwithstanding BMS and EXEL designation of a Screening Program as a Lead Op Candidate, [*] may, at any time after the number of Lead Op Candidates becomes greater than [*], designate a Lead Op Candidate as Rejected Screening Target, except if such designation would reduce the number of Lead Op Candidates below [*].

3.3 Lead Op Programs.

(a) In General. During each [*] Research Term, as described in more detail below, EXEL shall conduct programs as part of the Collaboration ("**Lead Op Programs**") in which EXEL will optimize lead compounds that were identified in Screening Programs for the purpose of advancing a lead compound to Development Candidate status. As of the Execution Date, the initial list of the [*] Lead Op Targets for the first year of the Research Term is set forth in **Exhibit 3.3**. These initial Lead Op Targets shall serve as the targets for the Initial Lead Op Programs. Additional Lead Op Targets shall be added to the table described in **Section 3.9**, which shall be updated by the Alliance Managers pursuant to **Section 3.9**. EXEL shall use Diligent Efforts to maintain and advance, [*] Lead Op Programs on behalf of the Collaboration during the Research Term [*] Lead Op Programs [*] EXEL shall use Diligent Efforts to maintain and advance [*] during the [*] Research Term (such minimum Lead Op Programs, **"[*]"**). For clarity, EXEL may, [*], advance [*] Lead Op Candidate(s) into lead optimization programs other

than [*], provided that such lead optimization programs will remain subject to the terms and conditions of this Agreement (as described in the last sentence of **Section 3.2(b)**).

(b) Completion of Lead Op Programs. Once EXEL determines that a compound in any Lead Op Program has completed lead optimization and has met the criteria of a Program Lead, EXEL will so notify BMS in writing and provide BMS with the Development Candidate proposal including such information as included in [*] and documenting the properties of such Program Lead as per [*] (the "**DCP**"). Within [*] of receiving the DCP, BMS shall notify EXEL in writing if BMS will [*] with respect to the Lead Op Program that generated such Program Lead. If EXEL receives BMS' notice stating that [*], then the provisions of **Section [*]** shall apply. Otherwise, EXEL will advance such Lead Op Program into preclinical development as a Provisional Collaboration Program, and [*] on [*]. The target(s) associated with each such Provisional Collaboration Program shall no longer be Lead Op Target(s) but shall instead automatically be a "**Collaboration Target(s)**."

(c) Termination of Lead Op Programs. If the JRC (by mutual agreement) elects to terminate a Lead Op Program before the lead compound in such Lead Op Program has completed lead optimization, then, [*]. If no such [*], or if [*], then EXEL will [*] (subject to Exelixis' obligations to a Third Party that would [*]), which program shall be [*]; or (ii) in the event that [*]. In any case, any such Lead Op Target(s) associated with such a terminated Lead Op Program shall no longer be Lead Op Target(s) but shall instead automatically be a "**Rejected Lead Op Target(s)**", subject to **Section 8.6(e)**.

(d) Limited Replacement of Lead Op Programs. At any time prior to the date which is [*] subsequent to the delivery by EXEL of the DCP with respect to a given Lead Op Program in accordance with **Section 3.3(b)**, [*] replace such Lead Op Program, [*], with any of the following: (i) [*] for which [*]; (ii) [*]; or (iii) a [*]. [*] shall cease after [*]. The target(s) associated with each such former Lead Op Program shall no longer be Lead Op Target(s) but shall instead automatically be "**Rejected Lead Op Target(s)**", subject to **Section 8.6(e)**.

3.4 Provisional Collaboration Programs; Exercise of BMS' Co-Development Option.

(a) In General. EXEL shall conduct programs as part of the Collaboration in which EXEL pre-clinically develops compounds (that were identified as Program Leads in Lead Op Programs) with the goal of submitting an IND on such compound where such IND meets the criteria for clinical development that is consistent with EXEL's internal criteria for all EXEL programs (including programs outside of the Collaboration) and, where reasonably possible, takes into account the [*] (such programs, **"Provisional Collaboration Programs**"). BMS [*] activities (for purposes of [*]) that were [*], including one or more of the following: [*] as needed to help [*] for Provisional Collaboration Programs [*]. [*] solely for use [*] described in this **Section 3.4(a)**.

(b) Exercise of BMS' Co-Development Option. Once EXEL determines that [*], EXEL will provide to BMS written notice and a data package (containing data not

already in BMS' possession) with sufficient detail regarding such Collaboration Compound (and any Program Backups) as per EXEL's internal standards and incorporating data applicable to the [*]. Upon receipt of each such data package, BMS will have [*] to notify EXEL in writing whether BMS exercised its Co-Development Option with respect to the Provisional Collaboration Program to which such Collaboration Compound relates; provided that [*]. For clarity, BMS may exercise its Co-Development Option at any time prior to such date, including [*].

(i) Acceptance. If EXEL receives BMS' notice (within the applicable [*] period) stating that BMS exercised its Co-Development Option for a given Provisional Collaboration Program, then such Provisional Collaboration Program shall become a **"Collaboration Program"**, and the provisions of **Section 3.7** shall apply, and BMS shall be responsible for submitting the IND for such Collaboration Program's Lead Compound (and other applicable regulatory and clinical documents).

(ii) Rejection. If EXEL receives BMS' notice (within the applicable [*] period) stating that BMS did not exercise its Co-Development Option for a given Provisional Collaboration Program, or if EXEL did not receive BMS' notice within the applicable [*] period, then in either case, the provisions of **Section 3.8** shall apply, and BMS shall not be responsible for submitting the IND for such Provisional Collaboration Program's Lead Compound (and other applicable regulatory and clinical documents).

(iii) [*]. If EXEL receives BMS' notice (within the applicable [*] period) stating that [*] its Co-Development Option for a given Provisional Collaboration Program, [*] set forth in such notice, then EXEL may [*]. Alternatively, EXEL may [*]. If the [*] for such Lead Compound, then EXEL may elect to either (i) [*] or (ii) [*]. If the [*] for such Provisional Collaboration Program's Lead Compound, then EXEL will so notify BMS in writing. BMS will [*]. Upon receipt of such notice from BMS, the provisions of **Section [*]** shall apply if EXEL received BMS' notice (within the applicable [*] period) stating that [*], or **Section [*]** shall apply if either (A) [*], or (B) [*].

3.5 Backup Compounds.

(a) Provisions Relating to BMS' Exercise of its Co-Development Option. If BMS does not exercise its Co-Development Option with respect to a Provisional Collaboration Program by the applicable deadline, then EXEL shall retain all right, title and interest in all compounds generated for such Provisional Collaboration Program, subject to [*]. If BMS does exercise its Co-Development Option with respect to a Provisional Collaboration Program, then any compounds generated for such Provisional Collaboration Program (or Lead Op Program that became such Provisional Collaboration Program) that satisfy the definition of a Program Backup shall become part of the Collaboration Program, and, subject to **Section 8.1(d)**, neither BMS nor EXEL shall use any such compounds for any purpose outside of the Collaboration without the prior written consent of the other Party. The compounds generated for such Provisional Collaboration Program (or Lead Op Program that became such Provisional Collaboration Program) that do not satisfy the definition of Program Backups shall become Unrelated Compounds, and EXEL shall be free to use such Unrelated Compounds outside of the

Collaboration, subject to **Section 8.6.** For clarity, BMS shall pay EPC the milestone payments described in **Section 9.5** for Program Backups that are Royalty-Bearing Products and that meet the applicable milestone events.

(b) Provisions Relating to Exercise of the Exelixis Co-Development Option. In the event that EXEL has exercised the Exelixis Co-Development Option with respect to a Collaboration Program, then the following terms shall apply with respect to Backup Programs:

(i) Commencement of a Backup Program. BMS and EXEL shall determine, via the JDC, whether or not to commence a backup program (a **"Backup Program"**) with respect to some or all of the Collaboration Programs, as well as the appropriate timing for such Backup Program(s). The Backup Program(s) shall be subject JDC oversight and decision making and to a Backup Research Plan to be established by the JDC prior to the start of backup work.

(ii) Exelixis Conduct of Backup Programs. EXEL shall have the first right to conduct such backup work up until designation of a backup compound as a Development Candidate and shall promptly notify the JDC in writing whether EXEL will conduct such Backup Program. Upon designation of a backup compound as a Development Candidate, the JDC shall determine [*] (with [*], in any case, having the right to perform [*]. In the event that [*] work on Backup Programs for Collaboration Programs shall be [*], to the extent such work is incurred and with reimbursement on a quarterly basis, up to [*] Dollars ($[*]) per Backup Program (such amount, the "[*] **Backup Funding**"); *provided, however*, that: (A) such [*] Backup Funding shall not be deemed to be [*] (except as set forth below); and (B) any costs associated with such Backup Program that are in excess of [*] shall be [*]. Notwithstanding clause (A) above, [*], then the [*] Backup Funding [*].

(iii) BMS Conduct of Backup Programs. If EXEL notifies BMS that EXEL will not conduct such Backup Program, or in the event that EXEL opts-out of co-Development with respect to such Collaboration Program, then BMS may conduct such Backup Program and such any costs associated with such Backup Program shall be [*] and shall be [*]. EXEL will transition to BMS any necessary [*] and other know-how necessary or reasonably useful for BMS to conduct such Backup Program.

(iv) Reporting and Accounting. Except as set forth in paragraph (ii) above, reporting and accounting of shared costs for the Backup Programs shall be as set forth in **Section 4.6** for Development Costs.

3.6 Information Exchange; [*]; and Identified Targets.

(a) Information Exchange and [*]. BMS, through the JRC, shall be allowed to review data from Screening Programs, Lead Op Programs and Provisional Collaboration Programs on a [*] basis, excluding any [*] relating to any compounds in any such Screening Programs, Lead Op Programs or Provisional Collaboration Programs (unless BMS and EXEL expressly agree in writing to disclosure of such [*]; [*]). Once a Lead Op Program or

Provisional Collaboration Program contains a Program Lead, BMS shall be notified and may at any time (or from time to time) thereafter (with reasonable prior written notice) request that EXEL provide[*] with the following information solely for the purpose of [*]: (i) a summary describing the [*] such Program Lead; (ii) the [*]; (iii) a list of [*]; and (iv) any other information reasonably requested by BMS and in the possession of EXEL. In the event that BMS has not provided written request for disclosure, or has only made written request for disclosure [*], then EXEL shall at all times [*]. BMS may make suggestions with respect to the direction or conduct of a Screening Program, Lead Op Program or Provisional Collaboration Program, but EXEL shall retain all authority over the conduct of such program (subject to **Sections 3.2(b), 3.3(c), 3.3(d), 3.4(a) and 3.5**). To maximize the probability that a Provisional Collaboration Program will be ultimately accepted by BMS, EXEL shall give good faith consideration to the [*] (the **"[*]"**) and shall endeavor through the JRC to work with BMS to [*]; provided, however, that EXEL shall not be required to [*]. It is expected that both BMS and EXEL will work closely together through the JRC to discuss and to endeavor to jointly establish the [*].

(b) Identified Targets, Potency Threshold and Specificity Criteria.

(i) Determination. For each Lead Op Program, Provisional Collaboration Program and Collaboration Program (as applicable), the JRC or the JDC (or BMS and EXEL in the case of a Collaboration Program with respect to which EXEL has exercised a Product Opt-Out) shall determine: (A) whether the definition of Identified Target(s) for each applicable Lead Op Program, Provisional Collaboration Program and Collaboration Program need to be [*]; and/or (B) whether the definition of the Target Potency Threshold and/or Specificity Criteria need to be [*]. If so, BMS and EXEL shall do so by mutual agreement and in writing through a separate side letter. The JRC, JDC or BMS and EXEL (as the case may be) shall also specify [*]. If BMS and EXEL mutually agree that the definitions of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable) [*]. If BMS and EXEL mutually agree that the definitions of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable) [*], then EXEL may [*] the Collaboration as [*] to the extent such [*] (as applicable), and subject to [*].

(ii) Party Resolution of Disputes. If the JRC or JDC (or BMS and EXEL, as the case may be) is unable to agree on the definition of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable) at the applicable JRC or JDC meeting (or other meetings and correspondence between BMS and EXEL), including as to whether such definition(s) need revision, then BMS and EXEL shall try to settle their differences amicably between themselves first, by referring the disputed matter to BMS' and EXEL's respective Executive Officers. Either BMS or EXEL may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within [*] after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within [*] of their first meeting for such negotiations, then BMS and EXEL shall proceed to dispute resolution pursuant to **Section 3.6(c)(iii)**.

(iii) Arbitration of Disputes. Any dispute not resolved internally by BMS and EXEL pursuant to **Section 3.6(b)(ii)** must be finally resolved through binding arbitration by JAMS (formerly, the Judicial Arbitration and Mediation Service) **("JAMS**") in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the dispute arises, except as modified in this Agreement and applying the substantive law specified in **Section 15.2**. Either BMS or EXEL may initiate arbitration under this **Section 3.6(b)(iii)** by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (A) each of BMS and EXEL shall submit to the arbitrator its proposal for resolving such dispute, such proposal based on the applicable scientific factors, and shall provide a copy of such proposal to the other Party; (B) each of BMS and EXEL may, within [*] of receipt of the other Party's proposal, provide a rebuttal to such other Party's proposal to the arbitrator (which rebuttal shall be limited to responding to arguments or scientific evidence presented in such other Party's proposal), and shall provide a copy of such rebuttal to the other Party; (C) the arbitrator shall select the proposal that is the most scientifically reasonable; and (D) such proposal shall become the new definition of Identified Target(s), Target Potency Threshold or Specificity Criteria (as applicable). Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The determination of the arbitrator shall be final. The arbitration proceedings shall be conducted in such location as determined by the arbitrator. BMS and EXEL agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each of BMS and EXEL shall bear its own attorneys' fees and associated costs and expenses.

3.7 Acceptance of Collaboration Programs. In the event that BMS timely exercises its Co-Development Option with respect to a Provisional Collaboration Program, then such Provisional Collaboration Program shall become a Collaboration Program, and each of the following shall apply:

(a) Payment. BMS shall pay the fee set forth in **Section 9.2**.

(b) [*] CMC Responsibilities. If not already completed (i.e., [*]), [*] shall: (i) complete the Chemistry, Manufacturing and Control ("**CMC**") portion of an IND submission package for each Collaboration Compound approved for IND submission (as well as such other sections of the IND submission package as may be reasonably required of it); and (ii) complete any pre-IND toxicity testing and other testing reasonably required to file an IND for the applicable Collaboration Compound.

(c) Exelixis Co-Development Option. EXEL shall provide written notice to BMS, within [*] after the acceptance of such Collaboration Program by BMS, as to whether or not EXEL will exercise its option to Co-Develop with BMS the Lead Compound arising from such Collaboration Program (the "**Exelixis Co-Development Option**"). In the event EXEL declines to exercise its right to Co-Develop such Lead Compound, EXEL shall lose any right to Co-Develop and Co-Promote any Product containing such Lead Compound and any subsequent Products or Related Products generated from such Collaboration Program.

(d) Transfer. EXEL shall use Diligent Efforts to transfer to BMS within [*] of BMS' exercise of its Co-Development Option: (i) reasonable quantities of the relevant Lead Compound; (ii) all Information reasonably necessary for the further development and commercialization of such Collaboration Program's Lead Compound; (iii) all regulatory filings (including any INDs, drug dossiers, and drug master files) in EXEL's name for such Lead Compound; (iv) any agreements with Third Parties necessary for the further development and commercialization of such Collaboration Program's Lead Compound (including any agreements relating to the conduct of the Phase I Clinical Studies of such Lead Compound); and (v) any trademark rights Controlled by EXEL covering such Collaboration Program's Lead Compound, that in each case ((i) through (v)) are existing, in EXEL's Control, and specifically relate to such Lead Compound. The costs and expenses incurred by EXEL in carrying out such transfer shall be either: (A) treated as Development Expenses in the event that such expenses relate to a Co-Developed Product, or (B) reimbursed one hundred percent (100%) by BMS in the in the event that such expenses relate to a Royalty-Bearing Product. For clarity, EXEL's transfer of Manufacturing-related rights and materials shall be governed by **Section 7.3**.

3.8 Rejection of Provisional Collaboration Programs. In the event that BMS declines to exercise its Co-Development Option with respect to a Provisional Collaboration Program, or if EXEL does not receive BMS' notice of exercising its Co-Development Option with respect to a Provisional Collaboration Program, then each of the following shall apply:

(a) Reversion of Rights. All rights with respect to such Provisional Collaboration Program shall automatically revert to Exelixis, and BMS shall have no further rights with respect to the Development or Commercialization of any compounds (including Program Backups) by EXEL under such Provisional Collaboration Program ([*].

(b) Expiration of Rights. Without limiting the generality of **Section 3.8(a)**, EXEL's obligations, and BMS rights, under **Sections 3.1, 3.4(a)** (to the extent applicable), and **3.6** shall expire with respect to such Provisional Collaboration Program.

(c) Phase I Clinical Trial Requirement. [*] shall be required to use Diligent Efforts to commence a Phase I Clinical Trial with respect to such Provisional Collaboration Program within [*] subsequent to acceptance of an IND with respect to such Provisional Collaboration Program. For purposes of this **Section 3.8(c)**, "**commence a Phase I Clinical Trial**" means that the first site at which such clinical trial will be conducted has received approval from the appropriate investigational review board ("**IRB**") and is ready to enroll patients.

(d) Transfer & Transition. If BMS conducted any work on such Provisional Collaboration Program pursuant to **Section 3.4(a)**, then BMS shall: (i) provide to EXEL all data generated by BMS with respect to the studies undertaken by it; (ii) grant to Exelixis the license set forth in **Section 8.2(c)**; and (iii) transition over to EXEL any ongoing studies then being conducted by BMS (with EXEL to assume the cost therefore from and after the date that BMS transfers such studies). With the prior written agreement of BMS and EXEL, BMS may complete any of the ongoing studies described in the foregoing clause (iii) at EXEL's expense.

(e) [*]. For any compound arising out of a Provisional Collaboration Program that [*] (a "[*]"), if EXEL decides to [*] prior to [*] (whichever occurs first) for such [*], then [*]. During the [*], [*]. If [*] at or before the end of such [*] (or at such earlier time that [*]), then [*].

Nothing herein shall preclude [*], including with the goal of [*], and any such work shall not [*], unless otherwise agreed by BMS and EXEL in writing. Additionally, if BMS declines to exercise its Co-Development Option with respect to a Provisional Collaboration Program, then any [*] as the Provisional Collaboration Program [*] shall not [*].

3.9 Target Status List. Based on the applicable minutes from each JRC and JDC meeting, the respective Alliance Managers shall prepare a list that is substantially in the form of **Exhibit 3.9** and that shall reflect the status of each target that is active (or was at one time) within the Collaboration. Each target shall be labeled with one of the following: Screening Target (chosen-awaiting-screening); Screening Target (screen-in-progress); Rejected Screening Target; Lead Op Candidate; Lead Op Target; Rejected Lead Op Target; or Collaboration Target. The updated target list shall be attached to all JRC and JDC minutes with written confirmation provided in a timely manner by the Alliance Managers.

3.10 Research Term. The "**Research Term**" shall commence on the Original Effective Date and continue until the November 13, 2010. Following the end of the Research Term, EXEL has no obligation to conduct any work under any Screening Programs, Lead Op Programs, Provisional Collaboration Programs and Collaboration Programs (other than EXEL's responsibilities, as set forth in the remainder of this Agreement, with respect to Co-Developed Products and Backup Programs for Collaboration Targets), and all rights with respect to Lead Op Candidates, Lead Op Targets and Collaboration Compounds, other than Collaboration Compounds included in a Collaboration Program for which BMS has exercised its Co-Development Option under **Section 3.4**, and in any case subject to **Section 3.8(e)**, automatically and immediately revert to Exelixis.

3.11 Record of Discovery Efforts; Inspection. EXEL shall keep complete, true and accurate books of accounts and records for the purpose of determining the resources and funding that EXEL provides pursuant to **Section 3.1**. All such books, records and accounts shall be retained by EXEL for a period of [*] after the end of the period to which such books, records and accounts pertain or such longer period as may be required by applicable law. BMS shall have the right to have an independent certified public accountant, reasonably acceptable to EXEL, have access during normal business hours, and upon reasonable prior written notice, to examine only those records of EXEL as may be reasonably necessary to determine, with respect to any calendar year ending not more than [*] prior to BMS's request, EXEL's compliance with the requirements of **Section 3.1**. The foregoing right of review may be exercised only once per year and only once with respect to any given period. Results of any such examination shall be: (i) limited to information relating to the applicable Screening Program, Lead Op Program, Provisional Collaboration Program or Collaboration Program; (ii) made available to both BMS and EXEL; and (iii) subject to **Article 11**. In general, BMS shall bear the full cost of the performance of any such audit. However, if such audit discloses a [*] to the applicable Screening Program, Lead Op Program, Provisional Collaboration Program or Collaboration

Program, [*] (as determined by the auditor(s)), then EXEL shall bear the full cost of the performance of such audit. The results of such audit shall be final, absent manifest error.

4. DEVELOPMENT OF PRODUCTS

4.1 Global Development Plans.

(a) Scope. The Development of each Co-Developed Product shall be governed by a comprehensive, multi-year, worldwide plan (each, a **"Global Development Plan"**) covering the Development of such Product for use in the U.S., Canada, each of the Major European Countries and Europe as a whole, and, broken out on a region-by-region or country-by-country basis only to the extent BMS does so for its own internal oncology products, the remaining countries in the Co-Development Territory. Each Global Development Plan shall: (i) provide a planned Development program that is designed to generate the non-clinical, clinical and regulatory information required for submitting Drug Approval Applications and to obtain Regulatory Approvals for the relevant indications in the U.S.; (ii) provide a planned Development program that is designed to generate the non-clinical, clinical and regulatory information required for submitting Drug Approval Applications and to achieve Regulatory Approvals for the relevant indications in the Royalty Territory, (iii) indicate the Core Program [*], (iv) set forth those obligations assigned to each of BMS and EXEL with respect to the performance of the Development activities contemplated by such Global Development Plan; and (v) provide an expected forecast, based on the information available at the time, including patient estimates and cost forecasts (and methodology, if available).

(b) Initial Global Development Plan. As soon as practicable following designation of a Collaboration Program in accordance with **Article 3** (and consistent with BMS' internal [*] process), the JDC shall prepare, and submit to the JEC for its approval, a Global Development Plan, or an amendment to an existing Global Development Plan, that meets the requirements set forth in **Section 4.1(a)**.

(c) Updates to the Global Development Plan. Following approval by the JEC of an initial Global Development Plan pursuant to **Section 4.1(b),** any material update, amendment or modification to, or waiver of, any provisions of such Global Development Plan shall require the approval of the JEC.

4.2 Annual Development Plans.

(a) Scope. The Development of each Co-Developed Product in the Co-Development Territory for a given calendar year shall be governed by a detailed and specific worldwide Development plan (each, an **"Annual Development Plan"**) covering all material Development activities to be performed for such Co-Developed Product for such year, and budgets covering all Development Costs for those Development activities for such Co-Developed Product conducted in support of Regulatory Approvals in the Co-Development Territory. Each Annual Development Plan and Budget shall be proposed by the JDC for approval by the JEC. Each Annual Development Plan for a Co-Developed Product, and any modifications thereto, shall cover, and be consistent in all material respects with, all the

Development activities and budgets in the then-current Global Development Plan for such Co-Developed Product that are to be performed in that particular calendar year.

(b) Procedure. Within [*] after the date on which a Global Development Plan (or an amendment to an existing Global Development Plan, as the case may be) is first approved with respect to a particular Co-Developed Product, the JDC shall submit for approval by the JEC an Annual Development Plan for such Co-Developed Product, covering the activities contemplated by the Global Development Plan with respect thereto for the remainder of such calendar year and the next subsequent calendar year. Thereafter, the JDC shall submit on an annual basis an Annual Development Plan for such Co-Developed Product to the JEC for its review, comment, and approval. Each such submission shall be no later than [*] calendar year immediately preceding the year covered by such Annual Development Plan, with a goal of having the Annual Development Plan approved, and any disputes resolved, by [*] of such immediately preceding calendar year.

4.3 Lead Development Party. It is expected that BMS would act as the lead development Party for each Product, although the Annual Development Plan may specify that outside contractors (and/or, in the case of Co-Promotion Products, EXEL) will have responsibility to direct and conduct any additional pre-clinical activities and applicable clinical trials in any country. The JDC shall make such determinations in the best interests of the Collaboration. In the event EXEL files an IND on a Provisional Collaboration Program's Lead Compound, and BMS exercises its Co-Development Option for such Provisional Collaboration Program pursuant to **Section 3.4(b)(iii)**, then any Phase I Clinical Study agreements that were entered into between EXEL and a clinical site before the effective date of BMS' exercise of its Co-Development Option and that specifically relate to such Lead Compound, shall become part of the initial Global Development Plan and initial Annual Development Plan.

4.4 Diligence. Each of BMS and EXEL shall use Diligent Efforts to carry out its responsibilities under the Global Development Plan and the then-applicable Annual Development Plan.

4.5 Limitations on Development. After the Original Effective Date and during the term of this Agreement, neither BMS nor EXEL nor any of its Affiliates shall, directly or through any Third Party, sponsor, conduct or cause to be conducted, otherwise assist in, supply any Product for use in connection with, or otherwise fund, any clinical trial or clinical study of any Product outside of the Global Development Plan or any Annual Development Plan, without the prior written consent of such other Party.

4.6 Development Costs.

(a) In general. Subject to **Section 4.6(e)**, any Development Costs incurred by either BMS or EXEL shall be borne by the Parties as follows:

(i) BMS shall bear [*] percent ([*]%) of all Development Costs, and EXEL shall bear [*] ([*]%) of all Development Costs; and,

(ii) for clarity, all costs relating to Development activities undertaken solely for the purposes of seeking Regulatory Approval(s) in [*], BMS shall bear one hundred percent (100%) of such costs.

(b) FTE Records and Calculations; Adjustments to FTE Rate. Each of BMS and EXEL shall record and account for its FTE effort for the Development of each Product to the extent that such FTE efforts are included in Development Costs or Allowable Expenses that are, or may in the future be, shared under this Agreement, and shall report such FTE effort to the JDC on a quarterly basis, in each case in a manner that allocates such FTE effort to the extent practicable to each applicable indication. Except to the extent provided herein, each of BMS and EXEL shall calculate and maintain records of FTE effort incurred by it in the same manner as used for other products developed by such Party. The JFC shall facilitate any reporting hereunder. The FTE rate shall initially be [*] for FTEs associated with activities prior to IND submission with respect to a Collaboration Program and [*] for all other FTEs and shall be adjusted annually, with each annual adjustment effective as of January 1 of each Year, with the first such annual adjustment to be made as of January 1, 2008, by mutual agreement of the JRC or the JFC.

(c) Other Expenses. Any expenses incurred by BMS or EXEL for Development activities that do not fall within the definitions of Development Costs shall be borne solely by such Party unless the JDC determines otherwise.

(d) Reports. Each of BMS and EXEL shall report to the other Party within [*] after the end of each quarter with regard to the Development Costs incurred by it during such quarter. Such report shall specify in reasonable detail (as agreed by the JFC) all expenses included in such Development Costs during such quarter and shall be accompanied by invoices, and/or such other appropriate supporting documentation as may be required by the JFC. Within [*] after the end of each of the first three quarters and, for the last quarter in a year, within [*] after the end of such quarter, the Party that has incurred less than its share of such Development Costs shall make a reconciling payment to the other Party to achieve the appropriate allocation of Development Costs provided for in **Section 4.6(a)**. Each of BMS and EXEL shall report to the other Development Costs incurred by it for comparison against the Annual Development Plan, on a line item basis (e.g., budgeted FTE costs and actual out-of-pocket cost). BMS and EXEL shall seek to resolve any questions related to such accounting statements within [*] following receipt by each Party of the other Party's report hereunder. The JFC shall facilitate the reporting of Development Costs hereunder and the resolution of any questions concerning such reports. Each of BMS and EXEL shall have the right at reasonable times and upon reasonable prior notice to audit the other Party's records as provided in **Section 9.19** to confirm the accuracy of the other Party's costs and reports with respect to Development Costs that are shared under this Agreement.

(e) Exelixis' Development Cost Obligations. If the Development Costs in a particular calendar quarter cause EXEL's' aggregate share of the Development Costs with respect to a particular Collaboration Program to exceed [*]), then EXEL may elect to defer payment of its share of such Development Costs that are in excess of [*] with respect to such Collaboration Program in accordance with the remainder of this **Section 4.6(e)**. Such election

may be made in writing anytime during the [*] following the end of such calendar quarter. If EXEL does not make such election, then EXEL would continue to pay its share of the Development Costs with respect to such Collaboration Program in accordance with **Section 4.6(a)**. If EXEL does make such election, then EXEL shall have no obligation to pay its share of such Development Costs, to the extent such share exceeds [*] (such excess amount, the **"Deferred Development Costs"**) until [*] first Product arising from such Collaboration Program. Until such [*], BMS shall bear [*] Development Costs with respect to such Collaboration Program, and after such Regulatory Approval, EXEL shall make a payment to BMS in an amount equal to [*] Deferred Development Costs (the **"Development Cost Mechanism Amount"**), which payment shall be paid by EXEL as an offset: (i) against Exelixis' share of the [*] from such Product, up to a maximum of [*] of such [*] in any given quarter (in the case where EXEL has not exercised its Product Opt-Out for such Product); or (ii) [*] with respect to such Product, up to a maximum of [*] in any given quarter. Once the Development Cost Mechanism Amount is fully paid to BMS, Exelixis shall receive [*] consistent with **Article 9**. For clarity, EXEL will continue to fund its share of Development Costs for indications outside of the Core Program with respect to a Collaboration Program for which EXEL has not opted out pursuant to **Section 4.7**.

(f) Records. Each of BMS and EXEL shall keep detailed records of the Development Costs it incurs, including all supporting documentation for such expenses. Each of BMS and EXEL shall keep such records for at least [*] after the date that such expense was incurred.

4.7 Exelixis' Opt-Out Rights.

(a) Entire Product. Within [*] after the completion of any Phase I Clinical Trial, Phase II Clinical Trial or Phase III Clinical Trial for a particular Co-Promotion Product, the Party primarily responsible for the conduct of such clinical trial shall prepare and deliver to the other Party a data package detailing the clinical outcome of such trial. EXEL shall have the right to cease its involvement in the Development and Commercialization of such Product (a **"Product Opt-Out"**), upon written notice to BMS within [*] after the delivery of such data package. Commencing on the date that EXEL provides BMS with written notice of a Product Opt-Out, EXEL shall have no further responsibility for conducting new activities or funding new Development or Commercialization activities with respect to the applicable Product, and shall complete any ongoing activities with respect to such Product subject to reimbursement by BMS of one hundred percent (100%) of any costs associated with such continuing activities unless such work is transferred to BMS at the discretion of the JDC.

(b) [*]. Before [*], [*] the right to [*] the Development and Commercialization of such Product [*]. After [*], EXEL shall have the right to [*] as follows. Within [*] after [*], for a Product [*] for such Product (as specified in the Global Development Plan for such Product), BMS shall prepare and deliver to EXEL: (i) [*]; or (ii) [*]. EXEL shall [*] BMS within [*] after [*] (as appropriate). For purposes of this **Section 4.7(b)**, [*] shall not include [*]. Notwithstanding the foregoing, if EXEL exercises its Co-Promotion Option with respect to a Product, it will be required to [*]. Commencing the date that [*], EXEL shall [*],

and shall [*] thereto. For clarity, EXEL may [*], and in the event that EXEL decides to [*], it [*].

(c) Exelixis Opt-Out of all SMO Products. BMS and EXEL agree that EXEL hereby ceases its involvement in the Development and Commercialization of all Products containing or comprising Collaboration Compounds directed against the SMO target, including without limitation the compound known as XL139 (such Collaboration Compounds, the "**SMO Products**") pursuant to a Product Opt-Out; therefore, the SMO Products are no longer Co-Developed Products and are now Royalty-Bearing Products. As of November 13, 2010, EXEL shall have no further responsibility for conducting new activities or funding new Development or Commercialization activities with respect to SMO Products. Furthermore, as of November 13, 2010, there are no ongoing EXEL activities with respect to SMO Products.

(d) Economics Associated with the Opt-Out of the SMO Products. In consideration for EXEL's opt-out of SMO Products, BMS agrees to the following:

(i) BMS shall pay EXEL a one-time fee of twenty million dollars ($20,000,000) within [*] after November 13, 2010. Such fee shall be noncreditable and nonrefundable.

(ii) BMS' obligation under Section 9.5(a) to pay EPC $20 million on the [*] is hereby cancelled.

(iii) BMS shall pay royalties to EPC on Net Sales (by BMS or its Affiliates or sublicensees) in the U.S. of Royalty-Bearing Products containing or comprising SMO Products at the royalty rates described in Section 9.6(b)(i), i.e., rates of [*]%, [*]% and [*]%.

5. REGULATORY

5.1 Regulatory Lead Party. BMS shall be the lead Party for all regulatory activities regarding a Product. However, EXEL shall have a participatory role in all [*] that [*]. All [*] would be made and implemented after conferring with the JDC. [*] Regulatory Authorities as well as [*] will be [*] through the JDC. BMS shall be the lead Party for worldwide pharmacovigilance. Notwithstanding any other provision of this Agreement, in the event any dispute with respect to the content of any regulatory filing or dossier, pharmacovigilance reports, patient risk management strategies and plans, Core Data Sheet, Product labeling, safety, and the decision to file any DAA is not resolved by the JEC, [*] with respect to such matters at the JEC [*] referring such dispute to the Designated Officers or submitting such dispute to any other dispute resolution procedures provided for in **Section 15.1**.

5.2 Ownership of Regulatory Dossier. BMS will own all regulatory filings for Products in order to facilitate BMS' interactions with Regulatory Authorities. For any Collaboration Program for which EXEL filed the IND for such Collaboration Program's Lead Compound and for which BMS exercised its Co-Development Option pursuant to **Section 3.4(b)(iii)**, EXEL hereby agrees to transfer and assign to BMS, and BMS hereby agrees to

receive from EXEL, all of EXEL's right, title and interest to such IND. Additionally, EXEL shall notify the applicable Regulatory Authorities in writing that it is transferring such IND for the applicable Lead Compound to BMS, and BMS shall notify the applicable Regulatory Authorities in writing that it is accepting such IND and all responsibilities associated therewith, including without limitation, the responsibility for reporting adverse events.

5.3 Regulatory Matters Relating to Co-Promotion Products in the United States. With respect to Co-Promotion Products in the United States:

(a) Regulatory Filings. Through their members on the JDC, EXEL and BMS shall cooperate in the drafting and review of all submissions (including any supplements or modifications thereto, but excluding routine adverse event filings (i.e., not relating to serious adverse events as defined by applicable law) to the FDA (including the preparation of an electronic submission of a Drug Approval Application to the FDA, with BMS having primary responsibility for preparing the electronic dossier for each indication). Each of BMS and EXEL shall have a right to review and approve (through its members of the appropriate Committee), the content and subject matter of, and strategy for, each Drug Approval Application to be filed in the United States, all correspondence submitted to the FDA related to clinical trial design, all proposed Product labeling (including the final FDA-approved labeling) and post-Regulatory Approval labeling changes. Each of BMS and EXEL shall promptly provide the other with copies of all written or electronic communications received by it from, or sent by it to, the FDA with respect to obtaining and maintaining, Regulatory Approvals for a Product in the United States (it being understood that routine adverse event filings (i.e., not relating to serious adverse events as defined by applicable law) shall not fall within the meaning of maintenance) and copies of all contact reports produced by such Party. BMS shall be the [*] point of contact with any Regulatory Authorities (except as provided in **Section [*]**).

(b) Notice of Regulatory Filing Requirements. BMS shall provide to EXEL, within [*] of discovery by BMS, notice of any event with respect to any Co-Promotion Product that triggers any FDA filing requirement that is subject to a deadline imposed by applicable law of less than twenty-one (21) days after the discovery of such an event. The co-chairpersons of the JDC shall discuss in good faith and on a timely basis determine the most effective and expeditious means of responding to such FDA filing requirement.

(c) Notice of Changed Regulatory Requirements. BMS shall provide notice to EXEL of any additional requirements which the FDA may impose with respect to obtaining or maintaining Regulatory Approval for a Co-Promotion Product (including additional clinical trials), and of all FDA inquiries with respect to a Co-Promotion Product requiring a response within [*] of receipt thereof by BMS.

(d) Regulatory Meetings. BMS shall provide EXEL with notice of all meetings, conferences, and discussions (including FDA advisory committee meetings and any other meeting of experts convened by the FDA concerning any topic relevant to a Co-Promotion Product, as well as Product labeling and post-Regulatory Approval Product labeling discussions with the FDA) scheduled with the FDA concerning any pending Drug Approval Application or

any material regulatory matters relating to a Co-Promotion Product within [*] after BMS receives notice of the scheduling of such meeting, conference, or discussion (or within such shorter period as may be necessary in order to give EXEL a reasonable opportunity to participate in such meetings, conferences and discussions). EXEL shall be entitled to be present at, and to participate in, all such meetings, conferences or discussions. EXEL's and BMS' respective members of the JDC shall use reasonable efforts to agree in advance on the scheduling of such meetings and on the objectives to be accomplished at such meetings, conferences, and discussions and the agenda for the meetings, conferences, and discussions with the FDA. BMS shall also include EXEL in any unscheduled, ad-hoc meetings, conferences and discussions with the FDA concerning any pending IND, Drug Approval Application or any material regulatory matters relating to a Product.

(e) Regulatory Data. Each of BMS and EXEL shall provide to the other Party on a timely basis copies of all material pre-clinical and clinical data compiled in support of a Drug Approval Application or other regulatory filings in the United States with respect to each Product (via electronic copies of such data in a form that may be analyzed and manipulated by the other Party).

(f) Common Database. If deemed appropriate by the JDC, BMS and EXEL will establish a common database to be controlled, maintained and administered by BMS for the receipt, investigation, recordation, communication, and exchange (as between BMS and EXEL) of data arising from clinical trials for Products. BMS and EXEL shall agree upon guidelines and procedures for such common database that shall be in accordance with, and enable BMS and EXEL and their Affiliates to fulfill their reporting obligations under applicable law. Furthermore, such guidelines and procedures shall be consistent with relevant International Council for Harmonisation ("**ICH**") guidelines. BMS' and EXEL's costs incurred in connection with receiving, investigating, recording, reviewing, communicating, and exchanging such efficacy data shall be included as an element of Development Costs or as Allowable Expenses (to the extent specifically identifiable to or reasonably allocable to the Development or Commercialization of Products for the United States), calculated on a FTE cost and direct out-of-pocket cost basis.

(g) Rights of Reference. Each of BMS and EXEL shall have the right to cross reference, file or incorporate by reference any regulatory filing or drug master file (as defined in the Code of Federal Regulations) (and any data contained therein) for any Product, or any component thereof, made in any country in the Territory (including all Approvals) in order to support regulatory filings that such Party is permitted to make under this Agreement for any Product in the United States and to enable either Party to fulfill its obligations under this Agreement to Develop or manufacture (anywhere in the world) any such Product for use in the United States or Commercialize any such Product in the United States. Each of BMS and EXEL shall support the other, as may be reasonably necessary, in obtaining Regulatory Approvals for each Product in the United States, including providing necessary documents, or other materials required by applicable law to obtain Regulatory Approvals, in each case in accordance with the terms and conditions of this Agreement.

5.4 Recalls in the United States. Any decision to initiate a recall or withdrawal of a Co-Developed or Co-Promotion Product in the United States shall be [*], [*]; provided, however, that if, as a result of patient safety concerns, there is not [*], and in any event before [*], BMS and EXEL shall promptly and in good faith discuss the reasons therefor and the strategy for implementing any such recall or withdrawal. The costs of any such recall or withdrawal relating to: (i) the Development of a Co-Developed Product for an indication prior to the approval of the Drug Approval Application (or compendia listing, as the case may be) for such indication (other than with respect to a recall related to a [*]); or (ii) the Commercialization of a Co-Promotion Product shall each be included in Regulatory Expenses. The costs of any such recall or withdrawal relating to the Development of a Co-Developed Product for a [*] or the Commercialization of a Royalty-Bearing Product, each shall be borne solely by BMS and shall be excluded from Development Costs and Allowable Expenses. Notwithstanding the preceding two (2) sentences, to the extent that any such recall or withdrawal is attributable to the negligence of a Party, such Party shall bear such costs, and such costs shall be excluded from Development Costs and Allowable Expenses. Under no circumstances shall either BMS or EXEL unreasonably object to a recall or withdrawal requested by the other Party, and with respect to Co-Developed and Co-Promotion Products, neither BMS nor EXEL shall have any right to object to a recall or withdrawal requested by the other Party for failure of a Product to meet the Specifications, for material safety concerns, for the manufacture of such Product in a manner that does not comply with applicable law or as requested by Regulatory Authorities. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from EXEL as reasonably requested.

5.5 Regulatory Matters Relating to Royalty-Bearing Products in the United States and Products in the Royalty Territory. With respect to Royalty-Bearing Products in the United States and Products in the Royalty Territory:

(a) Preparation of Regulatory Filings. BMS shall prepare and draft all filings (including any supplements or modifications thereto and including the preparation of any electronic submission of a Drug Approval Application) to Regulatory Authorities in each such country. BMS shall keep EXEL informed with respect to, and shall promptly provide to EXEL copies of, all material written or electronic communications received by it from, or sent by it to: (a) a Regulatory Authority in the U.S., Japan, a Major European Country or for the EU; and (b) a Regulatory Authority outside the Major European Countries to the extent that the substance of such communications: (i) vary materially from what BMS has already disclosed to EXEL with respect to the U.S., Japan, a Major European Country or for the EU under this **Section 5.4(a)**; and (ii) [*].

(b) Pricing and Reimbursement Approvals. [*] in all pricing and reimbursement approval proceedings relating to each Product in the Royalty Territory.

(c) Rights of Reference. BMS shall have the right to cross reference, file or incorporate by reference any regulatory filing or drug master file (as defined in the Code of Federal Regulations) (and any data contained therein) for any Product made in any country in the Territory (including all Approvals) in order to support regulatory filings that BMS is permitted to

make under this Agreement for any such Product in the Royalty Territory and to enable BMS to fulfill its obligations under this Agreement to Develop, Manufacture (anywhere in the world), or Commercialize any such Product for use in the Royalty Territory.

5.6 Recalls in the Royalty Territory. Any decision to initiate a recall or withdrawal of a Product in the Royalty Territory shall be made by BMS. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from the non-lead Party as reasonably requested by BMS. The costs of any such recall or withdrawal in the Royalty Territory shall be borne solely by BMS, except to the extent that the recall or withdrawal is attributable to: (a) the negligence of EXEL, in which event EXEL shall bear such costs; or (b) the negligence of both BMS and EXEL, in which event each Party shall bear such costs to the extent of its respective responsibility, and in either case ((a) or (b)), such costs shall be excluded from Development Costs and Allowable Expenses.

5.7 Pharmacovigilance Agreement. Subject to the terms of this Agreement, and within [*] after the [*] with respect to a Collaboration Program, BMS and EXEL (under the guidance of their respective Pharmacovigilance Departments, or equivalent thereof) shall define and finalize the responsibilities BMS and EXEL shall employ to protect patients and promote their well-being in a written Agreement (hereafter referred to as the "**Pharmacovigilance Agreement**"). These responsibilities shall include mutually acceptable guidelines and procedures for the receipt, investigation, recordation, communication, and exchange (as between BMS and EXEL) of adverse event reports, pregnancy reports, and any other information concerning the safety of any Product. Such guidelines and procedures shall be in accordance with, and enable BMS and EXEL and their Affiliates to fulfill, local and national regulatory reporting obligations to government authorities. Furthermore, such agreed procedures shall be consistent with relevant International Council for Harmonisation (ICH) guidelines, except where said guidelines may conflict with existing local regulatory safety reporting requirements, in which case local reporting requirements shall prevail. The Pharmacovigilance Agreement will provide for a worldwide safety database to be maintained by BMS. Each of BMS and EXEL hereby agrees to comply with its respective obligations under such Pharmacovigilance Agreement (as BMS and EXEL may agree to modify it from time to time) and to cause its Affiliates and Sublicensees to comply with such obligations.

6. COMMERCIALIZATION

6.1 Overview. As between the BMS and EXEL, BMS shall be the lead Party for all Commercialization activities throughout the world, and BMS shall book sales of all Products in all countries.

6.2 Commercialization Plans.

(a) Commercialization Plans. For each Product, the JCC shall be responsible for creating a global strategy for the Commercialization of each Product pursuant to a comprehensive, rolling, three-year commercialization plan (the **"Global Commercialization Strategy"**), along with creating a comprehensive, rolling, three-year commercialization plan

setting forth the anticipated Commercialization activities in the U.S. (including without limitation market research, launch plans, product positioning, and detailing activities) and timelines for such activities (the **"U.S. Commercialization Plan"**). The U.S. Commercialization Plan shall, in the case of Co-Promotion Products, allocate responsibility for carrying out such activities between BMS and Exelixis, and shall include a detailed and specific budget for all such activities. Each U.S. Commercialization Plan shall be consistent with the then-current Global Commercialization Strategy and the Co-Promotion Agreement, and the U.S. Commercialization Plan may be included as a part of the Global Commercialization Strategy.

(b) No later than [*] after commencement of the [*] for a particular Product, and on an annual basis thereafter, the JCC shall prepare, and submit to the JEC for its approval, a U.S. Commercialization Plan that meets the requirements of **Section 6.2(a)**. Each updated U.S. Commercialization Plan for a particular Product, once approved by the JEC, shall become effective and supersede the previous U.S. Commercialization Plan for such Product as of the date of such approval or at such other time decided by the JEC. The JEC shall not approve a U.S. Commercialization Plan that is inconsistent with or contradicts the terms of this Agreement or the Co-Promotion Agreement without the written consent of BMS and EXEL, and in the event of any inconsistency between the U.S. Commercialization Plan, on the one hand, and this Agreement or the Co-Promotion Agreement, on the other hand, the terms of this Agreement or the Co-Promotion Agreement, as the case may be, shall prevail.

6.3 Diligent Commercialization. BMS (and EXEL with respect to Co-Promotion Products in the U.S.) shall use Diligent Efforts to Commercialize each Product in each country in the Major Territory for each indication for which it receives Regulatory Approval.

6.4 Option to Co-Promote.

(a) In General. BMS hereby grants to EXEL the first and exclusive option (a **"Co-Promotion Option"**) to co-promote each Co-Developed Product in the U.S. in accordance with a co-promotion agreement (a **"Co-Promotion Agreement"**) to be negotiated in good faith by the Parties following EXEL's exercise of the Co-Promotion Option with respect to a particular Co-Developed Product.

(b) Exercise. BMS shall give EXEL prompt written notice (the **"Co-Promotion Notice"**) of the [*] for each Co-Developed Product, and shall provide with such notice: (i) the anticipated date of Launch of the applicable Product in the U.S.; and (ii) any material updates to the budget for the then-current U.S. Commercialization Plan. EXEL may exercise its Co-Promotion Option with respect to such Co-Developed Product by written notice to BMS no later than [*] after EXEL receives a Co-Promotion Notice. If EXEL timely exercises its Co-Promotion Option with respect to such Co-Developed Product, then such Co-Developed Product shall become a Co-Promotion Product, and BMS and EXEL shall share Operating Profits (or Losses) in accordance with **Sections 6.5 and 9.3**. If EXEL does not timely exercise its Co-Promotion Option with respect to such Co-Developed Product, then such Co-Developed Product shall become a Royalty-Bearing Product. EXEL's exercise or failure to exercise its Co-Promotion Option with respect to a particular Co-Developed Product shall not have any effect on its Co-Promotion Options for other Co-Developed Products.

(c) Co-Promotion Agreement. The Co-Promotion Agreement will include the specific terms set forth in **Exhibit 6.4(c)**, along with additional terms and conditions customary in the industry for an agreement of this type. In the event of any inconsistency between the terms of this Agreement and the terms of the Co-Promotion Agreement, the terms of this Agreement shall prevail.

6.5 Commercialization Costs. All costs and expenses incurred by BMS and EXEL in connection with the Commercialization of Co-Promotion Products in the U.S. shall be included in the calculation of Operating Profit (or Losses), and shall be allocated between BMS and EXEL, in accordance with **Sections 9.3 and 9.4**. BMS shall bear all costs and expenses incurred by the Parties in connection with the Commercialization of: (a) all Products in the Royalty Territory; and (b) all Royalty-Bearing Products in the U.S.

6.6 Commercialization Reports. BMS shall keep the JCC fully informed regarding the progress and results of its Commercialization activities and those of its Affiliates, sublicensees, and Third Party contractors in the Royalty Territory. On a [*] basis, BMS shall provide the JCC with a written report that summarizes, in reasonable detail, all Commercialization activities performed during the preceding [*] period, and compares such performance with the goals and timelines set forth in the Global Commercialization Strategy and (as appropriate) the U.S. Commercialization Plan. BMS shall also promptly provide any additional Information regarding the Commercialization of Products reasonably requested by the JCC or by EXEL. For clarity, each of BMS and EXEL will provide [*] updates to the JCC with respect to its Commercialization activities relating to Co-Promotion Products in the U.S.

6.7 Standards of Conduct. BMS shall perform, or shall ensure that its Affiliates, sublicensees and Third Party contractors perform, all Commercialization activities in a good scientific and ethical business manner and in compliance with applicable laws, rules and regulations.

6.8 Sales Force Training. BMS shall develop and conduct training programs specifically relating to the Products for its sales representatives. BMS agrees to utilize such training programs on an ongoing basis to assure a consistent, focused promotional strategy.

7. MANUFACTURING

7.1 Research Supply. EXEL shall Manufacture, or arrange with Third Parties for the Manufacture of, Lead Compounds and Program Backups for the purpose of EXEL's research and Development activities to be performed under **Article 3** prior to BMS' exercise of its Co-Development Option with respect to such compounds and for BMS' research activities under **Section 3.4(a)**.

7.2 Clinical and Commercial Supply. After BMS' selection of a Collaboration Program and prior to the completion of EXEL's transfer under **Section 7.3** of the Manufacturing technology for the Collaboration Compounds in such Collaboration Program, EXEL shall Manufacture, or arrange with Third Parties for the Manufacture of, the Lead Compound in such Collaboration Program for the purpose of transitional supply of Lead Compound for the first

Phase I Clinical Trial of such Lead Compound. As part of such Phase I Clinical Trial supply, EXEL will enable BMS' regulatory function to test and release all supplies of such Lead Compound for such Phase I Clinical Trial (if applicable). The costs and expenses incurred by EXEL in carrying out such Manufacturing shall be either: (a) treated as Development Expenses in the event that such expenses relate to a Co-Developed Product; or (b) reimbursed one hundred percent (100%) by BMS in the in the event that such expenses relate to a Royalty-Bearing Product. After the completion of EXEL's transfer under **Section 7.3** of the Manufacturing technology for the Collaboration Compounds in such Collaboration Program, BMS shall Manufacture, or arrange with Third Parties for the Manufacture of, Collaboration Compounds and Products (in bulk and finished form) for use in Development and for commercial sale.

7.3 Transfer of Manufacturing Right.

(a) Promptly following [*], EXEL shall transfer the Manufacturing technology for the Collaboration Compounds in such Collaboration Program to either (i) BMS or (ii) a Third Party manufacturer reasonably acceptable to EXEL, which election shall be made by BMS. As soon as is practicable after its receipt of such request, EXEL shall transfer to BMS or such Third Party manufacturer, as the case may be, all Information Controlled by Exelixis that is related to the Manufacturing of such Collaboration Compounds and is reasonably [*] to enable BMS or such Third Party manufacturer (as appropriate) to Manufacture such Collaboration Compounds. The costs and expenses incurred by EXEL in carrying out such transfer shall be either: (i) treated as Development Expenses in the event that such expenses relate to a Co-Developed Product; or (ii) reimbursed one hundred percent (100%) by BMS in the in the event that such expenses relate to a Royalty-Bearing Product.

(b) BMS and/or its Third Party manufacturer shall use any Information transferred pursuant to **Section 7.3(a)** solely for the purpose of Manufacturing Products containing such Collaboration Compounds for use by EXEL or BMS under this Agreement, and for no other purpose.

(c) BMS acknowledges and agrees that EXEL may condition its agreement to transfer of any Manufacturing technology or Information to a Third Party manufacturer on the execution of a confidentiality agreement between such Third Party manufacturer and EXEL that contains terms substantially equivalent to those of **Article 11** of this Agreement.

8. LICENSES; EXCLUSIVITY

8.1 Licenses to BMS. Subject to the terms of this Agreement:

(a) Research. EXEL hereby grants to BMS a non-exclusive, worldwide, royalty-free license (without the right to sublicense except with prior written consent of Exelixis) under the Exelixis Licensed Know-How solely to [*] in accordance [*]. EPC hereby grants to BMS a non-exclusive, worldwide, royalty-free license (without the right to sublicense except with prior written consent of Exelixis) under the Exelixis Licensed Patents solely to [*] in accordance [*].

(b) Clinical Development and Commercialization.

(i) EXEL hereby grants to BMS a co-exclusive, revenue-bearing license under the Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import Co-Promotion Products in the U.S. EPC hereby grants to BMS a co-exclusive, revenue-bearing license under the Exelixis Licensed Patents to clinically develop, make, use, sell, offer for sale and import Co-Promotion Products in the U.S.

(ii) EXEL hereby grants to BMS an exclusive, royalty-bearing license under the Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import (A) Royalty-Bearing Products in the U.S. and (B) Products in the Royalty Territory. EPC hereby grants to BMS an exclusive, royalty-bearing license under the Exelixis Licensed Patents to clinically develop, make, use, sell, offer for sale and import (A) Royalty-Bearing Products in the U.S. and (B) Products in the Royalty Territory.

(c) Sublicensing. The licenses granted to BMS in **Sections 8.1(a)** and **8.1(b)(i)** are, subject to **Section 8.5(b)**, sublicensable solely with the prior written consent of Exelixis, which consent shall not be unreasonably withheld. The license granted to BMS in **Section 8.1(b)(ii)** shall be freely sublicensable by BMS.

(d) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Licensed Know-How and Exelixis Patents except those expressly granted to BMS on an exclusive basis under the terms of this Agreement. In addition, notwithstanding the exclusive licenses granted to BMS pursuant to **Section 8.1(b)**, Exelixis retains the right under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to make, have made, use, and test Collaboration Compounds solely for internal research purposes. To the extent any such Exelixis Licensed Patents are owned by EPC, EPC hereby grants EXEL an exclusive, fully-paid, royalty free license, with the right to grant sublicenses, under the Exelixis Licensed Patents to perform and have performed the research tasks assigned to EXEL pursuant to the Research Plan.

8.2 Licenses to Exelixis.

(a) Research. Subject to the terms of this Agreement, BMS hereby grants to Exelixis a non-exclusive, worldwide, royalty-free license under the BMS Licensed Know-How and BMS Patents, solely to perform its obligations with respect to Screening Programs, Lead Op Programs and Collaboration Programs, as contemplated by **Article 3**.

(b) Clinical Development and Commercialization. Subject to the terms of this Agreement, BMS hereby grants to Exelixis a co-exclusive, revenue-bearing license under the BMS Licensed Patents and the BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import Co-Promotion Products in the U.S.

(c) Other Licenses. In the event that BMS declines to exercise its Co-Development Option with respect to a Collaboration Program that was a Provisional Collaboration Program, then BMS shall grant to Exelixis:

(i) a non-exclusive, worldwide, fully paid-up, sublicensable license under all Patents and Information that: (A) [*], in each case, to use and practice such Patents and Information for any purpose; and

(ii) a worldwide, fully paid-up, sublicensable license under all Patents and Information that: (A) [*] to continue to develop, make, use, sell, offer for sale and import Products comprising the applicable Collaboration Compound(s). The license described in this **Section 8.2(c)(ii)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Collaboration Compound(s), and shall be limited to the use and practice of such Patents and Information for the development, manufacture, use, sale, offer for sale or import of the applicable Collaboration Compound(s).

(d) Sublicensing. The licenses granted to Exelixis in **Sections 8.2(a)** and **8.2(b)** are, subject to **Section 8.5(b)**, sublicensable solely with the prior written consent of BMS, which consent shall not be unreasonably withheld. The license granted to Exelixis in **Section 8.2(c)(i)** shall be freely sublicensable solely in connection with the development, manufacture, use, sale, offer for sale or import of a pharmaceutical product discovered or created by Exelixis, and the license granted to Exelixis in **Section 8.2(c)(ii)** shall be freely sublicensable solely in connection with the development, manufacture, use, sale, offer for sale or import of the applicable Collaboration Compound.

(e) BMS Retained Rights. BMS retains all rights to use the BMS Licensed Know-How and BMS Patents except those expressly granted to Exelixis on an exclusive basis under the terms of this Agreement.

8.3 Mutual Covenants.

(a) BMS hereby covenants that BMS shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Licensed Know-How or Exelixis Licensed Patents for a purpose other than that expressly permitted in **Section 8.1**.

(b) Exelixis hereby covenants that Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any BMS Licensed Know-How or BMS Patents for a purpose other than that expressly permitted in **Section 8.2**.

8.4 No Additional Licenses. Except as expressly provided in **Sections 8.1, 8.2**, and **Article 12**, nothing in this Agreement grants either Party any right, title or interest in and to the intellectual property rights of another Party (either expressly or by implication or estoppel).

8.5 Sublicensing.

(a) In General. Each Party shall provide the other Parties with the name of each permitted sublicensee of its rights under this **Article 8** and a copy of the applicable sublicense agreement; provided that each Party may redact confidential or proprietary terms from such copy, including financial terms. The sublicensing Party shall remain responsible for each permitted sublicensee's compliance with the applicable terms and conditions of this Agreement.

(b) Right of First Refusal for Sublicense of Co-Promotion Rights. During the Term, should Exelixis decide to sublicense its rights under **Section 8.2(b)** to any Third Party, or should BMS decide to sublicense its rights under **Section 8.1(b)** to any Third Party, then the Party desiring to grant such sublicense (the "**Sublicensing Party**") shall promptly notify the other Party (the "**Other Party**") in writing. The Other Party shall have a first and exclusive right of negotiation to obtain from the Sublicensing Party such sublicense on commercially reasonable terms. If the Other Party exercises this right by so notifying the Sublicensing Party in writing within [*] receipt of the Sublicensing Party's notice, the Parties shall negotiate in good faith for [*] (the **"Negotiation Period"**) from the date the Sublicensing Party receives such notice from the Other Party to arrive at commercially reasonable terms (including any applicable royalty rate or other consideration) of an agreement for such a sublicense. If mutual agreement is not reached during the Negotiation Period, then the Sublicensing Party shall be free to pursue a Third Party sublicensee, subject to **Section 8.2(d)**; *provided*, *however*, that the Sublicensing Party may not grant a sublicense to such Third Party on terms more favorable to such Third Party (taking into consideration the overall aggregate of economic factors) than those which the Sublicensing Party last offered to the Other Party; and provided further that in the event that no such sublicense to a Third Party occurs for a period of [*] subsequent to the expiration of the Negotiation Period described above, then the terms of this **Section 8.5(b)** shall once again apply to any proposed sublicense by the Sublicensing Party (i.e., as if the Negotiation Period had never occurred).

8.6 Exclusivity. The Collaboration will be exclusive with respect to the research, development, manufacture, and commercialization of [*] that are intended to [*] the targets that are part of the Collaboration, as described below.

(a) Screening Targets. Following the designation of a target as a Screening Target and until such time as such Screening Target becomes a Rejected Screening Target (in which case the terms of **Section 8.6(b)** shall apply) or a Lead Op Candidate (in which case the terms of **Section 8.6(c)** shall apply), [*] conduct (directly or indirectly, and either with or without a *bona fide* collaborator), [*] such Screening Target.

(b) Rejected Screening Targets. [*] conduct (directly or indirectly, and either with or without a *bona fide* collaborator) programs outside the scope of this Collaboration to identify, optimize, develop and commercialize compounds that [*] Rejected Screening Target [*], except as follows. If: (i) [*], then [*] the Collaboration, directly or indirectly and either with or without a *bona fide* collaborator, in programs: (A) that are intended to research, develop and/or commercialize compounds that [*]; or (B) where such program's compounds [*], in either case ((A) or (B)) [*] Rejected Screening Target.

(c) Lead Op Candidates. Subsequent to the designation of a target as a Lead Op Candidate and until such time as such Lead Op Candidate becomes a [*] (in which case the terms of **Section 8.6(d)** shall apply) or a Rejected Lead Op Candidate (in which case the terms of **Section 8.6(e)** shall apply), [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs: (A) that are intended to identify, optimize, develop and commercialize compounds that [*] such Lead Op Candidate; or

(B) (i) [*] as such Lead Op Candidate [*], and (ii) [*] such program's compounds [*] the same Identified Target(s) as such Lead Op Candidate [*].

(d) Lead Op Targets. Following the designation of a Lead Op Program's Identified Target(s) and until such time as such Identified Target(s) become Collaboration Target(s) (in which case the terms of **Section 8.6(f)** shall apply), [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs: (i) that are intended to identify, optimize, develop and commercialize compounds that [*]; or (ii) (I) [*] Lead Op Target [*], and (II) [*] such program's compounds [*] Lead Op Target [*].

(e) Rejected Lead Op Targets. Each of BMS and EXEL shall be free to conduct (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration programs to identify, optimize, develop and commercialize compounds that [*] a Rejected Lead Op Target without any further obligation to such other Party, except as follows. If: (i) [*] the Collaboration (directly or indirectly, and either with or without a *bona fide* collaborator), in any programs: (A) that are intended to research, develop and/or commercialize compounds that [*]; or (B) where [*], in either case ((A) or (B)) [*] after the designation of such Rejected Lead Op Target.

(f) Collaboration Targets.

(i) Prior to Commercialization. Subsequent to [*] and until the initial Commercialization of a Product within the Collaboration Program to which such Identified Target(s) relates ([*] with respect to such Collaboration Program, in which case this clause (i) [*], [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs: (I) that are intended to identify, optimize, develop and commercialize compounds that [*] such Identified Target(s); or (II) (x) [*], and (y) [*] such program's compounds [*] Identified Target(s) [*] where the [*].

(1) [*] Termination of a Collaboration Program. Upon either (A) the [*] termination of a Provisional Collaboration Program or a Collaboration Program [*]; (B) the [*] pursuant to **Section [*]**; or (C) the [*] pursuant to **Section [*]**; [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration programs to identify, optimize, develop and commercialize compounds that [*] (subject, where applicable, to [*]).

(2) [*] Termination of a Provisional Collaboration Program. In the event that a [*] is discontinued prior to [*] and where: (A) [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs to identify, optimize, develop and commercialize compounds that [*] Identified Targets [*] after the termination of the Provisional Collaboration Program.

(ii) Subsequent to Commercialization. Subsequent to the initial Commercialization of a Product within the Collaboration Program to which Identified Targets relate [*]), [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside

the scope of this Collaboration any programs to identify, optimize and develop compounds that [*] such Identified Targets [*], subject to the following terms and conditions:

(1) Commercial Launch of [*]. [*] commercialize [*] the Collaboration, [*] such Identified Targets; or (B) where [*] (any such product, a "[*]"), [*] within such Collaboration Program; or (Y) [*] within such Collaboration Program.

(2) [*]. In the event of any [*] that is permitted under Section 8.6(f)(ii)(1), the Party [*] such other Party [*]: (A) [*] subsequent to [*] within such Collaboration Program and [*].

(iii) Upon Conclusion of the Research Term. Upon the end of the Research Term as set forth in **Section 3.10**, either BMS or EXEL shall be free to conduct (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs to identify, optimize, develop and commercialize compounds that [*] that exist as of the end of the Research Term.

(g) [*]. Notwithstanding anything to the contrary set forth in this **Article 8**, if BMS or EXEL is engaged in research of a program [*], and compounds in such program [*] Collaboration Program, such Party shall [*]. For clarity, the exclusivity associated with a Lead Op Program, Provisional Collaboration Program or a Collaboration Program containing multiple Identified Targets [*] Lead Op Program, Provisional Collaboration Program or Collaboration Program.

(h) Not Applicable to [*]. The restrictions in this **Section 8.6** shall not apply with respect to either BMS or EXEL for compounds that are [*].

(i) [*]. In the event that, [*], a Party is either (A) [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs [*] that: (1) that are intended to identify, optimize, develop and commercialize compounds that [*] Identified Target(s) as a Lead Op Program, a Provisional Collaboration Program or a Collaboration Program; or (2) where the conducting Party [*] Identified Target(s) as a Lead Op Program, a Provisional Collaboration Program or a Collaboration Program [*] ([*]); or (B) commercializing [*], then the following terms and conditions shall apply:

(i) In the event that a Party controls [*], such Party [*] (or Lead Op Programs, Provisional Collaboration Programs or Collaboration Programs, as applicable) using [*]; and (b) [*], either:

(1) (A) in the case of [*], or (B) in the case of [*];

(2) [*]; or

(3) [*];

and in any case ((1), (2) or (3) above), provide written notice to the other Parties of its decision with respect to subsection (b) above and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than [*] subsequent to such written notice.

(ii) In the event that a Party [*], where the [*], solely with respect to [*], either:

(1) (A) in the case of [*], or (B) in the case of [*]; or

(2) [*];

and in either case ((1) or (2) above), provide written notice to the other Parties of its decision with respect to this **Section 8.6(i)((ii)** and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than [*] subsequent to such written notice.

(iii) In the event that a Party [*], where the [*], the terms of **Section 8.6(f)(ii)(2)** shall apply as if [*].

(j) [*] for [*] ([*]) Agonists. Notwithstanding anything to the contrary set forth in this Article 8, [*] shall be permitted to engage in research, development or commercialization of products that directly bind and agonize the [*] known as [*] and that are outside the scope of this Agreement (i.e., such products [*] Collaboration Compounds or Products under this Agreement); provided, however that a compound shall be deemed to agonize [*] only if such compound has an efficacy of [*] or greater when compared to [*] in the [*] assay.

9. COMPENSATION

9.1 Upfront Payment. BMS shall pay Exelixis a one-time fee of sixty million dollars ($60,000,000) within [*] after the Original Effective Date. Such fee shall be noncreditable and nonrefundable.

9.2 Achievement Payments. For each Collaboration Compound selected by BMS pursuant to **Section 3.7** (up to a maximum of three (3) such Collaboration Compounds selected), BMS shall pay EPC twenty million dollars ($20,000,000) million within [*] of EXEL's receipt of written notice describing such selection. Each such payment shall be noncreditable and nonrefundable.

9.3 Profit Sharing the U.S. The terms and conditions of this **Section 9.3** shall govern each Party's rights and obligations with respect to Operating Profits (or Losses) relating to each Co-Promotion Product in the U.S. For clarity, Exelixis shall have no right to share Operating Profits, and, except as set forth in **Section 9.4(a)(iii)** below, no obligation to bear any Operating Losses, in each case pursuant to this **Section 9.3**, with respect to (x) any Product in the U.S. other than a Co-Promotion Product; or (y) any Product in the Royalty Territory, and in each case Exelixis shall instead be entitled to receive from BMS royalties pursuant to **Section 9.6**.

(a) Basic Concept. The Parties shall share equally all Operating Profits and all Operating Losses (as applicable) for each Co-Promotion Product in the U.S. Specifically, the Net Sales of Co-Promotion Product in the U.S. shall be allocated first to reimburse each Party for fifty percent (50%) of its Allowable Expenses for Co-Promotion Product in the U.S., and any remaining sums, shall be Operating Profit or Operating Loss (as applicable), which shall be shared fifty percent (50%) by each Party. The JFC will determine future financial flows regarding the sharing of Operating Profits and Allowable Expenses consistent with the first sentence of this **Section 9.3(a)** and with each partner's then existing tax and transfer pricing policies.

(b) [*]. If Exelixis elects [*] Co-Promotion Product (a "[*]"), then, solely during the period in which BMS is actually promoting the Co-Promotion Product [*], BMS shall receive [*] (such [*], the "[*]") of Operating Profits (or Losses) for such Co-Promoted Product (resulting in [*] for such Co-Promoted Product [*] during such period). The Parties agree that the Co-Promotion Agreement shall contain a mechanism by which the Parties shall [*]. The Co-Promotion Agreement shall also contain a mechanism, similar to that described in **Section 9.12(b)**, for arbitrating any disputes if the Parties are unable to mutually agree on [*] Co-Promotion Product.

(c) Commercialization Overruns. If the Allowable Expenses for Commercialization activities exceed the amounts budgeted for all such activities in the applicable Annual Commercialization Plan (and taking into account any amendments to such Annual Commercialization Plan and Budget that may be approved during a calendar year) by more than [*] (calculated for all costs incurred over such calendar year for all budgeted activities), such excess Allowable Expenses (each, a **"Commercialization Overrun"**) shall be borne by [*] and such excess Allowable Expenses shall be [*]. Notwithstanding the foregoing, in the event and to the extent that such Commercialization Overrun was [*], or did not [*], then such Commercialization Overrun shall be [*], as the case may be.

9.4 Calculation and Payment of Profit or Loss Share.

(a) Reports and Payments in General. With respect to a Co-Promotion Product, or a Co-Developed Product for which Exelixis has not yet elected whether to exercise its Co-Promotion Option, each Party shall report to the other Party, within [*] after the end of each quarter, with regard to Net Sales and Allowable Expenses incurred by such Party (including any Allowable Expenses incurred by a Party prior to Regulatory Approval of such Product) for such Product during such quarter in the U.S. Each such report shall specify in reasonable detail all deductions allowed in the calculation of such Net Sales and all expenses included in Allowable Expenses, and, if requested by a Party, any invoices or other supporting documentation for any payments to a Third Party that individually exceed [*] (or such other amount approved by the JFC) shall be promptly provided. Within [*] after the end of each quarter (or for the last quarter in a year, [*] after the end of such quarter), the Parties shall reconcile all Net Sales and Allowable Expenses to ascertain whether there is an Operating Profit or an Operating Loss and payments shall be made as set forth in paragraphs (i) and (ii) below, as applicable.

(i) If there is an Operating Profit for such quarter, then BMS shall reimburse Exelixis for Allowable Expenses incurred by Exelixis in such quarter and shall pay to Exelixis, subject to **Section 4.6(e) and 9.3(b)**, an amount equal to fifty percent (50%) of the Operating Profit for such quarter; or

(ii) If there is an Operating Loss for such quarter, then the Party that has borne less than its share of the Operating Loss in such quarter shall make a reconciling payment to the other Party to assure that each Party bears its share of such Operating Loss during such quarter.

(iii) In the event that Exelixis has borne Allowable Expenses, or has made reconciling payments to BMS relating to Allowable Expenses pursuant to clause (ii) above, with respect to a Co-Developed Product for which Exelixis does not elect to Co-Promote, then BMS shall reimburse Exelixis for such Allowable Expenses during the calendar quarter in which Exelixis elects not to Co-Promote such Product.

(b) Last Calendar Quarter. No separate payment shall be made for the last quarter in any year. Instead, at the end of each such year, a final reconciliation shall be conducted by comparing the share of Operating Profit (or Loss) to which a Party is otherwise entitled for such year pursuant to **Section 9.3** against the sum of all amounts (if any) previously paid or retained by such Party for prior quarters during such year, and the Parties shall make reconciling payments to one another no later than [*] after the end of such quarter, if and as necessary to ensure that each Party receives for such year its share of Operating Profits and bears its share of Operating Losses in accordance with **Section 9.3**.

9.5 Milestone Payments to EPC.

(a) For each Royalty-Bearing Product, BMS shall make the milestone payments set forth below to EPC within [*] after the first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to such Royalty-Bearing Product. All milestone payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable.

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

* [*].

(b) Milestone Payment Restrictions. Each milestone payment set forth in **Section 9.5(a)** shall be paid [*].

(c) Milestone Payments with Respect to Program Backups. Milestone payments for a Program Backup within a Collaboration Program shall [*] such Collaboration Program has [*] and, in such event, will be payable [*]. For clarity, in the event that a [*] development milestones set forth above, and [*], then: (i) such [*] milestones shall be due and payable with respect to such Program Backup [*]; and (ii) in the event that the [*] that were paid with respect to the [*], such milestones shall be [*] (or [*], if applicable) has [*] and will be payable [*].

(d) Where milestones are payable for the achievement of [*] with respect to a Royalty-Bearing Product, such [*] such milestone payment [*].

9.6 Royalty Payments to EPC.

(a) Sales of Products in the Royalty Territory. For each Product, BMS shall pay to EPC royalties on Net Sales of such Product by BMS (or its Affiliates or sublicensees) in the Royalty Territory at a royalty rate determined by aggregate Net Sales in the Royalty Territory of such Product in a calendar year as follows:

Calendar year Net Sales of Product in Royalty Territory	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

For clarity, Net Sales shall be [*]. All royalty payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, except in the event that an audit pursuant to Section 9.19 confirms that BMS had overpaid royalties to EPC, in which case such overpayment shall be credited against future royalties due to EPC (or, in the event that such audit takes place subsequent to the Royalty Term, such overpayment shall be refunded to BMS).

(b) Sales of Royalty-Bearing Products in the United States. For each Royalty-Bearing Product during the applicable Royalty Term, BMS shall pay to EPC royalties on Net Sales in the U.S. of such Royalty-Bearing Product by BMS (or its Affiliates or sublicensees) at a royalty rate determined by aggregate Net Sales in the U.S. of such Royalty-Bearing Product in a calendar year as follows:

(i) If EXEL elected not to co-Develop such Royalty-Bearing Product by failing to "opt-in" pursuant to **Section 3.7(c)** or if EXEL opted-out of the Development of such Royalty-Bearing Product prior to [*] with respect to such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

(ii) If EXEL opted-out of the Development of such Royalty-Bearing Product after [*] but prior to [*] with respect to such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	Royalty Rate
First $[*]	[*]%

Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

(iii) If EXEL opted-out of the Development of such Royalty-Bearing Product after [*] but prior to the completion of [*] with respect to such Royalty-Bearing Product or prior to [*] for such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

(iv) If EXEL opted-out of the Development of such Royalty-Bearing Product after [*] or [*] with respect to such Royalty-Bearing Product:

Calendar year, Net Sales of Royalty-Bearing Product in the U.S.	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

9.7 Third Party Royalties for Products in the Royalty Territory and Royalty-Bearing Products in the U.S.

(a) [*] Third Party milestones and royalties owed with respect to either a Product in the Royalty Territory or a Royalty-Bearing Product in the U.S., on intellectual property that: (i) [*]; or (ii) is intellectual property that: (A) [*] from a Third Party prior to the Original Effective Date and [*]; and (B) [*]. Subject to **Section 9.7(b)** and **Section 9.8**, [*] Third Party milestones and royalties owed on intellectual property in connection with the

development and commercialization of a Product [*]; provided that each Party shall bear all Third Party royalties arising from any infringing activities by such Party prior to the Original Effective Date.

(b) BMS may deduct from the royalties it would otherwise owe to EPC pursuant to **Section 9.6** for a particular Product, an amount equal to [*] of all royalties and other payments payable to a Third Party in consideration for rights [*] for the manufacture, use or sale of such Product, up to a maximum deduction of [*] royalties due EPC for such Product.

9.8 [*]. During the applicable Royalty Term for a particular Royalty-Bearing Product, if any Third Parties are: (a) [*] in any given country in any year; and (b) such [*] in such country for such year are, [*]:

(i) [*], but [*] of the [*] in such country, then [*]; or

(ii) [*], [*].

9.9 Limitation on Deductions. Notwithstanding anything to the contrary in this Agreement, the operation of **Section 9.7** and **Section 9.8** for a given Product, whether singularly or in combination with each other, shall not [*].

9.10 Quarterly Payments and Reports. All royalties due under **Section 9.6** shall be paid quarterly, on a country-by-country basis, within [*] end of the relevant quarter for which royalties are due. BMS shall provide to EPC within [*] after the end of each quarter a report that summarizes the Net Sales of a Royalty-Bearing Product during such quarter, provided that to the extent additional information is reasonably required by EPC and/or EXEL to comply with its obligations to any of its licensors, the Parties shall work together in good faith to timely compile and produce such additional information. Such reports shall also include detailed information regarding the calculation of royalties due pursuant to **Section 9.6**, including allowable deductions in the calculation of Net Sales of each Royalty-Bearing Product on which royalties are paid, and, to the extent **Section 9.8** is applicable, the calculation of sales and market share (by volume) of Generic Products.

9.11 Term of Royalties. EPC's right to receive royalties under **Section 9.6** shall expire on a country-by-country and Royalty-Bearing Product-by-Royalty-Bearing Product basis upon the later of: (a) [*]; or (b) [*] (the "**Royalty Term**"). Upon the expiration of the Royalty Term with respect to a Royalty-Bearing-Product in a country, BMS shall have a fully-paid-up perpetual license under **Section 8.1** for the making, using, selling, offering for sale and importing of such Royalty-Bearing-Product in such country.

9.12 Sales of [*] Product Against [*].

(a) In General. The Parties recognize that the exclusivity provisions set forth in **Section 8.6** may allow for situations where BMS or EXEL is [*] and such product [*] (each such product, a "[*]"). If BMS or EXEL asks the JEC to determine whether [*], the JEC shall determine whether [*] using [*] (or any other [*] reasonably acceptable to BMS and EXEL). If such [*] are [*] then the JEC shall determine if the [*] of such [*] is due to the [*] or if such [*]

is due to the [*]. If the [*] of such [*], then the JEC shall determine the extent to which sales of such [*]. The Party commercializing such [*] at: (i) a [*] (as determined by the JEC); and (ii) (A) in the case of BMS [*], and (B) in the case of [*]. [*] would be [*].

(b) Disputes. If the JEC cannot agree: (i) whether [*]; (ii) on the [*]; (iii) whether such [*]; (iv) if the [*] is due to the [*] (or a combination thereof); (v) the degree to [*]; or (vi) on the [*] as if such Party were [*] with respect to any [*] Product in the U.S., then, in each case, at the election of either BMS or EXEL, such dispute must be finally resolved through binding arbitration by JAMS in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the failure arises, except as modified in this Agreement and applying the substantive law specified in **Section 15.2**. Either BMS or EXEL may initiate arbitration under this **Section 9.12(b)** by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (A) each of BMS and EXEL shall submit to the arbitrator its proposal for resolving such dispute, with such proposal based on the applicable commercial and scientific factors discussed by the JEC; (B) the arbitrator shall select the proposal that is the most commercially and scientifically reasonable; and (C) such proposal shall become the applicable JEC determination. Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The award of the arbitrator shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted at such location as shall be determined by the Arbitrator. BMS and EXEL agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each of BMS and EXEL shall bear its own attorneys' fees and associated costs and expenses.

9.13 Payment Method. All payments due under this Agreement to EPC shall be made by bank wire transfer in immediately available funds to an account designated by EPC. All payments hereunder shall be made in Dollars.

9.14 Taxes. EPC shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, BMS shall: (a) deduct those taxes from the remittable payment; (b) pay the taxes to the proper taxing authority; and (c) send evidence of the obligation together with proof of tax payment to EXEL within [*] following that tax payment. The JFC shall discuss appropriate mechanisms for minimizing such taxes to the extent possible in compliance with applicable law.

9.15 Blocked Currency. In each country where the local currency is blocked and cannot be removed from the country, royalties accrued in that country shall be paid to EPC in Dollars based on the Dollar reported sales for the quarter (translated for such country per Statement of Financial Standards No. 52), unless otherwise mutually agreed.

9.16 Sublicenses. In the event BMS grants any permitted licenses or sublicenses to Third Parties to sell Products that are subject to royalty payments under **Section 9.6**, BMS shall have the responsibility to account for and report sales of any Product by a licensee or a sublicensee on the same basis as if such sales were Net Sales by BMS. BMS shall pay to EPC

(or cause the licensee or sublicensee to pay to EPC, with BMS remaining responsible for any failure of the licensee or sublicensee to pay amounts when due under this Agreement): (a) royalties on such sales as if such sales of the licensee or sublicensee were Net Sales of BMS or any of its Affiliates; and (b) milestones payments pursuant to **Section 9.5** based on the achievement by such licensee or sublicensee of any milestone event contemplated in such Sections as if such milestone event had been achieved by BMS or any of its Affiliates hereunder.

9.17 Foreign Exchange. Conversion of sales recorded in local currencies to Dollars shall be performed in a manner consistent with BMS' normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a widely accepted source of published exchange rates.

9.18 Records. Each of BMS and EXEL shall keep (and shall ensure that its Affiliates and sublicensees shall keep) such records as are required to determine, in a manner consistent with GAAP and this Agreement, the sums or credits due under this Agreement, including Development Costs, Allowable Expenses and Net Sales. All such books, records and accounts shall be retained by such Party until the later of (a) [*] after the end of the period to which such books, records and accounts pertain and (b) the [*] (or any extensions thereof), or for such longer period as may be required by applicable law. Each of BMS and EXEL shall require its sublicensees to provide to it a report detailing the foregoing expenses and calculations incurred or made by such sublicensee, which report shall be made available to the other Party in connection with any audit conducted by such other Party pursuant to this **Section 9.18**.

9.19 Audits. Each of BMS and EXEL shall have the right to have an independent certified public accountant, reasonably acceptable to the audited Party, to have access during normal business hours, and upon reasonable prior written notice, to examine only those records of the audited Party (and its Affiliates and sublicensees) as may be reasonably necessary to determine, with respect to any calendar year ending not more than [*] prior to such Party's request, the correctness or completeness of any report or payment made under this Agreement. The foregoing right of review may be exercised [*]. Results of any such examination shall be (a) limited to information relating to the Products, (b) made available to both BMS and EXEL and (c) subject to **Article 11**. The Party requesting the audit shall bear the full cost of the performance of any such audit, unless such audit discloses a variance to the detriment of the auditing Party of more than [*] from the amount of the original report, royalty or payment calculation, in which case the audited Party shall bear the full cost of the performance of such audit. The results of such audit shall be [*].

9.20 Interest. Any payments or portions thereof due hereunder that are not paid on the date such payments are due under this Agreement shall bear interest at a rate equal to the lesser of: (a) [*] Rate as published by Citibank, N.A., New York, New York, or any successor thereto, at 12:01 a.m. on the first day of each quarter in which such payments are overdue; or (b) the maximum rate permitted by law, in each case calculated on the number of days such payment is delinquent, compounded monthly.

9.21 Non-Monetary Consideration. Neither Party shall sell a Product for any consideration other than cash except on terms specified in the then approved Annual

Commercialization Plan. In the event a Party receives any non-monetary consideration in connection with the sale of a Product, such Party's payment obligations under this **Article 9** shall be based on the fair market value of such other consideration. In such case, the selling Party shall disclose the terms of such arrangement to the other Parties and the Parties shall endeavor in good faith to agree on such fair market value.

9.22 Cross Border Transactions.

(a) In General. BMS and EXEL recognize that in certain territories, and in particular in free trade regions, customers or other Third Parties may import Product(s) purchased in one country for commercial sale or use in another. If EXEL asks the JEC to determine whether Products purchased outside the U.S. are being imported into the U.S. for such purpose, the JEC shall determine the level that such importation is occurring using data obtained from a source reasonably acceptable to EXEL and BMS. If such importation is [*] (i.e., [*], for [*]) then the JEC shall [*].

(b) Disputes. If the JEC cannot agree whether such importation has [*], then, at the election of either BMS or EXEL, such dispute must be finally resolved through binding arbitration by JAMS in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the failure arises, except as modified in this Agreement and applying the substantive law specified in **Section 15.2**. Either BMS or EXEL may initiate arbitration under this **Section 9.22(b)** by written notice to such other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (i) each of BMS and EXEL shall submit to the arbitrator its proposal for resolving such dispute (i.e., the final form of the equitable mechanism to adjust the compensation of the Parties hereunder to offset the economic effect of cross border transactions described in **Section 9.22(a)**), such proposal based on the applicable business factors discussed by the JEC; (ii) the arbitrator shall select the proposal that is the most commercially reasonable; and (iii) such proposal shall become such equitable mechanism. Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The award of the arbitrator shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted in such location as shall be determined by the arbitrator. BMS and EXEL agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each of BMS and EXEL shall bear its own attorneys' fees and associated costs and expenses.

9.23 Payments to or Reports by Affiliates. Any payment required under any provision of this Agreement to be made to either BMS or EPC or any report required to be made by any Party shall be made to or by an Affiliate of that Party if designated in writing by that Party as the appropriate recipient or reporting entity.

10. INTELLECTUAL PROPERTY

10.1 Ownership.

(a) The inventorship of all Sole Inventions and Joint Inventions shall be determined under the U.S. patent laws.

(b) BMS shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents claiming only such Sole Inventions (and no Joint Inventions) (**"Sole Invention Patents"**). As between EXEL and EPC, EPC shall own the entire right, title and interest in and to any and all of Sole Invention Patents of EXEL and/or EPC. EXEL hereby assigns to EPC its entire right, title and interest in and to its Sole Invention Patents. BMS and Exelixis shall be joint owners in and to any and all Joint Inventions, provided that, as between EXEL and EPC, EPC shall be the joint owner of any and all Patents claiming such Joint Inventions (**"Joint Invention Patents"**), and EXEL hereby assigns to EPC its entire right, title and interest in and to its Joint Invention Patents. BMS and Exelixis (EPC for Joint Invention Patents and EXEL for other Joint Inventions) as joint owners each shall have the right to exploit and to grant licenses under such Joint Inventions, and where exercise of such rights require, under the laws of a country, the consent of the other Party, with the consent of the other Party (such consent to not be unreasonably withheld, delayed or conditioned) unless otherwise specified in this Agreement.

(c) All employees, agents and contractors of each Party shall be under written obligation to assign any inventions and related intellectual property to the Party for whom they are employed or are providing services.

(d) The Parties acknowledge and agree that this Agreement shall be deemed to be a **"Joint Research Agreement"** as defined under 35 U.S.C. 103(c).

10.2 Disclosure. Subject to **Section 3.6**, Each Party shall submit a written report to the JRC no less frequently than within [*] end of each [*] describing any Sole Invention or Joint Invention arising during the prior [*] in the course of the Collaboration or thereafter in accordance with this Agreement which it believes may be patentable or at such earlier time as may be necessary to preserve patentability of such invention. Each Party shall provide to the other Parties such assistance and execute such documents as are reasonably necessary to permit the filing and prosecution of such patent application to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension of any resulting Patent.

10.3 Patent Prosecution and Maintenance; Abandonment. As between EXEL and EPC, EXEL shall carry out the day-to-day responsibility for filing, prosecution and maintenance on behalf of EPC under Sections 10.1 through 10.4.

(a) Prosecution Prior to BMS' Exercise of its Co-Development Option. Prior to BMS' exercise of its Co-Development Option for a given Collaboration Program, EXEL shall (1) prepare, file, prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto), all

Exelixis Licensed Patents (other than Joint Patents) in [*] (the "**Primary Prosecution Countries**"), and (2) make a corresponding PCT filing (designating all countries) no later than twelve (12) months subsequent to initial filing, and a corresponding EPO application (designating all EPO countries/extension countries). no later than thirty (30) months subsequent to initial filing, [*]; provided that such responsibilities shall be [*], and provided further that, in each case, [*]. If BMS requests that EXEL prepare, file, prosecute or maintain an Exelixis Licensed Patent in a country other than a Primary Prosecution Country, BMS shall [*] EXEL in connection with preparing, filing, prosecuting or maintaining such Exelixis Licensed Patent in such non-Primary Prosecution Country. EXEL shall: (i) keep [*] as to the status of filing, prosecution, maintenance and extension of such Exelixis Licensed Patents, such that there is reasonable time to review, comment upon and approve (as set forth in this **Section 10.3(a)**) any documents intended for submission to any patent office; (ii) furnish to [*] copies of documents relevant to any such filing, prosecution, maintenance and extension including copies of any Patent Office, foreign associate, and outside counsel correspondence; and (iii) reasonably [*] on documents filed with any patent office with respect to Exelixis Licensed Patent claims that Cover Collaboration Compounds or Products. For the purpose of this **Section 10.3(a)**, [*] shall only have the right to review any such documents provided by EXEL if such [*] agrees in writing [*] or other structural information disclosed in such documents [*].

(b) Joint Patent Committee.

(i) Establishment & Meetings. Promptly after the November 13, 2010, the Parties shall establish a committee (the "**Joint Patent Committee**" or "**JPC**"). The JPC shall be composed of at least one (1) representative from each of BMS and EXEL, at least one of which shall be a patent counsel for such Party. Each such Party may change its representative(s) by giving the other such Party at least [*] prior written notice. The JPC shall meet within [*] after November 13, 2010, and once per [*] thereafter, or as may be requested by either Party as necessary, by teleconference, videoconference or in person (as determined by the JPC).

(1) Duties. Promptly after the November 13, 2010, [*] shall oversee (subject to **Sections 10.3(b)(ii), (iv)** and **(v)** below) the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all [*] Patents, [*] Patents Controlled by [*], and [*] Patents that in each case are [*] (the **"[*] Patents"**), provided that, unless otherwise agreed by the Parties, such responsibilities shall be carried out by: (A) [*] by [*], unless there exists [*] of [*] and [*]; (B) [*] by [*], but only in the case where [*] described in subsection (A) had [*] of [*]; or (C) [*] in conjunction with [*] described in the preceding subsection (A) or (B), as applicable. [*], or the [*], shall provide [*] with an update of the filing, prosecution and maintenance status for each of the [*] Patents on a periodic basis, and shall use commercially reasonable efforts to consult with and cooperate with [*] with respect to the filing, prosecution and maintenance of the [*] Patents, including providing [*] with drafts of proposed filings to allow [*] a reasonable opportunity for review and comment before such filings are due. [*], or [*], shall provide to [*] copies of any papers relating to the filing, prosecution and maintenance of the [*] Patents promptly upon their being filed and received.

(2) Decisions. Subsequent to November 13, 2010, in the event of a dispute between the Parties with regard to the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of any [*] Patent, the matter shall be promptly referred to the [*] of EXEL and [*] for BMS. If these two (2) individuals are unable to resolve the dispute promptly, then the matter shall be promptly elevated to the [*] of EXEL and the [*] of BMS. If these two (2) individuals are unable to resolve the dispute promptly, then, subject to **Sections 10.3(b)(i)(3), 10.3(b)(i)(4), 10.3(b)(ii), [*] of the ROR Collaboration Agreement,** and **[*] of the ROR Collaboration Agreement**, [*] shall have the final decision, except if such decision: (A) conflicts with the terms of the Agreement; (B) would result in [*] described in **Section [*]** or a [*] of the [*]; or (C) materially impacts [*] prosecution of Patents that [*] a [*], in which case of **subsection 10.3(b)(i)(2)(A)-(C)**, [*] shall have the final decision.

(3) Limitation on Subsection 10.3(b)(i)(2)(B). If [*] reasonably believes that filing a new patent application covering a [*] (other than the [*] of a [*]) would result in potential claims [*] for [*], and if [*] disputes with [*] that such patent application should be filed, then such dispute shall be discussed as described in the first two (2) sentences of **Section 10.3(b)(i)(2)**, and, if still unresolved, shall be arbitrated pursuant to **Section [*] of the ROR Collaboration Agreement**, and [*] shall not have the right to exercise its final-decision making authority pursuant to **Subsection 10.3(b)(i)(2)(B)** unless the dispute is resolved in [*] favor.

(4) Limitation on Subsection 10.3(b)(i)(2)(C). [*] hereby covenants that it shall not, without the prior written consent of [*] (which shall not be unreasonably delayed or conditioned), during the term of this Agreement, [*] the decision-making authority granted to [*] pursuant to **Subsection 10.3(b)(i)(2)(C)** [*] that is [*] existing as of the Original Effective Date or [*]. Furthermore, if [*] the decision-making authority granted to [*] pursuant to **Subsection 10.3(b)(i)(2)(C)** [*] by [*], [*] or [*], and such [*] is [*] or [*] a [*] that is [*], then [*] and [*] shall agree, pursuant to **Section [*] of the ROR Collaboration Agreement**, on [*] the decision-making authority granted to [*] pursuant to **Subsection 10.3(b)(i)(2)(C**).

(ii) Abandonment. In no event shall [*] knowingly permit any of the [*] Patents to be abandoned in any country, or elect not to file a new patent application claiming priority to a patent application within the [*] Patents either before such patent application's issuance or within the time period required for the filing of an international (i.e., Patent Cooperation Treaty), regional (including European Patent Office) or national application, without [*] written consent (such consent not to be unreasonably withheld, delayed or conditioned) or [*] otherwise first being given an opportunity to assume full responsibility (at [*] expense) for the continued prosecution and maintenance of such [*] Patents or the filing of such new patent application. Accordingly, [*], or [*], shall provide [*] with notice of the allowance and expected issuance date of any patent within the [*] Patents, or any of the aforementioned filing deadlines, and [*] shall provide [*] with prompt notice as to whether [*] desires [*] to file such new patent application. In the event that [*] decides either: (A) not to continue the prosecution or maintenance of a patent application or patent within the [*] Patents in any country; or (B) not to file such new patent application requested to be filed by [*], [*] shall

provide [*] with notice of this decision at least [*] prior to any pending lapse or abandonment thereof, and [*] shall thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such patent or patent application. In the event that [*] assumes such responsibility for such filing, prosecution and maintenance, [*] shall no longer have the responsibility for such filing, prosecution and maintenance of such patent applications and patents, and [*] shall cooperate as reasonably requested by [*] to facilitate control of such filing, prosecution and maintenance by [*]. In the case where [*] takes over the filing, prosecution or maintenance of any patent or patent application as set forth above, such patent or patent application shall [*] be [*] the [*], and [*] shall [*] such patent or patent application.

(iii) Filing, Prosecution and Maintenance of Sole Invention Patents Controlled by BMS. In accordance with this **Section 10.3 (a)(iii)**, BMS shall be responsible for the filing, prosecution (including any interferences, reissues and reexaminations) and maintenance of all Sole Invention Patents Controlled by BMS. BMS shall provide to EXEL copies of any papers relating to the filing, prosecution and maintenance of the Sole Invention Patents Controlled by BMS promptly upon their being filed and received.

(iv) Patent Term Extension. EXEL and BMS shall each cooperate with each another and shall use commercially reasonable efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to patent rights covering the Products. If elections with respect to obtaining such patent term extensions are to be made, BMS shall have the right to make the election to seek patent term extension or supplemental protection.

(v) Exelixis Right to Separate Claims. To the extent that any Sole Invention Patent owned by EPC contains claims that cover compounds that are not Collaboration Compounds (such compounds, **"Separable Compounds"**), EXEL shall have the right to separate any claims that cover such Separable Compounds (and not Collaboration Compounds) and to file such claims in a separate application (e.g., a continuation, continuation-in-part, or divisional application). EXEL shall notify BMS in writing prior to separating such claims, and such separation shall be at EXEL's sole expense.

(c) Payment of Prosecution Costs. BMS shall bear the out-of-pocket expenses (including reasonable fees for any outside counsel, but not EXEL's inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of: (X) [*]; and (Y) the [*], provided that:

(i) if EXEL or a Third Party licensee of Exelixis is practicing (A) a particular [*], or (B) a particular [*], or (C) a particular[*] (where expressly permitted by this Agreement), and such Invention is covered by a Patent for which BMS would otherwise bear the out-of-pocket patent expenses pursuant to **Section 10.3(c)** above, then, subject to **Section 10.3(c)(ii)** below, EXEL shall provide written notice to BMS and the Parties shall mutually agree on the percentage of such expenses that each Party shall bear (which, in the absence of any other agreement between the Parties, shall be [*]); and

(ii) if any [*] covered by clause (b) above is part of a patent application or patent that covers other inventions that are not subject to clause (b) above and that are not [*], then BMS and EXEL shall mutually agree upon an appropriate allocation of the expenses so that BMS does not bear any portion of the [*] attributable to such other inventions.

(d) EXEL and BMS shall mutually agree on the percentage of expenses that each of EXEL and BMS shall bear with respect to Joint Inventions for which the cost of filing, prosecuting or maintaining such Joint Invention is not the responsibility of either EXEL or BMS under **Sections 10.3(c)** hereof (which, in the absence of any other agreement between EXEL and BMS, shall be divided [*]).

(e) Non-payment of Expenses.

(i) If either EXEL or BMS elects not to pay its share of any expenses with respect to a Patent covering a Joint Invention in a given country under any of **Sections 10.3(c)** or **(d)** (each, a "**Joint Patent**"), such Party shall inform such 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 such other Party assumes the expenses associated with the Joint Patent, then the assuming Party [*] and such other Party shall [*].

(ii) If either EPC or BMS is the assignee or owner of a Patent (other than a Joint Patent) that is licensed to such other Party under any of **Sections 8.1 or 8.2**, and such owning Party elects not to pay its share of expenses pursuant to **Sections 10.3(c)** or **10.3(d)** in a given country, such owning Party shall inform such 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 such other Party assumes the expenses associated with the Patent in such country, then the assuming Party [*] and the owning Party shall [*].

(iii) If either EPC or BMS is the licensee of a Patent (other than a Joint Patent) under any of **Sections 8.1** or **8.2**, and such Party elects not to pay its share of expenses pursuant to **Sections 10.3(c)** or **10.3(d)** in a given country, such Party shall inform such other Party (in the case of EPC is the licensee, EPC or EXEL shall inform BMS, and in the case BMS is the licensee, BMS shall inform EXEL) in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable) (such Patent(s) in such countries, as identified in such notice, being a **"[*] Right"**), and [*] under such **Sections 8.1** or **8.2**, as applicable, with respect to the relevant Patent in such country, provided that [*]. It is also understood that such licensee shall be offered the opportunity to assume its share of the responsibility for the costs of filing, prosecution and maintenance of any Patent(s) claiming priority directly or indirectly from any such [*] Right, and that where such expenses are assumed by such licensee, it shall be afforded all the rights and licenses as provided under this Agreement for the licensed Patents (other than the [*] Right) with respect to such Patent(s) claiming priority directly or indirectly from any such [*] Right.

(f) Notwithstanding **Sections 10.3(c), (d) and (e),** , any costs incurred by the Parties associated with the filing, prosecution (including any interferences, reissue proceedings

and reexaminations) and maintenance of a U.S. Patent in the Exelixis Prosecuted Patents or the BMS Licensed Patents shall, solely to the extent such Patent claims the use, manufacture, or sale of a Co-Promoted Product, shall be included as an element of Allowable Expenses.

(g) Each of BMS and EXEL shall provide to such other Party, on a [*] basis, a patent report that includes the serial number, docket number and status of each Patent for which, pursuant to **Section 10.3(b)**, such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention (in the case of [*]) or Joint Invention. BMS and EXEL through their patent counsel shall discuss as appropriate (but not more than [*]) ways in which to allocate such out-of-pocket expenses in an appropriate, cost-effective manner consistent with the purposes of this Agreement and Exelixis' obligations to Third Parties.

10.4 Enforcement of Patent Rights.

(a) Enforcement of Exelixis Sole Patents.

(i) Enforcement by BMS. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement, by a Third Party of a Patent claiming a Sole Invention owned by EPC that claims the composition of matter (including formulation), manufacture or use of one or more Products that is being Developed or Commercialized using Diligent Efforts and which is co-exclusively or exclusively licensed to BMS under **Section 8.1** (for purposes of this **Section 10.4(a)(i)** only, an "**Exelixis Sole Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. As between EXEL and EPC, EXEL shall carry out the patent enforcement action on behalf of EPC under this Section 10.4, and shall pay costs and expenses on behalf of EPC in connection therewith. Each of EXEL and BMS shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of an Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a small molecule product directed against a target in a Collaboration Program, [*] shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*]' expense) in such actions or proceedings if so requested, and EPC shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions at [*] request. [*] shall each have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of any such [*] Sole Patent may be entered into by [*] without the prior consent of [*] (such consent to not be unreasonably withheld, delayed or conditioned).

(ii) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 10.4(a)(i)** and so notifies [*], or where [*] (or any other party other than [*] who is licensed under such [*] Sole Patent) otherwise

desires to bring an action or to defend any proceeding directly involving an [*] Sole Patent, then [*] may bring such action or defend such proceeding at its own expense, in Exelixis' own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any [*] Sole Patent that is a Patent listed or listable in the FDA's Orange Book (or foreign equivalent(s) of such Patent or the FDA's Orange Book) by [*] (a **"Listable Patent"**), if [*] fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such [*] Sole Patent shall in no event be diminished by any failure to enforce such [*] Sole Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a Listed Patent with respect to small molecules, may be entered into by [*] without the prior consent of [*] (such consent to not be unreasonably withheld, delayed or conditioned).

(b) Enforcement of Joint Patents.

(i) Joint Product Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter (including formulation), manufacture or use of one or more Products that is being developed or commercialized using Diligent Efforts and which is co-exclusively or exclusively licensed to [*] under **Section 8.1** (a "**Joint Product Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. Each of EXEL and BMS shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of a Joint Product Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. [*] shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*]' expense) in such actions or proceedings if so requested, and EPC shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by EXEL and/or EPC arising out of any such proceedings or actions. [*] shall each have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent to not be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 10.4(b)(i)(1)** and so notifies [*], or for any other enforcement by [*] of a Joint Product Patent which is co-exclusively or

exclusively licensed to [*] under **Section 8.1**, then [*] may bring such action or defend such proceeding at its own expense, in Exelixis' own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Joint Product Patent that is a Listable Patent, if [*] fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such Joint Product Patent shall in no event be diminished by any failure to enforce such Joint Product Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent to not be unreasonably withheld, delayed or conditioned).

(ii) Other Joint Patents.

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

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 10.4(b)(ii)(1)** and so notifies [*], then [*] may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Other Joint Patent that is a Listable Patent, if [*] fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such Other Joint Patent shall in no event be diminished by any failure to enforce such

Other Joint Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by EXEL or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by [*] without the prior consent of [*] (such consent to not be unreasonably withheld, delayed or conditioned).

(c) General Provisions Relating to Enforcement of Patents.

(i) Withdrawal. If either EXEL or BMS brings such an action or defends such a proceeding under this **Section 10.4** and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify such other Party and such other Party (in the case of EXEL, on behalf of EPC) may substitute itself for the withdrawing Party under the terms of this **Section 10.4** (including such prior written consent as provided for under this **Section 10.4**) at its own expense.

(ii) Recoveries. In the event either Party exercises the rights conferred in this **Section 10.4** and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be [*].

(iii) Patent Enforcement in the U.S. Notwithstanding any cost allocations set forth in **Sections 10.4(a)** and **(b),** and notwithstanding the allocation of recoveries set forth in **Section 10.4(c)(ii)**: (A) any costs incurred by either Party in connection with actions taken under this **Section 10.4** against suspected infringement by a Third Party in the U.S. that involves such Third Party's development, manufacture, use or sale of a small molecule product reasonably likely to materially affect sales of a Co-Promoted Product shall constitute Patent Costs and shall be [*]; and (B) any recoveries received by either Party in connection with such actions shall, [*].

(d) Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (such as those periods listed in the FDA's Orange Book (including any available pediatric extensions) or periods under national implementations of Article 10.1(a)(iii) of Directive 2001/EC/83, and all international equivalents), BMS shall use commercially reasonable efforts consistent with its obligations under applicable law (including any applicable consent order) to seek, maintain and enforce all such data exclusivity periods available for the Products. With respect to filings in the FDA Orange Book (and foreign equivalents) for issued patents for a Product, upon request by BMS (and at BMS' expense), Exelixis shall provide reasonable cooperation to BMS in filing and maintaining such Orange Book (and foreign equivalent) listings.

(e) No Action in Violation of Law. None of the Parties shall be required to take any action pursuant to this **Section 10.4** that such Party reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree applicable to such Party.

(f) Notification of Patent Certification. [*] shall notify and provide [*] with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of an Patent licensed to [*] hereunder pursuant to a Paragraph IV Patent Certification by a third party filing an Abbreviated New Drug Application, an application under §505(b)(2) or other similar patent certification by a third party, and any foreign equivalent thereof. Such notification and copies shall be provided to [*] by [*] as soon as practicable and at least within [*] after [*] receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below:

[*]

10.5 Defense of Third Party Claims. If a claim is brought by a Third Party that any activity related to work performed by a Party under the Collaboration infringes the intellectual property rights of such Third Party, each Party shall give prompt written notice to the other Parties of such claim, and following such notification, the Parties shall confer on how to respond.

10.6 Copyright Registrations. Copyrights and copyright registrations on copyrightable subject matter shall be filed, prosecuted, defended, and maintained, and the Parties shall have the right to pursue infringers of any copyrights owned or Controlled by it, in substantially the same manner as the Parties have allocated such responsibilities, and the expenses therefor, for patent rights under this **Article 10.**

11. CONFIDENTIALITY

11.1 Nondisclosure of Confidential Information. For the purpose of this Article 11, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." All Information disclosed by one Party to the other Party pursuant to this Agreement, and, subject to **Section 11.6**, Information that is generated in furtherance of the Collaboration pursuant to this Agreement with respect to Collaboration Compounds or Products (for so long as such Collaboration Compound or Product is not removed from the Collaboration), shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during the term of this Agreement and for a period of [*] thereafter, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party (such consent to not be unreasonably withheld, delayed or conditioned), except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (b) not use such other Party's Confidential Information for any purpose except those

permitted by this Agreement (it being understood that this **Section 11.1** shall not create or imply any rights or licenses not expressly granted under **Article 8** hereof).

11.2 Exceptions. The obligations in **Section 11.1** shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(a) Subject to the last sentence in **Section 11.1**, is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

(b) Was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party; or

(c) Is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without obligation to keep it confidential; or

(d) Is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement; or

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of the disclosing Party's Confidential Information.

11.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances; provided that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products, in each case pursuant to activities under this Agreement;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental laws and regulations; and

(e) Disclosure, in connection with the performance of this Agreement, to Affiliates, potential collaborators, partners, and actual and potential licensees (including potential co-marketing and co-promotion contractors, research contractors and manufacturing contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, in each case to the extent permitted by this Agreement, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 11**.

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to individuals or entities covered by **Section 11.3(e)** above, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 11**. In addition, a copy of this Agreement may be filed by either Party with the Securities and Exchange Commission in connection with any public offering of such Party's securities or as otherwise necessary under applicable law or regulations. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic, competitively sensitive, and trade secret information.

In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

11.4 Termination of Prior Agreements. This Agreement supersedes the Confidential Disclosure Agreement between EXEL and BMS effective as of September 22, 2005, and amended on November 9, 2005 and November 10, 2006 (such confidential disclosure agreement, as amended, the "**Prior CDA**"). All Information exchanged between the Parties under the Prior CDA shall be deemed Confidential Information and shall be subject to the terms of this **Article 11**.

11.5 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as **Exhibit 11.5**. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; *provided*, *however*, that any disclosure which is required by law, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded, as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

11.6 Publications.

(a) [*] shall publish or present the results of studies performed in connection with Provisional Collaboration Programs prior to [*]. Subsequent to [*], publication decisions regarding the results of studies performed in connection with Co-Developed Products shall be made by the JDC or JCC, as appropriate, and, in all cases, in accordance with [*] with respect to the disclosure of [*].

(b) Subject to paragraph (a) above and **Section 11.3**, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which contains Confidential Information of the other Party and would or may constitute an oral, written or electronic public disclosure if made (including the full content of proposed abstracts, manuscripts or presentations) which relate to any Inventions, or which otherwise may contain Confidential Information, at least [*] prior to its intended submission for publication and agrees,

upon request, not to submit any such abstract or manuscript for publication until the other Party is given a reasonable period of time to secure patent protection for any material in such publication which it believes to be patentable. Both Parties understand that a reasonable commercial strategy may require delay of publication of information or filing of patent applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JRC, JDC or JCC (or the Parties), as appropriate, shall review such requests and recommend subsequent action. Subject to paragraph (a) above and **Section 11.3,** neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to **Section 11.1**. Nothing contained in this **Section 11.6** shall prohibit the inclusion of Confidential Information of the non-filing Party necessary for a patent application, provided the non-filing Party is given a reasonable opportunity to review the extent and necessity for its Confidential Information to be included prior to submission of such patent application related to the Collaboration. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JRC, JDC or JCC (or the Parties), as appropriate.

12. TERM AND TERMINATION

12.1 Term. For the purpose of this Article 12, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with **Sections 12.2 or 12.3** or by mutual written agreement, or until the expiration of all payment obligations under **Article 9**. The period of time between the Original Effective Date until the expiration of this Agreement shall be deemed the **"Term"**, provided that, for the time period between the Original Effective Date and the Effective Date, the terms and conditions of the Collaboration Agreement shall apply.

12.2 BMS' Right to Terminate With respect to [*] pursuant to the terms of this Agreement, BMS shall have the right to terminate this Agreement [*] upon: (a) [*], in the event that such termination is [*] or (b) [*], in the event that such termination is [*]. In any termination under this **Section 12.2**, BMS shall remain responsible for its share of all Development Costs and Allowable Expenses during the applicable [*] or [*] period.

12.3 Termination for Material Breach.

(a) If either Party believes that the other is in material breach of this Agreement (including any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in **Article 9**, the allegedly breaching Party shall have [*] to cure such breach. For any breach arising from a failure to make a payment set forth in **Article 9**, the allegedly breaching Party shall have [*] to cure such breach.

(b) Subject to **Section 12.3(c)**, if the Party receiving notice of breach fails to cure such breach within the [*] or [*] period (as applicable), or the Party providing the notice

reasonably determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon [*] advance written notice, provided, that if the breach applies only to a given Product or to a given country, the non-breaching Party may only terminate the breaching Party's rights with respect to such Product or such country.

(c) If a Party gives notice of termination under **Section 12.3(a)** and the other Party [*], or if a Party determines under **Section 12.3(b)** that [*], then the issues of: (i) [*]; or (ii) [*], shall in any case [*]. If [*] it is [*], then such termination shall be [*] if the breaching Party fails thereafter to cure such breach in accordance with the [*] within the time period set forth in **Section 12.3(a)** for the applicable breach following such [*]. If as a result of such [*] it is [*], then [*].

12.4 Survival; Effect of Termination.

(a) In the event of termination of this Agreement, the following provisions of this Agreement shall survive: [*].

(b) In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

12.5 Licenses and Payments on Termination.

(a) Termination by BMS (Section 12.2). Subject to **Section 12.5(e)**, if BMS terminates this Agreement pursuant to **Section 12.2** with respect to a particular Product in any country, then the license granted to BMS under **Section 8.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to EPC a royalty-free license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country**.** The license described in this **Section 12.5(a)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Products.

(b) Termination by Exelixis (Section 12.3). If this Agreement terminates pursuant to **Section 12.3** with respect to a particular Product in any country, and BMS is the breaching Party, then the license granted to BMS under **Section 8.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to EPC a license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country or Major Territory. The license described in this **Section 12.5(b)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Product. For Products [*] prior to termination, the license described in this **Section 12.5(b)** shall be fully-paid and royalty-free. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either

case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(b)** shall bear a royalty of [*] of Exelixis' Net Sales of such Product. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(b)** shall bear a royalty of [*] of Exelixis' Net Sales of such Product. BMS' right to receive royalties under this **Section 12.5(b)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) [*]; or (ii) [*], in either case, [*].

(c) Termination by BMS (Section 12.3). If this Agreement terminates pursuant to **Section 12.3** with respect to a particular Product in any country, and Exelixis is the breaching Party, then the license granted to Exelixis under **Section 8.2** shall automatically terminate solely with respect to such Product in such country, and EXEL shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country or Major Territory, EPC shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Patents to clinically develop, make, use, sell, offer for sale and import such Product in such country or Major Territory. The license described in this **Section 12.5(c)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Product. For Products [*] prior to termination, the license described in this **Section 12.5(c)** shall be fully-paid and royalty-free. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(c)** shall bear a royalty of [*] of BMS' Net Sales of such Product. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 12.5(c)** shall bear a royalty of [*] of BMS' Net Sales of such Product. EPC's right to receive royalties under this **Section 12.5(c)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) [*]; or (ii) [*], in either case, [*].

(d) Transfers Related to Licenses. For each license granted under **Sections 12.5(a) – 12.5(c)**, the licensing Party shall transfer via assignment, license or sublicense to the licensee Party: (i) all Information reasonably necessary for the development and commercialization of the Product to which such license relates; (ii) [*] that specifically relate to such Product and that are in the name of the licensing Party; (iii) [*] that specifically relate to such Product; (iv) [*] by the licensing Party that specifically relate to such Product; and (v) supplies of such Product (including any intermediates, retained samples and reference standards), that, in each case ((i) through (v)) are existing and in the Control of the licensing Party. Any such transfer(s) shall be [*] licensee Party.

(e) Exception for Termination for Safety Reasons. The license granted to [*] under **Section 12.5(a)** shall be of no force or effect with respect to any given Product where [*] termination of Development and/or Commercialization of such Product was due to [*]. For purposes of this **Section 12.5(e)**, "[*]" means it is [*] or [*] there [*]: (i) [*]; or (ii) the [*], such as during [*] a Product. Notwithstanding anything to the contrary, this **Section 12.5(e)** shall not

prevent [*] from using its license in **Section 12.5(a)** to [*] that was terminated for [*]. [*] shall provide [*] with all relevant data for such [*] but [*] to [*] any [*] relating to such [*].

(f) Additional Effects of Termination.

(i) In the event of any termination pursuant to **Section 12.2**, [*]: (i) all Information relating to the Product, and all [*] with respect to Product in [*] name; (ii) all [*] related to the Product, to the extent that they may be [*]; (iii) all [*] related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in [*] Control and that relate to the Product. [*] shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to EPC (or its sublicensees).

(ii) In the event of any termination pursuant to **Section 12.3**, the breaching Party shall transfer and assign to the non-breaching Party (if BMS is the breaching Party, to EPC or its sublicensees): (i) all Information relating to the Product, and all [*] with respect to Product in the breaching Party's name; (ii) all [*] related to the Product, to the extent that they may be [*]; (iii) all [*] related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in the breaching Party's Control and that relate to the Product. The breaching Party shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to the non-breaching Party (if BMS is the breaching Party, to EPC or its sublicensees).

13. REPRESENTATIONS AND WARRANTIES AND COVENANTS

13.1 Mutual Authority. EXEL, EPC and BMS each represents and warrants to the other Parties as of the Execution Date that: (a) it has the authority and right to enter into and perform this Agreement, (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (c) its execution, delivery and performance of this Agreement shall not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

13.2 Rights in Technology.

(a) During the term of this Agreement, each Party shall use commercially reasonable efforts to maintain (but without an obligation to renew) and not to breach any agreements with Third Parties that provide a grant of rights from such Third Party to a Party that are Controlled by such Party and are licensed or become subject to a license from such Party to the other Party under **Article 8**. Each Party agrees to provide promptly the other Parties with notice of any such alleged breach or obligation to renew. As of the Execution Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

(b) Each of EPC and BMS represents and warrants that it: (i) has the ability to grant the licenses contained in or required by this Agreement; and (ii) is not currently subject to any agreement with any Third Party or to any outstanding order, judgment or decree of any court or administrative agency that restricts it in any way from granting to another Party such licenses or the right to exercise its rights hereunder.

(c) Each of EPC and BMS represents and warrants that: (i) it has not granted, and covenants that it shall not grant after the Execution Date and during the term of this Agreement, any right, license or interest in or to, or an option to acquire any of the foregoing with respect to, the intellectual property rights licensed to another Party hereunder (including the Exelixis Licensed Patents and the BMS Licensed Patents, as the case may be) that is in conflict with the rights (including the rights set forth in **Article 10**) or licenses granted or to be granted (including any conditional license rights) to another Party under this Agreement; and (ii) it has not granted any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to another Party hereunder that would prevent it from performing its obligations under this Agreement, or permitted such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to another Party hereunder.

13.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates; *provided*, *however*, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates under this Agreement with respect to Collaboration Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Collaboration Compounds shall apply equally to the activities of such Affiliate; and (b) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in **Article 8**) as if such intellectual property had been developed by the Party.

13.4 Third Party Rights. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Execution Date, its performance of work under the Collaboration as contemplated by this Agreement shall not infringe the valid patent, trade secret or other intellectual property rights of any Third Party. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Execution Date, it will not violate a contractual or fiduciary obligation owed to such Third Party (including misappropriation of trade secrets) by performing its work under the Collaboration as contemplated by this Agreement.

13.5 Notice of Infringement or Misappropriation. Each of BMS and EXEL represents and warrants to the other Party that, as of the Execution Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any Third Party in relation to any technology that such Party intends, as of the Execution Date, to use in connection with the Collaboration.

13.6 HSR Act Filing; Effective Date.

(a) Effective Date. The Parties agree that the effective date of the Collaboration Agreement is January 11, 2007 (the "**Original Effective Date**").

(b) Effect of HSR Act Filing on Rights & Obligations. If the exercise by BMS of any of its Co-Development Options under the Agreement, or the exercise by Exelixis of any of its Product Opt-Outs or Indication Opt-Outs, requires the making of filings under the HSR Act, or under any similar premerger notification provision in the European Union or any other jurisdiction, then all rights and obligations directly related to the exercise of such Co-Development Option(s) (e.g., the corresponding license grants and corresponding payment obligations) shall not become effective until the applicable waiting period has expired or been terminated or until approval or clearance from the reviewing authority has been received, and each Party agrees to diligently make any such filings and respond to any request for information to expedite review of such transaction. Each Party shall be responsible for its own costs in connection with such filing, except that BMS shall be solely responsible for the applicable filing fees. The Parties has made such HSR Act filings in relation to Exelixis' opting-out of the Co-Development of SMO Product and the Parties acknowledge that the applicable waiting period therefor has expired on November 13, 2010.

(c) Resolution of Regulatory Authority Opposition. If the antitrust enforcement authorities in the U.S. make a second request under the HSR Act, or any antitrust enforcement authority in another jurisdiction commences an investigation into the exercise by BMS of any of its Co-Development Options, then the Parties shall, in good faith, cooperate with each other and take reasonable actions to attempt to: (i) resolve all enforcement agency concerns about the transaction under investigation; and (ii) diligently oppose any enforcement agency opposition to such transaction. In the event the enforcement agency files a formal action to oppose the transaction, the Parties shall confer in good faith to determine the appropriate strategy for resolving the enforcement agency opposition, including where appropriate, the renegotiation of their obligations under this Agreement with respect to that Co-Development Option, with the objective of placing each Party, to the maximum extent possible, in the same economic position that each Party would have occupied if BMS had been permitted to exercise such Co-Development Option. Notwithstanding the foregoing, nothing in this **Section 13.6** shall require either party to divest any assets.

14. INDEMNIFICATION AND LIMITATION OF LIABILITY

14.1 Mutual Indemnification. For the purpose of this Article 14, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." Subject to **Section 14.4**, each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, employees and agents from and against any and all Third Party suits, claims, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and reasonable attorneys' fees ("**Losses**") to the extent such Losses result from any: (a) breach of warranty by the indemnifying Party contained in the Agreement; (b) breach of the Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of the indemnifying Party, its Affiliates

or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including misappropriation of trade secrets).

14.2 Indemnification by BMS. Subject to **Section 14.4**, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from [*] by BMS or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by Exelixis contained in the Agreement; (b) breach of the Agreement or applicable law by Exelixis; (c) negligence or willful misconduct by Exelixis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by Exelixis to a Third Party (including misappropriation of trade secrets).

14.3 Certain Losses. Any Losses resulting from [*] by a Party or its Affiliates, agents or sublicensees with respect to which neither Party owes an indemnification obligation under **Section 14.1** shall be [*], if incurred prior to [*] to which such Loss relates; or (b) [*], if incurred after such [*] to which such Loss relates.

14.4 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of **Sections 14.1 or 14.2**. A condition precedent to each Indemnitee's right to seek indemnification under such **Sections 14.1 or 14.2** is that such Indemnitee shall:

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

(b) if the indemnifying Party acknowledges that such Loss falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Loss (including the right to settle the claim solely for monetary consideration); provided, that the indemnifying Party shall seek the prior written consent (such consent to not be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(c) fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Loss.

Provided that an Indemnitee has complied with all of the conditions described in subsections (a) – (c), as applicable, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Loss. Subject to the foregoing, an Indemnitee may

participate in any proceedings involving such Loss using attorneys of the Indemnitee's choice and at the Indemnitee's expense. In no event may an Indemnitee settle or compromise any Loss for which the Indemnitee intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party (such consent to not be unreasonably withheld, delayed or conditioned), or the indemnification provided under such **Section 14.1 or 14.2** as to such Loss shall be null and void.

14.5 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO **SECTIONS 14.1 AND 14.2**, AND EXCEPT FOR BREACH OF **SECTION 11.1** HEREOF, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THE AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY (INCLUDING GROSS NEGLIGENCE OR WILLFUL BREACH WITH REEPCCT TO A PARTY'S REPRESENTATIONS AND WARRANTIES IN **ARTICLE 13**).

14.6 Collaboration Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 13 ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH REEPCCT TO ANY COMPOUNDS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY BMS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO EXELIXIS PURSUANT TO THE TERMS OF THE AGREEMENT. EXCEPT AS PROVIDED IN ARTICLE 13 ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH REEPCCT TO ANY COMPOUNDS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THE AGREEMENT.

15. MISCELLANEOUS

15.1 Dispute Resolution. For the purpose of Sections 15.1 through 15.3, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." Unless otherwise set forth in this Agreement and excluding in particular any dispute described in **Section 15.3** (which will be handled exclusively in accordance with **Section 15.3**), any dispute over matters within the authority of the JEC pursuant

to **Article 2** (which will be handled exclusively in accordance with **Section 2.7(c)**), and any dispute handled pursuant to **Section 3.6(c)(iii), Section 8.5(b)(i), Section 9.12(b)** or **Section 9.22(b)**, in the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Party's respective Executive Officers. Any Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within [*] after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within [*] of their first meeting for such negotiations, any Party may seek to have such dispute resolved in any U.S. federal or state court of competent jurisdiction and appropriate venue, provided, that if such suit includes a Third Party claimant or defendant, and jurisdiction and venue with respect to such Third Party appropriately resides outside the U.S., then in any other jurisdiction or venue permitted by applicable law.

15.2 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, without regard to conflicts of law rules.

15.3 Patents and Trademarks; Equitable Relief.

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

(b) Any dispute, controversy or claim arising out of, relating to or in connection with the need to seek preliminary or injunctive measures or other equitable relief (e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in **Article 11**) need not be resolved through the procedure described in **Section 15.1** but may be immediately brought in a court of competent jurisdiction.

15.4 Entire Agreement; Amendments. This Agreement and the collaboration agreement (for the discovery, development and commercialization of compounds that antagonize the target known as ROR) that is between Exelixis and BMS and that is dated as of October 8, 2010 and amended and restated as of the Effective Date (the "**ROR Collaboration 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. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement and the ROR Collaboration Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

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

15.6 Bankruptcy.

(a) For the purpose of this Section 15.6, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("**Title 11**"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "**Bankrupt Party**") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall, at the election of the Bankrupt Party made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party including, where applicable, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this **Section 15.6**, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies

now or hereafter existing at law or in equity (including Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of licensed products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this **Section 15.6** shall be subject to the licenses set forth elsewhere in this Agreement and the payment obligations of this Agreement, which shall be deemed to be royalties for purposes of Title 11.

15.7 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, acts of terrorism, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

15.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Parties confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For EXEL:	Exelixis, Inc. 210 East Grand Avenue South San Francisco, CA 94080 Attention: EVP and General Counsel
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.

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

For EPC:	Exelixis Patent Company, LLC. 210 East Grand Avenue South San Francisco, CA 94080 Attention: VP, Legal Services
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For BMS:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Senior Vice President, Corporate and Business Development Phone: 609-252-3413 Fax: 609-252-6880
With a copy to:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Vice President and Senior Counsel, Corporate and Business Development Phone: 609-252-5328 Fax: 609-252-4232

Furthermore, a copy of any notices required or given under **Article 10** of this Agreement shall also be addressed to the Vice President and Chief Intellectual Property Counsel of BMS at the address set forth in **Section 10.4(f)**.

15.9 Maintenance of Records Required by Law or Regulation. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Party upon request.

15.10 Assignment. For the purpose of this Section 15.10, EXEL and EPC shall be deemed collectively as one (1) "Party." Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other (such consent to not be unreasonably withheld, delayed or conditioned), except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to all or substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction; provided that any such permitted successor or assignee of rights and/or obligations hereunder is obligated, by reason of operation of law or pursuant to a written agreement with the other Party, to assume performance of this Agreement or such rights and/or obligations; and provided, further, that if assigned to an

Affiliate, the assigning Party shall remain jointly and severally responsible for the performance of this Agreement by such Affiliate. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this **Section 15.10** shall be null and void and of no legal effect.

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

15.12 Non-Solicitation of Employees. For the purpose of this Section 15.12, EXEL and EPC shall be deemed collectively as one (1) "Party." After the Original Effective Date and during the term of this Agreement, each Party agrees that neither it nor any of its divisions, operating groups or Affiliates shall recruit, solicit or induce any employee of the other Party directly involved in the activities conducted pursuant to this Agreement to terminate his or her employment with such other Party and become employed by or consult for such Party, whether or not such employee is a full-time employee of such other Party, and whether or not such employment is pursuant to a written agreement or is at-will. For purposes of the foregoing, **"recruit"**, **"solicit"** or **"induce"** shall not be deemed to mean: (a) circumstances where an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (b) general solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

15.13 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

15.14 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

15.15 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

15.16 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" are used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice

regarding this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

15.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, each of which shall be binding when sent.

Signature page follows.

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

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

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Graham R. Brazier
Title: Vice President, Business Development
Date: 4/20/11

EXELIXIS, INC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

EXELIXIS PATENT COMPANY, LLC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

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

Exhibit 3.2
LIST OF INITIAL SCREENING TARGETS

[*]

[*] = 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 3.3
LIST OF INITIAL LEAD OP TARGETS

[*]

[*] = 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 3.9

FORM OF TARGET STATUS LIST

Instructions for use:

- The name of each target will be added to the Target column.
- Under the Status column, each target shall be labeled with one of the following: Screening Target (chosen-awaiting-screening); Screening Target (screen-in-progress); Rejected Screening Target; Lead Op Candidate; Lead Op Target; Rejected Lead Op Target; or Collaboration Target.
- For the Other Identified Target column, the name of any other target(s) that is part of the set of Identified Targets will be listed and updated as appropriate.
- The applicable Specificity Criteria and Target Potency Threshold will be added and updated in the appropriate columns.
- The applicable dates for adding and withdrawing any target will be added to the last two columns.

TARGET	STATUS	OTHER IDENTIFIED TARGETS	SPECIFICITY CRITERIA	TARGET POTENCY THRESHOLD	DATE ADDED	DATE WITHDRAWN

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

Exhibit 6.4(c)

TERMS OF CO-PROMOTION AGREEMENT

Without limiting the generality of either Party's rights and obligations contained in the Agreement, the Co-Promotion Agreement shall, in addition to such other terms as the Parties may agree and as are customary in an agreement of that type, include the following terms and conditions, unless otherwise agreed upon by the Parties:

Allocation of Sales and Marketing Responsibilities	By [*] of each year, the JCC shall decide the [*] to be performed by both Parties during the Fiscal year commencing on January 1 of that year for the promotion of the Product in the U.S. based on indication(s) then available and expected to be available during the forthcoming year for Commercialization of the Product in the U.S. The [*] shall be reviewed and may be modified or adjusted during such year if both Parties so agree. (For each year, the [*] for that year.) As a fundamental principle of the Co-Promotion in the U.S., Exelixis shall perform [*] [*] in each year. Exelixis may phase-in its required number of representatives by recruiting, hiring and training such representatives over a period of [*] so long as Exelixis maintains, from the time estimated by the JDC to be [*] prior to anticipated approval as set forth in the then-current U.S. Commercialization Plan, the greater of (x) [*] required total representatives (determined by the JCC) as Exelixis representatives or (y) [*] Exelixis representatives. [*] to make up the difference between the above minimum requirement and Exelixis' share of the [*] during such [*] period, subject to [*] to perform such [*] with any costs associated with such performance by [*], (with such approval not to be unreasonably withheld). All Exelixis sales representatives who will be performing sales calls shall [*] Additionally, all Exelixis sales representatives, prior to being assigned by Exelixis to a Collaboration Product, [*] shall be set forth in the Co-Promotion Agreement), and [*] in accordance with applicable U.S. laws and regulations. All sales representatives shall be [*] relevant to the Product. Pre-approval, BMS shall provide initial sales training on the Product for the Exelixis sales representatives who will be performing sales calls in the U.S. Following such initial training, any subsequent training of Exelixis sales representatives shall be made available by [*] on the Product. With respect to marketing activities in the Profit-Share markets, the Parties shall work via the JCC to discuss positioning, branding, core messaging, distribution channel strategy, development strategy, competitive strategy, target selection, opinion leader development and investor and press relations.
Co-Promotion Agreement	The Co-Promotion Agreement will be negotiated [*]. The parties recognize that a [*]. The Co-Promotion agreement shall be limited to commercialization in the Profit Share Market and shall be consistent with the Agreement and rights granted to the JCC, JDC, JFC and JEC in the Agreement. In the Co-Promotion Agreement, the Parties shall jointly establish detailing

[*] = 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.

	thresholds, measures of sales performance consistent with internal company metrics and Net Sales and through a well established third party sales reporting entity, value of each detail for profit calculation purposes, and shortfall provisions (e.g., [*], etc.) in the definitive Co-Promotion Agreement. The Parties shall decide in the Co-Promotion agreement on the general [*] for each Party to [*].
Breach	The Parties shall jointly establish standards and consequences for material breach of the co-promotion obligations (*e.g.*, the threshold of material breach and remedies therefor, including without limitation the possibility of termination of the breaching Party's co-promotion right, etc.) set forth in the definitive Co-Promotion Agreement. Without limiting the foregoing, in the event that a Party does not provide at least [*] for any [*] with respect to a Co-Promotion Product, then the other Party shall have the right to assume all Commercialization responsibilities with respect to such Co-Promotion Product, and (i) in the case of any such failure by Exelixis, such Co-Promotion Product shall become a Royalty-Bearing Product (with royalties payable to Exelixis as set forth in Section 9.6(b)(iv)), or (ii) in the case of any such failure by BMS, Exelixis will pay to BMS royalties on net sales of such Product in the U.S. at the rates set forth in Section 9.6(b)(iv). The preceding remedy for a Party's failure to provide [*], and such failure [*] Agreement.
Use of Contractors	Only during the first [*] post [*], in order to reach Exelixis' [*] threshold of representatives. Also, if such other Party [*], then a contract sales organization may be used and the expenses incurred by such other Party for such activities shall be [*].

Exhibit 11.5

Press Release

For Immediate Release

Contact:
Charles Butler
Director,
Corporate Communications
Exelixis, Inc.
(650) 837-7277
cbutler@exelixis.com

MEDIA:
Jeff Macdonald
Bristol-Myers Squibb
(212) 546-4824
jeffrey.macdonald@bms.com

INVESTORS:
John Elicker
Bristol-Myers Squibb
(212) 546-3775
john.elicker@bms.com

EXELIXIS AND BRISTOL-MYERS SQUIBB SIGN NEW COLLABORATION AGREEMENT TO DISCOVER AND DEVELOP NOVEL ONCOLOGY COMPOUNDS

South San Francisco, CA and New York, NY – December 18, 2006 – Exelixis, Inc. (Nasdaq:EXEL) and Bristol-Myers Squibb Company (NYSE:BMY) today announced a worldwide collaboration to discover, develop and commercialize novel targeted therapies for the treatment of cancer.

Under the collaboration, which will become effective upon antitrust clearance, Exelixis will deploy its drug discovery platform and be fully responsible for the identification and pre-clinical development of small molecule drug candidates directed against mutually selected targets. Bristol-Myers Squibb will have the right to select up to three Investigational New Drug (INDs) candidates against three different targets. Following selection by BMS, Bristol-Myers Squibb will lead all global activities, although the parties will co-develop and co-commercialize the programs in the United States.

Under the terms of the agreement, Bristol-Myers Squibb will pay to Exelixis an upfront payment of $60 million in cash. Exelixis will also receive $20 million for each of up to three different drug candidates selected by Bristol-Myers Squibb at IND. The parties plan to equally share development costs, commercial profits and co-promotion responsibilities in the United States. Exelixis will also receive royalties on product sales outside of the United States. For each program selected by BMS, Exelixis may opt out of the co-development or co-promotion in the United States, in which case Exelixis would receive milestones and royalties in lieu of a U.S. profit share.

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

"We are very pleased to collaborate with BMS on the discovery and development of novel treatments for cancer." said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. "This collaboration will capitalize on the power of Exelixis' drug discovery engine and on the breadth and depth of BMS' expertise in oncology. We have had excellent, productive collaborations with BMS in oncology since 2000, and I am confident that this new collaboration will build on the excellent relationship between the companies and on the knowledge that we have generated during those years."

"Bristol-Myers Squibb is dedicated to addressing areas of serious medical need, and oncology remains one of the cornerstones of our research and development efforts," said Francis Cuss, M.D., senior vice president of Drug Discovery for Bristol-Myers Squibb. "We have a long-standing and productive history of collaboration with Exelixis and are pleased to expand our partnership to include the discovery and development of novel, targeted oncology therapies."

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company is leveraging its fully integrated drug discovery platform to fuel the growth of its development pipeline, which is primarily focused on cancer. For more information, please visit the company's web site at www.exelixis.com.

ABOUT BRISTOL-MYERS SQUIBB

Bristol-Myers Squibb is a global pharmaceutical and related health care products company whose mission is to extend and enhance human life. Visit Bristol-Myers Squibb on the World Wide Web at www.bms.com.

Exelixis Forward-Looking Statement

This press release contains forward-looking statements, including, without limitation, all statements related to the discovery, development and commercialization of therapies targeting the treatment of cancer under the collaboration as well as related costs and payments, including milestones, profits and royalties. Words such as "believes," "anticipates," "plans," "expects," "intends," "will," and similar expressions are intended to identify forward-looking statements. These forward-looking statements are based upon Exelixis' current expectations. Forward-looking statements involve risks and uncertainties and past performance is not indicative of future results. Exelixis' actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, the risk that products candidates that appeared promising in early research do not demonstrate safety or efficacy in clinical trials; the ability of the company to advance preclinical compounds into clinical development; the uncertainty of the FDA approval process; and the therapeutic and commercial value of the company's compounds. These and other risk factors are discussed under "Risk Factors" and elsewhere in Exelixis' quarterly report on Form 10-Q for the quarter ended September 30, 2006 and other filings with the Securities and Exchange Commission. Exelixis expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward- looking statements contained herein to reflect any change in the company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

Bristol-Myers Squibb Forward-Looking Statement

This press release contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995, regarding the development and commercialization of products. Such forward-looking

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statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes and results to differ materially from current expectations. No forward-looking statement can be guaranteed. Among other risks, there can be no guarantee that the research collaboration agreement described in this release will result in the discovery, development and commercialization of products. Forward-looking statements in the press release should be evaluated together with the many uncertainties that affect Bristol-Myers Squibb's business, particularly those identified in the cautionary factors discussion in Bristol-Myers Squibb's Annual Report on Form 10-K for the year ended December 31, 2005, its Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. Bristol-Myers Squibb undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise.

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AMENDED AND RESTATED COLLABORATION AGREEMENT

THIS AMENDED AND RESTATED COLLABORATION AGREEMENT (the "**Agreement**") is made and entered into as of April 15, 2011 (the "**Effective Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EXEL**"), **EXELIXIS PATENT COMPANY, LLC.**, a Delaware limited liability company having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EPC**"), and **BRISTOL-MYERS SQUIBB COMPANY,** a Delaware corporation headquartered at 345 Park Avenue, New York, New York, 10154 ("**BMS**"). EXEL, EPC and BMS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". EXEL and EPC are sometimes referred to collectively as "**Exelixis**."

RECITALS

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

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

C. BMS, EXEL and EPC desire to establish a collaboration to apply such Exelixis technology and expertise to the development and commercialization of novel therapeutic and prophylactic products.

D. BMS and EXEL are parties to a collaboration agreement that established such collaboration, entered into on December 11, 2008, as amended, (such agreement, the "Collaboration Agreement"), the execution date of such agreement, the "Execution Date", and the effective date of such agreement, the "Original Effective Date").

E. On event date herewith, EXEL is assigning to its wholly owned subsidiary, EPC, the patents relating to compounds that developed under this Agreement.

F. BMS, EXEL and EPC wish to amend and restate the Collaboration Agreement to account for such change of patent ownership.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

consolidation, other transaction or series of transactions. As used in this **Section 1.8, "Person"** means any corporation, firm, partnership or other legal entity.

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

1.10 "Co-Developed Product" shall mean an XL184 Product that is not a Royalty-Bearing Product.

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

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

1.13 "Collaboration Compounds" means: (a) XL184; and (b) XL281.

1.14 "Commercial Costs" means the [*] costs that are [*] the sales, marketing and education relating to a Co-Developed Product in the U.S., including: (a) activities directed to the advertising and marketing of such Product; (b) professional education (to the extent not performed by sales representatives), including launch meetings; (c) costs of advertising, public relations and medical education agencies; (d) peer-to-peer activities, such as continuing medical education, grand rounds, and lunch and dinner meetings; (e) speaker programs, including the training of such speakers; (f) grants to support continuing medical education or research (excluding Clinical Costs); (g) development, publication and dissemination of publications relating to such Product; (h) developing, obtaining and providing training packages of such Product, promotional literature, promotional materials and other selling materials; (i) developing and performing market research; (j) conducting symposia and opinion leader development activities; (k) development reimbursement programs; (l) developing information and data specifically intended for national accounts, managed care organizations and group purchasing organizations; (m) [*] incurred in connection with [*], to the extent provided therein; (n) direct expenses relating to selling by non-Affiliate Third Parties; (o) costs of transporting, housing and maintaining sales representatives for training; (p) conducting Phase IIIB Clinical Trials and/or Phase IV Clinical Trials; (q) administration, operation and maintenance of the sales force that promotes such Product in the U.S., sales bulletins and other communications, sales meetings, specialty sales forces, consultants, call reporting and other monitoring/tracking costs, district and regional sales management, home office personnel who support the sales force; and (r) costs associated with Medical Education Activities, and other ancillary services to the foregoing (to the extent not otherwise falling within **subsections 1.14(a) through (q)**. Commercial Costs shall include costs of such activities that are undertaken at any time during the term of this Agreement (including prior to the initial Regulatory Approval of such Product in the U.S.).

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

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

1.17 "Committee-Governed Product" means: (a) any [*]; (b) any [*]; and (c) any [*].

1.18 "Compendia Listing" means a listing for an indication in the United States for a Product that is supported by a citation in at least one of the following authoritative drug reference books: (a) the American Society of Health-System Pharmacists' American Hospital Formulary Service (AHFS), or (b) the U.S. Pharmacopoeia Drug Information, or in another similar authoritative drug reference book that is relied on by Third Party payors in authorizing reimbursement for such Product for such indication.

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

1.20 "Co-Promotion Product" means a Co-Developed Product for which EXEL has exercised its option to Co-Promote in the U.S. as set forth in **Section 5.4**.

1.21 "Core Program" shall mean, with respect to a Product, [*] for which any [*] or any [*] first [*] for an indication other than medullary thyroid cancer with respect to such Product.

1.22 "Development" means, with respect to a Product, those activities, including research, pre-clinical development activities, clinical trials, supporting manufacturing activities and related regulatory activities, that are [*] to: (a) obtain the approval by the applicable Regulatory Authorities of the Drug Approval Application with respect to such Product in the applicable regulatory jurisdiction, whether alone or for use together, or in combination, with another active agent or pharmaceutical product; (b) maintain such approvals; or (c) obtain or maintain Compendia Listings with respect to such Product. To avoid confusion, Development does not include the conduct of Phase IIIB Clinical Trials or Phase IV Clinical Trials. For clarity, "**Co-Develop**", **"Develop"** and **"Developing"** have a correlative meaning.

1.23 "Development Costs" means the costs incurred by a Party or for its account, during the term and pursuant to this Agreement, that are specifically identifiable (or reasonably allocable) to the Development of a Co-Developed Product in the Co-Development Territory and that are directed to achieving or maintaining Regulatory Approval of such Co-Developed Product in the Co-Development Territory. The Development Costs shall include amounts that a Party pays to Third Parties involved in the Development of a Co-Developed Product ([*]), and all internal costs incurred by a Party in connection with the Development of such Co-Developed Product. Development Costs include the following: (a) preclinical costs such as toxicology and formulation development, test method development, delivery system development, stability testing and statistical analysis; (b) Clinical Costs; (c) expenses related to adverse event reporting; (d) Manufacturing Costs for a Co-Developed Product for use in preclinical and clinical activities including the manufacture, purchase or packaging of comparators or placebo for use in clinical trials (with the manufacturing costs for comparators or placebo to be determined in the same manner as Manufacturing Costs are determined for any Product, and with the manufacturing costs for active pharmaceutical ingredients used in combination with a Product to be included at the cost of the Party providing such active pharmaceutical ingredient, without additional mark-up), as well as the direct costs and expenses of disposal of drugs and other supplies used in such Clinical Trials and any associated release testing and QA/QC development costs; (e) [*] incurred in connection with [*], to the extent provided therein; and (f) development of the Manufacturing process for a Co-Developed Product (including with respect to any excipients or any active pharmaceutical ingredient included in such Co-Developed Products) and related scale-up, manufacturing process validation, manufacturing process improvements, and qualification and validation of Third Party contract manufacturers; (g) regulatory expenses relating to Development activities for the purpose of obtaining Regulatory Approval for an indication for a Co-Developed Product; (h) costs of real property rented specifically for Development activities (to the extent actually used); and (i) other out-of pocket development expenses including, without limitation institutional and advisory review boards, investigator meetings, quality of life studies, epidemiology and outcomes research.

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

1.25 "Distribution Costs" means, with respect to a Co-Developed Product for any period, [*] of such Product during such period to cover the internal costs and out of pocket costs incurred by the Parties and all of their Affiliates in connection with the distribution of such Product to a Third Party in the U.S., including: (i) handling and transportation to fulfill orders (excluding such costs, if any, treated as a deduction in the definition of Net Sales); (ii) customer services, including order entry, billing and adjustments, inquiry and credit and collection; and (iii) direct cost of storage and distribution of the Product.

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

1.27 "Drug Approval Application" or "**DAA**" means: (a) in the United States, an NDA (or a supplemental NDA for following indications), and (b) in any other country or regulatory jurisdiction, an equivalent application for regulatory approval required before commercial sale or

use of a Product (or with respect to a subsequent indication) in such country or regulatory jurisdiction.

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

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

1.30 "Executive Officers" means: (a) in the case of Exelixis, the President and Chief Executive Officer of EXEL; and (b) in the case of BMS, either: (i) [*]; or (ii) the [*].

1.31 "Exelixis Clinical Trials" means: (a) On-going Exelixis Trials; and (b) New Exelixis Trials.

1.32 "**Exelixis Existing Patents**" means all: (a) patents included in Exelixis Licensed Patents that: (i) exist as of the Original Effective Date, or (ii) that are substitutions, extensions, registrations, confirmations, reissues, re-examinations, supplementary protection certificates, confirmation patents, patents of additions, renewals or any like filings of the patents described in subsection (a)(i) or the patents issuing from the applications described in subsection (b); (b) pending applications included in Exelixis Licensed Patents that: (i) exist as of the Original Effective Date; or (ii) that are continuations, divisions or continuations-in-part of those patents or applications described in subsection (a) or subsection (b)(i), as well as all patents issuing therefrom; and (c) any international counterparts, and counterparts in any country, to clauses (a) and (b) above.

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

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

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

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

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

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

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

1.40 "Identified Target(s)" means, with respect to a Collaboration Compound, the set of one or more biological targets (as applicable) identified on **Exhibit 1.40**.

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

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

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

1.44 "Joint Invention" means any Invention invented or discovered jointly by or on behalf of the employee(s), contractor(s) or agent(s) of BMS on one hand, and EXEL and/or EPC on the other hand (and/or their Affiliates).

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

1.46 "Launch" means, for each Product in each country, the first arm's-length sale to a Third Party for use or consumption by the public of such Product in such country after Regulatory Approval of such Product in such country. A Launch shall not include any Product sold for use in

clinical trials, for research or for other non-commercial uses, or that is supplied as part of a compassionate use or similar program**.**

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

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

1.49 "Major Tumor Indication" means one of the following indications: [*].

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

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

For costs in **subsection 1.51(a)**, Manufacturing Costs means: (i) the amount paid to such a Third Party ([*]); plus (ii) the relevant manufacturing Party's reasonable direct and identifiable internal costs and out-of-pocket costs, incurred or accrued (including any prepayments) by the manufacturing Party in connection with manufacturing process improvements, storage, manufacturing scale-up, manufacturing site qualification, quality assurance and quality control (including testing), supply chain management, capital equipment, similar activities comprising the manufacturing Party's oversight of the manufacturing process of the non-Affiliate Third Party, and any non-recoverable value-added tax or similar tax due for amounts paid to such Third Party.

For costs in **subsection 1.51(b)**, Manufacturing Costs means the "standard cost" per unit, including variances to standard costs and inventory write-offs. This standard cost shall include the cost of raw materials, labor, and other direct and identifiable variable costs incurred or accrued by the manufacturing Party in connection with the Manufacture of a Co-Developed Product, manufacturing process improvements, storage, manufacturing scale-up, manufacturing site qualification, quality assurance and quality control (including testing), supply chain management, and costs of equipment, plant operations and plant support services necessary to produce such Co-Developed Product. These costs of plant operations and support services shall include [*] and other similar activities, including [*]. Costs that cannot be identified to a specific activity supporting manufacturing of a Co-Developed Product, such as charges for corporate overhead that are not controllable by the Manufacturing plant, shall be [*] from the determination of Manufacturing Cost.

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

The Manufacturing Costs shall include costs of such activities that are undertaken at any time during the term of this Agreement (including [*]). The Manufacturing Costs for any active pharmaceutical ingredients used in combination with a Product shall be included at the cost of the Party providing such active pharmaceutical ingredient, without additional mark-up.

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

1.53 "MMA" means the Medicare Prescription Drug, Improvement and Modernization Act of 2003, as may be amended from time to time, or any successor legislation thereto.

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

1.55 "Net Sales" means the amount invoiced or otherwise billed by BMS, or its Affiliate or sublicensee, for sales or other commercial disposition of a Product to a Third Party purchaser, less the following to the extent included in such billing or otherwise actually allowed or incurred with respect to such sales: (a) discounts, including cash, trade and quantity discounts, price reduction programs, retroactive price adjustments with respect to sales of a product, charge-back payments and rebates granted to managed health care organizations or to federal, state and local governments (or their respective agencies, purchasers and reimbursers) or to trade customers, including but not limited to, wholesalers and chain and pharmacy buying groups; (b) credits or allowances actually granted upon rejections or returns of Products, including for recalls or damaged goods; (c) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Products, to the extent billed; (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of a Product; (e) bad debts relating to sales of Products that are actually written off by BMS in accordance with GAAP during the applicable calculation period; (f) costs due to the factoring of receivables; and (g) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Products, including value-added taxes, or other governmental charges otherwise measured by the billing amount, when included in billing, as adjusted for rebates and refunds, but specifically excluding taxes based on net income of the seller; provided that all of the foregoing deductions are calculated in accordance with GAAP.

Notwithstanding the foregoing, if any Product is sold under a bundled or capitated arrangement with other BMS products, then, solely for the purpose of calculating Net Sales under this Agreement, any discount on such Products sold under such an arrangement shall be [*] for the applicable accounting

period. In case of any dispute as to the applicable [*] under the preceding sentence, the determination of same shall be calculated and certified by [*], whose decision shall be binding.

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

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

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

1.56 “New Exelixis Trials” means the new or expanded clinical trials that are described in the Global Development Plan included in a letter agreement, which the Parties shall enter into and which will be incorporated by reference herein (the “**Letter Agreement**”), and any other trials that are designated as New Exelixis Trials by the JDC.

1.57 “On-Going Exelixis Trials” means the clinical trials that are described in the Global Development Plan included in the Letter Agreement and that are on-going as of the Original Effective Date.

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

1.59 “Patent” means all: (a) unexpired letters patent (including inventor’s certificates and utility models) which have not been held invalid or unenforceable by a court of competent

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

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

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

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

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

1.64 "Phase III Clinical Trial" means a clinical trial of a Product on sufficient numbers of patients that is designed to establish that such Product is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed, and to support Regulatory Approval of such Product or label expansion of such Product.

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

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

1.67 "Product" means any therapeutic or prophylactic product (for use in animals or humans) that contains or comprises a Collaboration Compound.

1.68 "Program Backups" means, with respect to a Collaboration Compound, any compounds that: (a) were created by BMS or EXEL as part of a Backup Program pursuant to **Section 2.12** for such Collaboration Compound; and (b) [*] such Collaboration Compound's Identified Target(s) [*].

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

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

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

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

1.73 "Royalty-Bearing Product" means: (a) any Product containing or comprising XL281 (but not XL184); or (b) any XL184 Product for which either: (i) an opt-out has occurred pursuant to **Sections 3.9(a), 3.10,** or **5.4(d);** or (ii) BMS has converted EXEL's right to profit-share pursuant to **Section 11.3(b)**.

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

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

1.76 "Target Potency Threshold" means: (a) with respect to XL184, that such compound [*]; and (b) with respect to XL281, that such compound [*].

1.77 "Territory" means the world.

1.78 "Third Party" means any entity other than: (a) EXEL; (b) EPC; (c) BMS; or (d) an Affiliate of any of the foregoing Party.

1.79 "Third Party Royalties" means royalties (in each case only to the extent allocable to the U.S.) payable to a Third Party in consideration for rights [*] for the [*] of an XL184 Product (other than a Royalty-Bearing Product containing or comprising XL184).

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

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

1.82 "Valid Claim" means: (a) a claim in an issued Patent that has not: (i) expired or been canceled; (ii) been declared invalid by an unreversed and unappealable or unappealed decision of a court or other appropriate body of competent jurisdiction; (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; or (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement of the Parties; or (b) a claim under an application for a Patent that has been pending for [*], and, in any case, which has not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), or abandoned.

1.83 "XL184" means: (a) the small molecule compound with EXEL identifier EXEL-02977184; (b) the small molecule compounds listed on **Schedule B** of the Letter Agreement; (c) any Program Backups to EXEL-02977184; and (d) any isomer, racemate, salt, solvate, hydrate, metabolite, conjugate, ester, or prodrug of the compound described in **subsections 1.83(a), (b) or (c)**.

1.84 "XL184 Product" means a Product containing or comprising XL184.

1.85 "XL281" means: (a) the small molecule compound with EXEL identifier EXEL-03832819; (b) the small molecule compounds listed on **Schedule C** of the Letter Agreement; (c) any Program Backups to EXEL-03832819; and (d) any isomer, racemate, salt, solvate, hydrate, metabolite, conjugate, ester, or prodrug of the compound described in **subsections 1.85(a), (b) or (c)**.

1.86 "XL281 Product" means a Product containing or comprising XL281.

1.87 "XL880" means: (a) the small molecule compound with EXEL identifier EXEL-03052880; (b) the small molecule compounds specifically related to EXEL-03052880 and licensed by EXEL to SmithKline Beecham Corporation (doing business as GlaxoSmithKline, "**GSK**") together with EXEL-03052880; and (c) any isomer, racemate, salt, solvate, hydrate, metabolite, conjugate, ester, or prodrug of the compound described in **subsections 1.87(a) or (b)**.

Additional Definitions

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

Definition	Location (Section)
Alliance Manager	**2.7(a)**
[*] Cap	**3.8(b)(ii)**
[*] Deferred Development Costs	**3.8(b)(iii)(2)**
Annual Development Plan	**3.2(a)**
Backup Program	**2.12(a)**
Backup Program Trigger Date	**2.12(b)**
Backup Research Plan	**2.12(a)**
[*]	**[*]**
BMS Initial Backup Funding	**2.12(d)(i)**
Cash Reserves	**3.10**
[*]	**[*]**
[*]	**[*]**
Confidential Information	**10.1**
Co-Promotion Agreement	**5.4(a)**
Co-Promotion Notice	**5.4(b)**
Co-Promotion Option	**5.4(a)**
Deferral End Point	**3.8(b)(i)**
Development Cost Mechanism Amount	**3.8(b)(iii)(1)**
Original Effective Date	**12.6**
Exelixis Initial Funding Allocation	**3.8(a)(i)**
Global Commercialization Strategy	**5.2(a)**
Global Deferred Development Costs	**3.8(b)(iii)(1)**
Global Development Plan	**3.1(a)**
GSK	**1.87**
Indication Opt-Out	**3.9(b)**
JAMS	**7.1(b)(i)(3)**
Joint Commercialization Committee or **JCC**	**2.1(a)**
Joint Development and Regulatory Committee or **JDC**	**2.1(a)**
Joint Executive Committee or **JEC**	**2.1(a)**
Joint Finance Committee or **JFC**	**2.1(a)**
Letter Agreement	**1.56**
Losses	**13.1**
[*]	**[*]**
Party Implementation Matter	**2.6(c)(ii)**
Party Vote	**2.6(c)(i)**
Pharmacovigilance Agreement	**4.7**
Product Opt-Out	**3.9(a)(i)**
Royalty Bearing Product Development Expenses	**3.11(b)**
Royalty Term	**8.10**
Sales Threshold	**8.4(b)**
[*]	**[*]**
Term	**11.1**
U.S. Commercialization Plan	**5.2(a)**
Working Group	**2.6(f)**

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

2. MANAGEMENT OF COLLABORATION

2.1 General. For the purpose of this Article 2, EXEL and EPC shall be deemed collectively as one (1) "Party."

(a) Role of Committees. Subject to **Section 2.1(b)** and the other terms and conditions of this Agreement, the Parties shall establish: (i) a joint executive committee (the "**Joint Executive Committee**" or "**JEC**") that will oversee the Collaboration and facilitate communications between the Parties with respect to the Development, Regulatory Approval, and Commercialization of Committee-Governed Products hereunder; and (ii) three (3) specialized joint committees consisting of one to focus on each of the following areas arising out of the Collaboration: (A) Development and Regulatory Approval and other regulatory matters (such committee, the "**Joint Development and Regulatory Committee**" or "**JDC**"); (B) Commercialization (such committee, the "**Joint Commercialization Committee**" or "**JCC**"); and (C) financial issues (such committee, the "**Joint Finance Committee**" or "**JFC**"). Each Committee shall have the responsibilities and authority allocated to it in this **Article 2** and elsewhere in this Agreement. It is contemplated that: (X) all significant matters (other than Party Implementation Matters, as defined in **Section 2.6(c)(ii)**) relating to the pre-clinical and clinical Development of Committee-Governed Products and the Commercialization of Co-Developed Products, in each case under this Agreement will be addressed by the applicable first-tier Committees (*i.e.*, the JDC, the JCC, or the JFC) and, if appropriate, by the JEC, as contemplated by **Section 2.6(c)**; and (Y) the Parties' respective activities under this Agreement (including Party Implementation Matters) will be reported to the relevant Committees in a reasonable and appropriate level of detail. Each of the JDC, JCC, and the JFC shall provide, on a [*] basis (unless otherwise requested by the JEC), updates on its activities and achievements to the JEC for review and comment. The Parties intend that their respective organizations will work together to assure the success of the Collaboration.

(b) Limitations on the Authority of Committees. Notwithstanding the Committee structure established pursuant to **Section 2.1(a)** to oversee the Collaboration, each Party shall retain the rights, powers and discretion granted to it under this Agreement, and no such rights, powers, or discretion shall be delegated to or vested in a Committee unless such delegation or vesting of rights is expressly provided for in this Agreement or the Parties expressly so agree in writing. Without limiting the generality of the foregoing, no Committee shall have any authority or jurisdiction to: (i) amend, modify, or waive compliance with this Agreement, any of which shall require mutual written agreement of the Parties; (ii) interpret this Agreement, or determine whether or not a Party has met its diligence or other obligations under the Agreement or whether or not a breach of this Agreement has occurred; (iii) require EXEL to [*] (other than [*], [*] that are carried out in accordance with the [*], and any [*] obligations with respect to [*] that are set forth in the applicable [*]) without EXEL's express written consent ([*]); (iv) require EXEL to [*] (other than [*], [*] that are carried out in accordance with [*], and any [*] with respect to [*] that are set forth in the applicable [*]) without EXEL's express written consent (which [*]); (v) require BMS to [*] (other than [*]) without BMS' express written consent (which [*]); (vi) make any decision on any matter that this Agreement expressly states is an option or election to be made by a Party; (vii) make any retroactive updates, amendments and modifications to, or waivers of provisions of, a Clinical Plan, an Annual Clinical Plan or an Approved Plan, any which shall require the mutual agreement of the Parties; and (viii) such other matters as are reserved to the consent, approval,

agreement or other decision-making authority of one or both Parties in this Agreement and that are not required by this Agreement to be considered by one or more Committees prior to the exercise of such consent, approval or other decision-making authority. For clarity, a Party's right to cast a deciding vote on a matter in a Committee pursuant to **Article 2** shall not, in and of itself, subject such matter to the preceding sentence. Notwithstanding the foregoing, neither Party shall be restricted from bringing before any appropriate Committee for discussion any matter relating to the Collaboration that it believes warrants discussion between the Parties through the Committees, *provided* that the consideration of any such matter by any Committee shall not infringe or limit the exercise of a Party's right of consent or approval or other decision-making authority granted to it by this Agreement nor shall any such consideration, as contemplated by this sentence, subject any such right of consent or approval or other decision-making authority to any dispute resolution mechanism provided for in **Section 2.6(c)** or **Article 14** or elsewhere in this Agreement.

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

2.2 Joint Executive Committee.

(a) Formation and Purpose. EXEL and BMS shall establish the JEC within [*] after the Original Effective Date. Subject to **Sections 2.1(b)** and **2.6(c)**, the JEC shall have overall responsibility for the success of the Collaboration, and its general areas of responsibility shall be: (a) to determine the global Development, regulatory, Commercialization, and manufacturing strategy for the Collaboration; (b) to coordinate the Parties' activities hereunder; and (c) as applicable, to review, comment on, approve, and resolve disputes with respect to, plans and budgets for, and the implementation of, the Collaboration, including the specific responsibilities of the JEC outlined below, in each case (clauses (a), (b) and (c) above) solely with respect to Committee-Governed Products. The JEC shall have the membership and shall operate by the procedures set forth in **Section 2.6**.

(b) Specific Responsibilities of the JEC. In addition to its overall responsibility for the Collaboration, but subject to **Sections 2.1(b)** and **2.6(c)**, the JEC shall, in particular, have the following specific responsibilities with respect to Committee-Governed Products:

(i) approve the global Development, regulatory and Commercialization strategies for the Collaboration;

(ii) coordinate the Parties' activities hereunder;

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

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

(v) manage and oversee the Development and Commercialization of each Product pursuant to the terms of the Agreement;

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

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

(viii) provide a forum for dispute resolution; and

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

2.3 Joint Development and Regulatory Committee.

(a) Formation and Purpose. EXEL and BMS shall establish the JDC within [*] after the Original Effective Date. Subject to **Sections 2.1(b) and 2.6(c)**, the JDC shall oversee, coordinate and expedite the Development of, and the making of regulatory filings for, each Product worldwide in order to obtain Regulatory Approvals (or Compendia Listings, as applicable). The JDC will also facilitate the flow of information with respect to Development activities being conducted for each Committee-Governed Product and oversee Development activities required to support Regulatory Approvals (or Compendia Listings, as applicable). The JDC shall have the membership and shall operate by the procedures set forth in **Section 2.6**.

(b) Specific Responsibilities of the JDC. In support of its responsibility for overseeing, coordinating and expediting the Development of, and regulatory filings for, each Product, but subject to **Sections 2.1(b) and 2.6(c)**, the JDC shall, in particular, and solely with respect to Committee-Governed Products:

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

(ii) prepare the Global Development Plan and each Annual Development Plan;

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

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

(v) design, in collaboration with the JCC, pharmacoeconomic studies or Phase IV Clinical Trials;

(vi) monitor and coordinate all regulatory actions, communications and submissions for Products, including establishing the schedule and implementation strategy for all regulatory filings for Products;

(vii) provide on a quarterly basis updates on its activities and achievements to the JEC for review and comment;

(viii) monitor the implementation of any Backup Programs; and

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

2.4 Joint Commercialization Committee.

(a) Formation and Purpose. EXEL and BMS shall establish the JCC within [*] after [*], which Committee shall, subject to **Sections 2.1(b) and 2.6(c)**, oversee: (i) the Commercialization strategy of each Co-Developed Product in the Co-Development Territory; and (ii) the Commercialization of such Products in the U.S. including the marketing, sales and distribution of each such Product in the U.S. The JCC shall have the membership and shall operate by the procedures set forth in **Section 2.6**.

(b) Specific Responsibilities of the JCC. In support of its responsibilities as described in clause (a) above, the JCC shall, subject to **Sections 2.1(b) and 2.6(c)**, perform the following activities solely with respect to Co-Developed Products:

(i) prepare the Global Commercialization Strategy and the U.S. Commercialization Plan, and any updates thereto;

(ii) review the allocation of Commercialization responsibilities between the Parties to ensure consistency with the terms of this Agreement, the Global Commercialization Strategy, and the U.S. Commercialization Plan;

(iii) coordinate and oversee the Parties' plans for labeling, branding and selecting trademarks for each such Product;

(iv) review life cycle management opportunities;

(v) review pricing and reimbursement strategies with respect to Products in the Royalty Territory and

(vi) With respect to Co-Developed Products in the U.S. only:

(1) review and approve advertising materials and strategies and promotional materials developed by a Party for the Parties' Sales Representatives;

(2) approve the selection of major or key marketing vendors (e.g., public relations and advertising agencies and medical education agencies) ;

(3) approve pricing and reimbursement, patient assistance, vendor return and co-pay strategies;

(4) design, in collaboration with the JDC, pharmacoeconomic studies or Phase IV Clinical Trials;

(5) approve market research plans;

(6) approve and coordinate all sales force activities, including training, number, proportion of time to be devoted to promotion, and territory alignment;

(7) approve packaging designs, and oversee educational and professional symposia, and speaker and peer-to-peer activity programs;

(8) discuss a range of suggested prices at which such Product will be sold to unaffiliated Third Parties and any discount strategies for such Product (it being understood that BMS will determine all pricing and reimbursement terms for such Products sold to customers);

(9) review of each Party's reports pertaining to its Commercial Costs; and

(10) review early access and compassionate use programs.

(c) Available Resources. Except as otherwise provided in **Article 5** or any applicable Co-Promotion Agreement, the JCC shall, in allocating responsibilities between BMS and EXEL with respect to Commercialization activities for Co-Promotion Products under this Agreement in the United States: (i) endeavor to take advantage of the respective resources, capabilities and expertise of EXEL and BMS; and (ii) endeavor to: (A) maintain, to the extent reasonably practical and commercially appropriate, continuity in functions and commitments of personnel and physical resources of BMS and EXEL; (B) avoid duplication of efforts by BMS and EXEL; and (C) foster efficient use by BMS and EXEL of resources and personnel, consistent with this Agreement and the applicable Global Commercialization Strategy and the applicable U.S. Commercialization Plan. For clarity, BMS shall be solely responsible for the Commercialization of each Product in the Royalty Territory and for each Royalty-Bearing Product in the United States.

2.5 Joint Finance Committee. EXEL and BMS shall establish a JFC within [*] after the Original Effective Date. The JFC shall provide support to all other Committees with respect to accounting and financial matters relating to Committee-Governed Products. The JFC shall have the membership and shall operate by the procedures set forth in Section 2.6.

2.6 General Committee Membership and Procedures.

(a) Membership. Each Committee shall be composed of such number of representatives as may be agreed by the Parties. Each of BMS and EXEL shall designate representatives with appropriate expertise to serve as members of each Committee, and each representative may serve on more than one Committee as appropriate in view of the individual's expertise. Each Party may replace its Committee representatives at any time upon written notice to

the other Party. Each Committee shall have co-chairpersons. BMS and EXEL shall each select from their representatives a co-chairperson for each of the Committees, and each Party may change its designated co-chairpersons from time to time upon written notice to the other Party. The Alliance Managers shall be responsible for calling meetings, preparing and circulating an agenda in advance of each meeting of such Committee, and preparing and issuing minutes of each meeting within [*] thereafter; *provided* that a Committee co-chairperson shall call a meeting of the applicable Committee promptly upon the written request of the other co-chairperson to convene such a meeting. The minutes of each meeting shall, among other things, record all matters acted upon and approved or disapproved by the Committee, actions to be taken, and any matters the Committee failed to resolve. Such minutes will not be finalized until both Alliance Managers review and confirm in writing the accuracy of such minutes.

(b) Meetings. Each Committee shall hold meetings at such times as it elects to do so, but in no event shall such meetings be held less frequently than once every [*] for the JDC, the JCC, and the JFC, and once every [*] for the JEC. Each Committee shall meet alternately at EXEL's facilities in South San Francisco, California, and BMS' facilities in Princeton, New Jersey, or at such other locations as the Parties may agree. The Alliance Managers shall, and other employees of each Party involved in the Development, Manufacture or Commercialization of any Product may as needed, attend meetings of each Committee (as nonvoting participants unless they are members of such Committee), and consultants, representatives or advisors involved in the Development, Manufacture or Commercialization of any Product may attend meetings of each Committee as nonvoting observers; *provided* that such Third Party representatives are under obligations of confidentiality and non-use applicable to the Confidential Information of each Party that are at least as stringent as those set forth in **Article 10**, and in the case of non-employees of a Party, subject to the consent of the other Party, which shall not be unreasonably withheld or delayed. Each Party shall be responsible for all of its own expenses of participating in any Committee (including in any Working Group). Meetings of any Committee may be held by audio or video teleconference with the consent of each Party, which shall not be unreasonably withheld or delayed; *provided* that at least [*] per year of such Committee shall be held in person. No action taken at any meeting of a Committee shall be effective unless a representative of each Party is participating.

(c) Decision-Making.

(i) Voting on Committee Decisions. Subject to **Section 2.1(b)**, each Party's designees on a Committee shall, collectively, have one (1) vote (the "**Party Vote**") on all matters brought before the Committee, which Party Vote shall be determined by [*] of such Party's designees present (in person or otherwise) at the meeting. Except as expressly provided in this **Section 2.6(c)** and subject to **Section 2.1(b)**, each Committee shall operate as to matters within its jurisdiction by unanimous Party Vote. All decisions of a Committee shall be documented in writing in the minutes of the applicable Committee meeting by the Alliance Managers.

(ii) Operational Decisions. With respect to Exelixis Clinical Trials for a given Product, day-to-day operational level decisions concerning Development of Collaboration Compounds shall be made by EXEL, subject to review and oversight by the JDC, when practicable. Otherwise, day-to-day operational level decisions concerning the Development and Commercialization of Products shall be made by the Party to which responsibility for such

decisions has been allocated under the Agreement (each such decision, a "**Party Implementation Matter**"). Unless otherwise directed by the appropriate Committee(s), and as set forth in the first two sentences of this **Section 2.6(c)(ii)**, [*] shall be the lead Party, and shall be primarily responsible for, all Development, regulatory activities and Manufacturing and, subject to [*], Commercialization activities with respect to such Product. Any disputes with respect to a Party Implementation Matter shall first be referred to the Alliance Managers, and, if the dispute is not resolved within [*] after such referral to the Alliance Managers, then it shall, upon written notice by a Party to the other, be referred for resolution as follows: (A) disputes between designees of BMS and EXEL with respect to Development and Regulatory Approval matters shall be referred to the JDC for resolution; and (B) disputes between designees of BMS and EXEL with respect to Commercialization shall be referred to the JCC for resolution. In each case, except for Appealable Matters, the Committee to which such matter is referred shall have final decision-making authority with respect to such matter, and [*] shall [*] with respect to such matter, [*].

(iii) Disagreements on Committees. Except for: (A) matters outside the jurisdiction and authority of the Committees as provided in **Section 2.1(b);** and (B) any Party Implementation Matter (other than Appealable Matters), and in any event without limiting the other rights and obligations of the Parties under this Agreement, any disagreement between the designees of BMS and EXEL on the JDC, JCC, or JFC as to matters within such Committee's jurisdiction shall, at the election of either Party, be addressed, first, with the Alliance Managers, and, if the dispute is not resolved within [*] after such referral to the Alliance Managers, then it shall, upon written notice by a Party to the other, be submitted to the JEC for resolution (except that any disputes arising from the JFC shall be submitted to the Committee to which such dispute relates (i.e., the JDC or the JCC)). If the JEC does not resolve any such matter submitted to it for resolution within [*] after such submission, or in the event of any disagreement between the designees of BMS and EXEL on the JEC with respect to any other matter within its jurisdiction, then, subject to **Section 2.1(b)**, the JEC shall submit the respective positions of the Parties with respect to such matter for discussion in good faith by the Executive Officer of EXEL and the Executive Officer of BMS (depending on the nature of the dispute). If such individuals are not able to mutually agree upon the resolution to such matter within [*] after submission of the matter to them, then the [*], subject to **Section [*]**.

(iv) [*]. [*] right to [*] (**"[*]"**) shall be subject to the following limitations:

(1) All [*] shall be made in good faith, with due regard for the impact of such decisions on Products [*], and, consistent in all material respects with the applicable Approved Plan and the terms of this Agreement. No such decision [*] shall violate or breach any term or condition of this Agreement. [*] shall make all [*] only after [*] (through its JEC, JDC or JCC members, as applicable) on such matters and [*], and in the case of [*] made pursuant to **Section [*],** only after [*] and the [*] on such matters.

(2) [*] shall [*]: (A) on any matter that would [*]; (B) on any matter that would amend, violate or breach any provision of this Agreement; (C) to adjust the [*]; (D) on matters related to the determination of [*]; (E) regarding the determination of Exelixis Clinical Trials in the initial Annual Development Plan as described in **Section 3.4(b)**; (F) the designation of New Exelixis Clinical Trials; (G) [*]; (H) that would change the responsibility for

the Exelixis Clinical Trials [*], or where EXEL has materially breached its obligations under **Section 3.4(e)** and has not cured such breach pursuant to **Section 11.3**); (I) the allocation of responsibilities for any Backup Program, in a manner inconsistent with **Section 2.12;** or (J) adjustments to the FTE rate described in **Section 3.8(c)**. Resolution of disputes relating to the foregoing matters shall [*] (except as otherwise expressly set forth in this Agreement).

(d) Meeting Agendas and Minutes. Each Party shall disclose to the other proposed agenda items along with appropriate information at least [*] in advance of each meeting of the applicable Committee; *provided* that under exigent circumstances requiring Committee input, a Party may provide its agenda items to the other Party within a shorter period of time in advance of the meeting, or may propose that there not be a specific agenda for a particular meeting, so long as such other Party consents to such later addition of such agenda items or the absence of a specific agenda for such Committee meeting.

(e) Multiple JDCs and JCCs at the Discretion of the JEC. The JEC may determine that a separate JDC and/or JCC be formed for each Product. In such event, the Parties will appoint representatives to such additional committees and such committees will be subject to the all of the applicable terms and conditions of this Agreement with respect to the JDC and the JCC, in each case, solely with respect to the Product to which such Committees relate.

(f) Working Groups. From time to time, the JEC, JDC, JCC, or JFC may establish and delegate duties to other committees, sub-committees or directed teams (each, a "**Working Group**") on an "as-needed" basis to oversee particular projects or activities, which delegation shall be reflected in the minutes of the meetings of the applicable Committee. Each such Working Group shall be constituted and shall operate as the JEC, JDC, JCC, or JFC, as the case may be, determines. The Working Groups may be established on an ad hoc basis for purposes of a specific project, for the life of a Product, or on such other basis as the applicable Committee may determine. Each Working Group and its activities shall be subject to the oversight, review and approval of, and shall report to, the Committee that established such Working Group. In no event shall the authority of the Working Group exceed that specified for the relevant Committee in this **Article 2**. Any disagreement between the designees of BMS and EXEL on a Working Group shall be referred to the applicable Committee for resolution.

(g) Interactions Between Committees and Internal Teams. The Parties recognize that each Party possesses an internal structure (including various committees, teams and review boards) that will be involved in administering such Party's activities under this Agreement. Each Committee shall establish procedures to facilitate communications between such Committee or Working Group and the relevant internal committee, team or board of each of the Parties in order to maximize the efficiency of the Collaboration, including by requiring appropriate members of such Committee to be available at reasonable times and places and upon reasonable prior notice for making appropriate oral reports to, and responding to reasonable inquiries from, the relevant internal committee, team or board.

2.7 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint a single individual to act as a single point of contact between the Parties to assure a successful Collaboration (each, an "**Alliance**

Manager"). Each Party may change its designated Alliance Manager from time to time upon written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by written notice to the other Party.

(b) Responsibilities. The Alliance Managers shall use good faith efforts to attend all Committee meetings and support the co-chairpersons of each Committee in the discharge of their responsibilities. Alliance Managers shall be nonvoting participants in such Committee meetings, unless they are also appointed members of such Committee pursuant to **Section 2.6(a)**. An Alliance Manager may bring any matter to the attention of any Committee if such Alliance Manager reasonably believes that such matter warrants such attention. Each Alliance Manager shall be charged with creating and maintaining a collaborative work environment within and among the Committees. In addition, each Alliance Manager: (i) will be the point of first referral in all matters of conflict resolution; (ii) will coordinate the relevant functional representatives of the Parties in developing and executing strategies and plans for the Products in an effort to ensure consistency and efficiency throughout the world; (iii) will provide a single point of communication for seeking consensus both internally within the respective Parties' organizations and between the Parties regarding key strategy and plan issues; (iv) will identify and bring disputes to the attention of the appropriate Committee in a timely manner; (v) will plan and coordinate cooperative efforts and internal and external communications; and (vi) will take responsibility for ensuring that governance activities, such as the conduct of required Committee meetings and production of meeting minutes, occur as set forth in this Agreement, and that relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

2.8 Collaboration Guidelines.

(a) General. Each Party, in working with the other to Develop and Commercialize each Product and otherwise as set forth herein, shall assign responsibilities for the various operational aspects of the Collaboration to those portions of its organization that have the appropriate resources, expertise and responsibility for such functions and, consistent with this Agreement, treat each Product as if it were a proprietary product solely of its own organization. In all matters related to the Collaboration, the Parties shall strive to balance as best they can the legitimate interests and concerns of the Parties and to realize the full economic potential of each Product (taking into account the risks and costs of further Development and Commercialization).

(b) Independence. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between EXEL, EPC and BMS is that of independent contractors and none of the Parties shall have the power to bind or obligate any other Parties in any manner.

2.9 Overview of Accounting.

(a) Development Costs and Allowable Expenses. For purposes of determining Development Costs and Allowable Expenses, any expense allocated by either Party to a particular category under Development Costs for a Co-Developed Product, or Allowable Expenses for a Co-Developed Product, shall not be allocated to another category under Development Costs or Allowable Expenses (as applicable). Each Party agrees to determine such Development Costs and Allowable Expenses (as applicable) using its standard accounting procedures, consistently applied,

to the maximum extent practical as if such Co-Developed Product were a solely owned product of such Party, except as specifically provided in this Agreement. The Parties also recognize that such procedures may change from time to time and that any such changes may affect the definition of Development Costs or Allowable Expenses. The Parties agree that, where such changes are economically material to either Party, and consistent with GAAP, adjustments shall be made to compensate the affected Party to preserve the same economics as reflected under this Agreement under such Party's accounting procedures in effect as of the date on which the activity in question (e.g., Development, Commercialization or Manufacturing) first commences under this Agreement. Where the change is or would be material to the other Party, the Party proposing to make the change shall provide the other Party with an explanation for the proposed change and an accounting of the effect of the change on the relevant expense category. Should the Parties disagree on the adjustment, the matter shall be placed before the JFC to resolve. Transfers between a Party and its Affiliates (or between its Affiliates) shall not have effect for purposes of calculating revenues, costs, profits, royalties or other payments or expenses under this Agreement.

(b) Affiliates. If either Party enters into any agreement with any of its Affiliates for the provision of materials or services pursuant to this Agreement, all costs incurred for the provision of such materials or services that are shared by the Parties under this Agreement shall be accounted for on the basis of the cost thereof to such Affiliate and not on the basis of any higher transfer price in effect between such Party and such Affiliate.

2.10 Compliance with Law. Each Party hereby covenants and agrees to comply with applicable law in performing its activities connected with the Development, Manufacture and Commercialization (as applicable) of each Product.

2.11 Records. Each of BMS and EXEL shall maintain complete and accurate records of all work conducted under the Collaboration and all results, data and developments made pursuant to its efforts under the Collaboration. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of the Collaboration in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each of BMS and EXEL shall maintain such records for a period of [*] after such records are created; *provided* that the following records may be maintained for a longer period, in accordance with each such Party's internal policies on record retention, *provided* that in no case shall such period be shorter than [*] from the date of creation of such records: (a) scientific notebooks; and (b) any other records that such other Party reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Either such Party shall have the right to review and copy such records of the other Party at reasonable times to the extent [*] for it to conduct its obligations or enforce its rights under this Agreement.

2.12 Backup Programs.

(a) Commencement of a Backup Program. BMS and EXEL shall determine, via the JDC (or BMS shall determine, in the event that the JDC no longer exists), whether or not to commence a backup program with respect to each Collaboration Compound (namely, each of XL184 and XL281 taken as a whole) (each such program, a "**Backup Program**"), as well as the appropriate timing for such Backup Program(s). The Backup Program(s) shall be subject to JDC oversight and decision making and to one or more backup research plan(s) to be established by the

JDC prior to the start of backup work (the "**Backup Research Plan**"). In no event shall a Backup Program be designed to [*] targets other than the Identified Targets [*] with respect to a Collaboration Compound.

(b) Exelixis' Conduct of Backup Programs. With respect to the Backup Program for any Collaboration Compound, EXEL shall have the first right to conduct such backup work up until the earlier of: (i) [*]; and (ii) [*] (the "**Backup Program Trigger Date**"). After the decision by the JDC (or BMS) to commence a Backup Program for a particular Collaboration Compound, EXEL shall promptly notify the JDC (or BMS) in writing whether EXEL will conduct such Backup Program. At a reasonable time prior to the Backup Program Trigger Date for a particular Backup Program, the JDC (or BMS) shall determine which Party (BMS or EXEL) shall continue the Development of Program Backups arising from such Backup Program; provided that EXEL shall have no further responsibilities with respect to a Backup Program for a Royalty-Bearing Product.

(c) BMS' Conduct of Backup Programs. If EXEL notifies BMS that EXEL will not conduct a Backup Program for a particular Collaboration Compound, then BMS may conduct such Backup Program. EXEL will transition to BMS any [*] and other know-how then in EXEL's possession and Control that are [*] for BMS to conduct such Backup Program.

(d) Costs of Backup Programs.

(i) The costs associated with any Backup Program for XL184 shall be shared by BMS and EXEL as follows: (A) if and for as long as any XL184 Product is a Co-Developed Product, any costs associated with such Backup Program shall be borne sixty-five percent (65%) by BMS and thirty-five percent (35%) by EXEL; and (B) if all XL184 Products are Royalty-Bearing Products, any costs associated with such Backup Program shall be borne one hundred percent (100%) by BMS. Notwithstanding the foregoing, in the case of subsection (A) above, in the event that [*], [*] shall bear [*] of the costs of the XL184 Backup Program until such costs reach [*] (such amount, the **"[*] Backup Funding**"). Such [*] Backup Funding shall not be deemed [*], except that, [*], then the future portion of the [*] Backup Funding [*] [*].

(ii) All costs associated with any Backup Program for XL281 incurred by either Party shall be borne [*].

(e) Reporting; Accounting. Reporting and accounting of shared costs for the Backup Programs shall be as set forth in **Section 3.8(c)-(f)** for Development Costs.

3. DEVELOPMENT OF PRODUCTS

3.1 Global Development Plans.

(a) Scope. For each Co-Developed Product, and for each XL281 Product during the period in which there are Exelixis Clinical Trials ongoing with respect to XL281, the Development of such Product(s) shall be governed by a comprehensive, multi-year, worldwide plan (the **"Global Development Plan"**) covering the Development of such Product for use in the U.S., each of the Major European Countries and Europe as a whole, and, broken out on a region-by-region or country-by-country basis only to the extent BMS does so for its own internal oncology

products, for the remaining countries in the Co-Development Territory. The Global Development Plan shall: (i) provide a planned Development program that is designed to generate the non-clinical, clinical and regulatory information required for submitting Drug Approval Applications and to obtain Regulatory Approvals for the relevant indications in the U.S.; (ii) provide a planned Development program that is designed to generate the non-clinical, clinical and regulatory information required for submitting Drug Approval Applications and to achieve Regulatory Approvals for the relevant indications in the Royalty Territory; (iii) indicate the Core Program [*]; (iv) set forth those obligations assigned to each Party with respect to the performance of the Development activities contemplated by such Global Development Plan; and (v) provide an expected forecast, based on the information available at the time, including patient estimates and cost forecasts (and methodology, if available).

(b) Initial Global Development Plan. The initial Global Development Plan is set forth in the Letter Agreement.

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

3.2 Annual Development Plans.

(a) Scope. The Development of each Co-Developed Product, and for each XL281 Product during the period in which there are Exelixis Clinical Trials ongoing with respect to XL281, for a given calendar year shall be governed by a detailed and specific worldwide Development plan (each, an **"Annual Development Plan"**) covering all material Development activities to be performed for such Product for such year, and budgets covering all Development Costs for those Development activities for the such Product conducted in support of Regulatory Approvals in the Co-Development Territory. Each Annual Development Plan and Budget shall be proposed by the JDC for approval by the JEC. Each Annual Development Plan for such Product, and any modifications thereto, shall cover, and be consistent in all material respects with, all the Development activities and budgets in the then-current Global Development Plan for such Product that are to be performed in that particular calendar year.

(b) Procedure. The initial Annual Development Plan for [*] will be determined by the JDC (by mutual agreement) no later than [*]. Thereafter, the JDC shall submit on an annual basis an Annual Development Plan for [*], and for [*], to the JEC for its review, comment, and approval. Each such submission shall be no later than [*] of the calendar year immediately preceding the year covered by such Annual Development Plan, with a goal of having the Annual Development Plan approved, and any disputes resolved, by [*] of such immediately preceding calendar year.

3.3 Lead Development Party. Except with respect to the Exelixis Clinical Trials, BMS shall act as the lead development Party for each Co-Developed Product, although the Annual Development Plan may specify that outside contractors (and/or EXEL, subject to EXEL's consent) will have responsibility to direct and conduct any additional pre-clinical activities and applicable clinical trials in any country. The Parties shall make such determinations in the best interests of the Collaboration.

3.4 Exelixis Clinical Trials.

(a) Scope. EXEL shall conduct the Exelixis Clinical Trials for each applicable Product in a collaborative and efficient manner. BMS and EXEL shall engage in joint decision-making for the Exelixis Clinical Trials as set forth in **Article 2**. As between BMS and EXEL, EXEL shall be the lead Party with respect to the Exelixis Clinical Trials, and all scientific and technical services (other than Manufacturing and process development activities, which shall be governed by **Article 6**) associated with such clinical trials, including all matters set forth in the Annual Development Plan with respect to such trials.

(b) As of the Original Effective Date, BMS and EXEL have agreed to a partial list of Exelixis Clinical Trials, and BMS and EXEL will determine the remainder of Exelixis Clinical Trials pursuant to **Section 3.2(b)** no later than [*]. The list of Exelixis Clinical Trials may be modified only by prior written agreement of BMS and EXEL.

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

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

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

3.5 Technology and Regulatory Transfer of Collaboration Compounds. EXEL shall disclose or transfer to BMS the Information and documents described in **subsections 3.5(a) – (b)** below; provided, however, that except for those documents expressly set forth on **Exhibit 3.5**, EXEL shall not have any obligation to transfer or provide copies of any Information or documents pursuant to **subsections 3.5(a) – (b)** below that are not in EXEL's possession and that are in the possession of EXEL's Third Party contractors (e.g., manufacturing documents that are in the

possession of EXEL's contract manufacturers or study files that are in the possession of EXEL's contract research organizations that are working on the Exelixis Clinical Trials):

(a) Within [*] after the Original Effective Date, EXEL shall, at BMS' expense, use Diligent Efforts to disclose (and provide copies, as applicable) to BMS the "Priority" documents identified on **Exhibit 3.5**. In addition, within [*] after the Original Effective Date, EXEL shall, at BMS' expense, use Diligent Efforts to disclose (and provide copies, as applicable) to BMS any other Information, including any preclinical data, clinical data, assays, protocols, procedures and any other information in EXEL's possession or control, not previously disclosed to BMS, and reasonably necessary or useful to continue or initiate pre-clinical or clinical Development, or in seeking Regulatory Approval of Products.

(b) BMS and EXEL shall cooperate to ensure that EXEL transfers, assigns or sublicenses (as applicable) to BMS, at a time determined by the JDC (except as described in below in this **subsection (b)** and in **subsection (c)**) and upon [*] prior written notice to EXEL: (i) all regulatory filings (including any INDs, drug dossiers, and drug master files) in EXEL's name for such Products; (ii) any agreements with Third Parties necessary for the further development of such Product (including any agreements relating to the wind-down of clinical trials for such Product); (iii) reasonable quantities of any Product in EXEL's possession that are required pursuant to BMS' activities under the Global Development Plan; and/or (iv) at BMS' option, all agreements entered into by EXEL with any Third Party regarding the Development or Manufacture of such Product. The JDC shall not give notice regarding the transfer, assignment or sublicense of items described in **subsections 3.5(b)(i) – (iv)** [*] during the period beginning on the Original Effective Date and ending on [*] (and such transfer, assignment or sublicense shall not take place until [*] after such notice), unless either: (A) [*]; or (B) [*]. The costs and expenses incurred by EXEL in carrying out the transfer under this **Section 3.5(b)** shall be either: (1) treated as Development Costs in the event that such expenses relate to a Co-Developed Product; or (2) reimbursed one hundred percent (100%) by BMS for any other Product.

(c) EXEL agrees to transfer, and BMS agrees to accept, the IND for [*] as soon as practicable on or before [*]. As part of such transfer, and for each [*] Clinical Trial involving [*], BMS shall also file a transfer of obligations substantially in the form of **Exhibit 3.5(c)** (the "[*] **TORO**"). Each [*] TORO shall identify [*] as having the responsibilities sufficient for [*] to conduct the [*] Clinical Trials (including the responsibility for oversight of the current contract research organization for such [*] Clinical Trials), and each [*] TORO shall incorporate any changes needed to reflect the responsibilities agreed upon between [*] and the applicable contract research organization. As part of the IND transfer for [*], EXEL shall [*] assign to BMS any agreements between EXEL and a Third Party that are [*] for the conduct of the [*] Clinical Trials involving [*], or the Manufacture of [*] that is use for such [*] Clinical Trials, [*] is [*] responsible for conducting such [*] Clinical Trials. To the extent required by applicable law, EXEL shall [*] that are [*] and a [*] and that are [*] for the conduct of the [*] Clinical Trials involving [*] to reflect that BMS is the IND holder for [*] on or before [*]. Each Party shall maintain comprehensive general liability insurance and umbrella insurance in amounts that are commercially reasonable to cover its indemnification and other obligations under this Agreement. Such insurance shall provide (1) product liability coverage and (2) broad form contractual liability coverage. BMS' insurance shall include EXEL as an additional insured with respect to the [*] Clinical Trials involving [*]. Such BMS insurance shall be written to cover claims relating to the [*] Clinical Trials involving [*]

that are incurred, discovered, manifested, or made during or after the expiration of this Agreement, and such BMS insurance will be primary coverage. EXEL's insurance will be excess for the [*] Clinical Trials involving [*].

3.6 Diligence of BMS. BMS shall use Diligent Efforts to Develop each XL184 Product and each XL281 Product in the U.S., including without limitation to carry out its responsibilities under the Annual Development Plan and the then-applicable Global Development Plan.

3.7 Limitations on Development. During the term of this Agreement, neither BMS nor EXEL nor any of its Affiliates shall, directly or through any Third Party, sponsor, conduct or cause to be conducted, otherwise assist in, supply any Co-Developed Product (or an XL281 Product in the case of EXEL) for use in connection with, or otherwise fund, any clinical trial or clinical study of such Product outside of the Global Development Plan or any Annual Development Plan, without the prior written consent of such other Party.

3.8 Development Costs.

(a) In general. Subject to the rest of this **Section 3.8(a)** and **Section 2.12(d)**, any Development Costs incurred by either BMS or EXEL for the Development of each Co-Developed Product shall be borne by BMS and EXEL as follows:

(i) EXEL shall bear the first One Hundred Million ($100,000,000) of all such Development Costs relating to XL184 (such amount, the **"Exelixis Initial Funding Allocation"**);

(ii) with respect to Development Costs associated with Co-Developed Products in excess of the Exelixis Initial Funding Allocation, BMS shall bear sixty-five percent (65%) of all such Development Costs, and EXEL shall bear thirty-five (35%) of all such Development Costs; and,

(iii) for clarity, all costs relating to Development activities undertaken solely for the purposes of seeking Regulatory Approval(s) of a Co-Developed Product in [*], shall be borne one hundred percent (100%) by BMS.

(b) Development Cost Deferral.

(i) If EXEL's aggregate share of the Development Costs and Allowable Expenses for Co-Developed Products exceeds [*], then EXEL may elect to defer payment of its share of such Development Costs and Allowable Expenses that are in excess of [*] with respect to the Co-Developed Products in accordance with the remainder of this **Section 3.8(b)**. For clarity, BMS and EXEL agree that only [*] of the Exelixis Initial Funding Allocation for the conduct of Exelixis Clinical Trials shall count toward EXEL's [*] threshold described in this **Section 3.8(b)**. EXEL's deferral election may be made in writing anytime during the [*] following the end of the calendar quarter in which such excess first arises. If EXEL does not make such election, then EXEL would continue to pay its share of the Development Costs and Allowable Expenses with respect to the Co-Developed Product in accordance with **Section 3.8(a),** but subject to **Section 3.8(b)(ii)**. If EXEL makes such election, then EXEL shall have no obligation to pay its share of such Development Costs and Allowable Expenses, to the extent such share exceeds [*] until the

first occurrence of the following: (A) the Launch in the U.S. of the first Co-Developed Product for [*]; (B) [*] the Launch in the U.S. of the first Co-Developed Product for [*]; or (C) [*] (the "**Deferral End Point**"). Until such Deferral End Point is reached, BMS shall bear one hundred percent (100%) of the Development Costs and Allowable Expenses with respect to such Co-Developed Product, and after such Deferral End Point is reached, EXEL and BMS shall again share the Development Costs and Allowable Expenses in accordance with the ratio set forth in **Sections 3.8(a) and 8.2**, respectively.

(ii) If EXEL has not made a deferral election pursuant to **Section 3.8(b)(i),** and EXEL's aggregate share of [*] Development Costs for Co-Developed Products in either calendar year [*] exceeds the greater of: (A) [*]; or (b) an amount equal to [*] of EXEL's share of the [*] Development Costs that was budgeted for [*], as set forth in the initial Annual Development Plan created pursuant to **Section 3.2(b)**, (the "[*] **Cap**"), then EXEL may elect to defer payment of its share of such Development Costs for [*] that are in excess of such [*] Cap with respect to the Co-Developed Products in accordance with the remainder of this **Section 3.8(b)(ii)**. The election by EXEL to defer such payment may be made in writing anytime during the [*] following the end of the calendar quarter in which such excess first arises. If EXEL does not make such election, then EXEL would continue to pay its share of the Development Costs with respect to the Co-Developed Product [*] in accordance with **Section 3.8(a)** unless EXEL makes a deferral election pursuant to **Section 3.8(b)(i)**. If EXEL makes such election, then EXEL shall have no obligation to pay its share of such Development Costs [*], to the extent such share exceeds the [*] Cap for such calendar year, and [*], BMS shall bear one hundred percent (100%) of the Development Costs with respect to such Co-Developed Product.

(iii) *Repayment of Deferred Costs*.

(1) The amounts deferred pursuant to **Section 3.8(b)(i)** shall be referred to as the **"Global Deferred Development Costs"**. BMS shall have the right to credit an amount equal to **[*]** of the Global Deferred Development Costs (the **"Development Cost Mechanism Amount"**), as an offset: (A) against EXEL's share of the Operating Profits from such Co-Developed Product, up to a maximum of [*] of such Operating Profits in any given quarter (in the case where EXEL has not exercised its Product Opt-Out for the Co-Developed Product); or (B) against royalties otherwise payable to EPC with respect to such Co-Developed Product, up to a maximum of [*] in any given quarter. Once the Development Cost Mechanism Amount is fully paid to BMS, Exelixis shall receive Operating Profits and royalties consistent with **Article 8**.

(2) The amounts deferred pursuant to **Section 3.8(b)(ii)** shall be referred to as the **"[*] Deferred Development Costs"**. EXEL shall repay to BMS any [*] Deferred Development Costs with respect to [*] no later than [*], with interest accruing at a rate of [*]. Any failure by EXEL to repay any such [*] Deferred Development Costs shall be considered a breach of EXEL's development funding obligations for purposes of **Section 11.3(b)**.

(c) FTE Records and Calculations; Adjustments to FTE Rate. Each of BMS and EXEL shall record and account for its FTE effort for the Development and Commercialization of the Co-Developed Product to the extent that such FTE efforts are included in Development Costs or Allowable Expenses that are, or may in the future be, shared under this Agreement, and shall report such FTE effort to the JDC on a quarterly basis. Except to the extent provided herein, each of

BMS and EXEL shall calculate and maintain records of FTE effort incurred by it in the same manner as used for other products developed by such Party. The JFC shall facilitate any reporting hereunder. The FTE rate shall initially be [*] and shall be adjusted annually, with each annual adjustment effective as of January 1 of each calendar year, with the first such annual adjustment to be made as of January 1, 2010, by mutual agreement of the JFC.

(d) Other Expenses. Any expenses incurred by BMS or EXEL for Development activities for the Co-Developed Product that do not fall within the definitions of Development Costs shall be borne solely by such Party unless the Parties determine otherwise.

(e) Reports and Payments for Development Costs. Prior to the commencement of each calendar quarter, each of BMS and EXEL shall prepare an estimate of its Development Costs for such quarter and shall deliver such estimate to the other Party. Upon receipt of such estimates by BMS and EXEL, the applicable Party shall make a reconciling payment to such other Party, within [*] subsequent to receipt of an invoice, to achieve the appropriate allocation of Development Costs provided for in **Section 3.8(a)** for such quarter, taking into account any differences between the prior quarter's estimated Development Costs and the actual Development Costs incurred by the Parties. In addition, during the third (3rd) month of each quarter, BMS and EXEL will provide an estimate of the total Development Costs incurred for the current calendar quarter. This estimate will contain two (2) months of actual costs and a third (3rd) month of forecasted costs for the quarter. Each of BMS and EXEL shall report to the other Party within [*] after the end of each quarter with regard to the Development Costs actually incurred by it during such quarter for a Co-Developed Product, or as otherwise agreed by the JFC. Such report shall specify in reasonable detail (as agreed by the JFC) all expenses included in such Development Costs during such quarter and shall be accompanied by invoices, and/or such other appropriate supporting documentation as may be required by the JFC. Each of BMS and EXEL shall report to the other Development Costs incurred by it for comparison against such invoices and the Annual Development Plan, on a line item basis (e.g., budgeted FTE costs and actual out-of-pocket cost). BMS and EXEL shall seek to resolve any questions related to such accounting statements within [*] following receipt by each of BMS and EXEL of the other Party's report hereunder. The JFC shall facilitate the reporting of Development Costs hereunder and the resolution of any questions concerning such reports. Each of BMS and EXEL shall have the right at reasonable times and upon reasonable prior notice to audit the other Party's records as provided in **Section 8.18** to confirm the accuracy of the other Party's costs and reports with respect to Development Costs that are shared under this Agreement.

(f) Records. Each of BMS and EXEL shall keep detailed records of the Development Costs it incurs for the Co-Developed Product (and in the case of EXEL, including for the Exelixis Clinical Trials for XL184), including all supporting documentation for such expenses. Each of BMS and EXEL shall keep such records for at least [*] after the date that such expense was incurred.

3.9 Exelixis' Opt-Out Rights.

(a) Entire Product.

(i) *Upon Delivery of Data Package*. Within [*] after the [*], BMS shall prepare and deliver to EXEL a data package detailing the clinical outcome of the clinical trial on which such decision was based. EXEL shall have the right to cease its involvement in the Development and Commercialization of the Co-Developed Product (the **"Product Opt-Out"**), upon written notice to BMS within [*] after the delivery of such data package. Commencing on the date that EXEL provides BMS with written notice of a Product Opt-Out, EXEL shall have no further responsibility for conducting new activities or funding Development or Commercialization activities with respect to the Co-Developed Product, and shall complete any ongoing activities with respect to the Co-Developed Product, subject to reimbursement by BMS of one hundred percent (100%) of any costs associated with such continuing activities unless such work is transferred to BMS at the discretion of the JDC.

(ii) *Following Decision to Prepare DAA.* At any time following [*], EXEL shall have the right to exercise a Product Opt-Out upon written notice to BMS, which, with the exception of the period described in **subsection 3.9(a)(i)** above, shall become effective as follows. If such notice is received by BMS before [*] of a given calendar year, then the Product Opt-Out shall become effective on [*]. If such notice is received by BMS on or after [*] of a given calendar year, then the Product Opt-Out shall become effective [*]. Commencing on the effective date of such Product Opt-Out, EXEL shall have no further responsibility for conducting new activities or funding Development or Commercialization activities with respect to the Co-Developed Product, and shall complete any ongoing activities with respect to the Co-Developed Product, subject to reimbursement by BMS of one hundred percent (100%) of any costs associated with such continuing activities unless such work is transferred to BMS at the discretion of the JDC.

(b) [*]. Before [*] with respect to [*], [*] the right to [*] the Development and Commercialization of the Co-Developed Product [*]. After [*] with respect to [*], EXEL shall have the right to [*] as follows. Within [*] after [*], for the Co-Developed Product [*] for the Co-Developed Product (as specified in the Global Development Plan for the Co-Developed Product), BMS shall prepare and deliver to EXEL: (i) [*]; or (ii) [*]. For the purposes of the preceding sentence only, "[*]" shall mean [*]. EXEL shall [*] BMS within [*] after [*] (as appropriate). For purposes of this **Section 3.9(b)**, [*] shall not include [*]. Notwithstanding the foregoing, if EXEL exercises its Co-Promotion Option with respect to the Co-Developed Product, it will be required to [*]. Commencing the date that [*], EXEL shall [*], and shall [*] thereto. For clarity, EXEL may [*], and in the event that EXEL decides to [*], it [*].

3.10 Termination of Co-Development Rights Due to Financial Trigger. In the event that EXEL's Cash Reserves fall below Eighty Million Dollars ($80,000,000), EXEL shall notify BMS in writing within [*] and shall discuss with BMS the corresponding situation. Upon receipt of any such notice, or upon the filing by EXEL of financial statements with the Securities and Exchange Commission that show EXEL's Cash Reserves to be below Eighty Million Dollars ($80,000,000), then BMS shall have the right, upon delivery of written notice to EXEL, to terminate EXEL's Co-Development and profit-share rights with respect to one or more Co-Developed Products. Such termination shall be effective upon receipt by EXEL; *provided*, *however*, that

EXEL may automatically restore its Co-Development and profit-share rights if EXEL can increase its Cash Reserves to Eighty Million Dollars ($80,000,000) within ninety (90) days of receipt of such notice. In the event EXEL's rights to Co-Develop and profit-share have been terminated, EXEL shall have no further responsibility for conducting new activities or funding Development or Commercialization activities with respect to the Co-Developed Product, and shall complete any ongoing activities with respect to the Co-Developed Product, subject to reimbursement by BMS of one hundred percent (100%) of any costs associated with such continuing activities unless such work is transferred to BMS at the discretion of the JDC, and such Co-Developed Product shall become a Royalty-Bearing Product. As used in this Agreement, **"Cash Reserves"** means, as of the time of any determination thereof, (a) the total cash, cash equivalents and investments (in each case, excluding any restricted cash) as reported by EXEL in its SEC Filings prepared in accordance with GAAP, plus (b) the amount then available for borrowing by EXEL under the Facility Agreement dated June 4, 2008 among EXEL, Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited, as the same may be amended from time to time, and any other similar financing arrangements; [*].

3.11 Development of Royalty-Bearing Products

(a) Scope & Diligence. Except for the Exelixis Clinical Trials, BMS shall have sole control and responsibility for the Development, Manufacture (including formulation) and Commercialization of all Royalty-Bearing Products. BMS shall bear all costs and expenses associated with, the Development, Manufacture (including formulation) and Commercialization of all Royalty-Bearing Products. BMS shall use Diligent Efforts to Develop each such Royalty-Bearing Product in the Territory; provided that BMS may satisfy such obligation by sublicensing the development and commercialization of a Royalty-Bearing Product to a Third Party pursuant to the terms of this Agreement (and subject to EXEL's ongoing activities with respect to Exelixis Clinical Trials). EXEL may notify BMS in writing if EXEL in good faith believes that BMS is not meeting its diligence obligations set forth in this **Section 3.11(a)**, and BMS and EXEL shall meet and discuss the matter in good faith. EXEL may further request review of BMS' records generated and maintained as required under **Section 3.11(c)** below, to the extent those records relate to Development and Commercialization of a Royalty-Bearing Product.

(b) Reports and Payments for Royalty Bearing Development Expenses. Prior to the commencement of each calendar quarter for as long as EXEL is conducting Exelixis Clinical Trials or any other mutually agreed research or Development activities, in each case with respect to a Royalty Bearing Product, EXEL shall prepare an estimate of its costs and expenses associated with such conduct (such costs and expenses, the **"Royalty Bearing Product Development Expenses"**) for such quarter and shall deliver such estimate to BMS. Upon receipt of such estimates by EXEL, BMS shall make a reconciling payment to EXEL, within [*] subsequent to receipt of an invoice, taking into account any differences between EXEL's estimated Royalty Bearing Product Development Expenses for the prior quarter and the actual Royalty Bearing Product Development Expenses incurred by EXEL for such quarter. In addition, during the third (3rd) month of each quarter, EXEL will provide an estimate of the total Royalty Bearing Product Development Expenses incurred for the current calendar quarter. This estimate will contain two (2) months of actual costs and a third month of forecasted costs for the quarter. EXEL shall report to BMS within [*] after the end of each quarter with regard to the Royalty Bearing Product Development Expenses actually incurred by it during such quarter, or as otherwise agreed by the

JFC. Such report shall specify in reasonable detail (as agreed by the JFC) all expenses included in such Royalty Bearing Product Development Expenses during such quarter and shall be accompanied by invoices, and/or such other appropriate supporting documentation as may be required by the JFC. EXEL shall report to BMS Royalty Bearing Product Development Expenses incurred by it for comparison against such invoices and the Annual Development Plan, on a line item basis (e.g., budgeted FTE costs and actual out-of-pocket cost). Within [*] of the end of the last calendar quarter in which EXEL conducts Exelixis Clinical Trials or any other mutually agreed research or Development activities, in each case with respect to a Royalty Bearing Product, either BMS or EXEL shall make a reconciling payment to the other Party to address any differences between EXEL's estimated Royalty Bearing Product Development Expenses for such last calendar quarter and the actual Royalty Bearing Product Development Expenses incurred by EXEL for such last calendar quarter. BMS and EXEL shall seek to resolve any questions related to such accounting statements within [*] following receipt by BMS of EXEL's report hereunder. The JFC shall facilitate the reporting of Royalty Bearing Product Development Expenses hereunder and the resolution of any questions concerning such reports. BMS shall have the right at reasonable times and upon reasonable prior notice to audit EXEL's records as provided in **Section 8.18** to confirm the accuracy of EXEL's costs and reports with respect to Royalty Bearing Product Development Expenses under this Agreement.

(c) Records. BMS shall maintain complete and accurate records of all Development, Manufacturing and Commercialization conducted by it or on its behalf related to each Royalty-Bearing Product, and all Information generated by it or on its behalf in connection with Development under this Agreement with respect to each such Royalty-Bearing Product. BMS shall maintain such records at least until the later of: (i) [*] after such records are created, or (ii) [*] after the Launch of the Royalty-Bearing Product to which such records pertain; *provided* that the following records may be maintained for a longer period, in accordance with each Party's internal policies on record retention: (i) scientific notebooks and (ii) any other records that EXEL reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Such records shall be at a level of detail appropriate for patent and regulatory purposes. EXEL shall have the right to review and copy such records of BMS at reasonable times to the extent necessary or useful for EXEL to conduct its obligations or enforce its rights under this Agreement.

(d) Reports. Beginning [*] after the Original Effective Date, and every [*] thereafter during the term of the Agreement, BMS shall submit to EXEL a written progress report summarizing the research and development performed by BMS on Royalty-Bearing Products. If [*] for EXEL to exercise its rights under this Agreement, EXEL may request that BMS provide more detailed information and data regarding such reports by BMS, and BMS shall promptly provide EXEL with information and data as is reasonably related to such request, at EXEL's expense. All such reports shall be considered Confidential Information of BMS.

4. REGULATORY

4.1 Regulatory Lead Party.

(a) Prior to transfer of an IND with respect to a Product(s) pursuant to **Section 3.5(b) or 3.5(c)**, EXEL shall be the lead Party for all regulatory activities regarding such Product(s).

However, BMS shall have a participatory role in all [*]. All [*] would be made and implemented after conferring with the JDC. Prior to transfer of an IND with respect to a Product(s) pursuant to **Section 3.5(b) or 3.5(c)**, EXEL shall be the lead Party for worldwide pharmacovigilance for such Product.

(b) Upon transfer of an IND with respect to a Product(s) pursuant to **Section 3.5(b) or 3.5(c)**, BMS shall be the lead Party for all regulatory activities regarding such Product(s). However, EXEL shall have a participatory role in all [*] that [*]. All [*] would be made and implemented after conferring with the JDC. [*] Regulatory Authorities as well [*] will be [*] through the JDC. Upon transfer of an IND with respect to a Product(s) pursuant to **Section 3.5(b) or 3.5(c)**, BMS shall be the lead Party for worldwide pharmacovigilance for such Product.

(c) Notwithstanding any other provision of this Agreement, in the event any dispute with respect to the content of any regulatory filing or dossier, pharmacovigilance reports, patient risk management strategies and plans, Core Data Sheet, labeling, safety, and the decision to file any DAA, in each case with respect to such Product is not resolved by the JEC, [*] with respect to such matters at the JEC [*] referring such dispute to the Designated Officers or submitting such dispute to any other dispute resolution procedures provided for in **Section 14.1**.

4.2 Ownership of Regulatory Dossier. Upon transfer of an IND with respect to a Product(s) pursuant to **Section 3.5(b) or 3.5(c)**, BMS will own all regulatory filings for such Product in order to facilitate BMS' interactions with Regulatory Authorities. Pursuant to **Section 3.5(b) or 3.5(c)**, EXEL shall transfer and assign to BMS, and BMS will receive from EXEL, all of EXEL's right, title and interest to the INDs for the Products. Subject to **Section 3.5(c)**, EXEL shall notify the applicable Regulatory Authorities in writing that it is transferring such INDs for the applicable Product to BMS, and BMS would notify the applicable Regulatory Authorities in writing that it is accepting such INDs and all responsibilities associated therewith (including without limitation, the responsibility for reporting adverse events), other than any ongoing activities of EXEL relating to ongoing Exelixis Clinical Trials (if applicable).

4.3 Regulatory Matters Relating to the XL184 Product in the United States. With respect to Co-Developed Products in the United States:

(a) Regulatory Filings. Through their members on the JDC, EXEL and BMS shall cooperate in the drafting and review of all submissions (including any supplements or modifications thereto, but excluding routine adverse event filings (i.e., not relating to serious adverse events as defined by applicable law) to the FDA (including the preparation of an electronic submission of a Drug Approval Application to the FDA, with BMS having primary responsibility for preparing the electronic dossier for each indication). Each of BMS and EXEL shall have a right to review (through its members of the appropriate Committee), the content and subject matter of, and strategy for, each Drug Approval Application to be filed in the United States, all correspondence submitted to the FDA related to clinical trial design, all proposed Product labeling (including the final FDA-approved labeling) and post-Regulatory Approval labeling changes. Each of BMS and EXEL shall promptly provide the other with copies of all written or electronic communications received by it from, or sent by it to, the FDA with respect to obtaining and maintaining, Regulatory Approvals for Co-Developed Products in the United States (it being understood that routine adverse event filings (i.e., not relating to serious adverse events as defined

by applicable law) shall not fall within the meaning of maintenance) and copies of all contact reports produced by such Party. BMS shall be the [*] point of contact with any Regulatory Authorities regarding each Product.

(b) Notice of Regulatory Filing Requirements. The Party holding the IND for a Co-Developed Product shall provide to the other Party, within [*] of discovery by BMS, notice of any event with respect to Co-Developed Products that triggers any FDA filing requirement that is subject to a deadline imposed by applicable law of less than [*] after the discovery of such an event. The co-chairpersons of the JDC shall discuss in good faith and on a timely basis determine the most effective and expeditious means of responding to such FDA filing requirement.

(c) Notice of Changed Regulatory Requirements. The Party holding the IND for a Co-Developed Product shall provide notice to the other Party of any additional requirements which the FDA may impose with respect to obtaining or maintaining Regulatory Approval for Co-Developed Products (including additional clinical trials), and of all FDA inquiries with respect to Co-Developed Products requiring a response within [*] of receipt thereof by BMS.

(d) Regulatory Meetings. The Party holding the IND for a Co-Developed Product shall provide the other Party with notice of all meetings, conferences, and discussions (including FDA advisory committee meetings and any other meeting of experts convened by the FDA concerning any topic relevant to Co-Developed Products, as well as Product labeling and post-Regulatory Approval Product labeling discussions with the FDA) scheduled with the FDA concerning any pending Drug Approval Application or any material regulatory matters relating to Co-Developed Products within [*] after such Party receives notice of the scheduling of such meeting, conference, or discussion (or within such shorter period as may be necessary in order to give such other Party a reasonable opportunity to participate in such meetings, conferences and discussions). Such other Party shall be entitled to be present at, and to participate in, all such meetings, conferences or discussions. EXEL's and BMS' respective members of the JDC shall use reasonable efforts to agree in advance on the scheduling of such meetings and on the objectives to be accomplished at such meetings, conferences, and discussions and the agenda for the meetings, conferences, and discussions with the FDA. To the extent practicable, the Party holding the IND for a Co-Developed Product shall also include the other Party in any unscheduled, ad-hoc meetings, conferences and discussions with the FDA concerning any pending IND, Drug Approval Application or any material regulatory matters relating to Co-Developed Products.

(e) Regulatory Data. Each of BMS and EXEL shall provide to the other Party on a timely basis copies of all material pre-clinical and clinical data compiled in support of a Drug Approval Application or other regulatory filings in the United States with respect to Co-Developed Products (via electronic copies of such data in a form that may be analyzed and manipulated by the other Party).

(f) Common Database. If deemed appropriate by the JDC, BMS and EXEL will establish a common database to be controlled, maintained and administered by BMS for the receipt, investigation, recordation, communication, and exchange (as between the Parties) of data arising from clinical trials for Co-Developed Products. BMS and EXEL shall agree upon guidelines and procedures for such common database that shall be in accordance with, and enable BMS and EXEL and their Affiliates to fulfill their reporting obligations under applicable law. Furthermore,

such guidelines and procedures shall be consistent with relevant International Council for Harmonisation ("**ICH**") guidelines. BMS' and EXEL's costs incurred in connection with receiving, investigating, recording, reviewing, communicating, and exchanging such efficacy data shall be included as an element of Development Costs or Allowable Expenses (to the extent specifically identifiable to or reasonably allocable to the Development or Commercialization of Products for the United States), calculated on a FTE cost and direct out-of-pocket cost basis.

(g) Rights of Reference. Each of BMS and EXEL shall have the right to cross reference, file or incorporate by reference any regulatory filing or drug master file (as defined in the Code of Federal Regulations) (and any data contained therein) for any Co-Developed Products, or any component thereof, made in any country in the Territory (including all Approvals) in order to support regulatory filings that such Party is permitted to make under this Agreement for any Co-Developed Products in the United States and to enable either Party to fulfill its obligations under this Agreement to Develop or Manufacture (anywhere in the world) any such Co-Developed Products for use in the United States or Commercialize any such Co-Developed Product in the United States. Each of BMS and EXEL shall support the other, as may be reasonably necessary, in obtaining Regulatory Approvals for each Co-Developed Product in the United States, including providing necessary documents, or other materials required by applicable law to obtain Regulatory Approvals, in each case in accordance with the terms and conditions of this Agreement.

4.4 Recalls in the United States. Any decision to initiate a recall or withdrawal of a Co-Developed Product in the United States shall be [*], [*]; *provided, however*, that if, as a result of patient safety concerns, there is not [*], and in any event before [*], BMS and EXEL shall promptly and in good faith discuss the reasons therefor and the strategy for implementing any such recall or withdrawal. The costs of any such recall or withdrawal relating to: (i) the Development of a Co-Developed Product for an indication prior to the approval of the Drug Approval Application (or Compendia Listing, as the case may be) for such indication (other than with respect to a recall related to a [*]); or (ii) the Commercialization of a Co-Promotion Product shall each be included in Regulatory Expenses. Notwithstanding the preceding sentence, to the extent that any such recall or withdrawal is attributable to the negligence of a Party, such Party shall bear such costs, and such costs shall be excluded from Development Costs and Allowable Expenses. Under no circumstances shall any Party unreasonably object to a recall or withdrawal requested by another Party, and with respect to a Co-Developed Product no Party shall have any right to object to a recall or withdrawal requested by another Party for failure of a Co-Developed Product to meet the Specifications, for material safety concerns, for the manufacture of a Co-Developed Product in a manner that does not comply with applicable law or as requested by Regulatory Authorities. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from Exelixis as reasonably requested.

4.5 Regulatory Matters Relating to Royalty-Bearing Products in the United States and Products in the Royalty Territory. With respect to Royalty-Bearing Products in the United States and Products in the Royalty Territory:

(a) Preparation of Regulatory Filings. BMS shall prepare and draft all filings (including any supplements or modifications thereto and including the preparation of any electronic submission of a Drug Approval Application) to Regulatory Authorities in each such country for such Royalty-Bearing Product. Each of BMS and EXEL shall keep the other Party informed with

respect to, and shall promptly provide to the other Party copies of, all material written or electronic communications received by it from, or sent by it to: (i) a Regulatory Authority in the U.S., Japan, a Major European Country or for the EU; and (ii) a Regulatory Authority in a country or jurisdiction other than U.S., Japan, a Major European Country or for the EU to the extent that the substance of such communications: (A) vary materially from what such Party has already disclosed to the other Party with respect to the U.S., Japan, a Major European Country or for the EU under this **Section 4.5(a)**; and (B) [*].

(b) Pricing and Reimbursement Approvals. [*] in all pricing and reimbursement approval proceedings relating to each Product in the Royalty Territory.

(c) Rights of Reference. BMS shall have the right to cross reference, file or incorporate by reference any regulatory filing or drug master file (as defined in the Code of Federal Regulations) (and any data contained therein) for any Royalty-Bearing Product made in any country in the Territory (including all Approvals) in order to support regulatory filings that BMS is permitted to make under this Agreement for any such Royalty-Bearing Product in the Royalty Territory and to enable such Party to fulfill its obligations under this Agreement to Develop, Manufacture (anywhere in the world), or Commercialize any such Royalty-Bearing Product for use in the Royalty Territory.

4.6 Recalls in the Royalty Territory. Any decision to initiate a recall or withdrawal of a Product in the Royalty Territory shall be made by BMS. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from the non-lead Party as reasonably requested by BMS. The costs of any such recall or withdrawal in the Royalty Territory shall be borne solely by BMS, except to the extent that the recall or withdrawal is attributable to: (a) the negligence of EXEL, in which event EXEL shall bear such costs; or (b) the negligence of both BMS and EXEL, in which event each Party shall bear such costs to the extent of its respective responsibility, and in either case ((a) or (b)), such costs shall be excluded from Development Costs and Allowable Expenses.

4.7 Pharmacovigilance Agreement. Subject to the terms of this Agreement, and within [*] after the Original Effective Date, BMS and EXEL (under the guidance of their respective Pharmacovigilance Departments, or equivalent thereof) shall re-define, re-state and finalize the responsibilities BMS and EXEL shall employ to protect patients and promote their well-being for XL184, XL281 and any future Collaboration Compounds under separate pharmacovigilance agreements, based on the Pharmacovigilance Agreement dated as of August 13, 2008 (each, a "**Pharmacovigilance Agreement**"). These responsibilities shall include mutually acceptable guidelines and procedures for the receipt, investigation, recordation, communication, and exchange (as between the Parties) of adverse event reports, pregnancy reports, and any other information concerning the safety of such Product. Such guidelines and procedures shall be in accordance with, and enable BMS and EXEL and their Affiliates to fulfill, local and national regulatory reporting obligations to government authorities. Furthermore, such agreed procedures shall be consistent with relevant International Council for Harmonisation (ICH) guidelines, except where said guidelines may conflict with existing local regulatory safety reporting requirements, in which case local reporting requirements shall prevail. The Pharmacovigilance Agreements will provide for a worldwide safety database to be maintained by BMS or EXEL (as applicable), and the Pharmacovigilance Agreement for XL281 shall contain a safety reporting procedure (as described

in Appendix IV of the Safety Data Exchange Agreement that is between the Parties and that is dated July 20, 2009). Each of BMS and EXEL hereby agrees to comply with its respective obligations under such Pharmacovigilance Agreement (as the Parties may agree to modify it from time to time) and to cause its Affiliates and Sublicensees to comply with such obligations).

5. COMMERCIALIZATION

5.1 Overview. As between BMS and EXEL, BMS shall be the lead Party for all Commercialization activities throughout the world, and BMS shall book sales of all Products in all countries.

5.2 Commercialization Plans.

(a) Commercialization Plans. For each Co-Developed Product, the JCC (or the JEC as described in **Section 5.2(b)** below) shall be responsible for creating a global strategy for the Commercialization of such Product pursuant to a comprehensive, rolling, three-year commercialization plan (the **"Global Commercialization Strategy"**), along with creating a comprehensive, rolling, three-year commercialization plan setting forth the anticipated Commercialization activities in the U.S. (including without limitation market research, launch plans, product positioning, and detailing activities) and timelines for such activities (the **"U.S. Commercialization Plan"**). The U.S. Commercialization Plan shall, in the case of the Co-Promotion Products, allocate responsibility for carrying out such activities between BMS and EXEL, and shall include a detailed and specific budget for all such activities. The U.S. Commercialization Plan shall be consistent with the then-current Global Commercialization Strategy and the Co-Promotion Agreement (if any), and the U.S. Commercialization Plan may be included as a part of the Global Commercialization Strategy.

(b) The initial Global Commercialization Strategy and the initial U.S. Commercialization Plan shall be generated by the BMS, in a manner consistent with BMS' planning for products at a similar stage of development, for review by EXEL prior to creation of the JCC. As soon as practicable upon the creation of the JCC, the JCC shall prepare, and submit to the JEC for its approval, any update to the Global Commercialization Strategy and U.S. Commercialization Plan that meets the requirements of **Section 5.2(a)**. Each updated U.S. Commercialization Plan for a particular Product, once approved by the JEC, shall become effective and supersede the previous U.S. Commercialization Plan for such Product as of the date of such approval or at such other time decided by the JEC. The JEC shall not approve a U.S. Commercialization Plan that is inconsistent with or contradicts the terms of this Agreement or the Co-Promotion Agreement (if any) without the written consent of BMS and EXEL, and in the event of any inconsistency between the U.S. Commercialization Plan, on the one hand, and this Agreement or the Co-Promotion Agreement (if any), on the other hand, the terms of this Agreement or the Co-Promotion Agreement (if any), as the case may be, shall prevail.

5.3 Diligent Commercialization. BMS (and EXEL with respect to a Co-Promotion Product in the U.S.) shall use Diligent Efforts to Commercialize each Product in each country in the Major Territory for each indication for which it receives Regulatory Approval; *provided*, *however*, that: (a) [*] shall [*] to Co-Promote a Co-Promotion Product for [*]; and (b) [*] shall [*] to actively promote XL184 for [*]. For clarity, the foregoing [*] **subsection 5.3(b)** shall [*] use Diligent

Efforts to make available for sale any Co-Developed Product in the event that Regulatory Approval for such Co-Developed Product has been obtained [*].

5.4 Option to Co-Promote.

(a) In General. BMS hereby grants to EXEL the first and exclusive option (a **"Co-Promotion Option"**) to co-promote each Co-Developed Product in the U.S. in accordance with a co-promotion agreement (the **"Co-Promotion Agreement"**) to be negotiated in good faith by the Parties [*] subsequent to EXEL's exercise of the Co-Promotion Option with respect to a particular Co-Developed Product.

(b) Exercise. BMS shall give EXEL prompt written notice (the "**Co-Promotion Notice**") of the [*], and shall provide with such notice: (i) the anticipated date of Launch of the Co-Developed Product in the U.S.; and (ii) the then-current Global Commercialization Strategy and U.S. Commercialization Plan (as created pursuant to **Section 5.2(b)**), including budgets relating to the commercialization activities set forth under such plan. EXEL may exercise its Co-Promotion Option with respect to such Co-Developed Product by written notice to BMS no later than [*] after EXEL receives a Co-Promotion Notice. A Co-Developed Product for which EXEL timely exercises its Co-Promotion Option may be referred to from time to time as a Co-Promotion Product. BMS and EXEL shall continue to share Operating Profits (or Losses) in accordance with **Sections 5.5 and 8.2** with respect to each Co-Developed Product, regardless whether EXEL exercises or does not exercise its Co-Promotion Option with respect to any Co-Developed Product.

(c) Co-Promotion Agreement. The Co-Promotion Agreement will include the specific terms set forth in **Exhibit 5.4(c)**, along with additional terms and conditions customary in the industry for an agreement of this type. In the event of any inconsistency between the terms of this Agreement and the terms of the Co-Promotion Agreement, the terms of this Agreement shall prevail.

(d) Termination of Co-Promotion Rights Due to Financial Trigger. In the event that EXEL's Cash Reserves fall below Eighty Million Dollars ($80,000,000), EXEL shall notify BMS within [*] and shall discuss with BMS the corresponding situation. Upon receipt of any such notice, or upon the filing by EXEL of financial statements with the Securities and Exchange Commission that show EXEL's Cash Reserves to be below Eighty Million Dollars ($80,000,000), then BMS shall have the right, upon delivery of written notice to EXEL, to terminate EXEL's Co-Promotion and profit-share rights with respect to one or more Co-Promotion Products; *provided*, *however*, that EXEL may automatically restore its Co-Promotion and profit-share rights if EXEL can increase its Cash Reserves to Eighty Million Dollars ($80,000,000) within ninety (90) days of receipt of such notice. In the event EXEL's rights to Co-Promote and profit-share have been terminated, EXEL shall have no further responsibility for conducting new activities or funding Development or Commercialization activities with respect to the Co-Promotion Product, and shall complete any ongoing activities with respect to the Co-Promotion Product, subject to reimbursement by BMS of one hundred percent (100%) of any costs associated with such continuing activities unless such work is transferred to BMS at the discretion of the JCC, and such Co-Promotion Product shall become a Royalty-Bearing Product.

5.5 Commercialization Costs. All costs and expenses incurred by BMS and EXEL in connection with the Commercialization of each Co-Developed Product in the U.S. shall be included in the calculation of Operating Profit (or Losses) for such Product, and shall be allocated between BMS and EXEL, in accordance with this **Section 5.5,** and **Sections 8.2** and **8.3**. BMS shall bear all costs and expenses incurred by the Parties in connection with the Commercialization of: (a) all Products in the Royalty Territory; and (b) all Royalty-Bearing Products in the U.S.

5.6 Commercialization Reports. With respect to each Co-Developed Product, BMS shall keep the JCC fully informed regarding the progress and results of its Commercialization activities and those of its Affiliates, sublicensees, and Third Party contractors in the U.S. With respect to Royalty-Bearing Products, BMS shall, on a [*] basis, BMS shall provide the JCC with a written report that summarizes, in reasonable detail, all Commercialization activities performed during the preceding [*] period, and compares such performance with the goals and timelines set forth in the Global Commercialization Strategy and (as appropriate) the U.S. Commercialization Plan (if applicable). BMS shall also promptly provide any additional Information regarding the Commercialization of Products reasonably requested by the JCC or by EXEL. For clarity, each of BMS and EXEL will provide [*] updates to the JCC with respect to its Commercialization activities relating to the Co-Promotion Product in the U.S.

5.7 Standards of Conduct. Each Party shall perform, or shall ensure that its Affiliates, sublicensees and Third Party contractors perform, all Commercialization activities in a good scientific and ethical business manner and in compliance with applicable laws, rules and regulations.

5.8 Sales Force Training. BMS shall develop and conduct training programs specifically relating to the Products for its sales representatives. BMS agrees to utilize such training programs on an ongoing basis to assure a consistent, focused promotional strategy.

6. MANUFACTURING

6.1 Clinical and Commercial Supply. Any costs and expenses incurred by either BMS or EXEL in carrying out Manufacturing shall be: (a) in the event that such expenses relate to Manufacture for use of a Co-Developed Product for Development use in the Co-Development Territory, treated as Development Costs; (b) in the event that such expenses relate to Manufacture for use of a Co-Developed Product for Commercial sale in the U.S., treated as Allowable Expenses; and (c) in all other cases, reimbursed one hundred percent (100%) by BMS. Prior to the transfer under **Section 6.2** of the Manufacturing technology for the XL281, EXEL shall Manufacture, or arrange with a Third Party for the Manufacture of, such XL281 Product for the clinical supply of the Exelixis Clinical Trials relating to such XL281 Product. After the completion of EXEL's transfer under **Section 6.2** of the Manufacturing technology for a given Product, BMS shall Manufacture, or arrange with Third Parties for the Manufacture of, such Products (in bulk and finished form) for use in Development and Commercialization. BMS shall at all times be the Lead Party with respect to manufacturing process development as such activities relate to Manufacturing.

6.2 Transfer of Manufacturing Right.

(a) Within [*] after the Original Effective Date, EXEL shall disclose (and provide copies, as applicable) to either BMS or a Third Party manufacturer reasonably acceptable to

EXEL (which election shall be made by BMS) all Information Controlled by Exelixis that is related to the Manufacturing of the Products and is reasonably [*] to enable BMS or such Third Party manufacturer (as appropriate) to Manufacture such Products.

(b) BMS and/or its Third Party manufacturer shall use any Information transferred pursuant to **Section 6.2(a)** solely for the purpose of Manufacturing Products containing such Products for use by EXEL or BMS under this Agreement, and for no other purpose.

(c) BMS acknowledges and agrees that EXEL may condition its agreement to transfer of any Manufacturing technology or Information to a Third Party manufacturer on the execution of a confidentiality agreement between such Third Party manufacturer and EXEL that contains terms substantially equivalent to those of **Article 10** of this Agreement.

7. LICENSES; INTELLECTUAL PROPERTY

7.1 Licenses to BMS. Subject to the terms of this Agreement:

(a) Clinical Development and Commercialization.

(i) EXEL hereby grants to BMS a co-exclusive, revenue-bearing license under the Exelixis Licensed Know-How to clinically develop, make, have made, use, sell, offer for sale and import Co-Developed Products in the U.S. EPC hereby grants to BMS a co-exclusive, revenue-bearing license under the Exelixis Licensed Patents to clinically develop, make, have made, use, sell, offer for sale and import Co-Developed Products in the U.S.

(ii) EXEL hereby grants to BMS an exclusive (subject to EXEL's right to conduct Exelixis Clinical Trials and work under the Backup Programs pursuant to this Agreement), royalty-bearing license under the Exelixis Licensed Know-How to clinically develop, make, have made, use, sell, offer for sale and import: (A) Royalty-Bearing Products in the U.S.; and (B) Products in the Royalty Territory. EPC hereby grants to BMS an exclusive (subject to EXEL's right to conduct Exelixis Clinical Trials and work under the Backup Programs pursuant to this Agreement), royalty-bearing license under the Exelixis Licensed Patents to clinically develop, make, have made, use, sell, offer for sale and import: (A) Royalty-Bearing Products in the U.S.; and (B) Products in the Royalty Territory.

(iii) The licenses granted to BMS in **Sections 7.1(a)(i)** and **(ii)** under the Existing Exelixis Patents shall [*]. As a result, in EXEL's conduct of the Backup Program for XL184 pursuant to **Section 2.12(b)**, EXEL shall [*]. In addition, if BMS conducts the Program Backup with respect to XL184 pursuant to **Section 2.12(c),** BMS shall [*], and EXEL shall determine in good faith [*]. If EXEL determines that [*], then BMS and EXEL shall [*]. Furthermore, EXEL shall (subject to its [*] obligations [*]) use commercially reasonable efforts to [*].

(b) Co-Branding.

(i) Exelixis Marks.

(1) Exelixis Marks. In the U.S., Japan and the Major European Countries, BMS and EXEL anticipate using certain of EXEL existing corporate trademarks to identify EXEL as a contributor to the discovery, Development and Commercialization of Products (collectively, the "**Exelixis Marks**"). Provided such uses comply with applicable laws and market practice in the U.S., the Exelixis Marks shall be used on the Product label, packaging and promotional/marketing material, and shall be displayed with equal prominence as the BMS corporate trademark (in cases where such trademark is used). The Exelixis Marks existing as of the Original Effective Date are set forth on **Exhibit 7.1(b)(i).**

(2) Trademark License Agreement. Within [*] after the Original Effective Date, BMS and EXEL shall commence negotiations of a trademark license agreement setting forth terms and conditions under which EXEL will grant to BMS a royalty-free, non-exclusive license to use such Exelixis Marks solely in connection with the Commercialization of the Products in the Territory and in a manner consistent with **Section 7.1(b)(i)(1)** (the "**Trademark License Agreement**"). Such Trademark License Agreement shall provide that: (A) in the event of termination, BMS shall have the right to use existing materials and packaging bearing such Exelixis Marks; (B) BMS may cease using any Exelixis Marks in the event of a material breach by EXEL pursuant to **Section 11.3(b)** or any bankruptcy or insolvency of EXEL; and (C) the Trademark License Agreement shall not in any way alter the decision-making authority of BMS with respect to Commercialization matters pursuant to this Agreement. and (D) there shall be no additional consideration paid to EXEL (except as set forth in this Agreement) for the use of such trademark.

(3) Arbitration. If BMS and EXEL do not agree upon the terms of the Trademark License Agreement within [*] after the Original Effective Date, then either BMS or EXEL may, by written notification to the other Party, submit the matter to binding "baseball" arbitration to determine the terms of the Trademark License Agreement as follows. Promptly following receipt of such notice, BMS and EXEL shall meet and discuss in good faith and agree on an arbitrator to resolve the issue, which arbitrator shall be neutral and independent of both BMS and EXEL, shall have significant experience and expertise in trademark license agreements for pharmaceutical products, and shall have some experience in mediating or arbitrating issues relating to such agreements. If BMS and EXEL cannot agree on such arbitrator within [*] of request by either BMS or EXEL for arbitration, then such arbitrator shall be appointed by JAMS (formerly, the Judicial Arbitration and Mediation Service) ("**JAMS**"), which arbitrator must meet the foregoing criteria. Within [*] after an arbitrator is selected (or appointed, as the case may be), each of BMS and EXEL will deliver to both the arbitrator and the other Party a detailed written proposal setting forth its proposed terms for the Trademark License Agreement (the **"Proposed Terms"** of the Party) and a memorandum (the **"Support Memorandum"**) in support thereof, not exceeding ten (10) pages in length. BMS and EXEL will also provide the arbitrator a copy of this Agreement, as may be amended at such time. Within [*] after receipt of such other Party's Proposed Terms and Support Memorandum, each of BMS and EXEL may submit to the arbitrator (with a copy to the other Party) a response to such other Party's Support Memorandum, such response not exceeding five (5) pages in length. Neither BMS nor EXEL may have any other communications (either written or oral) with the arbitrator

other than for the sole purpose of engaging the arbitrator or as expressly permitted in this **Section 7.1(b)(i)(3)**; provided that, the arbitrator may convene a hearing if the arbitrator so chooses to ask questions of BMS and EXEL and hear oral argument and discussion regarding each of BMS' and EXEL's Proposed Terms. Within [*] after the arbitrator's appointment, the arbitrator will select one of the two Proposed Terms (without modification) provided by BMS and EXEL that he or she believes is most consistent with the intention underlying and agreed principles set forth in this Agreement and most accurately reflects industry norms for a transaction of this type. The decision of the arbitrator shall be final, binding, and unappealable and BMS and EXEL shall promptly enter into a Trademark License Agreement having the terms set forth in the Proposed Terms selected by the arbitrator. For clarity, the arbitrator must select as the only method to determine the terms of the Trademark License Agreement one of the two sets of Proposed Terms, and may not combine elements of both Proposed Terms or take any other action. Except as expressly stated in this **Section 7.1(b)(i)(3)**, such arbitration shall be conducted in accordance with JAMS' Streamlined Arbitration Rules and Procedures then in effect.

(ii) Royalty-Bearing Products. Subject to **Section 7.1(b)(i)**, BMS shall be solely responsible for creating all packaging and promotional materials for the Royalty-Bearing Products. BMS shall own all right, title and interest in and to any and all such promotional materials, including all applicable copyrights, trademarks (other than Exelixis' name and logo), program names and domain names.

(iii) Advertising and Promotional Materials. Subject to **Section 7.1(b)(i)**, BMS shall create and the JCC shall review and approve the overall strategy with respect to packaging and promotional materials for use in the U.S. with respect to Co-Promotion Products. Subject to **Section 7.1(b)(i)**, the JCC shall determine the placement of the names and logos of the Parties in any promotional materials. BMS shall own all right, title and interest in and to any and all such promotional materials, including all applicable copyrights, trademarks (other than EXEL's name and logo), program names and domain names.

(c) Sublicensing. The licenses granted to BMS in **Section 7.1(a)(i)** are, subject to **Section 7.5(b)**, sublicenseable solely with the prior written consent of Exelixis, which consent shall not be unreasonably withheld; provided that BMS may engage contract service providers for the purpose of carrying out its Development, Commercialization and Manufacturing activities pursuant to the Collaboration without the prior consent of (or notice to) Exelixis. The licenses granted to BMS in **Section 7.1(a)(ii)** shall be freely sublicenseable by BMS in connection with the Development, Commercialization and/or Manufacturing of Royalty Bearing Products.

(d) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Licensed Know-How and Exelixis Patents except those expressly granted to BMS on an exclusive basis under the terms of this Agreement. In addition, notwithstanding the exclusive licenses granted to BMS pursuant to **Section 7.1**, Exelixis retains the right under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to: (i) make, have made, use, and test Collaboration Compounds solely for internal research purposes; (ii) clinically develop, make, have made and use (and to sublicense (or otherwise enter into contractual arrangements with) Third Parties to clinically develop, make or use) the Collaboration Compound for the Exelixis Clinical Trials during the Exelixis Development Period; or (iii) perform its obligations under any Approved Plan. To the extent any Exelixis Licensed Patents are owned by EPC, EPC hereby grants EXEL an exclusive,

fully-paid, royalty free license, with the right to grant sublicenses, under the Exelixis Licensed Patents to perform and have performed the research tasks assigned to EXEL pursuant to the Approved Plan.

7.2 Licenses to Exelixis.

(a) Clinical Development and Commercialization. Subject to the terms of this Agreement, BMS hereby grants to Exelixis a co-exclusive, revenue-bearing license under the BMS Licensed Patents and the BMS Licensed Know-How to clinically develop, make, have made, use, sell, offer for sale and import the Co-Promotion Product in the U.S.

(b) Sublicensing. The license granted to Exelixis in **Sections 7.2(a)** is, subject to **Section 7.5(b)**, sublicenseable solely with the prior written consent of BMS, which consent shall not be unreasonably withheld.

(c) BMS Retained Rights. BMS retains all rights to use the BMS Licensed Know-How and BMS Patents except those expressly granted to Exelixis on an exclusive basis under the terms of this Agreement.

7.3 Mutual Covenants.

(a) BMS hereby covenants that BMS shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Licensed Know-How or Exelixis Licensed Patents for a purpose other than that expressly permitted in **Section 7.1**.

(b) Exelixis hereby covenants that Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any BMS Licensed Know-How or BMS Patents for a purpose other than that expressly permitted in **Section 7.2**.

7.4 No Additional Licenses. Except as expressly provided in **Sections 7.1, 7.2**, and **Article 11**, nothing in this Agreement grants either Party any right, title or interest in and to the intellectual property rights of another Party (either expressly or by implication or estoppel).

7.5 Sublicensing.

(a) In General. Each Party shall provide the other Parties with the name of each permitted sublicensee of its rights under this **Article 7** and a copy of the applicable sublicense agreement; *provided* that each Party may redact confidential or proprietary terms from such copy, including financial terms. The sublicensing Party shall remain responsible for each permitted sublicensee's compliance with the applicable terms and conditions of this Agreement.

(b) Right of First Refusal for Sublicense of Co-Promotion Rights. During the Term, should Exelixis decide to sublicense its rights under **Section 7.2(a)** to any Third Party, or should BMS decide to sublicense its rights under **Section 7.1(a)** to any Third Party, then the Party desiring to grant such sublicense (the "**Sublicensing Party**") shall promptly notify the other Party (the "**Other Party**") in writing. The Other Party shall have a first and exclusive right of negotiation to obtain from the Sublicensing Party such sublicense on commercially reasonable terms. If the Other Party exercises this right by so notifying the Sublicensing Party in writing within [*] of the

receipt of the Sublicensing Party's notice, the Parties shall negotiate in good faith for [*] (the **"Negotiation Period"**) from the date the Sublicensing Party receives such notice from the Other Party to arrive at commercially reasonable terms (including any applicable royalty rate or other consideration) of an agreement for such a sublicense. If mutual agreement is not reached during the Negotiation Period, then the Sublicensing Party shall be free to pursue a Third Party sublicensee, subject to **Sections 7.1(c)** and **7.2(b), as applicable**; *provided, however*, that the Sublicensing Party may not grant a sublicense to such Third Party on terms more favorable to such Third Party (taking into consideration the overall aggregate of economic factors) than those which the Sublicensing Party last offered to the Other Party; and *provided further* that in the event that no such sublicense to a Third Party occurs for a period of [*] subsequent to the expiration of the Negotiation Period described above, then the terms of this **Section 7.5(b)** shall once again apply to any proposed sublicense by the Sublicensing Party (i.e., as if the Negotiation Period had never occurred).

7.6 Ownership.

(a) {Intentionally left blank.}

(b) The inventorship of all Sole Inventions and Joint Inventions shall be determined under the U.S. patent laws.

(c) BMS shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents claiming only such Sole Inventions (and no Joint Inventions) (**"Sole Invention Patents"**). As between EXEL and EPC, EPC shall own the entire right, title and interest in ant to any and all of Sole Invention Patents of EXEL and/or EPC. EXEL hereby assigns to EPC its entire right, title and interest in and to its Sole Invention Patents. BMS and Exelixis shall be joint owners in and to any and all Joint Inventions, provided that, as between EXEL and EPC, EPC shall be the joint owner of any and all Patents claiming such Joint Inventions (**"Joint Invention Patents"**), and EXEL hereby assigns to EPC its entire right, title and interest in and to its Joint Invention Patents. BMS and Exelixis (EPC for Joint Invention Patents and EXEL for other Joint Inventions) as joint owners each shall have the right to exploit and to grant licenses under such Joint Inventions, and where exercise of such rights require, under the laws of a country, the consent of the other Party, with the consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned) unless otherwise specified in this Agreement.

(d) All employees, agents and contractors of each Party shall be under written obligation to assign any inventions and related intellectual property to the Party for whom they are employed or are providing services.

(e) The Parties acknowledge and agree that this Agreement shall be deemed to be a **"Joint Research Agreement"** as defined under 35 U.S.C. 103(c).

7.7 Disclosure. Each Party shall submit a written report to the JEC no less frequently than within [*] of the end of each [*] describing any Sole Invention or Joint Invention arising during the prior [*] in the course of the Collaboration or thereafter in accordance with this Agreement which it believes may be patentable or at such earlier time as may be necessary to preserve patentability of such invention. Each Party shall provide to the other Parties such assistance and execute such documents as are reasonably necessary to permit the filing and prosecution of such

patent application to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension of any resulting Patent.

7.8 Patent Prosecution and Maintenance; Abandonment.

(a) Joint Patent Committee.

(i) Establishment & Meetings. Promptly after the Original Effective Date (as defined in the TGR5 License Agreement), the Parties shall establish a committee (the "**Joint Patent Committee**" or "**JPC**"). The JPC shall be composed of at least (1) representative from each of BMS and EXEL, at least one of which shall be a patent counsel for such Party. Each such Party may change its representative(s) by giving the other such Party at least [*] prior written notice. The JPC shall meet within [*] after the Original Effective Date (as defined in the TGR5 License Agreement), and once per [*] thereafter, or as may be requested by either Party as necessary, by teleconference, videoconference or in person (as determined by the JPC).

(1) Duties. As between EXEL and EPC, EXEL shall carry out the day-to-day responsibility for filing, prosecution and maintenance on behalf of EPC under Sections 7.1 through 7.9. Promptly after the Original Effective Date (as defined in the TGR5 License Agreement), [*] shall oversee (subject to **Sections 7.8(b)(ii), (iv)** and **(v)** below) the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all [*] Patents, [*] Patents Controlled by [*], and [*] Patents that in each case are [*] (the **"[*] Patents"**), provided that, unless otherwise agreed by the Parties, such responsibilities shall be carried out by: (A) [*] by [*] the [*], unless there exists [*] of [*] and [*]; (B) [*] by [*], but only in the case where [*] described in subsection (A) had [*] of [*]; or (C) [*] in conjunction with [*] described in the preceding subsection (A) or (B), as applicable. [*], or [*], shall provide [*] with an update of the filing, prosecution and maintenance status for each of the [*] Patents on a periodic basis, and shall use commercially reasonable efforts to consult with and cooperate with [*] with respect to the filing, prosecution and maintenance of the [*] Patents, including providing [*] with drafts of proposed filings to allow [*] a reasonable opportunity for review and comment before such filings are due. [*], or [*], shall provide to [*] copies of any papers relating to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents promptly upon their being filed and received.

(2) Decisions. Subsequent to the Original Effective Date (as defined in the TGR5 License Agreement), in the event of a dispute between the Parties with regard to the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of any [*] Patent, the matter shall be promptly referred to the [*] of EXEL and [*] for BMS. If these two (2) individuals are unable to resolve the dispute promptly, then the matter shall be promptly elevated to the [*] of EXEL and the [*] of BMS. If these two (2) individuals are unable to resolve the dispute promptly, then, subject to **Sections 7.8(a)(i)(3), 7.8(a)(i)(4), 7.8(a)(ii), [*] of the ROR Collaboration Agreement,** and **[*] of the ROR Collaboration Agreement**, [*] shall have the final decision, except if such decision: (A) conflicts with the terms of the Agreement; (B) would result in [*] described in [*] or a [*] of the [*]; or (C) materially impacts [*] prosecution of Patents that [*] a [*], in which case of **subsection 7.8(a)(i)(2)(A) - (C)**, [*] shall have the final decision.

(3) Limitation on Subsection 7.8(a)(i)(2)(B). If [*] reasonably believes that filing a new patent application covering a [*] (other than the [*] of a [*]) would result in potential claims [*] for [*], and if [*] disputes with [*] that such patent application should be filed, then such dispute shall be discussed as described in the first two (2) sentences of **Section 7.8(a)(i)(2)**, and, if still unresolved, shall be arbitrated pursuant to **Section [*] of the ROR Collaboration Agreement**, and [*] shall not have the right to exercise its final-decision making authority pursuant to **Subsection 7.8(a)(i)(2)(B)** unless the dispute is resolved in [*] favor.

(4) Limitation on Subsection 7.8(a)(i)(2)(C). [*] hereby covenants that it shall not, without the prior written consent of [*] (which shall not be unreasonably delayed or conditioned), during the term of this Agreement, [*] the decision-making authority granted to [*] pursuant to **Subsection 7.8 (a)(i)(2)(C)** [*] that is [*] existing as of the Original Effective Date or [*]. Furthermore, if [*] the decision-making authority granted to [*] pursuant to **Subsection 7.8 (a)(i)(2)(C)** [*] by [*], [*] or [*], and such [*] is [*] or [*] a [*] that is [*], then [*] and [*] shall agree, pursuant to **Section [*] of the ROR Collaboration Agreement**, on [*] the decision-making authority granted to [*] pursuant to **Subsection 7.8 (a)(i)(2)(C**).

(ii) Abandonment. In no event shall [*] knowingly permit any of the [*] Patents to be abandoned in any country, or elect not to file a new patent application claiming priority to a patent application within the [*] Patents either before such patent application's issuance or within the time period required for the filing of an international (i.e., Patent Cooperation Treaty), regional (including European Patent Office) or national application, without [*] written consent (such consent not to be unreasonably withheld, delayed or conditioned) or [*] otherwise first being given an opportunity to assume full responsibility [*] for the continued prosecution and maintenance of such [*] Patents or the filing of such new patent application. Accordingly, [*], or [*], shall provide [*] with notice of the allowance and expected issuance date of any patent within the [*] Patents, or any of the aforementioned filing deadlines, and [*] shall provide [*] with prompt notice as to whether [*] desires [*] to file such new patent application. In the event that [*] decides either: (A) not to continue the prosecution or maintenance of a patent application or patent within the [*] Patents in any country; or (B) not to file such new patent application requested to be filed by [*], [*] shall provide [*] with notice of this decision at least [*] prior to any pending lapse or abandonment thereof, and [*] shall thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such patent or patent application. In the event that [*] assumes such responsibility for such filing, prosecution and maintenance, [*] shall no longer have the responsibility for such filing, prosecution and maintenance of such patent applications and patents, and [*] shall cooperate as reasonably requested by [*] to facilitate control of such filing, prosecution and maintenance by [*]. In the case where [*] takes over the filing, prosecution or maintenance of any patent or patent application as set forth above, such patent or patent application shall [*] be [*] the [*], and [*] shall [*] such patent or patent application.

(iii) Filing, Prosecution and Maintenance of Sole Invention Patents Controlled by BMS. In accordance with this **Section 7.8 (a)(iii)**, BMS shall be responsible for the filing, prosecution (including any interferences, reissues and reexaminations) and maintenance of all Sole Invention Patents Controlled by BMS. BMS shall provide to EXEL copies of any papers relating to the filing, prosecution and maintenance of the Sole Invention Patents Controlled by BMS promptly upon their being filed and received.

(iv) Patent Term Extension. EXEL and BMS shall each cooperate with each another and shall use commercially reasonable efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to patent rights covering the Products. If elections with respect to obtaining such patent term extensions are to be made, [*] shall have the right to make the election to seek patent term extension or supplemental protection.

(v) Exelixis Right to Separate Claims. To the extent that any Sole Invention Patent owned by EPC contains claims that cover compounds that are not Collaboration Compounds (such compounds, **"Separable Compounds"**), EXEL shall have the right to separate any claims that cover such Separable Compounds (and not Collaboration Compounds) and to file such claims in a separate application (e.g., a continuation, continuation-in-part, or divisional application). EXEL shall notify BMS in writing prior to separating such claims, and such separation shall be at EXEL's sole expense.

(b) Payment of Prosecution Costs. BMS shall bear the out-of-pocket expenses (including reasonable fees for any outside counsel, but not EXEL's inside counsel fees) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of: (X) [*]; and (Y) the [*], *provided* that if any [*] is part of a patent application or patent that covers other inventions that are [*], then BMS and EXEL shall mutually agree upon an appropriate allocation of the expenses so that BMS does not bear any portion of the [*] attributable to such other inventions.

(c) Payment of Expenses for Joint Inventions. EXEL and BMS shall mutually agree on the percentage of expenses that each of BMS and EXEL shall bear with respect to Joint Inventions for which the cost of filing, prosecuting or maintaining such Joint Invention is not the responsibility of either BMS or EXEL under **Section 7.8(b)** hereof (which, in the absence of any other agreement between the Parties, shall be divided [*]).

(d) Non-payment of Expenses.

(i) If either BMS or EXEL elects not to pay its share of any expenses with respect to a Patent covering a Joint Invention in a given country under any of **Sections 7.8(b)** or **(c)** (each, a "**Joint Patent**"), such Party shall inform such 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 such other Party assumes the expenses associated with the Joint Patent, then the assuming Party [*] and such other Party shall [*].

(ii) If either BMS or EPC is the assignee or owner of a Patent (other than a Joint Patent) that is licensed to such other Party under any of **Sections 7.1 or 7.2**, and such owning Party elects not to pay its share of expenses pursuant to **Sections 7.8(b)** or **7.8(c)** in a given country, such owning Party shall inform such 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 such other Party assumes the expenses associated with the Patent in such country, then the assuming Party [*] and the owning Party shall [*].

(iii) If either BMS or EPC is the licensee of a Patent (other than a Joint Patent) under any of **Sections 7.1** or **7.2**, and such Party elects not to pay its share of expenses

pursuant to **Sections 7.8(b)** or **7.8(c)** in a given country, such Party shall inform such other Party (in the case of EPC is the licensee, EPC or EXEL shall inform BMS, and in the case BMS is the licensee, BMS shall inform EXEL) in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable) (such Patent(s) in such countries, as identified in such notice, being a **"[*]"**), and [*] under such **Sections 7.1** or **7.2**, as applicable, with respect to the relevant Patent in such country, *provided* that [*]. It is also understood that such licensee shall be offered the opportunity to assume its share of the responsibility for the costs of filing, prosecution and maintenance of any Patent(s) claiming priority directly or indirectly from any such [*] Right, and that where such expenses are assumed by such licensee, it shall be afforded all the rights and licenses as provided under this Agreement for the licensed Patents (other than the [*]) with respect to such Patent(s) claiming priority directly or indirectly from any such [*].

(e) Notwithstanding **Sections 7.8(b), (c) and (d),** any costs incurred by the Parties associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of a U.S. Patent in the Exelixis Prosecuted Patents or the BMS Licensed Patents shall, solely to the extent such Patent claims the use, manufacture, or sale of a Co-Promotion Product, be included as an element of Allowable Expenses.

(f) Each of BMS and EXEL shall provide to such other Party, on a [*] basis, a patent report that includes the serial number, docket number and status of each Patent for which such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention (in the case of [*]) or Joint Invention. BMS and EXEL through their patent counsel shall discuss as appropriate (but not more than [*]) ways in which to allocate such out-of-pocket expenses in an appropriate, cost-effective manner consistent with the purposes of this Agreement and Exelixis' obligations to Third Parties.

(g) BMS' right to file, prosecute and maintain any Exelixis Existing Patents covering XL184 shall be subject to any right to file, prosecute and maintain such Patents by GSK then in existence.

7.9 Enforcement of Patent Rights.

(a) Enforcement of Exelixis Sole Patents.

(i) Enforcement by [*]. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement by a Third Party of a Patent claiming a Sole Invention owned by EPC that claims the composition of matter (including formulation), manufacture or use of one or more Products that is being Developed or Commercialized using Diligent Efforts and which is co-exclusively or exclusively licensed to BMS under **Section 7.1** (for purposes of this **Section 7.9(a)(i)** only, an "**Exelixis Sole Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. As between EXEL and EPC, EXEL shall carry out the patent enforcement action on behalf of EPC under this Section 7.9, and shall pay costs and expenses on behalf of EPC in connection therewith. Each of BMS and EXEL shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of an Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed

issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a product directed against an Identified Target of a Product, [*] shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and SEP shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions at [*] request. [*] have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of any such [*] Sole Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(ii) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 7.9(a)(i)** and so notifies [*], or where [*] (or any other party other than [*] who is licensed under such [*] Sole Patent) otherwise desires to bring an action or to defend any proceeding directly involving an [*] Sole Patent, then [*] may bring such action or defend such proceeding at its own expense, in [*] own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further,* that with respect to any [*] Sole Patent that is a Patent listed or listable in the FDA's Orange Book (or foreign equivalent(s) of such Patent or the FDA's Orange Book) by [*] (a **"Listable Patent"**), if [*] fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such [*] Sole Patent shall in no event be diminished by any failure to enforce such [*] Sole Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a Listable Patent, may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(b) Enforcement of Joint Patents.

(i) Joint Product Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter (including formulation), manufacture or use of one or more Products that is being developed or commercialized using Diligent Efforts and which is co-exclusively or exclusively licensed to BMS under **Section 7.1** (a "**Joint Product Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. Each of BMS and EXEL shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of a Joint Product Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed

issued Patent claiming a product it is developing or commercializing independent of this Agreement. [*] shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and [*] shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 7.9(b)(i)(1)** and so notifies [*], or for any other enforcement by [*] of a Joint Product Patent which is co-exclusively or exclusively licensed to [*] under **Section 7.1**, then [*] may bring such action or defend such proceeding at its own expense, in [*] own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Joint Product Patent that is a Listable Patent, if [*] fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such Joint Product Patent shall in no event be diminished by any failure to enforce such Joint Product Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(ii) Other Joint Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement of a Patent that claims a Joint Invention but is not a Joint Product Patent (an "**Other Joint Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. Each of BMS and EXEL shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of an Other Joint Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. [*] shall have the right, but shall not be obligated, to prosecute an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and [*] shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the

enforceability of an Other Joint Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 7.9(b)(ii)(1)** and so notifies [*], then [*] may bring such action or defend such proceeding at its own expense, in [*] own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Other Joint Patent that is a Listable Patent, if [*] fails to consent to any such action or proceeding, the Royalty Term for any Product that is claimed in such Other Joint Patent shall in no event be diminished by any failure to enforce such Other Joint Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(c) General Provisions Relating to Enforcement of Patents.

(i) Withdrawal. If either BMS or EXEL brings such an action or defends such a proceeding under this **Section 7.9** and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify such other Party and such other Party (in the case of EXEL, on behalf of EPC) may substitute itself for the withdrawing Party under the terms of this **Section 7.9** (including such prior written consent as provided for under this **Section 7.9**) at its own expense.

(ii) Recoveries. In the event either Party exercises the rights conferred in this **Section 7.9** and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be [*].

(iii) Patent Enforcement in the U.S. Notwithstanding any cost allocations set forth in **Sections 7.9(a)** and **(b),** and notwithstanding the allocation of recoveries set forth in **Section 7.9(c)(ii)**: (A) any costs incurred by either Party in connection with actions taken under this **Section 7.9** against suspected infringement by a Third Party in the U.S. that involves such Third Party's development, manufacture, use or sale of a product reasonably likely to materially affect sales of a Co-Promoted Product shall be [*]; and (B) any recoveries received by either Party in connection with such actions shall, [*].

(d) Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (such as those periods listed in the FDA's Orange Book (including any available

pediatric extensions) or periods under national implementations of Article 10.1(a)(iii) of Directive 2001/EC/83, and all international equivalents), BMS shall use commercially reasonable efforts consistent with its obligations under applicable law (including any applicable consent order) to seek, maintain and enforce all such data exclusivity periods available for the Products. With respect to filings in the FDA Orange Book (and foreign equivalents) for issued patents for a Product, upon request by BMS (and at BMS' expense), Exelixis shall provide reasonable cooperation to BMS in filing and maintaining such Orange Book (and foreign equivalent) listings.

(e) No Action in Violation of Law. None of the Parties shall be required to take any action pursuant to this **Section 7.9** that such Party reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree applicable to such Party.

(f) Notification of Patent Certification. [*] shall notify and provide [*] with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of an Patent licensed to [*] hereunder pursuant to a Paragraph IV Patent Certification by a third party filing an Abbreviated New Drug Application, an application under §505(b)(2) or other similar patent certification by a third party, and any foreign equivalent thereof. Such notification and copies shall be provided to [*] by [*] as soon as practicable and at least within [*] after [*] receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below:

[*]

7.10 {Intentionally left blank.}

7.11 Defense of Third Party Claims. If a claim is brought by a Third Party that any activity related to work performed by a Party under the Collaboration infringes the intellectual property rights of such Third Party, each Party shall give prompt written notice to the other Parties of such claim, and following such notification, the Parties shall confer on how to respond.

7.12 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 7.**

8. COMPENSATION

8.1 Upfront Payment; License Payments.

(a) BMS shall pay Exelixis an upfront payment of One Hundred Ninety-Five Million Dollars ($195,000,000) within [*] after the Original Effective Date. Such payment shall be noncreditable and nonrefundable.

(b) BMS shall pay Exelixis a license fee of (i) [*] on or before [*], and (ii) [*] on or before [*]. Such payments shall be noncreditable and nonrefundable.

8.2 Profit Sharing in the U.S. The terms and conditions of this **Section 8.2** shall govern each Party's rights and obligations with respect to Operating Profits (or Losses) relating to each Co-Developed Product in the U.S. For clarity, Exelixis shall have no right to share Operating Profits, and, except as set forth in **Section 8.3(a)(iii)** below, no obligation to bear any Operating Losses, in each case pursuant to this **Section 8.2**, with respect to (x) any Royalty-Bearing Product in the U.S.; or (y) any Product in the Royalty Territory, and in each case Exelixis shall instead be entitled to receive from BMS royalties pursuant to **Section 8.5**.

(a) Basic Concept. The Parties shall share equally all Operating Profits and all Operating Losses (as applicable) for each Co-Developed Product in the U.S. Specifically, the Net Sales of such Product in the U.S. shall be allocated first to reimburse each Party for fifty percent (50%) of its Allowable Expenses for such Product in the U.S., and any remaining sums, shall be Operating Profit or Operating Loss (as applicable), which shall be shared fifty percent (50%) by each Party. The JFC will determine future financial flows regarding the sharing of Operating Profits and Allowable Expenses consistent with the first sentence of this **Section 8.2(a)** and with each Party's then existing tax and transfer pricing policies.

(b) [*]. If Exelixis elects [*] Co-Developed Product (a "[*]"), then, solely during the period in which BMS is actually promoting such Product [*], BMS shall receive [*] (such [*], the "[*]") of Operating Profits (or Losses) for such Product (resulting in [*] for such Product to [*] during such period). The Parties agree that the Co-Promotion Agreement shall contain a mechanism by which the Parties shall [*]. The Co-Promotion Agreement shall also contain a mechanism, similar to that described in **Section 8.11(b)**, for arbitrating any disputes if the Parties are unable to mutually agree on [*] for such Product.

(c) Commercialization Overruns. If the Allowable Expenses for Commercialization activities exceed the amounts budgeted for all such activities in the applicable Annual Commercialization Plan (and taking into account any amendments to such Annual Commercialization Plan and Budget that may be approved during a calendar year) by more than [*] (calculated for all costs incurred over such calendar year for all budgeted activities), such excess Allowable Expenses (each, a **"Commercialization Overrun"**) shall be borne by [*] and such excess Allowable Expenses shall be [*]. Notwithstanding the foregoing, in the event and to the extent that such Commercialization Overrun was [*], or did not [*], then such Commercialization Overrun shall be [*], as the case may be.

8.3 Calculation and Payment of Profit or Loss Share.

(a) Reports and Payments in General. With respect to each Co-Developed Product, each Party shall report to the other Party, within [*] after the end of each quarter, with regard to Net Sales and Allowable Expenses incurred by such Party (including any Allowable Expenses incurred by a Party prior to Regulatory Approval of such Product) for such Product during such quarter in the U.S. Each such report shall specify in reasonable detail all deductions allowed in the calculation of such Net Sales and all expenses included in Allowable Expenses, and, if requested by a Party, any invoices or other supporting documentation for any payments to a Third Party that individually exceed [*] (or such other amount approved by the JFC) shall be promptly provided. Within [*] after the end of each quarter (or for the last quarter in a year, [*] after the end of such quarter), the Parties shall reconcile all Net Sales and Allowable Expenses to ascertain

whether there is an Operating Profit or an Operating Loss and payments shall be made as set forth in paragraphs (i) and (ii) below, as applicable.

(i) If there is an Operating Profit for such quarter, then BMS shall reimburse Exelixis for Allowable Expenses incurred by Exelixis in such quarter and shall pay to Exelixis, subject to **Sections 3.8(b) and 8.2(b)**, an amount equal to fifty percent (50%) of the Operating Profit for such quarter; or

(ii) If there is an Operating Loss for such quarter, then, subject to **Section 3.8(b),** the Party that has borne less than its share of the Operating Loss in such quarter shall make a reconciling payment to the other Party to assure that each Party bears its share of such Operating Loss during such quarter.

(iii) In the event that Exelixis has borne Allowable Expenses, or has made reconciling payments to BMS relating to Allowable Expenses pursuant to clause (ii) above, with respect to a Co-Developed Product which becomes a Royalty-Bearing Product, then BMS shall reimburse Exelixis for such Allowable Expenses during the calendar quarter in which such Co-Developed Product becomes a Royalty-Bearing Product.

(b) Last Calendar Quarter. No separate payment shall be made for the last quarter in any year. Instead, at the end of each such year, a final reconciliation shall be conducted by comparing the share of Operating Profit (or Loss) to which a Party is otherwise entitled for such year pursuant to **Section 8.2** against the sum of all amounts (if any) previously paid or retained by such Party for prior quarters during such year, and the Parties shall make reconciling payments to one another no later than [*] after the end of such quarter, if and as necessary to ensure that each Party receives for such year its share of Operating Profits and bears its share of Operating Losses in accordance with **Section 8.2**.

8.4 Milestone Payments to EPC.

(a) Development and Regulatory Milestones.

(i) For each Royalty-Bearing Product that is an XL281 Product, and with respect to [*], BMS shall make the milestone payments set forth below to EPC within [*] after the first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to such Royalty-Bearing Product. All such milestone payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable.

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

[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

(ii) For each Royalty-Bearing Product that contains or comprises XL184 [*], BMS shall make the milestone payments set forth below to EPC within [*] after the first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to such Royalty-Bearing Product. No milestones shall be payable for events already achieved at the time of a Product Opt-Out by EXEL. All such milestone payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable.

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

[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

* [*]

(b) Commercial Milestones. BMS shall make the milestone payments set forth below to EPC after first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to each of: (i) an XL184 Product; and (ii) an XL281 Product. Each milestone payment shall be made by BMS in three (3) equal installments, with the first installment due and payable [*] after the end of the [*] in which such milestone event is met. BMS shall pay the second installment to EPC on [*] if, at the time [*], the sales threshold level that initially triggered the payment obligation (the **"Sales Threshold"**) was maintained or exceeded for the [*]. Otherwise, the second installment shall be deferred until [*], provided that [*]. BMS shall pay the third installment to EPC on [*] if, at the time [*], the Sales Threshold was maintained for [*]. Otherwise, the third installment shall be deferred until [*], provided that the [*]. All such milestone payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, and shall be paid only twice, once with respect to an XL184 Product (collectively), and once with respect to an XL281 Product (collectively).

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

* [*].

** [*].

(c) Milestone Payment Restrictions. Each milestone payment set forth in **Section 8.4(a)** shall be paid [*].

(d) Payments with Respect to Program Backups. Milestone payments for a Program Backup to a Product shall [*] and, in such event, will be payable [*]. For clarity, in the event that a [*] milestones set forth above, and [*], then: (i) such [*] milestones shall be due and payable with respect to such Program Backup [*]; and (ii) in the event that the [*] that were paid with respect to the [*], such milestones shall be [*] (or [*], if applicable) has [*] and will be payable [*].

(e) [*]. Where milestones are payable for the achievement of [*] with respect to a Royalty-Bearing Product, such [*] such milestone payment [*].

8.5 Royalty Payments to EPC.

(a) Sales of XL281 Products. For each Royalty-Bearing Product that is an XL281 Product, [*], BMS shall pay to EPC royalties on Net Sales of such Product by BMS (or its Affiliates or sublicensees) in the Territory at a royalty rate determined by aggregate Net Sales in the Territory of such Product in a calendar year as follows:

Calendar year Net Sales of XL281 Products or all Backup Programs that relate to XL184 and that are Royalty-Bearing Products in the Territory	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

For clarity, Net Sales shall be [*]. All royalty payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, except in the event that an audit pursuant to Section 8.18 confirms that BMS had overpaid royalties to EPC, in which case such overpayment shall be credited against future royalties due to EPC (or, in the event that such audit takes place subsequent to the Royalty Term, such overpayment shall be refunded to BMS).

(b) Sales of Products Containing or Comprising XL184. For each Product containing or comprising XL184 during the applicable Royalty Term, BMS shall pay to EPC royalties on Net Sales of such Product by BMS (or its Affiliates or sublicensees) as follows:

(i) For aggregate Net Sales outside the U.S. of such Product in a calendar year, BMS shall pay the following royalty rate:

Calendar year, Net Sales of XL184 Product Outside the U.S.	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

(ii) For aggregate Net Sales inside the U.S. of each XL184 Product that is a Royalty-Bearing Product in a calendar year, BMS shall pay the following royalty rate:

Calendar year, Net Sales of Royalty-Bearing Product Containing or Comprising XL184 in the U.S.	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%*
Portion above $[*]	[*]%*

* [*].

8.6 Third Party Royalties for Products in the Royalty Territory and Royalty-Bearing Products in the U.S.

(a) [*] Third Party royalties owed with respect to either a Product in the Royalty Territory or a Royalty-Bearing Product in the U.S., on intellectual property that: (i) [*]; or (ii) is intellectual property that: (A) [*] from a Third Party prior to the Original Effective Date and [*]; and (B) [*]. Subject to **Section 8.6(b)** and **Section 8.7**, [*] Third Party royalties owed on intellectual property in connection with the development and commercialization of a Product [*]; *provided* that each Party shall bear all Third Party royalties arising from any infringing activities by such Party prior to the Original Effective Date.

(b) BMS may deduct from the royalties it would otherwise owe to EPC pursuant to **Section 8.5** for a particular Product, an amount equal to [*] of all royalties payable to a Third Party in consideration for rights [*] for the manufacture, use or sale of such Product, up to a maximum deduction of [*] of the royalties due EPC for such Product.

8.7 [*]. During the applicable Royalty Term for a particular Royalty-Bearing Product, if the Patents claiming the composition of matter of such Royalty-Bearing Product have expired, and if any Third Parties are: (a) [*] in any given country in any year; and (b) such [*] in such country for such year are, [*]:

(i) [*], but [*] of the [*] in such country, then [*]; or

(ii) [*] of the [*], then [*].

8.8 Limitation on Deductions. Notwithstanding anything to the contrary in this Agreement, the operation of **Section 8.6** and **Section 8.7** for a given Product, whether singularly or in combination with each other, shall not [*].

8.9 Quarterly Payments and Reports. All royalties due under **Section 8.5** shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant quarter for which royalties are due. BMS shall provide to EPC within [*] after the end of each quarter a report that summarizes the Net Sales of a Royalty-Bearing Product during such quarter, *provided* that to the extent additional information is reasonably required by EPC and/or EXEL to comply with its obligations to any of its licensors, the Parties shall work together in good faith to timely compile and produce such additional information. Such reports shall also include detailed information regarding the calculation of royalties due pursuant to **Section 8.5**, including allowable deductions in the calculation of Net Sales of each Royalty-Bearing Product on which royalties are paid, and, to the extent **Section 8.7** is applicable, the calculation of sales and market share (by volume) of Generic Products.

8.10 Term of Royalties. EPC's right to receive royalties under **Section 8.5** shall expire on a country-by-country and Royalty-Bearing Product-by-Royalty-Bearing Product basis upon the later of: (a) [*]; or (b) [*] (the "**Royalty Term**"). Upon the expiration of the Royalty Term with respect to a Royalty-Bearing-Product in a country, BMS shall have a fully- paid- up perpetual license under **Section 7.1(a)(ii)** for the making, using, selling, offering for sale and importing of such Royalty-Bearing-Product in such country.

8.11 Sales of [*] Product Against [*].

(a) In General. The Parties recognize that the exclusivity provisions set forth in **Article 9** may allow for situations where BMS or EXEL is [*] and such product [*] (each such product, a "[*]"). If BMS or EXEL asks the JEC to determine whether [*], the JEC shall determine whether [*] using [*] (or any other [*] reasonably acceptable to BMS and EXEL). If such [*] are [*] then the JEC shall determine if the [*] of such [*] is due to the [*] or if such [*] is due to the [*]. If the [*] of such [*], then the JEC shall determine the extent to which sales of such [*]. The Party commercializing such [*]: (i) a [*] (as determined by the JEC); and (ii) (A) in the case of BMS [*], and (B) in the case of [*]. [*] would be [*].

(b) Disputes. If the JEC cannot agree: (i) whether [*]; (ii) on the [*]; (iii) whether such [*]; (iv) if the [*] is due to the [*] (or a combination thereof); (v) the degree to [*]; or (vi) on the [*] as if such Party were [*] with respect to any [*] in the U.S., then, in each case, at the election of either BMS or EXEL, such dispute must be finally resolved through binding arbitration by JAMS in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the failure arises, except as modified in this Agreement and applying the substantive law specified in **Section 14.2**. Either BMS or EXEL may initiate arbitration under this **Section 8.11(b)** by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. For each arbitration: (A) each of BMS and EXEL shall submit to the arbitrator its proposal for resolving such dispute, with such proposal based on the applicable commercial and scientific factors discussed by the JEC; (B) the arbitrator shall select the proposal that is the most commercially and scientifically reasonable; and (C) such proposal shall become the applicable JEC determination. Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The award of the arbitrator shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted at such location as shall be determined by the

Arbitrator. BMS and EXEL agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each of BMS and EXEL shall bear its own attorneys' fees and associated costs and expenses.

8.12 Payment Method. All payments due under this Agreement to EPC shall be made by bank wire transfer in immediately available funds to an account designated by EPC. All payments hereunder shall be made in Dollars.

8.13 Taxes. EPC shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, BMS shall: (a) deduct those taxes from the remittable payment; (b) pay the taxes to the proper taxing authority; and (c) send evidence of the obligation together with proof of tax payment to EXEL within [*] following that tax payment. The JFC shall discuss appropriate mechanisms for minimizing such taxes to the extent possible in compliance with applicable law.

8.14 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 EPC in Dollars based on the Dollar reported sales for the quarter (translated for such country per Statement of Financial Standards No. 52), unless otherwise mutually agreed.

8.15 Sublicenses. In the event BMS grants any permitted licenses or sublicenses to Third Parties to sell Products that are subject to royalty payments under **Section 8.5**, BMS shall have the responsibility to account for and report sales of any Product by a licensee or a sublicensee on the same basis as if such sales were Net Sales by BMS. BMS shall pay to EPC (or cause the licensee or sublicensee to pay to EPC, with BMS remaining responsible for any failure of the licensee or sublicensee to pay amounts when due under this Agreement): (a) royalties on such sales as if such sales of the licensee or sublicensee were Net Sales of BMS or any of its Affiliates; and (b) milestones payments pursuant to **Section 8.4** based on the achievement by such licensee or sublicensee of any milestone event contemplated in such Sections as if such milestone event had been achieved by BMS or any of its Affiliates hereunder. Any sales by BMS' Affiliates and sublicensees of BMS or such sublicensee's Affiliates, in each case to Third Parties, shall be aggregated with sales by BMS for the purpose of calculating the aggregate Net Sales in **Sections 8.4** and **8.5**.

8.16 Foreign Exchange. Conversion of sales recorded in local currencies to Dollars shall be performed in a manner consistent with BMS' normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a widely accepted source of published exchange rates.

8.17 Records. Each Party shall keep (and shall ensure that its Affiliates and sublicensees shall keep) such records as are required to determine, in a manner consistent with GAAP and this Agreement, the sums or credits due under this Agreement, including Development Costs, Allowable Expenses and Net Sales. All such books, records and accounts shall be retained by such Party until the later of (a) [*] after the end of the period to which such books, records and accounts pertain and (b) the [*] (or any extensions thereof), or for such longer period as may be required by applicable law. Each Party shall require its sublicensees to provide to it a report detailing the foregoing expenses and calculations incurred or made by such sublicensee, which report shall be made

available to the other Party in connection with any audit conducted by such other Party pursuant to **Section 8.18**.

8.18 Audits. Each Party shall have the right to have an independent certified public accountant, reasonably acceptable to the audited Party, to have access during normal business hours, and upon reasonable prior written notice, to examine only those records of the audited Party (and its Affiliates and sublicensees) as may be reasonably necessary to determine, with respect to any calendar year ending not more than [*] prior to such Party's request, the correctness or completeness of any report or payment made under this Agreement. The foregoing right of review may be exercised [*]. Results of any such examination shall be: (a) limited to information relating to the Products; (b) made available to both Parties; and (c) subject to **Article 10**. The Party requesting the audit shall bear the full cost of the performance of any such audit, unless such audit discloses a variance to the detriment of the auditing Party of more than [*] from the amount of the original report, royalty or payment calculation, in which case the audited Party shall bear the full cost of the performance of such audit. The results of such audit shall be [*].

8.19 Interest. Any payments or portions thereof due hereunder that are not paid on the date such payments are due under this Agreement shall bear interest at a rate equal to the lesser of: (a) [*] Rate as published by Citibank, N.A., New York, New York, or any successor thereto, at 12:01 a.m. on the first day of each quarter in which such payments are overdue; or (b) the maximum rate permitted by law, in each case calculated on the number of days such payment is delinquent, compounded monthly.

8.20 Non-Monetary Consideration. Neither Party shall sell a Product for any consideration other than cash except on terms specified in the then approved Annual Commercialization Plan. In the event a Party receives any non-monetary consideration in connection with the sale of a Product, such Party's payment obligations under this **Article 8** shall be based on the fair market value of such other consideration. In such case, the selling Party shall disclose the terms of such arrangement to the other Parties and the Parties shall endeavor in good faith to agree on such fair market value.

8.21 Cross Border Transactions.

(a) In General. BMS and EXEL recognize that in certain territories, and in particular in free trade regions, customers or other Third Parties may import Product(s) purchased in one country for commercial sale or use in another. If EXEL asks the JEC to determine whether Products purchased outside the U.S. are being imported into the U.S. for such purpose, the JEC shall determine the level that such importation is occurring using data obtained from a source reasonably acceptable to EXEL and BMS. If such importation is [*] (i.e., [*], for [*]) then the JEC shall [*].

(b) Disputes. If the JEC cannot agree whether such importation has [*], then, at the election of either BMS or EXEL, such dispute must be finally resolved through binding arbitration by JAMS in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the failure arises, except as modified in this Agreement and applying the substantive law specified in **Section 14.2**. Either BMS or EXEL may initiate arbitration under this **Section 8.21(b)** by written notice to such other Party of its intention to arbitrate, and such notice shall specify in

reasonable detail the nature of the dispute. For each arbitration: (i) each of BMS and EXEL shall submit to the arbitrator its proposal for resolving such dispute (i.e., the final form of the equitable mechanism to adjust the compensation of the Parties hereunder to offset the economic effect of cross border transactions described in **Section 8.21(a)**), such proposal based on the applicable business factors discussed by the JEC; (ii) the arbitrator shall select the proposal that is the most commercially reasonable; and (iii) such proposal shall become such equitable mechanism. Notwithstanding anything to the contrary, the arbitrators will not have the ability to change the terms of either Party's proposal. The award of the arbitrator shall be final and judgment upon such an award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order of enforcement. The arbitration proceedings shall be conducted in such location as shall be determined by the arbitrator. BMS and EXEL agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each of BMS and EXEL shall bear its own attorneys' fees and associated costs and expenses.

8.22 Payments to or Reports by Affiliates. Any payment required under any provision of this Agreement to be made to either BMS or EPC or any report required to be made by any Party shall be made to or by an Affiliate of that Party if designated in writing by that Party as the appropriate recipient or reporting entity.

9. EXCLUSIVITY

9.1 Collaboration Compounds. The Collaboration will be exclusive with respect to the Development, Manufacture, and Commercialization of [*] that are intended to [*] the Identified Targets, as described below.

(a) Prior to Commercialization. Subject to **Sections 9.1(a)(i), 9.2 and 9.3**, [*], [*] (directly or indirectly, and either with or without a bona fide collaborator) outside the scope of this Collaboration any programs: (I) that [*] that [*] of [*]; or (II) where [*] that [*] and [*] of [*], [*]; provided, however, that, [*], the foregoing shall [*] (either alone or with a Third Party) [*] of a [*] that [*]: (A) [*] that [*] and/or [*] a [*] that [*] of such [*], [*] (B) [*] that is [*] or [*].

(i) [*] of a Product. Upon either (A) the [*] of the [*] Products [*] with respect to [*] or [*]; (B) the [*] of [*] Products with respect to [*] or [*] pursuant to **Section [*]**; or (C) the [*] of [*] or [*] pursuant to **Section [*],** [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration programs to [*] that [*].

(b) Subsequent to Commercialization. Subject to Sections 9.2 and 9.3, subsequent to the initial Commercialization of a Product, [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs to identify, optimize and develop compounds that [*] all of such Product's Identified Target(s), in combination, [*], and any commercialization subject to the following terms and conditions:

(i) Commercial Launch of [*]. [*] commercialize [*] the Collaboration, ([*]): (A) that is [*] all of such Product's Identified Target(s) in combination; or (B) where [*] (any such product, a "[*]"), [*] with all such Identified Target(s); or (Y) [*] with all such Identified Target(s).

(ii) [*]. In the event of any [*] that is permitted under Section 9.1(b)(i), the Party ([*] the other Party [*]: (A) [*] subsequent to [*] with all such Identified Target(s) and [*]

9.2 [*]. Notwithstanding anything to the contrary set forth in this **Article 9**, if BMS or EXEL is engaged in research of a program [*], and compounds in such program [*] Collaboration Compound, such Party shall [*].

9.3 Not Applicable to [*]. The restrictions and obligations in **Sections 9.1, 9.2 and 9.4** shall not apply with respect to either BMS or EXEL for compounds that are [*] (either with or without a *bona fide* collaborator), including without limitation, in the case of EXEL, with respect to [*]; *provided*, *however*, that: (a) [*]; and (b) if [*], and BMS and EXEL are [*], then EXEL and its Affiliates shall [*].

9.4 [*]. In the event that, [*], a Party is either (A) [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Collaboration any programs ([*]) that: (1) that are intended to identify, optimize, develop and commercialize compounds that [*] Identified Target(s), in combination, as a Collaboration Compound; or (2) where the conducting Party [*] Identified Target(s), in combination, as a Collaboration Compound [*] ([*]); or (B) commercializing [*], then the following terms and conditions shall apply:

(a) In the event that a Party controls [*], such Party [*] using [*]; and (y) [*], either:

(i) (A) in the case of [*], or (B) in the case of [*];

(ii) [*]; or

(iii) [*];

and in any case ((i), (ii) or (iii) above), provide written notice to the other Parties of its decision with respect to the **Section 9.4(a)** above and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than [*] subsequent to such written notice.

(b) In the event that a Party [*], where the [*], solely with respect to [*], either:

(i) (A) in the case of [*], or (B) in the case of [*]; or

(ii) [*];

and in either case ((i) or (ii) above), provide written notice to the other Parties of its decision with respect to this **Section 9.4(b)** and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than [*] subsequent to such written notice.

(c) In the event that a Party [*], where the [*], the terms of **Section 9.1(b)(ii)** shall apply as if [*].

10. CONFIDENTIALITY

10.1 Nondisclosure of Confidential Information. For the purpose of this Article 10, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." All Information disclosed by one Party to the other Party pursuant to this Agreement, and, subject to **Section 10.6**, Information that is generated in furtherance of the Collaboration pursuant to this Agreement with respect to Collaboration Compounds or Products (for so long as such Collaboration Compound or Product is not removed from the Collaboration as a result of a Product specific termination pursuant to **Section 11.2** or **Section 11.3**), shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during the period from the Execution Date to the Original Effective Date, during term of this Agreement and for a period of [*] thereafter, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned), except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (b) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement (it being understood that this **Section 10.1** shall not create or imply any rights or licenses not expressly granted under **Article 7** or **Article 11** hereof).

10.2 Exceptions. The obligations in **Section 10.1** shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(a) Is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

(b) Was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party; or

(c) Is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without obligation to keep it confidential; or

(d) Is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement; or

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of the disclosing Party's Confidential Information.

10.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances; *provided* that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products, in each case pursuant to activities under this Agreement;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental laws and regulations; and

(e) Disclosure, in connection with the performance of this Agreement, or exercise of its rights hereunder, to Affiliates, potential collaborators, partners, and actual and potential licensees (including potential co-marketing and co-promotion contractors, research contractors and manufacturing contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 10**.

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to individuals or entities covered by **Section 10.3(e)** above, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 10**. In addition, a copy of this Agreement may be filed by either Party with the Securities and Exchange Commission in connection with any public offering of such Party's securities, in connection with such Party's on-going periodic reporting requirements under the federal securities laws, or as otherwise necessary under applicable law or regulations. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic, competitively sensitive, and trade secret information.

10.4 Termination of Prior Agreements. This Agreement terminates, as of the Execution Date, the Confidential Disclosure Agreement between EXEL and BMS effective as of [*] (such confidential disclosure agreement, the "**Prior CDA**"). All Information exchanged between the Parties with respect to XL184 Products and XL281 Products under the Prior CDA shall be deemed Confidential Information and shall be subject to the terms of this **Article 10**.

10.5 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as **Exhibit 10.5**. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; *provided*, *however*, that any disclosure which is required by law, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded, as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

10.6 Publications. Subject to **Section 10.3**, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which contains Confidential Information of the other Party and would or may constitute an oral, written or electronic public disclosure if made

(including the full content of proposed abstracts, manuscripts or presentations) which relate to any Inventions, or which otherwise may contain Confidential Information, at least [*] prior to its intended submission for publication and agrees, upon request, not to submit any such abstract or manuscript for publication until the other Party is given a reasonable period of time to secure patent protection for any material in such publication which it believes to be patentable. Both Parties understand that a reasonable commercial strategy may require delay of publication of information or filing of patent applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JDC or JCC (or the Parties), as appropriate, shall review such requests and recommend subsequent action. Subject to **Section 10.3,** neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to **Section 10.1**. Nothing contained in this **Section 10.6** shall prohibit the inclusion of Confidential Information of the non-filing Party necessary for a patent application, *provided* the non-filing Party is given a reasonable opportunity to review the extent and necessity for its Confidential Information to be included prior to submission of such patent application related to the Collaboration. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JDC or JCC (or the Parties), as appropriate.

11. TERM AND TERMINATION

11.1 Term. For the purpose of this Article 11, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with **Sections 11.2 or 11.3** or by mutual written agreement, or until the expiration of all payment obligations under **Article 8**. The period of time between the Original Effective Date until the expiration of this Agreement shall be deemed the **"Term"**, provided that, for the time period between the Original Effective Date and the Effective Date, the terms and conditions of the Collaboration Agreement shall apply.

11.2 BMS' Right to Terminate. BMS shall have the right to terminate this Agreement [*] upon: (a) [*], in the event that such termination is [*] or (b) [*], in the event that such termination is [*]. In any termination under this **Section 11.2**, BMS shall remain responsible for its share of all Development Costs and Allowable Expenses during the applicable [*] or [*] period.

11.3 Termination for Material Breach or Patent Challenge

(a) If either Party believes that the other is in material breach of this Agreement (including any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in **Article 8**, the allegedly breaching Party shall have [*] to cure such breach. For any breach arising from a failure to make a payment set forth in **Article 8**, the allegedly breaching Party shall have [*] to cure such breach.

(b) Subject to **Section 11.3(c)**, if the Party receiving notice of breach fails to cure such breach within the [*] or [*] period (as applicable), or the Party providing the notice reasonably

determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon [*] advance written notice, *provided*, that if the breach applies only to a given Product or to a given country, the non-breaching Party may only terminate the breaching Party's rights with respect to such Product or such country; and *provided further*, that the failure of Exelixis to cure, within [*] of BMS' notice pursuant to **Section 11.3(a)**, a material breach by Exelixis of its obligations to pay Development Costs under **Article 3**, or Operating Losses under **Sections 8.2** and **8.3** with respect to an XL184 Product, shall not give BMS any right to terminate this Agreement, but shall give BMS the right, upon [*] advance written notice to Exelixis, to terminate Exelixis' right to Co-Develop and Co-Promote such XL184 Product and to convert Exelixis' profit-sharing rights in such XL184 Product to rights to receive royalties under **Section 8.5(b)(ii)**. In the event BMS converts Exelixis' profit-sharing rights to rights to receive royalties pursuant to the foregoing, (i) the terms of **Section 11.5(d)** shall apply with respect to such XL184 Product as though Exelixis were the licensing Party, (ii) BMS shall have the right, in addition to any other remedies that may be available to BMS, to offset any Development Costs that were unpaid by Exelixis prior to such notice (or any Losses that would otherwise have been shared by Exelixis prior to such notice) against milestone payments and/or royalties that would otherwise have been payable to Exelixis subsequent to such notice.

(c) If a Party gives notice of termination under **Section 11.3(a)** and the other Party [*], or if a Party determines under **Section 11.3(b)** that [*], then the issues of: (i) [*]; or (ii) [*], shall in any case [*]. If [*] it is [*], then such termination shall be [*] if the breaching Party fails thereafter to cure such breach in accordance with the [*] within the time period set forth in **Section 11.3(a)** for the applicable breach following such [*]. If as a result of such [*] it is [*], then [*].

(d) Termination for Patent Challenge. Exelixis may terminate this Agreement with respect to a given Product in a given country if BMS or its Affiliates or sublicensees, directly or indirectly, individually or in association with any other person or entity, challenge the validity, enforceability or scope of any Exelixis Licensed Patents that relate to such Product in such country; *provided* that, if BMS, due to a Change of Control transaction, acquires control of a company that is challenging, directly or indirectly, individually or in association with another person or entity, the validity, enforceability or scope of any Exelixis Licensed Patents, BMS shall have [*] from the date of such acquisition to terminate such challenge to such Exelixis Licensed Patents before Exelixis' right to terminate under this **Section 11.3(d)** becomes effective. For clarity, any dispute as to whether a given Patent is within the scope of Exelixis Licensed Patents, such matter shall be subject to dispute resolution as set forth in **Section 14.3**.

11.4 Survival; Effect of Termination.

(a) In the event of termination of this Agreement, the following provisions of this Agreement shall survive: [*].

(b) In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

11.5 Licenses and Payments on Termination.

(a) Termination by BMS (Section 11.2). Subject to **Section 11.5(e)**, if BMS terminates this Agreement pursuant to **Section 11.2** with respect to a particular Product in any country, then the license granted to BMS under **Section 7.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to EPC a royalty-free license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country**.** The license described in this **Section 11.5(a)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Products.

(b) Termination by Exelixis (Section 11.3). If this Agreement terminates pursuant to **Section 11.3** with respect to a particular Product in any country, and BMS is the breaching Party, then the license granted to BMS under **Section 7.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to EPC a license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country. The license described in this **Section 11.5(b)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Product. For Products (other than any XL184 Product) [*] prior to termination, or for any XL184 Product, the license described in this **Section 11.5(b)** shall be fully-paid and royalty-free. For Products (other than any XL184 Product) [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent in such country that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 11.5(b)** shall bear a royalty of [*] of Exelixis' Net Sales of such Product. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent in such country that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 11.5(b)** shall bear a royalty of [*] of Exelixis' Net Sales of such Product. BMS' right to receive royalties under this **Section 11.5(b)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) [*]; or (ii) [*], in either case, [*].

(c) Termination by BMS (Section 11.3). If this Agreement terminates pursuant to **Section 11.3** with respect to a particular Product in any country, and Exelixis is the breaching Party, then the license granted to Exelixis under **Section 7.2,** and to BMS under **Section 7.1,** shall automatically terminate solely with respect to such Product in such country, and EXEL shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Patents and Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country, EPC shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Patents to clinically develop, make, use, sell, offer for sale and import such Product in such country. The license described in this **Section 11.5(c)** shall be non-exclusive, except that it shall be exclusive with respect to the manufacture, use and sale of such Product. For Products [*] prior to termination, the license described in this **Section 11.5(c)** shall be fully-paid and royalty-free. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed Patent or BMS Licensed Patent in such country that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 11.5(c)** shall bear a royalty of [*] of BMS' Net Sales of such Product. For Products [*] prior to termination and that are covered by a Valid Claim of an Exelixis Licensed

Patent or BMS Licensed Patent in such country that, in either case, covers the Product or the manufacture, use or sale of such Product, the license described in this **Section 11.5(c)** shall bear a royalty of [*] of BMS' Net Sales of such Product. EPC's right to receive royalties under this **Section 11.5(c)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) [*]; or (ii) [*], in either case, [*].

(d) Transfers Related to Licenses. For each license granted under **Sections 11.5(a) – 11.5(c)**, the licensing Party shall transfer via assignment, license or sublicense to the licensee Party: (i) all Information reasonably necessary for the development and commercialization of the Product to which such license relates; (ii) [*] that specifically relate to such Product and that are in the name of the licensing Party; (iii) [*] that specifically relate to such Product; (iv) [*] by the licensing Party that specifically relate to such Product; and (v) supplies of such Product (including any intermediates, retained samples and reference standards), that, in each case ((i) through (v)) are existing and in the Control of the licensing Party. Any such transfer(s) shall be [*] licensee Party.

(e) Exception for Termination for [*]. The license granted to EPC under **Section 11.5(a)** shall be of no force or effect with respect to any given Product where [*] termination of Development and/or Commercialization of such Product was due to [*]. For purposes of this **Section 11.5(e)**, "[*]" means it is [*] or [*] there [*]: (i) [*]; or (ii) the [*], such as during [*] a Product. Notwithstanding anything to the contrary, this **Section 11.5(e)** shall not prevent [*] from using its license in **Section 11.5(a)** to [*] that was terminated for [*]. [*] shall provide [*] with all relevant data for such [*] but [*] to [*] any [*] relating to such [*].

(f) Additional Effects of Termination.

(i) At-Will Transfer. In the event of any termination pursuant to **Section 11.2**, [*]: (i) all Information relating to the Product, and all [*] with respect to Product in [*] name; (ii) all [*] related to the Product, to the extent that they may be [*]; (iii) all [*] related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in [*] Control and that relate to the Product. [*] shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to EPC (or its sublicensees).

(ii) Breach Transfer. In the event of any termination pursuant to **Section 11.3**, the breaching Party shall transfer and assign to the non-breaching Party (if BMS is the breaching Party, to EPC or its sublicensees): (i) all Information relating to the Product, and all [*] with respect to Product in the breaching Party's name; (ii) all [*] related to the Product, to the extent that they may be [*]; (iii) all [*] related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in the breaching Party's Control and that relate to the Product. The breaching Party shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to the non-breaching Party (if BMS is the breaching Party, to EPC or its sublicensees).

11.6 Interim Supply. In the event of any termination pursuant to **Section 11.2**, or **Section 11.3** (where BMS is the breaching Party), at the written request of EPC (or its sublicensee), BMS shall supply, or cause to be supplied, to EPC (or such sublicensee) sufficient quantities of

Product to satisfy EPC's (or its sublicensee's) requirements for Product for a period of up to [*] following the effective date of termination, as EPC (or such sublicensee) may require until EPC (or such sublicensee) can itself assume or transition to a Third Party such manufacturing responsibilities; *provided, however* that EPC (or such sublicensee) shall use Diligent Efforts to affect such assumption (or transition) as promptly as practicable. Such supply shall be [*] for such Product(s) with respect to development supply, and shall be [*] for such Product(s) with respect to commercial supply. Any such supply will be made pursuant to a supply agreement between the Parties with typical provisions relating to quality, forecasting and ordering to forecast, force majeure and product liability and indemnity. In the event that BMS has one or more agreements with Third Party manufacturers with respect to the manufacture of a Product, at EPC's (or such sublicensee's) request, BMS shall use commercially reasonable efforts to transfer its rights and obligations under such agreement(s) to EPC upon any such termination.

12. REPRESENTATIONS AND WARRANTIES AND COVENANTS

12.1 Mutual Authority. EXEL, EPC and BMS each represents and warrants to the other Parties as of the Execution Date that: (a) it has the authority and right to enter into and perform this Agreement, (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (c) its execution, delivery and performance of this Agreement shall not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

12.2 Rights in Technology.

(a) During the term of this Agreement, each Party shall use commercially reasonable efforts to maintain (but without an obligation to renew) and not to breach any agreements with Third Parties that provide a grant of rights from such Third Party to a Party that are Controlled by such Party and are licensed or become subject to a license from such Party to the other Party under **Article 7**. Each Party agrees to provide promptly the other Parties with notice of any such alleged breach or obligation to renew. As of the Execution Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

(b) Each of EPC and BMS represents and warrants that it: (i) has the ability to grant the licenses contained in or required by this Agreement; and (ii) is not currently subject to any agreement with any Third Party or to any outstanding order, judgment or decree of any court or administrative agency that restricts it in any way from granting to another Party such licenses or the right to exercise its rights hereunder.

(c) Each of EPC and BMS represents and warrants that: (i) it has not granted, and covenants that it shall not grant after the Execution Date and during the term of this Agreement, any right, license or interest in or to, or an option to acquire any of the foregoing with respect to, the intellectual property rights licensed to another Party hereunder (including the Exelixis Licensed Patents and the BMS Licensed Patents, as the case may be) that is in conflict with the rights (including the rights set forth in **Article 7**) or licenses granted or to be granted (including any

conditional license rights) to another Party under this Agreement; and (ii) it has not granted any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to another Party hereunder that would prevent it from performing its obligations under this Agreement, or permitted such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to another Party hereunder, except for the security interest that Exelixis granted to GSK with respect to XL184 and XL281 under the Loan and Security Agreement dated as of October 28, 2002 between the Exelixis and GSK, as amended, and the Patent Security Agreement and Mortgage dated as of October 28, 2002 between the Exelixis and GSK, as amended, and except as provided in **Section 8.6(a).**

12.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates; *provided*, *however*, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates under this Agreement with respect to Collaboration Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Collaboration Compounds shall apply equally to the activities of such Affiliate; and (b) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in **Article 7**) as if such intellectual property had been developed by the Party.

12.4 Third Party Rights. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Execution Date, its performance of work under the Collaboration as contemplated by this Agreement shall not infringe the valid patent, trade secret or other intellectual property rights of any Third Party. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Execution Date, it will not violate a contractual or fiduciary obligation owed to such Third Party (including misappropriation of trade secrets) by performing its work under the Collaboration as contemplated by this Agreement.

12.5 Notice of Infringement or Misappropriation. Each of BMS and EXEL represents and warrants to the other Party that, as of the Execution Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any Third Party in relation to any technology that such Party intends, as of the Execution Date, to use in connection with the Collaboration.

12.6 HSR Act Filing; Effective Date.

(a) Effective Date. The Parties agree that the effective date of this Agreement is December 18, 2008 (the "**Original Effective Date**").

(b) Effect of HSR Act Filing on Rights & Obligations. If the exercise by BMS of any of its rights under the Agreement, or the exercise by Exelixis of any of its rights under the Agreement, requires the making of filings under the HSR Act, or under any similar premerger notification provision in the European Union or any other jurisdiction, then all rights and obligations directly related to the exercise of such rights(s) (e.g., the corresponding license grants

and corresponding payment obligations) [*], and each Party agrees to diligently make any such filings and respond to any request for information to expedite review of such transaction. Each Party shall be responsible for its own costs in connection with such filing, except that BMS shall be [*].

(c) Resolution of Regulatory Authority Opposition. If the antitrust enforcement authorities in the U.S. make a second request under the HSR Act, or any antitrust enforcement authority in another jurisdiction commences an investigation into the exercise by BMS of any of its rights, then the Parties shall, in good faith, cooperate with each other and take reasonable actions to attempt to: (i) resolve all enforcement agency concerns about the transaction under investigation; and (ii) diligently oppose any enforcement agency opposition to such transaction. In the event the enforcement agency files a formal action to oppose the transaction, the Parties shall confer in good faith to determine the appropriate strategy for resolving the enforcement agency opposition, including where appropriate, [*], with the [*]. Notwithstanding the foregoing, nothing in this **Section 12.6** shall [*].

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Mutual Indemnification. For the purpose of this Article 13, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." Subject to **Section 13.4**, each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, employees and agents from and against any and all Third Party suits, claims, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and reasonable attorneys' fees ("**Losses**") to the extent such Losses result from any: (a) breach of warranty by the indemnifying Party contained in the Agreement; (b) breach of the Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of the indemnifying Party, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including misappropriation of trade secrets).

13.2 Indemnification by BMS. Subject to **Section 13.4**, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from [*] by BMS or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by Exelixis contained in the Agreement; (b) breach of the Agreement or applicable law by Exelixis; (c) negligence or willful misconduct by Exelixis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by Exelixis to a Third Party (including misappropriation of trade secrets).

13.3 Certain Losses. Any Losses resulting from [*] by a Party or its Affiliates, agents or sublicensees with respect to which neither Party owes an indemnification obligation under **Section 13.1** shall be [*], if incurred prior to [*] to which such Loss relates; or (b) [*], if incurred after [*] to which such Loss relates.

13.4 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of **Sections 13.1 or 13.2**. A condition precedent to each Indemnitee's right to seek indemnification under such **Sections 13.1 or 13.2** is that such Indemnitee shall:

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

(b) if the indemnifying Party acknowledges that such Loss falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Loss (including the right to settle the claim solely for monetary consideration); *provided*, that the indemnifying Party shall seek the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(c) fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Loss.

Provided that an Indemnitee has complied with all of the conditions described in **subsections 13.4(a) – (c)**, as applicable, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Loss. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Loss using attorneys of the Indemnitee's choice and at the Indemnitee's expense. In no event may an Indemnitee settle or compromise any Loss for which the Indemnitee intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party (such consent not to be unreasonably withheld, delayed or conditioned), or the indemnification provided under such **Section 13.1 or 13.2** as to such Loss shall be null and void.

13.5 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 13.1 AND 13.2**, AND EXCEPT FOR BREACH OF **SECTION 10.1** HEREOF, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THE AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY (INCLUDING GROSS NEGLIGENCE OR WILLFUL BREACH WITH REEPCCT TO A PARTY'S REPRESENTATIONS AND WARRANTIES IN **ARTICLE 12**). FOR CLARITY, THE AMOUNT OF THE UPFRONT PAYMENTS AND LICENSE FEE PAYMENTS DESCRIBED IN **SECTION 8.1** MAY SERVE AS A MEASURE OF

A REMEDY IN THE EVENT OF A BREACH WITH REEPCCT TO EXELIXIS' REPRESENTATIONS AND WARRANTIES IN **ARTICLE 12**.

13.6 Collaboration Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH REEPCCT TO ANY COMPOUNDS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY BMS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO EXELIXIS PURSUANT TO THE TERMS OF THE AGREEMENT. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH REEPCCT TO ANY COMPOUNDS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THE AGREEMENT.

14. MISCELLANEOUS

14.1 Dispute Resolution. For the purpose of Sections 14.1 through 14.3, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." Unless otherwise set forth in this Agreement and excluding in particular any dispute described in **Section 14.3** (which will be handled exclusively in accordance with **Section 14.3**), any dispute over matters within the authority of the JEC pursuant to **Article 2** (which will be handled exclusively in accordance with **Section 2.6(c)**), and any dispute handled pursuant to **Section 7.1(b)(i)(3), Section 7.5(b), Section 8.11(b)** or **Section 8.21(b)**, in the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Party's respective Executive Officers. Any Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within [*] after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within [*] of their first meeting for such negotiations, any Party may seek to have such dispute resolved in any U.S. federal or state court of competent jurisdiction and appropriate venue, *provided*, that if such suit includes a Third Party claimant or defendant, and jurisdiction and venue with respect to such Third Party appropriately resides outside the U.S., then in any other jurisdiction or venue permitted by applicable law.

14.2 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, without regard to conflicts of law rules.

14.3 Patents and Trademarks; Equitable Relief.

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

(b) Any dispute, controversy or claim arising out of, relating to or in connection with the need to seek preliminary or injunctive measures or other equitable relief (e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in **Article 10**) need not be resolved through the procedure described in **Section 14.1** but may be immediately brought in a court of competent jurisdiction.

14.4 Entire Agreement; Amendments. This Agreement, the license agreement (for the discovery, development and commercialization of compounds that agonize the target known as TGR5) and that is dated as of October 8, 2010 and amended and restated as of Effective Date (the **"TGR5 License Agreement"**), the collaboration agreement (for the discovery, development and commercialization of compounds that antagonize the target known as ROR) and that is dated as of October 8, 2010 and amended and restated as of Effective Date (the **"ROR Collaboration 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. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement, the TGR5 License Agreement, and the ROR Collaboration Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

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

14.6 Bankruptcy.

(a) For the purpose of this Section 14.6, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("**Title 11**"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "**Bankrupt Party**") under Title 11, then, unless and until

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

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held 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 14.6**, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of Products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this **Section 14.6** 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.

14.7 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For

purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, acts of terrorism, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

14.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Party confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For EXEL:	Exelixis, Inc. 210 East Grand Avenue South San Francisco, CA 94080 Attention: EVP and General Counsel
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For EPC:	Exelixis Patent Company, LLC. 210 East Grand Avenue South San Francisco, CA 94080 Attention: VP, Legal Services
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For BMS:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Senior Vice President, Strategic Transactions Group Phone: 609-252-5333 Fax: 609-252-7212

With a copy to: Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Vice President and Senior Counsel, Corporate and Business Development
Phone: 609-252-5328
Fax: 609-252-4232

Furthermore, a copy of any notices required or given under **Article 7** of this Agreement shall also be addressed to the Vice President and Chief Intellectual Property Counsel of BMS at the address set forth in **Section 7.9(f)**.

14.9 Maintenance of Records Required by Law or Regulation. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Party upon request.

14.10 Assignment. For the purpose of this Section 14.10, EXEL and EPC shall be deemed collectively as one (1) "Party." Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other (such consent not to be unreasonably withheld, delayed or conditioned), except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to all or substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction; *provided* that any such permitted successor or assignee of rights and/or obligations hereunder is obligated, by reason of operation of law or pursuant to a written agreement with the other Party, to assume performance of this Agreement or such rights and/or obligations; and *provided, further*, that if assigned to an Affiliate, the assigning Party shall remain jointly and severally responsible for the performance of this Agreement by such Affiliate. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this **Section 14.10** shall be null and void and of no legal effect.

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

14.12 Non-Solicitation of Employees. For the purpose of this Section 14.12, EXEL and EPC shall be deemed collectively as one (1) "Party." After the Original Effective Date and during the term of this Agreement, each Party agrees that neither it nor any of its divisions, operating groups or Affiliates shall recruit, solicit or induce any employee of the other Party directly involved in the activities conducted pursuant to this Agreement to terminate his or her employment with such other Party and become employed by or consult for such Party, whether or not such employee is a full-time employee of such other Party, and whether or not such employment is pursuant to a written agreement or is at-will. For purposes of the foregoing, **"recruit"**, **"solicit"** or **"induce"** shall not be deemed to mean: (a) circumstances where an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (b) general

solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

14.13 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

14.14 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

14.15 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

14.16 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" are used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

14.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, or electronically in PDF format, each of which shall be binding when sent.

Signature page follows.

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

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

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Graham R. Brazier
Title: Vice President, Business Development
Date: 4/20/11

EXELIXIS, INC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

EXELIXIS PATENT COMPANY, LLC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

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

Exhibit 1.40

List of Identified Target(s) for Each Collaboration Compound

[*]

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

Exhibit 3.5

List of Priority Documents to be provided to BMS by Exelixis

[*]

[*] = 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 3.5(c)

Draft Transfer of Regulatory Obligations

TRANSFER OF OBLIGATIONS

THIS ADDENDUM DETAILS SPECIFIC RESPONSIBILITIES OF SPONSORS CODIFIED UNDER SUBPART D OF PART 312 OF TITLE 21 OF THE US CODE OF FEDERAL REGULATIONS {21 CFR 312 SUBPART D}. [*] [*] [*]
IN ACCORDANCE WITH 21 CFR 312.52 ENTITLED 'TRANSFER OF OBLIGATIONS TO A CONTRACT RESEARCH ORGANIZATION', THE FOLLOWING RESPONSIBILITIES ARE OFFICIALLY TRANSFERRED TO AND MANAGED BY THE SPECIFIED ORGANIZATION.

A. GENERAL RESPONSIBILITIES {21 CFR 312.50}

1. Ensuring the investigation is conducted in accordance with the general investigational plan & protocol

2. Maintaining an effective IND with respect to the covered investigation

3. Ensuring that FDA is promptly informed of significant new adverse effects or risks with respect to the drug.

4. Ensuring that all participating investigators are promptly informed of significant new adverse effects or risks with respect to the drug.

B. SELECTING QUALIFIED INVESTIGATORS AND MONITORS {21 CFR 312.53(a) and (d)}

1. Confirming that participating Investigators have satisfactory training and experience

2. Confirming that monitors have satisfactory training and experience

3. Confirming that site personnel routinely conduct research in accordance with Regulations governing GCP

C. CONTROLLING INVESTIGATIONAL NEW DRUG {21 CFR 312.53(b)} *Addressed in QA Agreement [*]

1. Warehousing investigational new drug

2. Releasing investigational new drug for clinical use

3. Shipping investigational new drug to clinical site

4. Returning unused investigational supply

D. OBTAINING SIGNED REGULATORY DOCUMENTS {21 CFR 312.53(c)}

1. Obtaining signed Form FDA 1572

2. Obtaining signed Curriculum Vitae (CV)

3. Obtaining certification of financial interest (signed Form FDA 3454 or alternate Exelixis approved form)

E. INFORMING INVESTIGATORS {21 CFR 312.55}

1. Providing the Clinical Protocol to participating Investigators

2. Providing the Investigator's Brochure to participating Investigators

3. Notifying investigators of new findings including IND Safety Reports (Serious Adverse Events)

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THIS ADDENDUM DETAILS SPECIFIC RESPONSIBILITIES OF SPONSORS CODIFIED UNDER SUBPART D OF PART 312 OF TITLE 21 OF THE US CODE OF FEDERAL REGULATIONS {21 CFR 312 SUBPART D}. IN ACCORDANCE WITH 21 CFR 312.52 ENTITLED 'TRANSFER OF OBLIGATIONS TO A CONTRACT RESEARCH ORGANIZATION', THE FOLLOWING RESPONSIBILITIES ARE OFFICIALLY TRANSFERRED TO AND MANAGED BY THE SPECIFIED ORGANIZATION. [*] [*] [*]

F. REVIEW OF ONGOING INVESTIGATIONS {21 CFR 312.56}

1. Monitoring progress of the investigation

2. Securing compliance with the general investigational plan and protocol or discontinuing drug shipment

3. Evaluating evidence relating to the safety and effectiveness of the drug as obtained from the Investigator

4. Discontinuing the investigation if the drug presents an unreasonable and significant risk to subjects; notifying FDA, all other applicable health authorities, all IRBs and participating Investigators if such actions occur

G. RECORDKEEPING AND RECORD RETENTION {21 CFR 312.57}

1. MAINTAINING ADEQUATE RECORDS SHOWING RECEIPT, SHIPMENT OR DISPOSITION OF THE INVESTIGATIONAL DRUG

2. MAINTAINING ADEQUATE RECORDS REGARDING FINANCIAL INTERESTS IN COVERED STUDIES (AS DEFINED IN 21 CFR 54)

3. MAINTAINING RECORDS AND REPORTS FOR (A) 2 YEARS AFTER MARKETING AUTHORIZATION OR (B) 2 YEARS AFTER SHIPMENT AND DELIVERY OF THE DRUG FOR INVESTIGATIONAL USE IS DISCONTINUED AND FDA IS SO NOTIFIED [*]

4. MAINTAINING RESERVE SAMPLES FOR HUMAN BIOAVAILABILITY STUDIES (AS GOVERNED BY 21 CFR 320)

H. INEPCCTION OF SPONSOR'S RECORDS AND REPORTS {21 CFR 312.58}

1. Permitting FDA to access, copy and verify any records and reports relating to a clinical investigation

2. Submitting records or reports to FDA (upon written request from FDA)

3. Discontinuing shipments of drug to Investigators who fail to maintain compliance with 21 CFR 312.62

I. DISPOSITION OF UNUSED SUPPLY OF INVESTIGATIONAL DRUG {21 CFR 312.59}

1. Assuring the return of all unused supplies of the investigational drug from each individual investigator whose participation in the investigation is discontinued or terminated

2. Authorizing alternative disposition of unused supplies of the investigational drug (provided this alternative disposition does not expose humans to risks from the drug).

3. Maintaining written records of any disposition of the drug in accordance with 21 CFR 312.57

Exhibit 5.4(c)

TERMS OF CO-PROMOTION AGREEMENT

Without limiting the generality of either Party's rights and obligations contained in the Agreement, the Co-Promotion Agreement shall, in addition to such other terms as the Parties may agree and as are customary in an agreement of that type, include the following terms and conditions, unless otherwise agreed upon by the Parties:

Allocation of Commercial Responsibilities	Exelixis [*] the right or obligation to co-promote a Co-Promotion Product for [*]. By [*] of each year, the JCC shall decide the [*] to be performed by both Parties during the Fiscal year commencing on January 1 of the following year for the promotion of the Product in the U.S. based on indication(s) then available and expected to be available during the forthcoming year for Commercialization of the Product in the U.S. The [*] shall be reviewed and may be modified or adjusted during such year if both Parties so agree. (For each year, the [*] for that year.) As a fundamental principle of the Co-Promotion in the U.S., Exelixis shall perform [*] in each year. Exelixis may phase-in its required number of representatives by recruiting, hiring and training such representatives over a period of [*] so long as Exelixis maintains, from the time estimated by the JDC to be [*] prior to anticipated approval as set forth in the then-current U.S. Commercialization Plan, the greater of (x) [*] required total representatives (determined by the JCC) as Exelixis representatives or (y) [*] Exelixis representatives. [*] to make up the difference between the above minimum requirement and Exelixis' share of the [*] during such [*] period, subject to [*] to perform such [*] with any costs associated with such performance by [*], (with such approval not to be unreasonably withheld). All Exelixis sales representatives who will be performing sales calls shall [*] Additionally, all Exelixis sales representatives, prior to being assigned by Exelixis to a Collaboration Product, [*] shall be set forth in the Co-Promotion Agreement), and [*] in accordance with applicable U.S. laws and regulations. All Exelixis and BMS sales representatives shall be [*] relevant to the Product. Pre-approval, BMS shall provide initial sales training on the Product for the Exelixis sales representatives who will be performing sales calls in the U.S. Following such initial training, any subsequent training of Exelixis sales representatives shall be made available by [*] on the Product. With respect to marketing activities in the Profit-Share markets, the Parties shall work via the JCC to discuss positioning, branding, core messaging, distribution channel strategy, development strategy, competitive strategy, target selection, opinion leader development and investor and press relations.
Co-Promotion Agreement	The Co-Promotion Agreement will be negotiated [*]. The parties recognize that a [*]. The Co-Promotion agreement shall be limited to commercialization in the United States and shall be consistent with the

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	Agreement and rights granted to the JCC, JDC, JFC and JEC in the Agreement. In the Co-Promotion Agreement, the Parties shall jointly establish detailing thresholds, measures of sales performance consistent with internal company metrics and Net Sales and through a well established third party sales reporting entity, value of each detail for profit calculation purposes, and shortfall provisions (e.g., [*], etc.) in the definitive Co-Promotion Agreement. The Parties shall decide in the Co-Promotion agreement on the general [*] for each Party to [*].
Breach	The Parties shall jointly establish standards and consequences for material breach of the co-promotion obligations (*e.g.*, the threshold of material breach and remedies therefor, including without limitation the possibility of termination of the breaching Party's co-promotion right, etc.) set forth in the definitive Co-Promotion Agreement. Without limiting the foregoing, in the event that a Party does not provide at least [*] for any [*] with respect to a Co-Promotion Product, then the other Party shall have the right to assume all Commercialization responsibilities with respect to such Co-Promotion Product.
Use of Contractors	Only during the first [*] post [*], in order to reach Exelixis' [*] threshold of representatives. Also, if such other Party [*], then a contract sales organization may be used and the expenses incurred by such other Party for such activities shall be [*].
Change of Control	In the event of a Change of Control transaction in which Exelixis is acquired by a Qualifying Oncology Company (defined below), BMS shall have the right to assume all Commercialization responsibilities with respect to the Co-Promotion Product. In addition, the Parties shall implement modifications to the committee structure with respect to any Co-Promotion Product to ensure that competitively sensitive information of either Party with respect to other oncology products controlled by such Party is not compromised. A "**Qualifying Oncology Company**" means any company that owns one or more products that: (a) [*]; or (b) [*].

Exhibit 7.1(b)(i)
Exelixis Marks

[*]

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Exhibit 7.10(a)

184 Patents

Application No.	*Filing Date*	*Exelixis Docket No.*
[*]	[*]	[*]

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Exhibit 7.10(b)

281 Patents

Application No.	*Filing Date*	*Exelixis Docket No.*
[*]	[*]	[*]

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Exhibit 11.5

Bristol-Myers Squibb and Exelixis Enter Global Collaboration on Two Novel Cancer Programs

Programs include XL184, a Phase III inhibitor of MET, VEGFR2 and RET, and XL281, a Phase I Inhibitor of RAF Kinase

PRINCETON, New Jersey, and SOUTH SAN FRANCISCO, California – December XX, 2008 – Bristol-Myers Squibb Company (NYSE: BMY) and Exelixis, Inc. (Nasdaq:EXEL) today announced a global collaboration covering two novel cancer programs: Exelixis' XL184, a small molecule inhibitor of MET, VEGFR2 and RET, which is currently in Phase III development for medullary thyroid cancer, and its associated development program; and Exelixis' XL281, a small molecule inhibitor of RAF kinase, which is currently in Phase I development for the treatment of patients with advanced solid tumor malignancies, and its associated development program.

Under the terms of the collaboration, Bristol-Myers Squibb agreed to pay Exelixis an upfront cash payment of $195 million for the development and commercialization rights to both programs and to make additional license payments of $45 million in 2009.

The companies have agreed to co-develop XL184. Exelixis will have the option to co-promote XL184 in the United States. The companies will share worldwide development costs and commercial profits on XL184 in the United States. Exelixis will be eligible to receive sales performance milestones of up to $150 million and royalties on sales outside the United States. The clinical development of XL184 will be directed by a joint committee. It is anticipated that Exelixis will conduct a significant portion of clinical development activities through 2010. Exelixis may opt out of the co-development for XL184 in the United States, in which case Exelixis would instead be eligible to receive development and regulatory milestones of up to $295 million, royalties on XL184 product sales worldwide, and sales performance milestones.

Bristol-Myers Squibb will receive an exclusive worldwide license to develop and commercialize XL281. Bristol-Myers Squibb will be responsible for funding all future development. Exelixis is eligible for development and regulatory milestones of up to $315 million, sales performance milestones of up to $150 million and royalties on worldwide sales of XL281.

"For nearly a decade, the foundation for our close collaborations with Exelixis has been a commitment to discover and develop new medicines to help patients prevail over serious disease," said Elliott Sigal, M.D., Ph.D., executive vice president, chief scientific officer, and president, Research and Development of Bristol-Myers Squibb. "XL184 and XL281 represent significant new opportunities to inhibit the progression of many different tumor types.

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This agreement represents the next pearl in our on-going String of Pearls initiative, designed to accelerate our company's strategy to transform into a BioPharma leader by blending external scientific innovation with our own internal research and development expertise. Together with Exelixis, we intend to fully explore how these compounds can potentially extend the treatment options of patients with cancer."

"There have been many attempts to blend the best of big pharma with the best of biotech, and over the years Exelixis and Bristol-Myers Squibb have learned how to do just that. This new collaboration maximizes the capabilities and strengths of each partner and sets the stage for the aggressive development of XL184 and XL281. The collaboration provides the development programs with appropriate resources and positions both compounds to be developed to their full potential in indications with significant commercial potential," said George Scangos, president and chief executive officer of Exelixis. "Exelixis and Bristol-Myers Squibb are working toward a shared vision of maximizing the potential of these compounds to benefit patients who suffer from numerous types of cancer."

XL184 provides a novel approach to the treatment of a variety of solid tumors where signaling through MET, VEGFR2 or RET plays an important role in dysregulated tumor growth and progression. XL184 has recently begun a Phase III clinical trials in medullary thyroid cancer, a disease in which RET mutations are found in a large proportion of patients. In addition, clinical trials to exploit the MET and VEGFR2 targeting of XL184 are ongoing in patients with non-small cell lung cancer and glioblastoma. Preclinically, XL184 also exhibits inhibitory activity for MET and VEGFR2 in a variety of breast, colon and brain tumor models.

XL281 is a novel small molecule designed to selectively inhibit RAF kinase, which lies immediately downstream of RAS and is a key component of the RAS/RAF/MEK/ERK kinase signaling pathway. The RAS/RAF/MEK/ERK pathway plays a key role in the transmission of growth-promoting signals downstream of receptor tyrosine kinases. Dysregulation of this pathway plays a pivotal role in the progression of many human tumors, and inhibition of the pathway may be useful in the treatment of cancer. Phase I trials with this molecule are underway in order to select a dose and schedule for Phase II disease-directed trials.

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

About Bristol-Myers Squibb

Bristol-Myers Squibb is a global biopharmaceutical company whose mission is to extend and enhance human life. For more information visit www.bms.com.

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company is leveraging its fully integrated drug discovery platform to fuel the growth of its development pipeline, which is primarily focused on cancer.

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

Exelixis Forward-Looking Statements

This press release contains forward-looking statements by Exelixis, including, without limitation, statements related to the anticipated closing and Exelixis' receipt of an upfront cash payment from Bristol-Myers Squibb; potential license and milestone payments by Bristol-Myers Squibb to Exelixis; the companies' plan to share development costs and commercial profits for XL184 in the United States; Exelixis' potential receipt of royalties for XL184 products sales; Exelixis' right to opt out of the co-development and co-promotion of XL184 in the United States and the related impact on potential royalties and milestones; Exelixis' potential receipt of development, regulatory and sales milestones and royalties on worldwide sales of XL281; and the future funding, development path and commercial and therapeutic potential of XL184 and XL281 and associated compounds. Words such as "will," "plan," "eligible," "may," "shall," "intend," "potential," "positions" and similar expressions are intended to identify forward-looking statements. These forward-looking statements are based upon Exelixis' current plans, assumptions, beliefs and expectations. Forward-looking statements involve risks and uncertainties. Exelixis' actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks related to the potential failure of XL184 and XL281 to demonstrate safety and efficacy in clinical testing; the therapeutic and commercial value of XL184 and XL281; the uncertainty of the FDA approval process; market competition; and risks related to Exelixis' dependence on its relationship with Bristol-Myers Squibb. These and other risk factors are discussed under "Risk Factors" and elsewhere in Exelixis' quarterly report on Form 10-Q for the quarter ended September 26, 2008 and Exelixis' other filings with the Securities and Exchange Commission. Exelixis expressly disclaims any duty, obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Exelixis' expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

Bristol-Myers Squibb Forward-Looking Statements

This press release contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995, regarding the research, development and commercialization of pharmaceutical products. Such forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes and results to differ materially from current expectations. No forward-looking statement can be guaranteed. Among other risks, there can be no guarantee that the clinical trials described in this release will support a regulatory filing or that the products described in this release will receive regulatory approval. There can be no assurance that if approved, the products will be commercially successful. Forward-looking statements in the press release should be evaluated together with the many uncertainties that affect Bristol-Myers Squibb's business, particularly those identified in the cautionary factors discussion in Bristol-Myers Squibb's Annual Report on Form 10-K for the year ended December 31, 2007, its Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. Bristol-Myers Squibb undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise.

Bristol-Myers Squibb Company
Media
Jennifer Fron Mauer, 609-252-6579
jennifer.mauer@bms.com
or
Investors
John Elicker, 212-546-3775
john.elicker@bms.com

Exelixis
Media
Soleil Harrison, 650-837-7012
cbutler@exelixis.com
or
Investors
Charles Butler, 650-837-7277
cbutler@exelixis.com

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AMENDED AND RESTATED LICENSE AGREEMENT

THIS AMENDED AND RESTATED LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of April 15, 2011 (the "**Effective Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EXEL**"), **EXELIXIS PATENT COMPANY, LLC.**, a Delaware limited liability company having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EPC**"), and **BRISTOL-MYERS SQUIBB COMPANY,** a Delaware corporation headquartered at 345 Park Avenue, New York, New York, 10154 ("**BMS**"). EXEL, EPC and BMS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". EXEL and EPC are sometimes referred to collectively as "**Exelixis**".

RECITALS

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

B. EXEL is a drug discovery company that has expertise and proprietary technology relating to compounds that modulate the metabolic target known as TGR5.

C. BMS, EXEL and EPC desire to establish an agreement to license such Exelixis technology and expertise for the discovery, lead optimization and characterization of small molecule compounds, and to provide for the development and commercialization of novel therapeutic and prophylactic products based on such compounds.

D. BMS and EXEL are parties to a license agreement that established such license, entered into on October 8, 2010 (such agreement, the "**License Agreement**"), the execution date of such agreement, the "**Execution Date**", and the effective date of such agreement, the "**Original Effective Date**").

E. On event date herewith, EXEL is assigning to its wholly owned subsidiary, EPC, the patents relating to compounds that modulate TGR5.

F. BMS, EXEL and EPC wish to amend and restate the License Agreement to account for such change of patent ownership.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

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

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

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

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

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

1.5 "BMS TGR5 Compound" means any Small Molecule Compound that: (a) is [*] or [*] under the [*] or [*] that [*]; (b) [*] and [*] TGR5 [*]; and (c) is [*] TGR5, based on the [*].

1.6 "Change of Control" means any transaction in which a Party: (a) sells, conveys or otherwise disposes of all or substantially all of its property or business; or (b)(i) merges, consolidates with, or is acquired by any other Person (other than a wholly-owned subsidiary of such Party); or (ii) effects any other transaction or series of transactions; in each case of clause (i) or (ii), such that the stockholders of such Party immediately prior thereto, in the aggregate, no longer own, directly or indirectly, beneficially or legally, at least fifty percent (50%) of the outstanding voting securities or capital stock of the surviving Person following the closing of such merger, consolidation, other transaction or series of transactions. As used in this Section 1.6, "Person" means any corporation, firm, partnership or other legal entity or individual person.

1.7 "Commercialize" means to promote, market, distribute, sell (and offer for sale or contract to sell) or provide product support for a Product, including by way of example: (a) detailing and other promotional activities in support of a Product; (b) advertising and public relations in support of a Product, including market research, development and distribution of selling, advertising and promotional materials, field literature, direct-to-consumer advertising campaigns, media/journal advertising, and exhibiting at seminars and conventions; (c) developing reimbursement programs and information and data specifically intended for national accounts, managed care organizations,

governmental agencies (e.g., federal, state and local), and other group purchasing organizations, including pull-through activities; (d) co-promotion activities not included in the above; (e) conducting Medical Education Activities and journal advertising; and (f) [*]. For clarity, **"Commercializing"** and **"Commercialization"** have a correlative meaning.

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

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

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

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

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

1.13 "EMEA" means BMS' European, Central and Eastern European, Middle Eastern and African commercial territory, consisting of the following countries and regions: Algeria, Andorra, Austria, Baltic States, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, U.K., Ukraine, Vatican City, Lebanon, Jordan, Syria, Kuwait, Bahrain, Oman, UAE and Qatar. The EMEA also includes: (a) the former Soviet Union and commonwealth of independent states such as Georgia, Armenia and central Asian republics; and (b) exports from France to English and French speaking African countries not separately identified in the list. For clarity, the specific list of countries and regions may change to align with any corresponding changes to BMS' business structures.

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

1.15 "Executive Officers" means: (a) in the case of Exelixis, the [*] of EXEL; and (b) in the case of BMS, [*].

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

1.17 "Exelixis Licensed Patents" means all Patents Controlled by Exelixis and its Affiliates, including Patents Controlled jointly with BMS, as of the Original Effective Date or during the term of this Agreement that: (a) cover a Licensed Compound, a composition containing a Licensed Compound, a formulation containing a Licensed Compound, or the manufacture or use of a Licensed Compound; and (b) are [*] for BMS to exercise the rights licensed to it under the Agreement or to perform its obligations under the Agreement. For clarity, the Exelixis Licensed Patents include the Patents listed on **Exhibit 1.17.**

1.18 "Exelixis TGR5 Compound" means: (a) XL475; and (b) any Small Molecule Compound that is controlled by Exelixis as of the Original Effective Date or during the Term of the Agreement that: (i) [*] TGR5 [*]; (ii) are [*] TGR5, based on the [*]; and (iii) are disclosed in the Exelixis Licensed Patents listed on **Exhibit 1.17**.

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

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

1.21 "[*]" means, with respect to a particular Product in a country, [*]: (a) [*]; (b) is [*] ([*] or [*]); and (c) is [*] or [*] a [*].

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

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

1.24 "Information" means information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including, preclinical data, clinical trial data, databases, practices, methods, techniques, specifications, formulations, formulae, knowledge, know-how, skill,

experience, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures. For clarity, Information does not include any Patents.

1.25 "Invention" means any and all inventions and improvements, whether or not patentable, that are conceived or reduced to practice or otherwise made by or on behalf of a Party (and/or its Affiliates) in the performance of its obligations, or the exercise of its rights, under this Agreement.

1.26 "Joint Invention" means any Invention invented, made or discovered jointly by or on behalf of the employee(s), contractor(s) or agent(s) of BMS on one hand, and EXEL and/or EPC on the other hand (and/or their Affiliates).

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

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

1.29 "Licensed Compounds" means: (a) any Exelixis TGR5 Compounds; (b) any BMS TGR5 Compound; and (c) and any [*], or [*] of [*].

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

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

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

1.33 "Materials" means: (a) Licensed Compounds; and (b) [*] materials, including but not limited to [*], that are in Exelixis' Control and that [*].

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

1.35 "Net Sales" means the amount invoiced or otherwise billed by BMS, or its Affiliate or sublicensee, for sales or other commercial disposition of a Product to a Third Party purchaser, less the following to the extent included in such billing or otherwise actually allowed or incurred with respect to such sales: (a) discounts, including cash, trade and quantity discounts, price

reduction programs, retroactive price adjustments with respect to sales of a product, charge-back payments and rebates granted to managed health care organizations or to federal, state and local governments (or their respective agencies, purchasers and reimbursers) or to trade customers, including but not limited to, wholesalers and chain and pharmacy buying groups; (b) credits or allowances actually granted upon rejections or returns of Products, including for recalls or damaged goods; (c) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Products, to the extent billed; (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of a Product; (e) bad debts relating to sales of Products that are actually written off by BMS in accordance with GAAP during the applicable calculation period; (f) costs due to the factoring of receivables; and (g) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Products, including without limitation any fees payable under the Health Care Reform Act of 2010, value-added taxes, or other governmental charges otherwise measured by the billing amount, when included in billing, as adjusted for rebates and refunds, but specifically excluding taxes based on net income of the seller; provided that all of the foregoing deductions are calculated in accordance with GAAP.

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

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

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

In the event a Product is sold as an end-user product consisting of a combination of active functional elements or as a combined product and/or service, Net Sales allocable to the Product in each such country, for purposes of determining royalty payments on such Product, shall be determined by mutual agreement reached in good faith by the Parties prior to the end of the accounting period in question based on an equitable method of determining same that takes into account, on a country-by-country basis, variations in potency, the relative contribution of each active agent, component or service, as the case may be, in the combination, and relative value to the end user of each active agent, component or service, as the case may be. Notwithstanding the foregoing, the Parties agree that, for purposes of this paragraph, drug delivery vehicles, adjuvants, and excipients shall not be deemed to be "**active ingredients**" or "**active functional elements**".

1.36 "Patent" means all: (a) unexpired letters patent (including inventor's certificates and utility models) which have not been held invalid or unenforceable by a court or other applicable governmental authority of competent jurisdiction from which no appeal can be taken or has been taken within the required time period (and which have not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, or been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement), including any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof; (b) pending applications for letters patent which have not been canceled, withdrawn from

consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), and/or abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written consent, including any continuation, division or continuation-in-part thereof and any provisional or other priority applications; and (c) any international counterparts, and counterparts in any country, to clauses (a) and (b) above.

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

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

1.39 "Phase III Clinical Trial" means a clinical trial of a Product on sufficient numbers of patients that is designed to establish that such Product is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed, and to support Regulatory Approval of such Product or label expansion of such Product.

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

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

1.42 "Product" means any therapeutic or prophylactic product (for use in animals or humans) that contains or comprises a Licensed Compound.

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

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

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

1.46 "Research" means the following activities: (a) identifying Small Molecule Compounds as [*] compounds that [*] and [*] TGR5 by [*]; (b) conducting a [*] program to [*] such [*] compounds to [*] that [*] and [*] TGR5 (including the conduct of [*] and [*] studies, and [*] studies); and (c) conducting [*] on [*] to [*] for [*] (including the conduct of [*] studies, and related [*] and [*] activities). To avoid confusion, Research does not include the conduct of Development.

1.47 "[*]**"** means any: (a) [*] of the Exelixis TGR5 Compounds that are specifically disclosed in the Exelixis Licensed Patents listed on **Exhibit 1.7**; and (b) [*] of a [*] described in the foregoing subsection (a).

1.48 "Small Molecule Compound" means a molecule that [*] or [*]. For clarity, [*], shall be considered Small Molecule Compounds.

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

1.50 "Target Potency Threshold" means, with respect to a Small Compound Molecule, that such Small Molecule Compound [*] and [*] the activity of TGR5 with a half maximal effective concentration ("EC_{50}") of less than or equal to [*] in either the [*] assays or the [*] assays.

1.51 "Target Specificity Threshold" means, with respect to a Small Compound Molecule, that such Small Molecule Compound demonstrates, in a [*] or [*], [*] TGR5 [*]: (a) [*] of [*] including [*], and [*]; and (b) [*] ([*] or [*]) [*] and [*].

1.52 "Territory" means the world.

1.53 "TGR5" means: (a) the gene for the G protein-coupled bile acid receptor 1, otherwise known as TGR5 (or GPBAR1, BG37, GPCR19, GPR131, M-BAR, AND MGC40597), ([*]); (b) the protein encoded by such gene; and (c) all [*] and [*] thereof.

1.54 "Third Party" means any entity other than: (a) EXEL; (b) EPC; (c) BMS; or (d) an Affiliate of any of the foregoing Party.

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

1.56 "Valid Claim" means: (a) a claim in an issued Patent that has not: (i) expired or been canceled; (ii) been declared invalid by an unreversed and unappealable or unappealed (within any applicable allowable time) decision of a court or other appropriate body of competent jurisdiction; (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; or (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement of the Parties; or (b) a claim under an application for a

Patent that has been pending [*], and, in any case, which has not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), or abandoned.

1.57 "XL475" means the Small Molecule Compound with Exelixis identifier EXEL-04614475, as disclosed to BMS in writing prior to the Execution Date.

Additional Definitions

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

Definition	Location (Section)
Alliance Manager	**2.3(a)**
Bankrupt Party	**13.6(a)**
[*]	**[*]**
Confidential Information	**9.1**
Cost-Terminated Patent Right	**6.7(d)(iii)**
EDI	**13.11**
Original Effective Date	**11.6**
[*]	**[*]**
Exelixis Sole Patent	**6.8(a)(i)**
Indemnitees	**12.3**
Joint Invention Patent	**6.5(b)**
Joint Product Patent	**6.8(b)(i)(1)**
Letter Agreement	**13.4**
[*]	**[*]**
Losses	**12.1**
Other Joint Patent	**6.8(b)(ii)(1)**
Permitted Use	**2.2(b)**
Prior CDA	**9.4**
ROR Collaboration Agreement	**13.4**
Royalty Term	**7.8**
Sales Threshold	**7.2(b)**
Separable Compound	**6.7(a)(v)**
Sole Invention Patent	**6.5(b)**
Term	**10.1**
TGR5 Technology	**2.1**
Title 11	**13.6(a)**
Transfer Addendum	**2.2(d)**
Unauthorized Invention	**2.2(c)**
Working Group	**2.6(f)**

2. TRANSFER OF TGR5 TECHNOLOGY

2.1 General. As soon as practicable following the Original Effective Date, and for [*] thereafter, EXEL shall use Diligent Efforts to transfer to BMS, solely in accordance with **Section 2.2**, all items of Information or Materials that are in EXEL's possession and Control as of the Original Effective Date and that are [*] for BMS to research or pre-clinically develop Licensed Compounds ("**TGR5 Technology**"); provided that subsequent to such [*] period, EXEL will use commercially reasonable efforts to transfer Information and Materials that are in EXEL's possession and Control and that are requested by BMS for purposes of making a regulatory filing or patent application. BMS may request such a transfer in writing pursuant to **Section 2.2**. Additionally, BMS may request that EXEL provide a reasonable amount of on-site advice or support in connection with the foregoing transfer until [*], and BMS shall reimburse EXEL for reasonable travel costs incurred.

2.2 Transfer of TGR5 Technology. EXEL shall transfer to BMS, upon prior written approval by the Parties, reasonable quantities of Information and Materials included in the TGR5 Technology solely as described below.

(a) Ownership. Except as otherwise provided in the Agreement, all rights, title and interest in and to such Information or Materials being transferred shall remain with EXEL. All such Information or Materials shall be considered the Confidential Information of EXEL and shall be subject to **Article 9** of the Agreement.

(b) Permitted Use. BMS shall use the Information or Materials solely for the purposes of exercising its rights, and performing its obligations, under the Agreement, subject to any additional limitations due to Exelixis' obligations to Third Parties relating to such Information or Materials (with such limitations being set forth in the applicable Transfer Addendum) (the "**Permitted Use**"). BMS shall not transfer, deliver or disclose any of the Materials to any Third Party, other than its Affiliates or bona fide collaborators or third party contract service providers, without EXEL's prior written consent, except as otherwise stipulated in the Transfer Addendum. The Materials shall not be used in humans, except as otherwise contemplated by the Agreement. Any unused Materials supplied by EXEL shall be returned to EXEL or destroyed as agreed upon in writing by the Parties.

(c) Unauthorized Use. The Parties do not intend for BMS to use the Materials other than for the Permitted Use. If BMS or its Affiliates or other transferees use the Information or Materials outside of the Permitted Use, and any inventions, improvements, discoveries or data arise (or result) from such unauthorized use (such inventions, improvements, discoveries and data, and all intellectual property rights related thereto, collectively the "**Unauthorized Inventions**"), then: (i) BMS shall promptly and fully disclose all such Unauthorized Inventions to EXEL in writing; (ii) BMS shall comply with the terms of any upstream license agreement between either EXEL or EPC on one hand and a Third Party on the other hand with respect to such Unauthorized Use of Materials; and (iii) Exelixis may pursue all rights and remedies it may have under this Agreement, or at law or in equity, with respect to any breach of BMS' obligation of Permitted Use (and creation of any Unauthorized Inventions).

(d) Transfer Addendum. Each transfer of Materials and Information shall occur through the execution of an agreement substantially in the form of **Exhibit 2.2** (each, a "**Transfer Addendum**"), which is incorporated by reference into the Agreement. After receiving BMS' written request for a particular item of TGR5 Technology, EXEL shall prepare and submit a Transfer Addendum listing the Information and Materials to be transferred to BMS. Upon written approval of such Transfer Addendum by the Parties, the Information and Materials shall be transferred to BMS within [*]. For clarity, the intent of the Parties is to provide BMS with the ability to use Materials and Information for the Permitted Use and without additional restrictions other than those set forth in any applicable agreements between EXEL or EPC on one hand and a Third Party on the other hand, and as such, (i) no Transfer Addendum shall contain terms that are inconsistent with this Agreement, and (ii) Exelixis shall not unreasonably withhold its signature on a Transfer Addendum to prevent BMS from obtaining access to Materials or Information where such request by BMS is consistent with Section 2.1 and this Section 2.2.

(e) Retention of Key Individual. EXEL shall use commercially reasonable efforts to seek to retain the services of [*] as an EXEL employee through [*]. If [*] is not available, then EXEL will use commercially reasonable efforts to seek to make available to BMS, through [*], a qualified employee who is familiar with the Research Program. [*] or the qualified employee will be available to BMS on a part-time basis (up to no more than half-time) when and as reasonably needed during regular business hours, during the period beginning on the Original Effective Date and ending [*]. During such period, [*] or the qualified employee shall be available to assist BMS: (i) in the preparation of patent applications with respect to the Exelixis TGR5 Compounds; and (ii) in the transfer of the TGR5 discovery program effort to BMS.

2.3 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint a single individual to act as a single point of contact between the Parties to assure a successful transfer of TGR5 Technology and to communicate with respect to matters under the Agreement (each, an "**Alliance Manager**"). Each Party may change its designated Alliance Manager from time to time upon written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by written notice to the other Party.

(b) Responsibilities. The Alliance Managers shall: (i) coordinate the transfer of TGR5 Technology; (ii) be the point of first referral in all matters of conflict resolution; (iii) identify and bring disputes to the attention of the appropriate Party in a timely manner; (iv) plan and coordinate cooperative efforts and internal and external communications; and (v) otherwise take responsibility for ensuring that relevant action items resulting from such Party interactions are appropriately carried out or otherwise addressed.

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

3. RESEARCH, DEVELOPMENT, MANUFACTURING & COMMERCIALIZATION OF PRODUCTS

3.1 Research, Development, & Manufacturing of Products

(a) Scope & Diligence. BMS shall have sole control and responsibility for the Research, Development, Manufacture (including formulation) and Commercialization of all Products. BMS shall bear all costs and expenses associated with the Research, Development, Manufacture (including formulation) and Commercialization of all Products. BMS shall use Diligent Efforts to Develop each such Product in the Territory, and BMS shall use Diligent Efforts to Commercialize each Product in [*] and each country in the Territory in which BMS maintains a commercial presence for each indication for which it receives Regulatory Approval; provided, however, that BMS may satisfy its diligence obligations by sublicensing the Development and Commercialization of a Product to a Third Party pursuant to the terms of this Agreement. EXEL may notify BMS in writing if EXEL in good faith believes that BMS is not meeting its diligence obligations set forth in this **Section 3.1(a)**, and the Parties shall meet and discuss the matter in good faith. EXEL may further request review of BMS' records generated and maintained as required under **Section 3.1(b)** below.

(b) Records. Each of EXEL and BMS shall maintain complete and accurate records of all Research, Development, Manufacturing and Commercialization conducted by it or on its behalf related to each Product, and all Information generated by it or on its behalf in connection with Development under this Agreement with respect to each such Product; provided that in the case of EXEL, such obligation shall be limited to those records that exist as of the Original Effective Date. Each of EXEL and BMS shall maintain such records at least until the later of: (i) [*] after such records are created, or (ii) [*] after the Launch of the Product to which such records pertain; provided that the following records shall be maintained for a longer period, in accordance with each such Party's internal policies on record retention: (i) scientific notebooks and (ii) any other records that either such Party reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Such records shall be at a level of detail appropriate for patent and regulatory purposes. Each of EXEL and BMS shall have the right to review and copy such records of the other such Party at reasonable times to the extent necessary or useful for such reviewing Party to conduct its obligations or enforce its rights under this Agreement.

(c) Reports. Beginning [*] after the Original Effective Date, and every [*] thereafter during the term of the Agreement, BMS shall submit to EXEL a written progress report summarizing the Research, Development, Manufacturing and Commercialization performed by or on behalf of BMS with respect to Products. If reasonably necessary or useful for EXEL to exercise its rights under this Agreement, EXEL may request that BMS provide more detailed information and data regarding such reports by BMS, and BMS shall promptly provide EXEL with information and data as is reasonably related to such request, at EXEL's expense. All such reports shall be considered Confidential Information of BMS.

3.2 Standards of Conduct. BMS shall perform, or shall ensure that its Affiliates, sublicensees and Third Party contractors perform, all Research, Development, Manufacturing and

Commercialization activities in a good scientific and ethical business manner and in compliance with applicable laws, rules and regulations.

4. REGULATORY

4.1 Regulatory Lead Party. BMS shall have sole responsibility for (and bear all costs and expenses associated with) all regulatory activities regarding Products. BMS shall also have sole responsibility for (and bear all costs and expenses associated with) worldwide pharmacovigilance for such Product. BMS and its Affiliates shall have sole responsibility for all pricing and reimbursement approval proceedings relating to each Product in the Territory.

4.2 Ownership of Regulatory Dossier. BMS will own all regulatory filings for such Product in order to facilitate BMS' interactions with Regulatory Authorities. BMS shall prepare and draft all filings (including any supplements or modifications thereto and including the preparation of any electronic submission of a Drug Approval Application) to Regulatory Authorities in each such country for such Product.

4.3 Recalls in the Territory. Any decision to initiate a recall or withdrawal of a Product in the Territory shall be made by BMS. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from EXEL as reasonably requested by BMS. The costs of any such recall or withdrawal in the Territory shall be borne solely by BMS.

5. MANUFACTURING

5.1 Transfer of Manufacturing Information.

(a) Promptly following the Original Effective Date, EXEL shall transfer the Manufacturing technology Controlled by EXEL for XL475 to BMS. As soon as is practicable after its receipt of such request, EXEL shall transfer to BMS all Information that is Controlled by EXEL, that is related to the Manufacturing of Licensed Compounds, and that is [*] to enable BMS to Manufacture Licensed Compounds.

(b) BMS shall use any Information transferred pursuant to **Section 5.1(a)** solely for the purpose of Manufacturing Licensed Compounds and/or Products for use by BMS under this Agreement, and for no other purpose.

6. LICENSES; INTELLECTUAL PROPERTY

6.1 Licenses to BMS. Subject to the terms of this Agreement:

(a) Research. EXEL hereby grants to BMS an exclusive, worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers) under the Exelixis Licensed Know-How to research, identify, derivatize, pre-clinically develop, make, have made, and use Licensed Compounds solely for research purposes. EPC hereby grants to BMS an exclusive, worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers) under the Exelixis

[*] = 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.

Licensed Patents to research, identify, derivatize, pre-clinically develop, make, have made, and use Licensed Compounds solely for research purposes.

(b) Clinical Development and Commercialization. EXEL hereby grants to BMS an exclusive, worldwide, royalty-bearing license (with the right to sublicense) under the Exelixis Licensed Know-How to clinically develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any Licensed Compound. EPC hereby grants to BMS an exclusive, worldwide, royalty-bearing license (with the right to sublicense) under the Exelixis Licensed Patents to clinically develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any Licensed Compound.

(c) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Licensed Know-How and Exelixis Licensed Patents except those expressly granted to BMS on an exclusive basis under the terms of this Agreement. In addition, notwithstanding the exclusive licenses granted to BMS pursuant to **Section 6.1**, Exelixis retains the right under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to make, have made, use, and test Exelixis TGR5 Compounds solely for internal research purposes.

6.2 BMS Covenants. BMS hereby covenants that BMS shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Licensed Know-How or Exelixis Licensed Patents for a purpose other than that expressly permitted in Section 6.1.

6.3 No Additional Licenses. Except as expressly provided in **Sections 6.1, 6.2**, and **Article 10**, nothing in this Agreement grants either Party any right, title or interest in and to the intellectual property rights of another Party (either expressly or by implication or estoppel). For clarity, the licenses granted in **Sections 6.1** by Exelixis to BMS does not give BMS any right or license to incorporate into any Product (e.g., as a combination product) any compound that is Controlled by Exelixis and that is not a Licensed Compound. For clarity, the licenses granted in **Section 10.5** by BMS to Exelixis do not give Exelixis any right or license to incorporate into any Product (e.g., as a combination product) any compound that is Controlled by BMS and that is not a Licensed Compound.

6.4 Sublicensing. The license granted to BMS in **Section 6.1(b)** shall be freely sublicenseable by BMS in connection with the Development, Commercialization and/or Manufacturing of Products. BMS shall provide EXEL and EPC with the name of each permitted sublicensee of its rights under this **Article 6** and a copy of the applicable sublicense agreement; *provided* that BMS may redact confidential or proprietary terms from such copy, including financial terms. BMS shall remain responsible for each permitted sublicensee's compliance with the applicable terms and conditions of this Agreement. Each sublicense granted by BMS under this Article 6 to a party that is an Affiliate of BMS at the time such license is granted shall terminate immediately upon such party ceasing to be an Affiliate of BMS.

6.5 Ownership.

(a) The inventorship of all Inventions shall be determined under the U.S. patent laws.

(b) BMS shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents claiming only such Sole Inventions (and no Joint Inventions) (**"Sole Invention Patents"**). As between EXEL and EPC, EPC shall own the entire right, title and interest in and to any and all of Sole Invention Patents of EXEL and/or EPC. EXEL hereby assigns to EPC its entire right, title and interest in and to its Sole Invention Patents. BMS and Exelixis shall be joint owners in and to any and all Joint Inventions, provided that, as between EXEL and EPC, EPC shall be the joint owner of any and all Patents claiming such Joint Inventions (**"Joint Invention Patents"**), and EXEL hereby assigns to EPC its entire right, title and interest in and to its Joint Invention Patents. Subject to **Section 6.1**, BMS and Exelixis (EPC for Joint Invention Patents and EXEL for other Joint Inventions) as joint owners each shall have the right to exploit and to grant licenses under such Joint Inventions, and where exercise of such rights require, under the laws of a country, the consent of the other Party, with the consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned) unless otherwise specified in this Agreement (including where such rights are exclusively licensed to the other Party hereunder).

(c) All employees, agents and contractors of each Party shall be under written obligation to assign any inventions and related intellectual property to the Party for whom they are employed or are providing services.

(d) The Parties acknowledge and agree that this Agreement shall be deemed to be a **"Joint Research Agreement"** as defined under 35 U.S.C. 103(c).

6.6 Disclosure. Each Party shall submit a written report to the other Parties no less frequently than within [*] of the end of each [*] describing any Sole Invention or Joint Invention arising during the prior [*] in the course of the Agreement which it believes may be patentable or at such earlier time as may be necessary to preserve patentability of such invention. Each Party shall provide to the other Parties such assistance and execute such documents as are reasonably necessary to permit the filing and prosecution of such patent application to be filed on any such Sole Invention or Joint Invention, or the issuance, maintenance or extension of any resulting Patent.

6.7 Patent Prosecution and Maintenance; Abandonment.

(a) Joint Patent Committee.

(i) Establishment & Meetings. Promptly after the Original Effective Date, the Parties shall establish a committee (the "Joint Patent Committee" or "JPC"). The JPC shall be composed of at least (1) representative from each of BMS and EXEL, at least one of which shall be a patent counsel for such Party. Each such Party may change its representative(s) by giving the other such Party at least [*] prior written notice. The JPC shall meet within [*] after the Original Effective Date, and once per [*] thereafter, or as may be requested by either Party as necessary, by teleconference, videoconference or in person (as determined by the JPC).

(1) Duties. As between EXEL and EPC, EXEL shall carry out the day-to-day responsibility for filing, prosecution and maintenance on behalf of EPC under Sections 6.1 to 6.8. Promptly after the Original Effective Date, [*] shall oversee (subject to **Sections 6.7(a)(ii), (iv)** and **(v)** below) the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all [*] Patents, [*]

Patents Controlled by [*], and [*] Patents that in each case are [*] (the "**[*] Patents**"), provided that, unless otherwise agreed by the Parties, such responsibilities shall be carried out by: (A) [*] by [*] the [*], unless there exists [*] and [*]; (B) [*] by [*], but only in the case where [*] described in subsection (A) had [*] of [*]; or (C) [*] in conjunction with [*] described in the preceding subsection (A) or (B), as applicable. [*], or [*], shall provide [*] with an update of the filing, prosecution and maintenance status for each of the [*] Patents on a periodic basis, and shall use commercially reasonable efforts to consult with and cooperate with [*] with respect to the filing, prosecution and maintenance of the [*] Patents, including providing [*] with drafts of proposed filings to allow [*] a reasonable opportunity for review and comment before such filings are due. [*], or [*], shall provide to [*] copies of any papers relating to the filing, prosecution and maintenance of the [*] Patents promptly upon their being filed and received.

(2) Decisions. Subsequent to the Original Effective Date, in the event of a dispute between the Parties with regard to the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of any [*] Patent, the matter shall be promptly referred to the [*] of EXEL and [*] for BMS. If these two (2) individuals are unable to resolve the dispute promptly, then the matter shall be promptly elevated to the [*] of EXEL and the [*] of BMS. If these two (2) individuals are unable to resolve the dispute promptly, then, subject to **Sections 6.7(a)(i)(3), 6.7(a)(i)(4), 6.7(a)(ii), [*] of the ROR Collaboration Agreement,** and [*] of the ROR **Collaboration Agreement, [*]** shall have the final decision, except if such decision: (A) conflicts with the terms of the Agreement; (B) would result in [*] described in [*] or a [*] of the [*]; or (C) materially impacts [*] prosecution of Patents that [*] a [*], in which case of **subsection 6.7(a)(i)(2)(A)-(C)**, [*] shall have the final decision.

(3) Limitation on Subsection 6.7(a)(i)(2)(B). If [*] reasonably believes that filing a new patent application covering a [*] (other than the [*] of a [*]) would result in potential claims [*] for [*], and if [*] disputes with [*] that such patent application should be filed, then such dispute shall be discussed as described in the first two (2) sentences of **Section 6.7(a)(i)(2),** and, if still unresolved, shall be arbitrated pursuant to **Section [*] of the ROR Collaboration Agreement**, and [*] shall not have the right to exercise its final-decision making authority pursuant to **Subsection 6.7(a)(i)(2)(B)** unless the dispute is resolved in [*] favor.

(**4) Limitation on Subsection 6.7(a)(i)(2)(C)**. [*] hereby covenants that it shall not, without the prior written consent of [*] (which shall not be unreasonably delayed or conditioned), during the term of this Agreement, [*] the decision-making authority granted to [*] pursuant to **Subsection 6.7(a)(i)(2)(C)** [*] that is [*] as of the Original Effective Date or [*]. Furthermore, if [*] the decision-making authority granted to [*] pursuant to **Subsection 6.7(a)(i)(2)(C)** [*] by [*], [*] or [*], and such [*] is [*] or [*] a [*] that is [*], then [*] and [*] shall agree, pursuant to **Section [*] of the ROR Collaboration Agreement,** on [*] the decision-making authority granted to [*] pursuant to **Subsection 6.7(a)(i)(2)(C**).

(ii) Abandonment. In no event shall [*] knowingly permit any of the [*] Patents to be abandoned in any country, or elect not to file a new patent application claiming priority to a patent application within the [*] Patents either before such patent application's issuance or within the time period required for the filing of an international (i.e., Patent Cooperation Treaty), regional (including European Patent Office) or national application, without [*] written consent (such consent not to be unreasonably withheld, delayed or conditioned) or [*] otherwise first being

given an opportunity to assume full responsibility (at [*] expense) for the continued prosecution and maintenance of such [*] Patents or the filing of such new patent application. Accordingly, [*], or [*], shall provide [*] with notice of the allowance and expected issuance date of any patent within the [*] Patents, or any of the aforementioned filing deadlines, and [*] shall provide [*] with prompt notice as to whether [*] desires [*] to file such new patent application. In the event that [*] decides either: (A) not to continue the prosecution or maintenance of a patent application or patent within the [*] Patents in any country; or (B) not to file such new patent application requested to be filed by [*], [*] shall provide [*] with notice of this decision at least [*] prior to any pending lapse or abandonment thereof, and [*] shall thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such patent or patent application. In the event that [*] assumes such responsibility for such filing, prosecution and maintenance, [*] shall no longer have the responsibility for such filing, prosecution and maintenance of such patent applications and patents, and [*] shall cooperate as reasonably requested by [*] to facilitate control of such filing, prosecution and maintenance by [*]. In the case where [*] takes over the filing, prosecution or maintenance of any patent or patent application as set forth above, such patent or patent application shall [*] be [*] the [*], and [*] shall [*] such patent or patent application.

(iii) Filing, Prosecution and Maintenance of Sole Invention Patents Controlled by BMS. In accordance with this **Section 6.7(a)(iii)**, BMS shall be responsible for the filing, prosecution (including any interferences, reissues and reexaminations) and maintenance of all Sole Invention Patents Controlled by BMS. BMS shall provide to EXEL copies of any papers relating to the filing, prosecution and maintenance of the Sole Invention Patents Controlled by BMS promptly upon their being filed and received.

(iv) Patent Term Extension. EXEL and BMS shall each cooperate with each another and shall use commercially reasonable efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to patent rights covering the Products. If elections with respect to obtaining such patent term extensions are to be made, [*] shall have the right to make the election to seek patent term extension or supplemental protection.

(v) Exelixis Right to Separate Claims. To the extent that any Sole Invention Patent owned by EPC contains claims that cover compounds that are not Licensed Compounds (such compounds, **"Separable Compounds"**), EXEL shall have the right to separate any claims that cover such Separable Compounds (and not Licensed Compounds) and to file such claims in a separate application (e.g., a continuation, continuation-in-part, or divisional application). EXEL shall notify BMS in writing prior to separating such claims, and such separation shall be at EXEL's sole expense.

(b) Payment of Prosecution Costs. [*] shall bear the out-of-pocket expenses (including reasonable fees for any outside counsel, [*]) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of: (X) Patents covering [*]; and (Y) the [*] Patents, *provided* that if any [*] or [*] is part of a patent application or patent that [*] that are [*], then the Parties shall mutually agree upon an appropriate allocation of the expenses so that [*] does not bear any portion of the out-of-pocket expenses attributable to [*].

(c) Payment of Expenses for Joint Inventions. EXEL and BMS shall mutually agree on the percentage of expenses that each of EXEL and BMS shall bear with respect to Joint Inventions for which the cost of filing, prosecuting or maintaining such Joint Invention is not the responsibility of a Party under **Section 6.7(b)** hereof (which, in the absence of any other agreement between EXEL and BMS, shall be divided evenly).

(d) Non-payment of Expenses.

(i) If either EXEL or BMS elects not to pay its share of any expenses with respect to a Patent covering a [*] in a given country under any of **Sections [*]** (each, a "[*] **Patent**"), such Party shall inform such 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 such other Party assumes the expenses associated with the [*] Patent, then the assuming Party (in the case of EXEL, EPC) shall thereby become the sole owner of such [*] Patent in such country and such other Party shall assign to the assuming Party its rights, title and interests in such [*] Patent in such country.

(ii) If either EPC or BMS is the assignee or owner of a Patent (other than a [*] Patent) that is licensed to such other Party under **Section 6.1**, and such owning Party elects not to pay its share of expenses pursuant to **Sections [*]** in a given country, such owning Party shall inform such 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 such other Party assumes the expenses associated with the Patent in such country, then the assuming Party shall thereby [*] such Patent and the owning Party shall [*] such Patent in such country.

(iii) If either EPC or BMS is the licensee of a Patent (other than a [*] Patent) under any of **Sections 6.1** or **6.2**, and such Party elects not to pay its share of expenses pursuant to **Sections [*]** in a given country, such Party shall inform such other Party (in the case of EPC is the licensee, EPC or EXEL shall inform BMS, and in the case BMS is the licensee, BMS shall inform EXEL) in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable) (such Patent(s) in such countries, as identified in such notice, being a **"Cost-Terminated Patent Right"**), and shall no longer have any rights under such **Sections 6.1** or **6.2**, as applicable, with respect to the relevant Patent in such country, *provided* that all remaining rights and licenses under all other Patent(s) within such licensed Patents would remain in effect. It is also understood that such licensee shall be offered the opportunity to assume its share of the responsibility for the costs of filing, prosecution and maintenance of any Patent(s) claiming priority directly or indirectly from any such Cost-Terminated Patent Right, and that where such expenses are assumed by such licensee, it shall be afforded all the rights and licenses as provided under this Agreement for the licensed Patents (other than the Cost-Terminated Patent Right) with respect to such Patent(s) claiming priority directly or indirectly from any such Cost-Terminated Patent Right.

(e) Each of EXEL and BMS shall provide to such other Party, on [*] basis, a patent report that includes the serial number, docket number and status of each Patent for which such Party has the right to direct the filing, prosecution and maintenance and which [*] (in the case of [*] such [*] that are [*]) or [*]. EXEL and BMS through their patent counsel shall discuss as

appropriate (but not more than [*]) ways in which to allocate such out-of-pocket expenses in an appropriate, cost-effective manner consistent with the purposes of this Agreement [*].

6.8 Enforcement of Patent Rights.

(a) Enforcement of Exelixis Sole Patents.

(i) Enforcement by [*]. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement by a Third Party of a Patent claiming a Sole Invention owned by EPC that claims the composition of matter (including formulation), manufacture or use of one or more Licensed Compound(s) or Product(s) that is being Developed or Commercialized by BMS or its Affiliate or sublicensee using Diligent Efforts and which is exclusively licensed to BMS under **Section 6.1** (for purposes of this **Section 6.8(a)(i)** only, an "**Exelixis Sole Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. As between EXEL and EPC, EXEL shall carry out the patent enforcement activities on behalf of EPC under this Section 6.8, and shall pay costs and expenses on behalf of EPC in connection therewith. Each of EXEL and BMS shall provide the same level of disclosure to such other Party's in-house counsel concerning suspected infringement of an Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. [*] shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and [*] shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions at [*] request. [*] 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 [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(ii) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 6.8(a)(i)** and so notifies [*], or where [*] otherwise desires to bring an action or to defend any proceeding directly involving an Exelixis Sole Patent, then [*] may bring such action or defend such proceeding at [*] own expense, in its own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further,* that with respect to any Exelixis Sole Patent that is a Patent [*] the [*] (or foreign equivalent(s) of such Patent or the [*]) by [*] (a **"[*] Patent"**), if [*] fails to consent to any such action or proceeding, the [*] for any [*] such Exelixis Sole Patent shall in no event [*] by any failure to enforce such Exelixis Sole Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the

scope, or adversely affects the enforceability, of a [*] Patent, may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(b) Enforcement of Joint Patents.

(i) Joint Product Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for either EXEL or BMS becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter (including formulation), manufacture or use of one or more Licensed Compound(s) or Product(s) that is being Developed or Commercialized by BMS or its Affiliate or sublicensee using Diligent Efforts and (a "**Joint Product Patent**"), such Party shall notify such other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to such other Party's in-house counsel concerning suspected infringement of a Joint Product Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. [*] shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and [*] shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 6.8(b)(i)(1)** and so notifies [*], or for any other enforcement by [*] of a Joint Product Patent which is exclusively licensed to BMS under **Section 6.1**, then [*] may bring such action or defend such proceeding at its own expense, in [*] own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Joint Product Patent that is a [*] Patent, if [*] fails to consent to any such action or proceeding, the [*] for any [*] such Joint Product Patent shall in no event [*] by any failure to enforce such Joint Product Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(ii) Other Joint Patents.

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

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 6.8(b)(ii)(1)** and so notifies [*], then [*] may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Other Joint Patent that is a [*] Patent, if [*] fails to consent to any such action or proceeding, the [*] for any [*] such Other Joint Patent shall in no event [*] by any failure to enforce such Other Joint Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(c) General Provisions Relating to Enforcement of Patents.

(i) Withdrawal. If either EXEL or BMS brings such an action or defends such a proceeding under this **Section 6.8** and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify such other Party and such other Party (in the case of EXEL, on behalf of EPC) may substitute itself for the withdrawing Party under the terms of this **Section 6.8** (including such prior written consent as provided for under this **Section 6.8**) at its own expense.

(ii) Recoveries. In the event either Party exercises the rights conferred in this **Section 6.8** and recovers any damages or other sums in such action, suit or proceeding or in

settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be [*].

(d) Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (such as those periods listed in the FDA's Orange Book (including any available pediatric extensions) or periods under national implementations of Article 9.1(a)(iii) of Directive 2001/EC/83, and all international equivalents), BMS shall use commercially reasonable efforts consistent with its obligations under applicable law (including any applicable consent order) to seek, maintain and enforce all such data exclusivity periods available for the Products. With respect to filings in the FDA Orange Book (and foreign equivalents) for issued patents for a Product, upon request by BMS (and at BMS' expense), Exelixis shall provide reasonable cooperation to BMS in filing and maintaining such Orange Book (and foreign equivalent) listings.

(e) No Action in Violation of Law. None of the Parties shall be required to take any action pursuant to this **Section 6.8** that such Party reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree applicable to such Party.

(f) Notification of Patent Certification. [*] shall notify and provide [*] with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of any [*] Patent [*] hereunder pursuant to a Paragraph IV Patent Certification by a Third Party filing an Abbreviated New Drug Application, an application under §505(b)(2) or other similar patent certification by a Third Party, and any foreign equivalent thereof. Such notification and copies shall be provided to [*] by [*] as soon as practicable and at least within [*] after [*] receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below:

[*]

6.9 Defense of Third Party Claims. If a claim is brought by a Third Party that any activity related to work performed by a Party under the Agreement infringes the intellectual property rights of such Third Party, each Party shall give prompt written notice to the other Party of such claim, and following such notification, the Parties shall confer on how to respond.

6.10 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 6.

7. COMPENSATION

7.1 Upfront Payment. BMS shall pay Exelixis an upfront payment of Thirty-Five Million Dollars ($35,000,000) within [*] after the Original Effective Date. Such payment shall be noncreditable and nonrefundable.

7.2 Milestone Payments to EPC.

(a) Development and Regulatory Milestones. For each Product, BMS shall make the milestone payments set forth below to EPC within [*] after the first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to such Product. All such milestone payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable. For clarity, with respect to milestones that are triggered by the [*], such [*] must be [*] that is [*] and [*] the [*] or [*] the [*]. For example, if the [*] is [*] the [*] or [*], a milestone for [*] would be possible for the first occurrence of [*] that is [*] and [*] the [*] or [*] (such as [*], etc).

Event	Milestone Payment
(i) [*]	$ [*]
(ii) [*]	$ [*]
(iii) [*]	$ [*]
(iv) [*]	$ [*]
(v) [*]	$ [*]
(vi) [*]	$ [*]
(vii) [*]	$ [*]
(viii) [*]	$ [*]
(ix) [*]	$ [*]
(x) [*]	$ [*]
(xi) [*]	$ [*]
(xii) [*]	$ [*]

(b) Commercial Milestones. BMS shall make the milestone payments set forth below to EPC after first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to each Product. Each milestone payment shall be made by BMS [*], [*] due and payable [*] after the end of the [*] in which such milestone event is met. BMS shall pay [*] to EPC [*] if, at the time [*], the [*] the payment obligation (the **"[*]"**) was [*] for the [*]. Otherwise, the [*] shall be [*], provided that [*]. BMS shall pay [*] to EPC [*] if, at the time [*], the [*] for the [*]. Otherwise, the [*] shall be [*], provided that the [*]. All such milestone

payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, and shall be paid only once with respect to each Product.

Event	Milestone Payment
[*]	$ [*]
[*]	$ [*]
[*]	$ [*]

(c) Milestone Payment Restrictions. Each milestone payment set forth in **Section 7.2(a)** shall be paid [*] with respect to [*], [*] the [*] or [*] the [*] in [*] for [*], or the [*] or [*] for [*].

(d) Milestone Payments for [*]. If BMS is diligently developing and paying milestones to EPC under Section 7.2(a) [*], the payments otherwise to be made to EPC under Sections 7.2(a) for [*] shall be [*] such [*] the [*] in [*], in which case BMS shall pay EPC [*] any such [*] in [*] within [*] of the [*] such [*]; provided, however, that if this Agreement terminates before such [*], then BMS shall [*] pay EPC the [*]. If [*] the [*] or [*], then BMS shall only pay milestones [*] for the events that [*] the [*] such [*]; however, if a [*], then BMS shall pay the milestones [*] a [*] have been paid [*]. For clarity, the Parties agree that [*] shall [*], [*], or [*] of the [*] the [*].

7.3 Royalty Payments to EPC **for Net Sales of Products**. For each Product, and for all Program Backups that are Products, BMS shall pay to EPC royalties on Net Sales of such Product by BMS (or its Affiliates or sublicensees) in the Territory at a royalty rate determined by aggregate Net Sales in the Territory of such Product in a calendar year as follows:

Calendar year Net Sales of Products in the Territory	Royalty Rate
First $[*]	[*]%
Portion above $[*] and up to and including $[*]	[*]%
Portion above $[*]	[*]%

For clarity, Net Sales shall be [*]. For the purpose of this **Section 7.3**, all Products [*] shall be [*] and the Net Sales of such Products shall be [*] the [*], regardless of whether [*] or [*], or [*] or [*]. All royalty payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, [*] to EPC, in which case such [*] shall be [*] (or, in the event that [*], such [*] shall be [*]).

7.4 Third Party Royalties for Products in the Territory and Products in the U.S.

(a) [*] all Third Party royalties owed with respect to either a Product in the Territory on intellectual property that is intellectual property that: (A) [*] from a Third Party prior to the Original Effective Date and [*]; and (B) [*]. Subject to **Section 7.4(b)**, [*] Third Party royalties owed on intellectual property in connection with the development and commercialization of a Product in the Territory; *provided* that each Party shall bear all Third Party royalties arising from any infringing activities by such Party prior to the Original Effective Date.

(b) BMS may deduct from the royalties it would otherwise owe to EPC pursuant to **Section 7.3** for a particular Product, an amount equal to [*] of all royalties payable to a Third Party in consideration for rights necessary or reasonably useful for the manufacture, use or sale of such Product, up to a maximum deduction of [*] of the royalties due EPC for such Product.

7.5 [*]. During the applicable Royalty Term for a particular Product, if the Patents claiming the composition of matter of such Product have expired, and if any [*]: (a) [*] in any given country in any year; and (b) such [*] in such country for such year are, [*]:

(i) [*], but [*] of the [*] in such country, then [*]; or

(ii) [*] of the [*] in such country, then [*] **7.3**.

7.6 Limitation on Deductions. Notwithstanding anything to the contrary in this Agreement, the operation of **Section 7.4** and **Section 7.5** for a given Product, whether singularly or in combination with each other, shall not [*].

7.7 Quarterly Payments and Reports. All royalties due under **Section 7.3** shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant quarter for which royalties are due. BMS shall provide to EPC within [*] after the end of each quarter a report that summarizes the Net Sales of a Product during such quarter, *provided* that to the extent additional information is reasonably required by EPC and/or EXEL to comply with its obligations to any of its licensors, the Parties shall work together in good faith to timely compile and produce such additional information. Such reports shall also include detailed information regarding the calculation of royalties due pursuant to **Section 7.3**, including allowable deductions in the calculation of Net Sales of each Product on which royalties are paid, and, to the extent **Section 7.5** is applicable, the calculation of [*] and [*] of [*].

7.8 Term of Royalties. EPC's right to receive royalties under **Section 7.3** shall expire on a country-by-country and Product-by-Product basis upon the later of: (a) [*]; or (b) [*] (the "**Royalty Term**"). Upon the expiration of the Royalty Term with respect to a Product in a country, BMS shall have a fully-paid-up perpetual license under **Sections 6.1(a) and 6.1(b)** for the making, using, selling, offering for sale and importing of such Product in such country.

7.9 Payment Method. All payments due under this Agreement to EPC shall be made by bank wire transfer in immediately available funds to an account designated by EPC. All payments hereunder shall be made in Dollars.

7.10 Taxes. EPC shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, BMS shall: (a) deduct those taxes from the remittable payment; (b) pay the taxes to the proper taxing authority; and (c) send evidence of the obligation together with proof of tax payment to EPC within [*] following that tax payment. The Parties shall discuss appropriate mechanisms for minimizing such taxes to the extent possible in compliance with applicable law.

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 EPC in Dollars based on the Dollar reported sales for the quarter (translated for such country per Statement of Financial Standards No. 52), unless otherwise mutually agreed.

7.12 Sublicenses. In the event BMS grants any permitted licenses or sublicenses to Third Parties to sell Products that are subject to royalty payments under **Section 7.3**, BMS shall have the responsibility to account for and report sales of any Product by a licensee or a sublicensee on the same basis as if such sales were Net Sales by BMS. BMS shall pay to EPC (or cause the licensee or sublicensee to pay to EPC, with BMS remaining responsible for any failure of the licensee or sublicensee to pay amounts when due under this Agreement): (a) royalties on such sales as if such sales of the licensee or sublicensee were Net Sales of BMS or any of its Affiliates; and (b) milestones payments pursuant to **Section 7.2** based on the achievement by such licensee or sublicensee of any milestone event contemplated in such Sections as if such milestone event had been achieved by BMS or any of its Affiliates hereunder. Any sales by BMS' Affiliates and sublicensees of BMS or such sublicensee's Affiliates, in each case to Third Parties, shall be aggregated with sales by BMS for the purpose of calculating the aggregate Net Sales in **Sections 7.2** and **7.3**.

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

7.14 Records. BMS shall keep (and shall ensure that its Affiliates and sublicensees shall keep) such records as are required to determine, in a manner consistent with GAAP and this Agreement, the sums due under this Agreement, including Net Sales. All such books, records and accounts shall be retained by such Party until the later of (a) [*] after the end of the period to which such books, records and accounts pertain and (b) the [*] (or any extensions thereof), or for such longer period as may be required by applicable law. BMS shall require its sublicensees to provide to it a report detailing the foregoing expenses and calculations incurred or made by such sublicensee, which report shall be made available to Exelixis in connection with any audit conducted by Exelixis pursuant to **Section 7.15**.

7.15 Audits. Exelixis shall have the right to have an independent certified public accountant, reasonably acceptable to BMS, to have access during normal business hours, and upon reasonable prior written notice, to examine only those records of BMS (and its Affiliates and sublicensees) as may be reasonably necessary to determine, with respect to any calendar year ending not more than [*] prior to Exelixis' request, the correctness or completeness of any report or payment made under this Agreement. The foregoing right of review may be exercised [*]. Results

of any such examination shall be: (a) limited to information relating to the Products; (b) made available to both Parties; and (c) subject to **Article 9.** Exelixis shall bear the full cost of the performance of any such audit, unless such audit discloses a variance to the detriment of Exelixis of more than [*] from the amount of the original report, royalty or payment calculation, in which case BMS shall bear the full cost of the performance of such audit. The results of such audit shall be [*].

7.16 Interest. Any payments or portions thereof due hereunder that are not paid on the date such payments are due under this Agreement shall bear interest at a rate equal to the lesser of: (a) [*] Rate as published by Citibank, N.A., New York, New York, or any successor thereto, at 12:01 a.m. on the first day of each quarter in which such payments are overdue; or (b) the maximum rate permitted by law, in each case calculated on the number of days such payment is delinquent, compounded monthly.

7.17 Non-Monetary Consideration. In the event that BMS or its Affiliates or sublicensees receives any non-monetary consideration in connection with the sale of a Product, BMS' payment obligations under this **Article 7** shall be based on the fair market value of such other consideration. In such case, BMS shall disclose the terms of such arrangement to EPC and EXEL and the Parties shall endeavor in good faith to agree on such fair market value.

7.18 Payments to or Reports by Affiliates. Any payment required under any provision of this Agreement to be made to either BMS or EPC or any report required to be made by any Party shall be made to or by an Affiliate of that Party if designated in writing by that Party as the appropriate recipient or reporting entity.

8. EXCLUSIVITY

8.1 Licensed Compounds. This Agreement will be exclusive with respect to the Development, Manufacture, and Commercialization of [*] that are intended to [*], as described below.

(a) Prior to Commercialization. Subject to **Sections 8.1(a)(i), 8.2, 8.3** and **8.4**, [*], [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Agreement any programs: (I) that [*] that [*]; or (II) where [*].

(i) [*] of a Product. Upon either (A) the [*] of [*] Products pursuant to **Section [*]**; or (B) the [*] of [*] Product pursuant to **Section [*],** [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Agreement programs to [*] that [*].

(ii) [*] of a [*]. In the event of any [*] of a [*] that is permitted under **Section [*]**, the Party [*] shall [*] a [*] of [*] of any [*] a [*] subsequent to [*] of a [*] and [*] the [*] the [*] with respect to such [*] or [*] of this Agreement (in either case, [*]).

(b) Subsequent to Commercialization. Subject to **Sections 8.2, 8.3** and **8.4**, [*], [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Agreement any programs to [*] that [*], and any [*] subject to the following terms and conditions:

(i) Commercial Launch of [*]. [*], any product [*]: (A) that is [*] and [*]; or (B) where the [*] that [*] (any such product, a "[*]"), for a [*] of a [*].

8.2 [*]. Notwithstanding anything to the contrary set forth in this **Article 8**, if either BMS or EXEL is engaged in [*] a program that is [*] that is [*], and [*] such program [*], such Party shall [*] with such [*] in order to [*] so the [*] the [*] for [*].

8.3 Not Applicable to [*]. The restrictions and obligations in **Section 8.1** shall not apply with respect to either BMS or EXEL for [*] that are [*] by such Party [*] (either with or without a *bona fide* collaborator).

8.4 [*] Right. [*] may [*] with a [*] that [*] a [*] solely with respect to the [*] of [*] and/or a [*] that [*]: (a) any [*] product that is [*] a [*]; and (b) such [*] a [*], on the condition that [*] to [*] of [*] with respect to [*] as set forth herein (assuming such [*] and/or a [*]).

9. CONFIDENTIALITY

9.1 Nondisclosure of Confidential Information. For the purpose of this Article 9, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." All Information or Materials disclosed by one Party to the other Party pursuant to this Agreement, and, subject to **Section 9.6**, Information that is generated pursuant to this Agreement with respect to Licensed Compounds or Products (for so long as such Licensed Compound or Product is not removed from the Agreement as a result of a Product specific termination pursuant to **Section 10.2** or **Section 10.3**), shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during the period from the Execution Date to the Original Effective Date, during term of this Agreement and for a period of [*] thereafter, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned), except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (b) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement (it being understood that this **Section 9.1** shall not create or imply any rights or licenses not expressly granted under **Article 6** or **Article 10** 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, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement; or

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of the disclosing Party's Confidential Information.

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; *provided* that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products, in each case pursuant to activities under this Agreement;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental laws and regulations; and

(e) Disclosure, in connection with the performance of this Agreement, or exercise of its rights hereunder, to Affiliates, potential collaborators, partners, and actual and potential licensees (including potential co-marketing and co-promotion contractors, research contractors and manufacturing contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, 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 **Section 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 such Party's on-going periodic reporting requirements under the federal securities laws, or as otherwise necessary under applicable law or regulations. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic, competitively sensitive, and trade secret information.

9.4 Termination of Prior Agreements. All Information exchanged between the Parties under the Confidential Disclosure Agreement between EXEL and BMS executed as of [*], and amended as of [*] and [*] (such confidential disclosure agreement, as amended, the **"Prior CDA"**)

that relates to TGR5, Licensed Compounds or Products shall be deemed Confidential Information and shall, commencing upon the Execution Date, be subject to the terms of this **Article 9** rather than the Prior CDA. The Prior CDA shall otherwise remain in full force and effect, including with respect to each Party's rights with respect to breaches thereof, if any, that occurred prior to the Execution Date with respect to Information described in the first sentence of this **Section 9.4**.

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, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded, as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

9.6 Publications. Subject to **Section 9.3**, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which contains Confidential Information of the other Party and would or may constitute an oral, written or electronic public disclosure if made (including the full content of proposed abstracts, manuscripts or presentations), and which relate to any Inventions, 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; *provided, however*, that BMS may publish results of clinical studies relating to Licensed Compounds without the prior review or approval of Exelixis. 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 Alliance Managers (or the Parties), as appropriate, shall review such requests and recommend subsequent action. Subject to **Section 9.3,** 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 non-filing Party necessary for a patent application, *provided* the non-filing Party is given a reasonable opportunity to review the extent and necessity for its Confidential Information to be included prior to submission of such patent application related to the Agreement. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the Alliance Managers (or the Parties), as appropriate.

10. TERM AND TERMINATION

10.1 Term. For the purpose of this Article 10, unless otherwise set forth herein, EPC and EXEL shall be deemed collectively as one (1) "Party" and shall be referred to as "Exelixis." This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with **Sections 10.2 or 10.3** or by mutual written agreement, or until the expiration of all payment obligations under **Article 7**. The period of time between the Original Effective Date until the expiration of this Agreement shall be deemed the **"Term"**, provided that, for the period of

time between the Original Effective Date and the Effective Date, the terms and conditions of the License Agreement shall apply.

10.2 BMS' Right to Terminate. BMS shall have the right to terminate this Agreement, at any time, on a Product-by-Product and country-by-country basis upon: (a) [*] prior written notice to each of EXEL and EPC, in the event that such termination is [*] of the [*] or (b) [*] prior written notice to each of EXEL and EPC, in the event that such termination is [*] of the [*].

10.3 Termination for Material Breach or Patent Challenge

(a) Notice. If either Party believes that the other is in material breach of this Agreement (including any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in **Article 7**, the allegedly breaching Party shall have [*] to cure such breach. For any breach arising from a failure to make a payment set forth in **Article 7**, the allegedly breaching Party shall have [*] to cure such breach.

(b) Cure Period. Subject to **Section 10.3(c)**, if the Party receiving notice of breach fails to cure such breach within the [*] period or [*] period (as applicable), or the Party providing the notice reasonably determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon [*] advance written notice, *provided*, that if the breach [*] or [*], the non-breaching Party may [*] the [*] with respect to [*].

(c) [*] Material Breach. If a Party gives notice of termination under **Section 10.3(a)** and the other Party [*], or if a Party determines under **Section 10.3(b)** that the [*] or the [*] is [*] and such [*] such [*], then the [*]: (i) [*]; or (ii) [*] or the [*], shall in any case [*]. If [*] such [*] it is [*] the [*], then such termination shall [*] if the breaching Party fails [*] to cure such breach in accordance with the [*] within the time period set forth in **Section 10.3(a)** for the applicable breach [*]. If [*] such [*] it is [*] the [*], then [*] and [*].

(d) Termination for Patent Challenge. Exelixis may terminate this Agreement with respect to a given Product in a given country if BMS or its Affiliates or sublicensees, directly or indirectly, individually or in association with any other person or entity, challenge the validity, enforceability or scope of any Exelixis Licensed Patents that relate to such Product in such country; *provided* that, if BMS, due to a Change of Control transaction, acquires control of a company that is challenging, directly or indirectly, individually or in association with another person or entity, the validity, enforceability or scope of any Exelixis Licensed Patents, BMS shall have [*] from the date of such acquisition to terminate such challenge to such Exelixis Licensed Patents before Exelixis' right to terminate under this **Section 10.3(d)** becomes effective. For clarity, any dispute as to whether a given Patent is within the scope of Exelixis Licensed Patents, such matter shall be subject to dispute resolution as set forth in **Section 13.3**.

10.4 Survival; Effect of Termination.

(a) In the event of expiration or termination of this Agreement, the following provisions of this Agreement shall survive: Articles [*]; and Sections [*].

(b) In any event, expiration or termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such expiration or 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.

10.5 Licenses and Payments on Termination.

(a) Termination by BMS (Section 10.2). Subject to **Section 10.5(e)**, if BMS terminates this Agreement pursuant to **Section 10.2** with respect to a particular Product in any country, then the license granted to BMS under **Section 6.1** shall automatically terminate solely with respect to such Product in such country, and BMS shall, and hereby does, grant to EPC a royalty-free license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product in such country**.** The license described in this **Section 10.5(a)** shall be [*], except that it shall be [*] with respect to the [*].

(b) Termination by Exelixis (Section 10.3). If this Agreement terminates pursuant to **Section 10.3** [*], and BMS is the breaching Party, then the license granted to BMS under **Section 6.1** shall automatically terminate [*], and BMS shall, and hereby does, grant to EPC a license, with the right to grant sublicenses, under the BMS Licensed Patents and BMS Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product [*]. The license described in this **Section 10.5(b)** shall be [*], except that it shall be [*] with respect to the [*]. For Products on which [*], the license described in this **Section 10.5(b)** shall be [*]. For Products on which [*] but which [*] and that are [*] of [*] or [*] in [*] that, in either case, [*] or the [*] or [*], the license described in this **Section 10.5(b)** shall bear a royalty of [*] of Exelixis' Net Sales of such Product. For Products on which [*] and that are [*] of [*] or [*] in [*] that, in either case, [*] or the [*] or [*], the license described in this **Section 10.5(b)** shall bear a royalty of [*] of Exelixis' Net Sales of such Product. BMS' right to receive royalties under this **Section 10.5(b)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) [*]; or (ii) [*] or the [*].

(c) Termination by BMS (Section 10.3). If this Agreement terminates pursuant to **Section 10.3** [*], and Exelixis is the breaching Party, then the license granted to BMS under **Section 6.1,** shall automatically terminate [*], and EPC shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Patents to clinically develop, make, use, sell, offer for sale and import such Product in such country, EXEL shall, and hereby does, grant to BMS a license, with the right to grant sublicenses, under the Exelixis Licensed Know-How to clinically develop, make, use, sell, offer for sale and import such Product [*]. The license described in this **Section 10.5(c)** shall be [*], except that it shall be [*] with respect to the [*]. For Products on which [*], the license described in this **Section 10.5(c)** shall [*]. For Products on which [*] but which [*] and that are [*] of [*] or [*] in [*] that, in either case, [*] or the [*] or

[*], the license described in this **Section 10.5(c)** shall bear a royalty of [*] of BMS' Net Sales of such Product. For Products on which [*] and that [*] of [*] or [*] in [*] that, in either case, [*] or the [*] or [*], the license described in this **Section 10.5(c)** shall bear a royalty of [*] of BMS' Net Sales of such Product. EPC's right to receive royalties under this **Section 10.5(c)** shall expire on a country-by-country and Product-by-Product basis upon the later of: (i) [*]; or (ii) [*] or the [*].

(d) Transfers Related to Licenses. For each license granted under **Sections 10.5(a) – 10.5(c)**, the licensing Party shall transfer via assignment, license or sublicense to the licensee Party: (i) all Information reasonably necessary for the development and commercialization of the Product to which such license relates; (ii) [*] that [*] relate to such Product and that are [*]; (iii) [*] that [*] relate to such Product; (iv) [*] Controlled by the licensing Party that [*] relate to such Product; and (v) supplies of such Product (including any intermediates, retained samples and reference standards), that, in each case ((i) through (v)) are existing and in the Control of the licensing Party. Any such transfer(s) shall be [*] of the [*].

(e) Exception for Termination for [*]. The license granted to [*] under **Section [*]** shall be of [*] with respect to any given Product where [*] termination of Development and/or Commercialization of such Product was due to [*]. For purposes of this **Section 10.5(e)**, "[*]" means it is [*] or [*] or [*] that there is [*] for [*]: (i) [*], including [*]; or (ii) the [*] of [*] a Product [*] or [*], such as [*] or [*] a Product. Notwithstanding anything to the contrary, this **Section 10.5(e)** shall not prevent [*] from using its license in **Section [*]** to [*] by [*] that was [*]. [*] shall provide [*] with all [*] for such [*] but shall not [*] to [*] any [*] relating to such [*].

(f) Additional Effects of Termination.

(i) At-Will Transfer. In the event of any termination pursuant to **Section 10.2**, BMS shall transfer and assign to EPC (or its sublicensees): (i) all Information relating to the Product, and [*] with respect to Product in BMS' name; (ii) all [*] related to the Product, to the extent that [*]; (iii) all [*] related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in BMS' Control and that relate to the Product. BMS shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to EPC (or its sublicensees).

(ii) Breach Transfer. In the event of any termination pursuant to **Section 10.3**, the breaching Party shall transfer and assign to the non-breaching Party (if BMS is the breaching Party, to EPC or its sublicensees): (i) all Information relating to the Product, and [*] with respect to Product in the breaching Party's name; (ii) all [*] related to the Product, to the extent that [*]; (iii) all [*] related to the Product; and (iv) all supplies of Product (including any intermediates, retained samples and reference standards) that in each case are in the breaching Party's Control and that relate to the Product. The breaching Party shall take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of rights hereunder to the non-breaching Party (if BMS is the breaching Party, to EPC or its sublicensees).

10.6 Interim Supply. In the event of any termination of a Product pursuant to **Section 10.2**, or **Section 10.3** (where BMS is the breaching Party), in each case [*], at the written request of EPC (or its sublicensees), BMS shall supply, or cause to be supplied, to EPC (or its sublicensees)

sufficient quantities of Product to satisfy EPC's (or its sublicensees') requirements for Product for a period of up to [*] following the effective date of termination, as EPC (or its sublicensees) may require until EPC (or its sublicensees) can itself assume or transition to a Third Party such manufacturing responsibilities; *provided, however* that EPC (or its sublicensees) shall use Diligent Efforts to affect such assumption (or transition) as promptly as practicable. Such supply shall be [*] with respect to development supply, and shall be [*] for such Product(s) with respect to commercial supply. Any such supply will be made pursuant to a supply agreement between the Parties with typical provisions relating to quality, forecasting and ordering to forecast, force majeure and product liability and indemnity. In the event that BMS has one or more agreements with Third Party manufacturers with respect to the manufacture of a Product, at EPC's (or its sublicensees') request, BMS shall use commercially reasonable efforts to transfer its rights and obligations under such agreement(s) to EPC upon any such termination.

11. REPRESENTATIONS AND WARRANTIES AND COVENANTS

11.1 Mutual Authority. EXEL, EPC and BMS each represents and warrants to the other Parties as of the Execution Date that: (a) it has the authority and right to enter into and perform this Agreement, (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (c) its execution, delivery and performance of this Agreement shall not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

11.2 Rights in Technology.

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

(b) Each of EPC and BMS represents and warrants that it: (i) has the ability to grant the licenses contained in or required by this Agreement; and (ii) is not currently subject to any agreement with any Third Party or to any outstanding order, judgment or decree of any court or administrative agency that restricts it in any way from granting to another Party such licenses or the right to exercise its rights hereunder.

(c) Each of EPC and BMS represents and warrants that: (i) it has not granted, and covenants that it shall not grant after the Execution Date and during the term of this Agreement, any right, license or interest in or to, or an option to acquire any of the foregoing with respect to, the intellectual property rights licensed to another Party hereunder (including the Exelixis Licensed Patents and the BMS Licensed Patents, as the case may be) that is in conflict with the rights (including the rights set forth in **Article 6**) or licenses granted or to be granted (including any

conditional license rights) to another Party under this Agreement; and (ii) it has not granted any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to another Party hereunder that would prevent it from performing its obligations under this Agreement, or permitted such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to another Party hereunder.

(d) To the Knowledge of Exelixis as of the Original Effective Date, Exelixis does not Control any Small Molecule Compounds that: (i) [*] TGR5 [*]; (ii) [*] TGR5, [*]; and (iii) are not disclosed in the Exelixis Licensed Patents listed on **Exhibit 1.17.**

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 under this Agreement with respect to Licensed Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Licensed Compounds shall apply equally to the activities of such Affiliate; and (b) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in **Article 6**) as if such intellectual property had been developed by the Party.

11.4 Third Party Rights. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Execution Date, its performance of work as contemplated by this Agreement shall not infringe the valid patent, trade secret or other intellectual property rights of any Third Party. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Execution Date, it will not violate a contractual or fiduciary obligation owed to such Third Party (including misappropriation of trade secrets) by performing its work as contemplated by this Agreement.

11.5 Notice of Infringement or Misappropriation. Each of EXEL and BMS represents and warrants to the other Party that, as of the Execution Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any Third Party in relation to any technology that such Party intends, as of the Execution Date, to use in connection with the Agreement.

11.6 HSR Act Filing; Effective Date. EXEL and BMS shall each, prior to or as promptly as practicable after the Execution Date of this Agreement, file or cause to be filed with the U.S. Federal Trade Commission and the U.S. Department of Justice and any relevant foreign governmental authority any notifications required to be filed under the HSR Act and any applicable foreign equivalent thereof with respect to the transactions contemplated hereby; *provided* that EXEL and BMS shall each file the notifications required to be filed under the HSR Act no later than [*] after the Execution Date of this Agreement. Each of EXEL and BMS shall be responsible for its own costs in connection with such filing, except that BMS shall be [*]. EXEL and BMS shall use commercially reasonable efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act and any applicable foreign equivalent thereof to terminate or expire at the earliest possible date after the date

of filing. Each Party shall use its commercially reasonable efforts to ensure that its representations and warranties set forth in this Agreement remain true and correct at and as of the Original Effective Date as if such representations and warranties were made at and as of the Original Effective Date. Notwithstanding anything in this Agreement to the contrary, this Agreement (other than **Article 9** and this **Section 11.6**) [*] under the HSR Act in the U.S., the expiration or earlier termination of any applicable waiting period under the antitrust or competition laws of any other jurisdiction, and the approval or clearance of the transactions contemplated by this Agreement in any jurisdiction requiring advance approval or clearance (the **"Original Effective Date"**).

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

12.1 Mutual Indemnification. For the purpose of this Article 12, EPC and EXEL shall be deemed collectively as one (1) "Party" and referred to as "Exelixis." Subject to **Section 12.3**, each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, employees and agents from and against any and all Third Party suits, claims, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and reasonable attorneys' fees ("**Losses**") to the extent such Losses result from any: (a) breach of warranty by the indemnifying Party contained in the Agreement; (b) breach of the Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of the indemnifying Party, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including misappropriation of trade secrets).

12.2 Indemnification.

(a) Indemnification by BMS. Subject to **Section 12.3**, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from [*] or [*] by BMS or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by Exelixis contained in the Agreement; (b) breach of the Agreement or applicable law by Exelixis; (c) negligence or willful misconduct by Exelixis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by Exelixis to a Third Party (including misappropriation of trade secrets).

(b) Indemnification by Exelixis. Subject to **Section 12.3**, Exelixis hereby agrees to indemnify, defend and hold harmless BMS and its directors, employees and agents from and against any and all Losses to the extent such Losses result from [*] or [*] by Exelixis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by BMS contained in the Agreement; (b) breach of the Agreement or applicable law by BMS; (c) negligence or willful misconduct by BMS, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by BMS to a Third Party (including misappropriation of trade secrets).

12.3 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of **Sections 12.1 or 12.2**. A condition precedent to each

Indemnitee's right to seek indemnification under such **Sections 12.1 or 12.2** is that such Indemnitee shall:

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

(b) if the indemnifying Party acknowledges that such Loss falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Loss (including the right to settle the claim solely for monetary consideration); *provided*, that the indemnifying Party shall seek the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(c) fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Loss.

Provided that an Indemnitee has complied with all of the conditions described in **subsections 12.3(a) – (c)**, as applicable, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Loss. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Loss using attorneys of the Indemnitee's choice and at the Indemnitee's expense. In no event may an Indemnitee settle or compromise any Loss for which the Indemnitee intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party (such consent not to be unreasonably withheld, delayed or conditioned), or the indemnification provided under such **Section 12.1 or 12.2** as to such Loss shall be null and void.

12.4 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO **SECTIONS 12.1 AND 12.2**, 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 THE AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY (INCLUDING GROSS NEGLIGENCE OR WILLFUL BREACH WITH REEPCCT TO A PARTY'S REPRESENTATIONS AND WARRANTIES IN **ARTICLE 11**). FOR CLARITY, THE AMOUNT OF THE UPFRONT PAYMENTS DESCRIBED IN **SECTION 7.1** MAY SERVE AS A MEASURE OF A REMEDY IN THE EVENT OF A BREACH WITH REEPCCT TO EXELIXIS' REPRESENTATIONS AND WARRANTIES IN **ARTICLE 11.**

12.5 Agreement Disclaimer. EXCEPT AS PROVIDED IN **ARTICLE 11** ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH REEPCCT TO ANY COMPOUNDS, MATERIALS OR INFORMATION (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 THE AGREEMENT. EXCEPT AS PROVIDED IN **ARTICLE 11** ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH REEPCCT TO ANY COMPOUNDS, MATERIALS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THE AGREEMENT.

13. MISCELLANEOUS

13.1 Dispute Resolution. For the purpose of Sections 13.1 through 13.3, EPC and EXEL shall be deemed collectively as one (1) "Party" and referred to as "Exelixis." Unless otherwise set forth in this Agreement and excluding in particular any dispute described in **Section 13.3** (which will be handled exclusively in accordance with **Section 13.3**), in the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Party's respective Executive Officers. Any Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within [*] after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within [*] of their first meeting for such negotiations, any Party may seek to have such dispute resolved in any U.S. federal or state court of competent jurisdiction and appropriate venue, *provided*, that if such suit includes a Third Party claimant or defendant, and jurisdiction and venue with respect to such Third Party appropriately resides outside the U.S., then in any other jurisdiction or venue permitted by applicable law.

13.2 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, without regard to conflicts of law rules.

13.3 Patents and Trademarks; Equitable Relief.

(a) Except as set forth in **Section 6.7(a)(i)**, any dispute, controversy or claim arising out of, relating to or in connection with: (i) the scope, validity, enforceability or infringement of any Patent rights covering the research, development, manufacture, use or sale of any Product; or (ii) any trademark rights related to any Product, shall in each case be submitted to a

court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

(b) Any dispute, controversy or claim arising out of, relating to or in connection with the need to seek preliminary or injunctive measures or other equitable relief (e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in **Article 9**) need not be resolved through the procedure described in **Section 13.1** but may be immediately brought in a court of competent jurisdiction.

13.4 Entire Agreement; Amendments. This Agreement and the collaboration agreement (for the discovery, development and commercialization of compounds that antagonize the target known as ROR) that is between Exelixis and BMS and that is dated as of the Execution Date and amended and restated as of the Effective Date (the **"ROR Collaboration 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. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement and the ROR Collaboration Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. The License Agreement shall be effective from the Original Effective Date until the Effective Date and shall govern the Parties' respective rights and obligations during such period of time.

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

13.6 Bankruptcy.

(a) For the purpose of this Section 13.6, EPC and EXEL shall be deemed collectively as one (1) "Party" and referred to as "Exelixis." All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("**Title 11**"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "**Bankrupt Party**") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall, at the election of the Bankrupt Party made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party

including, where applicable, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held 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 Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of 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. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, acts of terrorism, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due

and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

13.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Parties confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For EXEL:	Exelixis, Inc. 210 East Grand Avenue South San Francisco, CA 94080 Attention: EVP and General Counsel
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For EPC:	Exelixis Patent Company, LLC 210 East Grand Avenue South San Francisco, CA 94080 Attention: VP, Legal Services
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For BMS:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Senior Vice President, Strategy, Transactions and Alliances Phone: 609-252-5333 Fax: 609-252-7212

With a copy to: Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Vice President and Asst. General Counsel, Business Development
Phone: 609-252-5328
Fax: 609-252-4232

Furthermore, a copy of any notices required or given under **Article 6** of this Agreement shall also be addressed to the [*] of [*] at the address set forth in **Section 6.8(f)**.

13.9 Maintenance of Records Required by Law or Regulation. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Parties upon request.

13.10 Assignment. For the purpose of this Section 13.10, EPC and EXEL shall be deemed collectively as one "Party." Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other (such consent not to be unreasonably withheld, delayed or conditioned), except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to all or substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction; *provided* that any such permitted successor or assignee of rights and/or obligations hereunder is 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 13.10** shall be null and void and of no legal effect.

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

13.12 Non-Solicitation of Employees. For the purpose of this Section 13.12, EPC and EXEL shall be deemed collectively as one "Party." **[*]**, each Party agrees that neither it nor any of its divisions, operating groups or Affiliates shall recruit, solicit or induce any employee of the other Party directly involved in the activities conducted pursuant to this Agreement to terminate his or her employment with such other Party and become employed by or consult for such Party, whether or not such employee is a full-time employee of such other Party, and whether or not such employment is pursuant to a written agreement or is at-will. For purposes of the foregoing, **"recruit"**, **"solicit"** or **"induce"** shall not be deemed to mean: (a) circumstances where an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (b) general solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

13.13 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

13.14 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

13.15 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

13.16 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" are used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

13.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, or electronically in PDF format, each of which shall be binding when sent.

Signature page follows.

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

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

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Graham R. Brazier
Title: Vice President, Business Development
Date: 4/20/11

EXELIXIS, INC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

EXELIXIS PATENT COMPANY, LLC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

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

Exhibit 1.17

List of Exelixis Licensed Patents

Exelixis Ref. No.	External Counsel ("EC")	EC Ref. No.	Country	App. No.	Title
[*]	[*]	[*]	[*]	[*]	[*]

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

Exhibit 2.2

Form of Transfer Addendum

This Transfer Addendum No. ____ (the "**Transfer Addendum**") to the license agreement between Bristol-Myers Squibb Company and Exelixis, Inc., effective as of _____, 2010 (the "**License Agreement**"), is made as of_____ **{Note: Please insert date} (**the **"Addendum Effective Date")**, by and between:

Transferring Party: **Exelixis, Inc.**

And

Receiving Party: **Bristol-Myers Squibb Company**

for the transfer of:

(1) Information:

{Note: Please identify any Information other than the Materials that would be transferred, e.g., assay protocols, or else add "N/A" if not applicable.}

(2) Materials:

(i) the following biological materials:

{Note: Please identify any cell-lines, reagents, genes, vectors and constructs that would be transferred, or else add "N/A" if not applicable.}

(ii) the following {Licensed Compounds} known as:

{Note: Please insert identifier of the applicable compounds, or else add "N/A" if not applicable.}

Terms and Special Terms

The Parties agree that the transfer of the above defined Information and Materials pursuant to this Transfer Addendum shall be covered and submitted to the terms and conditions of the License Agreement. Any special terms and conditions identified on Appendix A, attached hereto and incorporated herein, shall also apply to the transfer of the Materials under this Transfer Addendum.

IN WITNESS WHEREOF, this Transfer Addendum is entered into as of the Addendum Effective Date, and it is accepted and agreed to by the Parties' authorized representatives. The date that this Transfer Addendum is signed shall not be construed to imply that the document was made effective on that date.

Name: **{Note: insert name of AM}** For Exelixis	Name: **{Note: insert name of AM}** For BMS
Title: Alliance Manager Date:	Title: Alliance Manager Date:

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

Appendix A to Transfer Addendum
Special Terms

The following special terms and conditions apply to the transfer of the Materials under this Transfer Addendum.

{Note: Please identify any special terms and conditions, or else add "N/A" if not applicable.}

[*] = 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 9.5

Press Release

EXELIXIS™

www.exelixis.com

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

Contact:
Charles Butler
Vice President
Corporate Communications
& Investor Relations
Exelixis, Inc.
(650) 837-7277
cbutler@exelixis.com

DeDe Sheel
Associate Director,
Investor Relations
Exelixis, Inc.
(650) 837-8231
dshell@exelixis.com

EXELIXIS LICENSES PROGRAMS TO BRISTOL-MYERS SQUIBB COMPANY

-Exelixis to receive initial payment of $60 million-

SOUTH SAN FRANCISCO, Calif., October XX, 2010 — Exelixis, Inc. (NASDAQ: EXEL) announced today that it has entered into two new collaboration agreements with Bristol-Myers Squibb Company (NYSE:BMY). Under the first agreement, Exelixis will grant to Bristol-Myers Squibb an exclusive license to its small-molecule TGR5 agonist program including backups. Under the second agreement, the companies will collaborate to discover, optimize, and characterize small-molecule ROR antagonists. The companies have also made minor amendments to their XL281 and liver X receptor (LXR) agreements. Finally, under the companies' cancer collaboration agreement Exelixis has opted to exercise its right to opt out of further co-development of XL139 and will receive an accelerated milestone payment.

Under the terms of the new agreements, Bristol-Myers Squibb will make a combined initial payment of $60 million to Exelixis. Exelixis will be eligible for potential development and approval milestone payments of up to $250 million on TGR5 and $255 million on the ROR antagonists. Exelixis will also be eligible for combined sales performance milestones, and royalties on net sales of products from each of the TGR5 and ROR programs. Bristol-Myers Squibb will receive an exclusive worldwide license to develop and commercialize small molecule TGR5 agonists and ROR antagonists. Under the TGR5 agreement, Bristol-Myers Squibb will have sole responsibility for research, development, manufacturing, and

[*] = 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.

commercialization. Under the ROR agreement, Bristol-Myers Squibb and Exelixis will collaborate on ROR antagonist programs up to a pre-clinical transition point and then Bristol-Myers Squibb will have sole responsibility for the further research, development, manufacture, and commercialization.

Exelixis is granting rights to the ROR program in exchange for Bristol-Myers Squibb waiving rights to receive a third Investigational New Drug (IND) candidate as agreed to under a collaboration signed in 2006 between the two companies in the area of oncology.

After Exelixis opts-out of further co-development of XL139, Bristol-Myers Squibb will receive an exclusive worldwide license to develop and commercialize, and will have sole responsibility for the further development, manufacture, and commercialization of the compound.

“We continue our strong relationship with Bristol-Myers Squibb and are excited for these collaborations to maximize the potential of these novel programs and bring benefits to patients with serious diseases,” said Michael M. Morrissey, Ph.D., president and chief executive officer of Exelixis. “These transactions leverage our discovery expertise with the development expertise of Bristol-Myers Squibb in inflammation and metabolic diseases, and provide important additional resources for us to continue our focus on our clinical stage development pipeline.”

TGR5 is a G-protein coupled bile acid receptor (GPCR) which is highly expressed in the gall bladder and intestine. Through TGR5, bile acids promote the secretion of glucogen-like peptide-1 (GLP-1), a hormone that affects multiple metabolic parameters including increased insulin secretion from the pancreas and lowering of blood glucose. Stimulating GLP-1 secretion by activation of TGR5 has the potential to be complementary to the use of dipeptidyl peptidase-4 (DPP-IV) inhibitors for the treatment of diabetes.

ROR is a member of the nuclear hormone receptor family that is expressed in multiple cell types including T-cells. ROR plays a prominent role in the development and activity of the TH17 subset of T-cells, which secrete IL-17 and are associated with a variety of inflammatory disorders. Small molecule antagonists of ROR inhibit production of these pro-inflammatory cytokines and have broad potential as novel anti-inflammatory compounds.

The TGR5 license agreement and the amendment to the 2007 cancer collaboration agreement are subject to antitrust clearance under the Hart-Scott-Rodino Antitrust Improvements Act and other customary regulatory approvals.

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company is leveraging its biological expertise and integrated research and development capabilities to generate a pipeline of development compounds with significant therapeutic and commercial potential for the treatment of cancer and potentially other serious diseases. Currently, Exelixis’ broad product pipeline includes investigational compounds in phase 3, phase 2, and phase 1 clinical development. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including Bristol-Myers Squibb Company, sanofi-aventis, GlaxoSmithKline, Genentech (a wholly owned member of the Roche Group), Boehringer Ingelheim, and Daiichi-Sankyo. For more information, please visit the company’s web site at http://www.exelixis.com.

Exelixis and the Exelixis logo are registered U.S. trademarks.

{Insert Forward-Looking Statements}

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

[*] = 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.

AMENDED AND RESTATED COLLABORATION AGREEMENT

THIS AMENDED AND RESTATED COLLABORATION AGREEMENT (the "**Agreement**") is made and entered into as of April 15, 2011 (the "**Effective Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EXEL**"), **EXELIXIS PATENT COMPANY, LLC.**, a Delaware limited liability company having its principal place of business at 210 East Grand Avenue, South San Francisco, California 94080 ("**EPC**"), and **BRISTOL-MYERS SQUIBB COMPANY,** a Delaware corporation headquartered at 345 Park Avenue, New York, New York, 10154 ("**BMS**"). EXEL, EPC and BMS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". EXEL and EPC are sometimes referred to collectively as "**Exelixis**".

RECITALS

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

B. EXEL is a drug discovery company that has expertise and proprietary technology relating to compounds that modulate the target known as ROR.

C. BMS, EXEL and EPC desire to establish a collaboration to apply such Exelixis technology and expertise to the discovery, lead optimization and characterization of Small Molecule Compounds, and to provide for the development and commercialization of novel therapeutic and prophylactic products based on such compounds.

D. BMS and EXEL are parties to a collaboration agreement that established such collaboration, entered into on October 8, 2010 (such agreement, the "**Collaboration Agreement**", and the effective date of such agreement, the "**Original Effective Date**").

E. On event date herewith, EXEL is assigning to its wholly owned subsidiary, EPC, the patents relating to compounds that modulate ROR.

F. BMS, EXEL and EPC wishes to amend and restate the Collaboration Agreement to account for such change of patent ownership.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

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

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

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

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

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

1.5 "BMS ROR Compound" means: (a) any Small Molecule Compound that is an ROR Antagonist and is Controlled by BMS and/or its Affiliates as of the Original Effective Date or during the Term, wherein such compound (i) (1) [*] or [*] and/or [*] an ROR Antagonist [*] the [*] or (2) is [*] and [*] an ROR Antagonist (A) [*] or [*] and/or [*] in the [*] the [*] or (B) [*] or [*] and/or [*] in the [*] the [*], and (ii) is [*], a [*], or a [*] or [*]; or (b) any [*], or [*] of [*]. Those ROR Antagonists that are [*] Controlled by BMS and/or its Affiliates as of the Original Effective Date are set forth in the Disclosure Letter dated as of even date herewith.

1.6 "Change of Control" means any transaction in which a Party: (a) sells, conveys or otherwise disposes of all or substantially all of its property or business; or (b)(i) merges, consolidates with, or is acquired by any other Person (other than a wholly-owned subsidiary of such Party); or (ii) effects any other transaction or series of transactions; in each case of clause (i) or (ii), such that the stockholders of such Party immediately prior thereto, in the aggregate, no longer own, directly or indirectly, beneficially or legally, at least fifty percent (50%) of the outstanding voting securities or capital stock of the surviving Person following the closing of such merger, consolidation, other transaction or series of transactions. As used in this Section 1.6, "Person" means any corporation, firm, partnership or other legal entity or individual person.

1.7 "Collaboration" means all the activities performed by or on behalf of either Exelixis or BMS in the course of performing work contemplated in **Article 3, 4** or **5**.

1.8 "Collaborative Research Period" means the period described in **Section 3.2**.

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

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

1.11 "Decision Point [*]" or "[*]" means the point at which [*] decides whether to [*] a [*] to [*] to [*], including [*] of [*] or [*] and the [*] of [*] and [*] of [*] ([*], etc.) to that effort. At [*], the following [*]: (a) [*] or [*] with [*] and [*] (through [*]); (b) [*] to [*]; (c) [*] or [*]; (d) [*] in [*]; (e) [*] for the [*] through [*] and [*]; (f) [*] for [*] for [*]; and (g) [*].

1.12 "Derivative" means, for a particular ROR Antagonist, each ROR Antagonist that is [*] or [*] or [*] that are [*] of such ROR Antagonist.

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

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

1.15 "Disclosure Letter" means one or more mutually agreed written letters or memoranda that are delivered by each of EXEL and BMS to the other contemporaneously with or subsequent to the execution of this Agreement and are identified therein as a Disclosure Letter

contemplated by this Agreement and any amendments or replacement thereof approved in writing by both Parties.

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

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

1.18 "[*]" or "[*]" means the point at which [*] decides whether to [*] a [*] to [*] to [*]. This decision point is known [*] as "**Decision Point [*]**" or "[*]". This decision point is typically made [*] to [*] prior to the [*] of the [*] for such [*]. For such a [*], the relevant [*] for such [*] shall [*] include: (a) [*] of [*] in [*]; (b) [*] that [*] and is [*] to be [*]; (c) [*] that [*] includes [*] and [*] and [*] to [*], [*], [*] and [*]; and (d) [*], and [*] and [*], including [*] and [*]. For clarity, [*] (whether [*] or [*] or [*]) shall be [*] at [*]; however, [*] must be [*] a [*]. Typically, the [*] shall also be [*] and deemed suitable for [*].

1.19 "EMEA" means BMS' European, Central and Eastern European, Middle Eastern and African commercial territory, consisting of the following countries and regions: Algeria, Andorra, Austria, Baltic States, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, U.K., Ukraine, Vatican City, Lebanon, Jordan, Syria, Kuwait, Bahrain, Oman, UAE and Qatar. The EMEA also includes: (a) the former Soviet Union and commonwealth of independent states such as Georgia, Armenia and central Asian republics; and (b) exports from France to English and French speaking African countries not separately identified in the list. For clarity, the specific list of countries and regions may change to align with any corresponding changes to BMS' business structures.

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

1.21 "Executive Officers" means: (a) in the case of Exelixis, the [*] of EXEL; and (b) in the case of BMS, [*].

1.22 "Exelixis ROR Compound" means:

(a) any Small Molecule Compound that is an ROR Antagonist and is Controlled by Exelixis and/or its Affiliates as of the Original Effective Date or during the Term, wherein such compound (i) [*] an ROR Antagonist [*] or [*] and/or [*] the [*]; (ii) [*] an ROR Antagonist [*] or

[*] and/or [*] in the [*] the [*] and is [*] a Small Molecule Compound that [*] or [*] and/or [*] an ROR Antagonist [*] the [*]; or (iii) is [*] or [*] and such [*] an ROR Antagonist (A) [*] or [*] and/or [*] in the [*] the [*] or (B) [*] or [*] and/or [*] in the [*] the [*];

(b) any [*] or [*] that is an ROR Antagonist and is [*] or [*] and/or [*] the [*] or [*], wherein such [*] (i) [*] an ROR Antagonist [*] or [*] and/or [*] the [*]; or (ii) [*] an ROR Antagonist [*] or [*] and/or [*] in the [*] the [*];

(c) any [*] or a [*], wherein such [*] is [*] or [*] and/or [*] the [*] or [*] and such [*] an ROR Antagonist (i) [*] or [*] and/or [*] in the [*] the [*] or (ii) [*] or [*] and/or [*] in the [*] the [*]; or

(d) any [*], or [*] of [*] or [*].

Those ROR Antagonists that are [*] Controlled by Exelixis and/or its Affiliates as of the Original Effective Date are set forth in the Disclosure Letter dated as of even date herewith.

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

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

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

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

1.27 "[*]" means, with respect to a particular Product in a country, [*]: (a) [*] such Product (or [*]) and [*]; (b) is [*] ([*] or [*]); and (c) is [*] or [*] a [*].

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

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

1.30 "Invention" means any and all inventions and improvements, whether or not patentable, that are conceived or reduced to practice or otherwise made by or on behalf of a Party (and/or its Affiliates) in the performance of its obligations, or the exercise of its rights, under this Agreement.

1.31 "Joint Invention" means any Invention invented or discovered jointly by or on behalf of the employee(s), contractor(s) or agent(s) of BMS on one hand, and EXEL and/or EPC on the other hand (and/or their Affiliates).

1.32 "Joint Research Committee" or **"JRC"** means the committee described in **Section 2.1**.

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

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

1.35 "Licensed Compound" means any BMS ROR Compound or Exelixis ROR Compound.

1.36 "LXR Collaboration Agreement" means the Collaboration Agreement between Exelixis and BMS, executed as of December 5, 2005, as amended.

1.37 "[*]" means [*] or [*] to the [*] that [*] the [*] set forth in [*] of the [*].

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

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

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

1.41 "Materials" means: (a) Licensed Compounds; and (b) biological materials, including but not limited to cell-lines, reagents, genes, vectors and constructs, that are in Exelixis' Control and that were used by Exelixis in the performance of its obligations under the Research Plan.

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

1.43 "Net Sales" means the amount invoiced or otherwise billed by BMS, or its Affiliate or sublicensee, for sales or other commercial disposition of a Product to a Third Party purchaser, less the following to the extent included in such billing or otherwise actually allowed or incurred with respect to such sales: (a) discounts, including cash, trade and quantity discounts, price reduction programs, retroactive price adjustments with respect to sales of a product, charge-back payments and rebates granted to managed health care organizations or to federal, state and local governments (or their respective agencies, purchasers and reimbursers) or to trade customers, including but not limited to, wholesalers and chain and pharmacy buying groups; (b) credits or allowances actually granted upon rejections or returns of Products, including for recalls or damaged goods; (c) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Products, to the extent billed; (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of a Product; (e) bad debts relating to sales of Products that are actually written off by BMS in accordance with GAAP during the applicable calculation period; (f) costs due to the factoring of receivables; and (g) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Products, without limitation any fees payable under the Health Care Reform Act of 2010, value-added taxes, or other governmental charges otherwise measured by the billing amount, when included in billing, as adjusted for rebates and refunds, but specifically excluding taxes based on net income of the seller; provided that all of the foregoing deductions are calculated in accordance with GAAP.

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

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

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

In the event a Product is sold as an end-user product consisting of a combination of active functional elements or as a combined product and/or service, Net Sales allocable to the Product in each such country, for purposes of determining royalty payments on such Product, 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 such Net Sales that takes into account, on a country-by-country basis, variations in potency, the relative contribution of each active agent, component or service, as the case may be, in the combination, and relative value to the end user of each active agent, component or service, as the case may be. Notwithstanding the foregoing, the Parties agree that, for purposes of this paragraph, drug delivery vehicles, adjuvants, and excipients shall not be deemed to be "active ingredients" or "active functional elements".

1.44 "[*]" means a [*] or [*] to the [*] that [*] the [*] set forth in [*] of the [*].

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

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

1.47 "Phase III Clinical Trial" means a clinical trial of a Product on sufficient numbers of patients that is designed to establish that such Product is safe and efficacious for its intended use**,** and to define warnings, precautions and adverse reactions that are associated with such Product in the dosage range to be prescribed, and to support Regulatory Approval of such Product or label expansion of such Product.

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

1.49 "Post-Termination Compound" means any ROR Antagonist for which [*] such compound in any of the following time periods after the expiration or termination of the Agreement: (i) within [*] thereafter in the event the Agreement expires or terminates prior to the [*] anniversary of the Original Effective Date; (ii) within [*] thereafter in the event the Agreement expires or terminates on or after the [*] anniversary and prior to the [*] anniversary of the Original Effective Date; (iii) within [*] thereafter in the event the Agreement terminates on or after [*] anniversary and prior to the [*] anniversary of the Original Effective Date; and (iv) within [*] in the event the Agreement terminates on or after the [*] anniversary of the Original Effective Date. For clarity, Post-Termination Compounds shall not include: (A) any compound with respect to which [*] such compound [*] and [*] the [*] any [*] or [*] or [*]; or (B) any compound that [*] or [*] that is [*] and that is [*] under **Article** [*] of this Agreement.

1.50 "Product" means any human pharmaceutical product containing or comprising a Licensed Compound, either alone or with other active ingredients and in all forms, presentations, formulations and dosage forms.

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

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

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

1.54 "Research" means the following activities: (a) identifying Small Molecule Compounds as [*] that [*] and [*] ROR by [*]; (b) conducting a [*] program to [*] such [*] to [*] that [*] and [*] ROR (including the conduct of [*] and [*] studies, and [*] studies); and (c) conducting [*] on [*] to [*] for [*] (including the conduct of [*] studies, and related [*] and [*] activities). To avoid confusion, Research does not include the conduct of Development.

1.55 "Reverted Compound" means: (a) any Licensed Compound that has [*] prior to the effective date of termination of this Agreement; and (b) any Licensed Compound that: (i) has [*] prior to the effective date of termination of this Agreement; and (ii) are [*].

1.56 "Reverted Compounds License Agreement" has the meaning set forth in **Section 11.5(a)(v)**.

1.57 "ROR" means: (a) the RAR-related orphan receptor [*] gene, otherwise known as the [*] gene, ([*]); (b) the RAR-related orphan receptor [*] (otherwise known as [*] or [*]) and RAR-related orphan receptor [*] (otherwise known as [*] or [*]) proteins encoded by such gene (**"**[*]**"**); (c) the RAR-related orphan receptor [*] (otherwise known as [*] (otherwise known as [*]) proteins encoded by such gene (**"**[*]**"**); and (d) all [*] and [*] thereof.

1.58 "**ROR Antagonist**" means any Small Molecule Compound that (a) directly binds and antagonizes (or is an inverse agonist of) ROR at the Target Potency Threshold and (b) is specific for ROR, based upon the Target Specificity Threshold.

1.59 "Small Molecule Compound" means a small molecule compound [*] or [*]. For clarity, [*], shall be considered Small Molecule Compounds.

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

1.61 "Success Criteria" has the meaning set forth in **Section 3.3(b)**.

1.62 "Target Potency Threshold" means, with respect to a Small Molecule Compound, that such Small Molecule Compound [*] and [*] (or [*] of) the activity of ROR with a half maximal inhibitory concentration ("**IC_{50}**") of less than or equal to [*] in the [*] using [*].

1.63 "Target Specificity Threshold" means, with respect to a Small Molecule Compound, that such Small Molecule Compound demonstrates, in a [*] or [*], [*] ROR [*], [*] (i.e., the RAR-related orphan receptor [*] gene, otherwise known as the [*] gene, and the protein encoded by such gene) (**"ROR** [*]**"**).

1.64 "Territory" means the world.

1.65 "Third Party" means any entity other than: (a) EXEL; (b) EPC; (c) BMS; or (d) an Affiliate of any of the foregoing Party.

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

1.67 "Valid Claim" means: (a) a claim in an issued Patent that has not: (i) expired or been canceled; (ii) been declared invalid by an unreversed and unappealable or unappealed decision of a court or other appropriate body of competent jurisdiction; (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; or (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement of the Parties; or (b) a claim under an application for a Patent that has been pending [*], and, in any case, which has not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority or court for whatever reason (and from which no appeal is or can be taken), or abandoned.

Additional Definitions

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

Definition	Location (Section)
Alliance Manager	**2.3(a)**
Bankrupt Party	**14.6(a)**
[*]	**[*]**
[*]	**[*]**
BMS Independent Program	**5.1(b)**
[*]	**[*]**
Confidential Information	**10.1**
Cost-Terminated Patent Right	**7.7(d)(iii)**
[*] Notice	**[*]**
[*] Notice	**[*]**
EDI	**14.11**
[*]	**[*]**
Exelixis Sole Patent	**7.8(a)(i)**
Indemnitee	**13.3**
JAMS	**14.3(c)**
Joint Invention Patents	**7.5(b)**
Joint Product Patent	**7.8(b)(i)(1)**
Letter Agreement	**14.4**
[*]	**[*]**
Losses	**13.1**
Other Joint Patent	**7.8(b)(ii)(1)**
Permitted Use	**4.2(b)**
Prior CDA	**10.4**
Proposed Terms	**14.3(d)**
Research Plan	**3.3(a)**
ROR Technology	**4.1**
Royalty Term	**8.8**
[*]	**[*]**
Sales Threshold	**8.2(b)**
Separable Compounds	**7.7(a)(v)**
Sole Invention Patents	**7.5(b)**
Support Memorandum	**14.3(c)**
Term	**11.1**
TGR5 License Agreement	**14.4**
[*]	**[*]**
Title 11	**14.6(a)**
Transfer Addendum	**4.2(d)**
Unauthorized Invention	**4.2(c)**

2. GOVERNANCE

2.1 Joint Research Committee.

(a) Membership of JRC. For the purpose of this Article 2, EXEL and EPC shall be deemed collectively as one (1) "Party". The JRC shall be composed of four (4) members. Within [*] after the Original Effective Date, each Party shall appoint two (2) representatives to the JRC. Each Party may replace its appointed JRC representatives at any time upon written notice to the other Party. Each Party shall designate one (1) of its representatives as co-chairperson of the JRC. Each of the co-chairpersons shall be responsible, on an alternating basis with the BMS co-chairperson having responsibility with respect to the initial meeting, for working with the Alliance Managers to schedule meetings, prepare and circulate an agenda in advance of each meeting, and to prepare and issue minutes of each meeting within [*] thereafter. Any JRC member may add topics to the draft agenda.

(b) Decision-making. The two (2) JRC representatives of each Party shall collectively have one (1) vote, and the JRC shall operate by unanimous consent of all JRC members present and in accordance with the principles set forth in this **Article 2**. The JRC shall not have any authority or jurisdiction to amend, modify, or waive compliance with this Agreement, any of which shall require mutual written agreement of the Parties. In the event of a dispute between the Parties with regard to the performance of the Collaboration, the matter shall be first referred to the Alliance Managers for resolution. If these two (2) individuals are unable to resolve the dispute, then the matter shall be elevated to the [*] of EXEL and the [*] of BMS (or in either case a direct report of such individual). If these two (2) individuals are unable to resolve the dispute, then, subject to the last sentence of this **Section 2.1(b)** and to **Section 2.1(c)**, [*] shall have the final decision for [*] disputes relating to the [*] or [*] of the [*], so long as such decision does not [*] or conflict with the terms of the Agreement, the Parties shall mutually agree as to the [*] of the [*] of [*] that [*] the [*] under the [*], and [*] shall have the final decision with respect to [*] disputes with respect to the [*], so long as such decision does not conflict with the terms of the Agreement. Notwithstanding anything to the contrary, no decision by a Party shall (i) require the other Party to: (1) [*] or [*] that such other Party [*] or [*]; (2) [*] that are [*] or [*] those [*] the [*]; or (3) [*] any [*] (e.g., [*] of the [*] for [*] in the [*] for [*]) in connection with [*] of [*] the [*], or [*] associated with such [*]; or (ii) amend, modify, or waive such Party's compliance with, this Agreement, any of which shall require mutual written agreement of the Parties.

(c) Exceptions to Decision-making. Notwithstanding anything to the contrary, [*] shall not have the final decision with respect to any dispute involving any of the following: (i) [*] of the [*] the [*] and [*] of [*] the [*] and [*] of [*]; (ii) changing the [*]; (iii) changing [*] for [*] in a manner that [*] for [*] that are [*] with [*] for the [*] the [*]; (iv) whether the [*] by [*] pursuant to [*] that a [*] the [*]; (v) changing the [*] in a manner that [*] that are [*] with [*] for the [*] the [*]; (vi) whether the [*] by [*] pursuant to [*] that a [*] the [*]; (vii) changing the [*] or the [*]; or (viii) changing the [*] the [*] so as to modify [*] (including [*]) under the [*], or the [*] associated therewith.

(d) Responsibilities of the JRC. The JRC shall be responsible for the overall planning and execution of the Collaboration and the approval and oversight of the Research Plan.

At its meetings, the JRC shall evaluate the Parties' progress in carrying out the Research Plan and the data generated by the Parties in the course of carrying out the Research Plan, shall discuss and approve project prioritization within the Research Plan, shall discuss and approve any revisions to the Research Plan, and shall perform those activities specifically described in this Agreement. To the extent necessary to carry out its responsibilities, a Party's JRC members shall be granted access to the other Party's Confidential Information relevant to any decision required to be made by the JRC.

2.2 Meetings of JRC. During the Collaborative Research Period, the JRC shall meet [*] by audio or video teleconference and, at a minimum, [*] in person (which in-person meeting shall be held on an alternating basis in New Jersey and in San Francisco). With the consent of the representatives of each Party serving on the JRC, other representatives of each Party may attend meetings of the JRC as nonvoting observers (provided such representatives: (i) have contractual confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement; and (ii) are under intellectual property assignment obligations to such Party in accordance with **Section 7.5(c)**). Meetings of the JRC shall be effective only if at least one (1) representative of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in JRC meetings. The Parties shall endeavor to schedule meetings of the JRC at least [*] in advance. Upon the conclusion of the Collaborative Research Period, the JRC shall be discontinued.

2.3 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint an individual (each, an "**Alliance Manager**") who possesses a general understanding of the scientific and business issues relevant to this Agreement. Each Party may change its designated Alliance Manager from time to time upon prior written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by prior written notice to the other Party.

(b) Responsibilities. The Alliance Managers shall use good faith efforts to attend all JRC meetings and support the co-chairpersons of the JRC in the discharge of their responsibilities. Alliance Managers shall be nonvoting participants in JRC meetings. An Alliance Manager may bring any matter to the attention of the JRC if such Alliance Manager reasonably believes that such matter warrants such attention. Each Alliance Manager shall be charged with creating and maintaining a collaborative work environment within the JRC. In addition, each Alliance Manager: (a) shall be the point of first referral in all matters of conflict resolution; (b) shall identify and bring disputes to the attention of the JRC in a timely manner; (c) shall plan and coordinate cooperative efforts and internal and external communications; and (d) shall take responsibility for ensuring that governance activities, such as the conduct of required JRC meetings and production of meeting minutes, occur as set forth in this Agreement, and that relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

3. RESEARCH COLLABORATION.

3.1 Overview. The general goals and intent of the research portion of the Collaboration are to apply each Party's technology to discover, optimize and characterize ROR Antagonists that

may be developed into Products by BMS. Each of EXEL and BMS shall use Diligent Efforts to carry out its research responsibilities in accordance with the allocation of duties set forth in the Research Plan, including responsibilities for [*], [*] and [*] of Licensed Compounds and activities to be conducted by the Parties that lead to the submission by EXEL of data to BMS [*].

3.2 Collaborative Research Period. Subject to termination of this Agreement pursuant to **Section 11.2** or **11.3** (which will in turn terminate the Collaborative Research Period), the Collaborative Research Period shall begin on the Original Effective Date and shall, unless otherwise agreed by the Parties, terminate as follows (such period, the **"Collaborative Research Period"**):

(a) In the event that [*] as of third (3rd) anniversary of the Original Effective Date, then the Collaborative Research Period shall end on such third (3rd) anniversary of the Effective Date.

(b) In the event that [*] prior to the third (3rd) anniversary of the Original Effective Date, then the Collaborative Research Period shall end upon the earlier of (i) the second (2^{nd}) anniversary of the date on which in such series of Licensed Compounds has achieved [*], or (ii) achievement of the first [*] for a Licensed Compound.

During the Collaborative Research Period, each of EXEL and BMS shall use Diligent Efforts to perform the tasks assigned to it in the Research Plan then in effect. For clarity, upon [*], Exelixis shall be deemed to have fulfilled its obligations under the Research Plan.

3.3 Research Plan; Success Criteria.

(a) The Parties have agreed in writing upon a detailed plan for the research to be carried out by the BMS and EXEL during the Collaborative Research Period, which is set forth in the Disclosure Letter and incorporated herein by reference (the "**Research Plan**"). The Research Plan includes each of BMS's and EXEL's respective obligations in furtherance of the research portion of the Collaboration and timelines for completion of key stages. The JRC shall review the Research Plan at least [*] and may propose and approve, subject to **Sections 2.1(b)** and **2.1(c)**, a revised version of the Research Plan that is consistent with the terms of this Agreement. Once approved by the JRC, such revised Research Plan shall replace the prior Research Plan.

(b) The Research Plan shall also contain criteria that a Licensed Compound must satisfy in order for BMS to make the [*] decision (each set of criteria, "**Success Criteria**"). Any Success Criteria that are not reasonably ascertainable or completely known as of the Original Effective Date, or requiring adjustment based on results obtained during the conduct of the Research Plan, shall be supplemented and/or modified as approved by mutual agreement of the JRC from time to time as appropriate.

3.4 Activities and Costs under the Research Plan.

(a) The Parties intend: (i) for EXEL to perform [*] activities during the "[*]" phase of the Research Plan, including [*] of certain [*], known as "[*]" and "[*]" in the [*], that were [*] or [*] pursuant to the [*] (with [*] the [*] to [*] activities with respect to such [*] pursuant to the [*]); (ii) for EXEL to perform the [*] activities in "[*]" phase of the Research Plan, which

may include [*] of [*] that were [*] and [*] as [*] to the [*]; and (iii) for EXEL and BMS, after [*], to jointly perform the "[*]" phase of the Research Plan, in each case as set forth in more detail in the Research Plan. EXEL shall provide no less than the minimum number of FTEs for the periods and activities set forth in the Research Plan, and shall continue to support the Research Plan using Diligent Efforts upon the expiration of any such period until the conclusion of the Collaborative Research Period, and BMS shall provide adequate resources to meet its activities set forth in the Research Plan.

(b) Each of EXEL and BMS shall bear its own internal and out-of-pocket costs and expenses incurred in connection with the conduct of the activities assigned to it under the Research Plan.

3.5 [*]. Promptly after EXEL and BMS's activities pursuant to the Research Plan generate data demonstrating that a particular series of Licensed Compounds meets the Success Criteria for [*], and subsequent to activities in **Section 3.7**, EXEL shall submit such data to BMS. BMS shall promptly (and in good faith) review such data, and, within [*] of such submission, shall notify EXEL in writing if BMS believes in good faith that such data do not demonstrate that such series of Licensed Compounds [*], which notice shall specify the deficiencies in such data that cause it not to demonstrate that such series of Licensed Compounds [*] (such notice, a "[*] **Notice**"). If EXEL does not receive [*] Notice from BMS by the end of such 30-day period, then BMS will, as of the end of such 30-day period, be deemed to have agreed that the series of Licensed Compounds [*] (**"**[*]**"**) and BMS shall be obligated to [*] set forth in **Section** [*] no later than [*] after the end of such period. If EXEL receives [*] Notice within such [*] period and it disagrees with BMS' assessment of such data, then such dispute shall be resolved by a mutually acceptable independent Third Party expert. Such Third Party expert shall determine, within [*] of receipt of the data submitted by EXEL to BMS pursuant to this **Section 3.5** and the [*], whether such data demonstrate that such series of Licensed Compounds [*], and EXEL and BMS agree that such Third Party expert's determination on this issue shall be final, binding, and determinative. The Party against whom the Third Party expert rules shall bear all costs of such Third Party determination. If such Third Party expert determines that data submitted by EXEL to BMS pursuant to this **Section 3.5** demonstrate that such series of Licensed Compounds [*], then BMS will, as of the date of such determination, be deemed to have made a [*] and BMS shall be obligated to [*] set forth in **Section** [*] no later than [*] after the date of such determination. If such Third Party expert determines that data submitted by EXEL to BMS pursuant to this **Section 3.5** does not demonstrate that such series of Licensed Compounds [*], then [*] will not have occurred and EXEL and BMS shall continue to work under the Research Plan in order to [*].

3.6 [*]. Promptly after the Parties' activities pursuant to the Research Plan generate data demonstrating that a particular Licensed Compound [*], EXEL shall submit such data to BMS. BMS shall promptly (and in good faith) review such data, and, within [*] of such submission, shall notify EXEL in writing if BMS believes in good faith that such data do not demonstrate that such Licensed Compound [*], which notice shall specify the deficiencies in such data that cause it not to demonstrate that such Licensed Compound [*] (such notice, an "[*] **Notice**"). If EXEL does not receive [*] Notice from BMS by the end of such [*] period, then BMS will, as of the end of such [*] period, be deemed to have agreed the Licensed Compound [*] (**"**[*]**"**) and BMS shall be obligated to [*] set forth in **Section** [*] no later than [*] after the end of such period. If EXEL receives [*] Notice within such [*] period and it disagrees with BMS' assessment of such data, then such dispute

shall be resolved by a mutually acceptable independent Third Party expert. Such Third Party expert shall determine, within [*] of receipt of the data submitted by EXEL to BMS pursuant to this **Section 3.6** and [*], whether such data demonstrate that such Licensed Compound [*], and EXEL and BMS agree that such Third Party expert's determination on this issue shall be final, binding, and determinative. The Party against whom the Third Party expert rules shall bear all costs of such Third Party determination. If such Third Party expert determines that data submitted by EXEL to BMS pursuant to this **Section 3.6** demonstrate that such Licensed Compound [*], then BMS will, as of the date of such determination, be deemed to have made a [*] and BMS shall be obligated to [*] set forth in **Section** [*] no later than [*] after the date of such determination. If such Third Party expert determines that data submitted by EXEL to BMS pursuant to this **Section 3.6** does not demonstrate that such Licensed Compound [*], then [*] will not have occurred and EXEL and BMS shall continue to work under the Research Plan in order to [*].

3.7 Review of Licensed Compounds. Prior to any determination whether a Licensed Compound meets the Success Criteria for [*], EXEL shall review the results of all [*] assays for [*] conducted by either EXEL or BMS for a compound that is expected to progress to [*]. BMS shall provide EXEL with the results of all [*] assays conducted by or on behalf of relating to [*] for each [*] Licensed Compound, and sufficient samples of each [*] Licensed Compound to have such assays conducted. EXEL may use such results and samples for the sole purpose of performing assays to verify that such [*] Licensed Compound [*] of [*] any [*] for [*] to any [*] ("[*]"). EXEL shall be responsible for having such assays conducted [*] associated with such assays. If EXEL notifies BMS in writing within [*] of receiving a sample of a submitted [*] Licensed Compound that such Licensed Compound [*], then BMS shall [*] or [*] such Licensed Compound, and [*] to [*] such Licensed Compound shall [*] ([*] to such Licensed Compound); *provided, however*, that BMS [*] such Licensed Compound [*] in [*] to [*] the [*] such Licensed Compound. For clarity, (i) nothing in this **Section 3.7** shall be [*] conducting screening activities, at any time, with respect to Licensed Compounds in order to determine whether Licensed Compounds [*], and (ii) BMS may [*] and [*] with respect to any such submitted [*] Licensed Compound during such review period prior to receiving any such written notice from EXEL. In the event that EXEL does not provide written notice to BMS with respect to the [*] submitted [*] Licensed Compound within such [*] period, then BMS shall [*] and [*] such Licensed Compound [*] and [*] in [*]. Notwithstanding the foregoing, EXEL shall use commercially reasonable efforts to notify BMS as soon as practicable in the event that EXEL becomes aware in the course of performing its obligations under the Research Plan during the Collaborative Research Period that a Licensed Compound [*].

3.8 Obligations of Parties. EXEL and BMS shall provide the JRC and its authorized representatives with reasonable access during regular business hours to all records, documents, and Information relating to the performance under the Collaboration, which the JRC may reasonably require in order to perform its obligations hereunder, provided that if such documents are under a bona fide obligation of confidentiality to a Third Party, then EXEL or BMS, as the case may be, may withhold access thereto to the extent necessary to satisfy such obligation.

3.9 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 EXEL, EPC and BMS is that of independent contractors, and shall not constitute a partnership, joint venture or agency, and none of the Parties

shall have the power to bind or obligate any other Parties in any manner, other than as is expressly set forth in this Agreement.

3.10 Conduct of Research. BMS and EXEL 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. Each of BMS and EXEL may use its Affiliates or subcontractors, contract manufacturers, services providers or other Third Parties to complete its research responsibilities under the Research Plan, except that EXEL shall not be permitted to use Third Party contractors to complete the respective tasks of the minimum EXEL FTEs specifically set forth in the Research Plan without the approval of the JRC.

3.11 Records. Each of EXEL and BMS shall maintain complete and accurate records of all work conducted under the Collaboration and all results, data and developments made pursuant to its efforts under the Collaboration. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of the Collaboration in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each of EXEL and BMS shall maintain such records for a period of [*] after such records are created; provided that the following records may be maintained for a longer period, in accordance with each such Party's internal policies on record retention, provided that in no case shall such period be shorter than [*] from the date of creation of such records: (a) scientific notebooks; and (b) any other records that such other Party reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Either such Party shall have the right to review and copy such records of the other such Party at reasonable times to the extent necessary or useful for it to conduct its obligations or enforce its rights under this Agreement.

3.12 Reports. During the Collaborative Research Period, each of EXEL and BMS shall report to the JRC no less than [*] and shall submit to the other such Party and the JRC [*] written progress report summarizing the work performed under the Collaboration. If reasonably necessary for EXEL or BMS to perform its work under the Collaboration or to exercise its rights under the Agreement, such Party may request that such other Party provide more detailed information and data regarding such results reported by such other Party, and such other Party shall promptly provide the requesting Party with information and data as is reasonably related to such request, including any records created by a Party pursuant to **Section 3.11**. All such reports shall be considered Confidential Information of the Party providing same.

4. TRANSFER OF ROR TECHNOLOGY

4.1 General. For a period beginning on the Original Effective Date and ending [*] after the end of the Collaborative Research Period, EXEL shall use Diligent Efforts to transfer to BMS, solely in accordance with **Section 4.2**, all items of Materials or Information that are in EXEL's possession and Control and that are [*] for BMS to research or clinically develop or manufacture Licensed Compounds (such Information and Materials, "**ROR Technology**"); provided that subsequent to such [*] period, EXEL will use commercially reasonable efforts to transfer Information and Materials that are requested by BMS for purposes of making a regulatory filing or patent application and that are in EXEL's possession and Control (as of the date of such request).

BMS may request such a transfer in writing pursuant to **Section 4.2.** Additionally, BMS may request that EXEL provide a reasonable amount of on-site advice or support in connection with the foregoing transfer until the date which is [*] subsequent to the [*], and BMS shall reimburse EXEL for reasonable travel costs incurred.

4.2 Transfer of ROR Technology. EXEL shall transfer to BMS, upon prior written approval by the Parties, reasonable quantities of Information and Materials included in the ROR Technology solely as described below.

(a) Ownership. Except as otherwise provided in the Agreement, all rights, title and interest in and to such Information and Materials that are transferred by EXEL to BMS shall remain with EXEL. All such Information and Materials shall be considered the Confidential Information of EXEL and shall be subject to **Article 10** of the Agreement.

(b) Permitted Use. BMS shall use such Information and Materials solely for performing its obligations under the Research Plan and exercising its right to perform the BMS Independent Program, subject to any additional limitations due to Exelixis' obligations to Third Parties relating to such Information or Materials (with such limitations being set forth in the applicable Transfer Addendum) (the "**Permitted Use**"). BMS shall not transfer, deliver or disclose any of the Materials to any Third Party, other than its Affiliates or bona fide collaborators or third party contract service providers, without EXEL's prior written consent, except as otherwise stipulated in the Transfer Addendum. The Materials shall not be used in humans, except as otherwise contemplated by the Agreement. Any unused Materials supplied by EXEL shall be returned to EXEL or destroyed as agreed upon in writing by the Parties.

(c) Unauthorized Use. The Parties do not intend for BMS to use the Materials other than for the Permitted Use. If BMS or its Affiliates or other transferees use the Information or Materials outside of the Permitted Use, and any inventions, improvements, discoveries or data arise (or result) from such unauthorized use (such inventions, improvements, discoveries and data, and all intellectual property rights related thereto, collectively the "**Unauthorized Inventions**"), then: (i) BMS shall promptly and fully disclose all such Unauthorized Inventions to EXEL in writing; (ii) BMS shall comply with the terms of any upstream license agreement between either EXEL or EPC on one hand, and a Third Party on the other hand, with respect to such Unauthorized Use of Materials; and (iii) Exelixis may pursue all rights and remedies it may have under this Agreement, or at law or in equity, with respect to any breach of BMS' obligation of Permitted Use (and creation of any Unauthorized Inventions).

(d) Transfer Addendum. Each transfer shall occur through the execution of an agreement substantially in the form of **Exhibit 4.2** (each, a "**Transfer Addendum**"), which is incorporated by reference into the Agreement. After receiving BMS' written request for a particular item of ROR Technology, EXEL shall prepare and submit a Transfer Addendum listing the Information and Materials to be transferred to BMS. Upon written approval of such Transfer Addendum by the Parties, the Information and Materials shall be transferred to BMS within [*]. For clarity, the intent of the Parties is to provide BMS with the ability to use Materials and Information for the Permitted Use and without additional restrictions other than those set forth in any applicable agreements between EXEL or EPC on the one hand, and a Third Party on the other hand, and as such, (i) no Transfer Addendum shall contain terms that are inconsistent with this

Agreement, and (ii) Exelixis shall not unreasonably withhold its signature on a Transfer Addendum to prevent BMS from obtaining access to Materials or Information where such request by BMS is consistent with Section 4.1 and this Section 4.2.

5. RESEARCH, DEVELOPMENT, MANUFACTURING & COMMERCIALIZATION OF PRODUCTS

5.1 Research, Development, & Manufacturing of Products

(a) Scope. After the end of the Collaborative Research Period, BMS shall have sole control and responsibility for the Research (which Research shall solely be conducted pursuant to the BMS Independent Program), Development, Manufacture (including formulation) and Commercialization of all Products. BMS shall bear all costs and expenses associated with such Research, Development, Manufacture (including formulation) and Commercialization of Products.

(b) BMS Independent Program. After the end of the Collaborative Research Period, BMS shall have the right to, at its sole expense, to conduct Research upon Licensed Compounds in accordance with, and solely to the extent permitted by, the license set forth in **Section 7.1(b)** (such Research, the "**BMS Independent Program**"). BMS shall provide EXEL with a written description of each ROR Antagonist that is optimized under the BMS Independent Program. Each such ROR Antagonist shall be deemed [*] unless it qualifies as [*] on account of satisfying the definition set forth in **Section [*]**.

(c) Diligence. During the BMS Independent Program, BMS shall use Diligent Efforts to conduct Research to advance at least one Licensed Compound to meet the Success Criteria for [*]. BMS shall use Diligent Efforts to Develop at least one Product in each country in the Major Territory, and Commercialize each Product for each indication for which it receives Regulatory Approval; provided, however, that BMS may satisfy its diligence obligations by sublicensing the Development and Commercialization of a Product to a Third Party pursuant to the terms of this Agreement. EXEL may notify BMS in writing if EXEL in good faith believes that BMS is not meeting its diligence obligations set forth in this **Section 5.1(c)**, and the Parties shall meet and discuss the matter in good faith. EXEL may further request review of BMS' records generated and maintained as required under **Section 5.1(d)** below.

(d) Records. BMS shall maintain complete and accurate records of all Research, Development, Manufacturing and Commercialization conducted by it or on its behalf related to each Product, and all Information generated by it or on its behalf in connection with Development under this Agreement with respect to each such Product. BMS shall maintain such records at least until the later of: (i) [*] after such records are created, or (ii) [*] after the Launch of the Product to which such records pertain; *provided* that the following records may be maintained for a longer period, in accordance with each Party's internal policies on record retention: (i) scientific notebooks and (ii) any other records that EXEL reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of intellectual property rights. Such records shall be at a level of detail appropriate for patent and regulatory purposes. EXEL shall have the right to review and copy such records of BMS at reasonable times to the extent necessary or useful for EXEL to conduct its obligations or enforce its rights under this Agreement.

(e) Reports. Beginning [*] after the end of the Collaborative Research Period, and every [*] thereafter during the term of the Agreement, BMS shall submit to EXEL a written progress report summarizing the Research, Development, Manufacturing and Commercialization performed by or on behalf of BMS with respect to Products. If reasonably necessary or useful for EXEL to exercise its rights under this Agreement, EXEL may request that BMS provide more detailed Information and data regarding such reports by BMS, and BMS shall promptly provide EXEL with Information and data as is reasonably related to such request, at EXEL's expense. All such reports shall be considered Confidential Information of BMS.

5.2 Standards of Conduct. BMS shall perform, or shall ensure that its Affiliates, sublicensees and Third Party contractors perform, all Research, Development, Manufacturing and Commercialization activities in a good scientific and ethical business manner and in compliance with applicable laws, rules and regulations.

6. REGULATORY

6.1 Regulatory Lead Party. BMS shall have sole responsibility for (and bear all costs and expenses associated with) all regulatory activities regarding Products. BMS shall also have sole responsibility for (and bear all costs and expenses associated with) worldwide pharmacovigilance for each Product. BMS and its Affiliates shall have sole responsibility for all pricing and reimbursement approval proceedings relating to any Product in the Territory.

6.2 Ownership of Regulatory Dossier. BMS will own all regulatory filings for such Product in order to facilitate BMS' interactions with Regulatory Authorities. BMS shall prepare and draft all filings (including any supplements or modifications thereto and including the preparation of any electronic submission of a Drug Approval Application) to Regulatory Authorities in each such country for such Product.

6.3 Recalls in the Territory. Any decision to initiate a recall or withdrawal of a Product in the Territory shall be made by BMS. In the event of any recall or withdrawal, BMS shall take any and all necessary action to implement such recall or withdrawal in accordance with applicable law, with assistance from EXEL as reasonably requested by BMS. The costs of any such recall or withdrawal in the Territory shall be borne solely by BMS.

7. LICENSES; INTELLECTUAL PROPERTY

7.1 Licenses to BMS. Subject to the terms of this Agreement:

(a) Collaborative Research Period (Non-Sublicensable to Non-Affiliates). During the Collaborative Research Period, EXEL hereby grants to BMS a co-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 the Exelixis Licensed Know-How, solely to perform, or have performed pursuant to **Section 3.10**, the research tasks assigned to BMS pursuant to the Research Plan. During the Collaborative Research Period, EPC hereby grants to BMS a co-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 the Exelixis Licensed Patents, solely to perform, or have performed pursuant to Section 3.10, the research tasks assigned to BMS pursuant to the Research Plan.

(b) BMS Independent Program (Sublicensable to Non-Affiliates). During the period beginning with the end of the Collaborative Research Period and ending on the expiration or earlier termination of this Agreement, EXEL hereby grants to BMS, an exclusive, worldwide, royalty-free license (with the right to sublicense to its Affiliates, Third Party contract research providers and manufacturers, and bona fide collaborators), under the Exelixis Licensed Know-How, to make, have made, import and use for Research any: (i) Licensed Compounds (subject to **Section 3.7**) that have achieved a [*] by the end of the Collaborative Research Period; (ii) Licensed Compounds (subject to **Section 3.7**) that have achieved a [*] by the end of the Collaborative Research Period; (iii) Licensed Compounds (subject to Section 3.7) that have achieved the [*] described in the Research Plan by the end of the Collaborative Research Period; and (iv) [*] the Licensed Compounds described in [*], including [*] that is created under [*] for [*]. During the period beginning with the end of the Collaborative Research Period and ending on the expiration or earlier termination of this Agreement, EPC hereby grants to BMS, an exclusive, worldwide, royalty-free license (with the right to sublicense to its Affiliates, Third Party contract research providers and manufacturers, and bona fide collaborators), under the Exelixis Licensed Patents, to make, have made, import and use for Research any: (i) Licensed Compounds (subject to **Section 3.7**) that have achieved a [*] by the end of the Collaborative Research Period; (ii) Licensed Compounds (subject to **Section 3.7**) that have achieved a [*] by the end of the Collaborative Research Period; (iii) Licensed Compounds (subject to **Section 3.7**) that have achieved the [*] described in the Research Plan by the end of the Collaborative Research Period; and (iv) [*] the Licensed Compounds [*] in [*], including [*] that is created under [*] for [*].

(c) Clinical Development and Commercialization. EXEL hereby grants to BMS, effective upon BMS' timely payment of the milestone payment set forth in **Section 8.2(a)(i)(2)**, an exclusive, worldwide, royalty-bearing license (with the right to sublicense), under the Exelixis Licensed Know-How, to make, have made, use, Develop, import, sell, offer to sell and have sold Products. EPC hereby grants to BMS, effective upon BMS' timely payment of the milestone payment set forth in **Section 8.2(a)(i)(2)**, an exclusive, worldwide, royalty-bearing license (with the right to sublicense), under the Exelixis Licensed Patents, to make, have made, use, Develop, import, sell, offer to sell and have sold Products.

(d) Exelixis Retained Rights. Exelixis retains all rights to use the Exelixis Licensed Know-How and Exelixis Licensed Patents except those expressly granted to BMS on an exclusive basis under the terms of this Agreement. In addition, notwithstanding the exclusive licenses granted to BMS pursuant to **Section 7.1**, Exelixis retains the right under the Exelixis Licensed Patents and the Exelixis Licensed Know-How to make, have made, use, and test Licensed Compounds solely for internal research purposes. To the extent any such Exelixis Licensed Patents are owned by EPC, EPC hereby grants EXEL an exclusive, fully-paid, royalty free license, with the right to grant sublicenses, under the Exelixis Licensed Patents to perform and have performed the research tasks assigned to EXEL pursuant to the Research Plan.

(e) BMS Covenants. BMS hereby covenants that BMS shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Licensed Know-How or

Exelixis Licensed Patents for a purpose other than that expressly permitted in **Section 7.1 or 11.5(b)**.

7.2 License to Exelixis for Collaboration Research. Subject to the terms of this Agreement, BMS hereby grants Exelixis a co-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 Licensed Know-How and BMS Licensed Patents, solely to perform, or have performed pursuant to **Section 3.10**, the research tasks assigned to Exelixis pursuant to the Research Plan. Exelixis hereby covenants that Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any BMS Licensed Know-How or BMS Licensed Patents for a purpose other than that expressly permitted in this **Section 7.2 or 11.5(a).**

7.3 No Additional Licenses. Except as expressly provided in **Sections 4.2, 7.1, 7.2**, and **Article 11**, nothing in this Agreement grants either Party any right, title or interest in and to the intellectual property rights of an Party (either expressly or by implication or estoppel). For clarity, the licenses granted in **Section 7.1** by Exelixis to BMS do not give BMS any right or license (a) to incorporate into any Product (e.g., as a combination product) any compound that is Controlled by Exelixis and that is not a Licensed Compound or (b) to perform any research that is directed to identifying, characterizing, developing or otherwise pursuing any Small Molecule Compound that is not a Licensed Compound. For clarity, the licenses granted in **Section 11.5** by BMS to Exelixis do not give Exelixis any right or license (a) to incorporate into any Product (e.g., as a combination product) any compound that is Controlled by Exelixis and that is not a Reverted Compound or (b) to perform any research that is directed to identifying, characterizing, developing or otherwise pursuing any small molecule compound that is not a Reverted Compound.

7.4 Sublicensing. Each Party shall provide the other Parties with the name of each permitted sublicensee of its rights under this **Article 7** and a copy of the applicable sublicense agreement; provided that each Party may redact confidential or proprietary terms from such copy, including financial terms. The sublicensing Party shall remain responsible for each permitted sublicensee's compliance with the applicable terms and conditions of this Agreement. Each sublicense granted by a Party of its rights under this **Article 7** to a party who is an Affiliate of such Party at the time such license is granted shall terminate immediately upon such party ceasing to be an Affiliate of such Party.

7.5 Ownership.

(a) The inventorship of all Sole Inventions and Joint Inventions shall be determined under the U.S. patent laws.

(b) BMS shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents claiming only such Sole Inventions (and no Joint Inventions) (**"Sole Invention Patents"**). As between EXEL and EPC, EPC shall own the entire right, title and interest in and to any and all of Sole Invention Patents of EXEL and/or EPC. EXEL hereby assigns to EPC its entire right, title and interest in and to its Sole Invention Patents. BMS and Exelixis shall be joint owners in and to any and all Joint Inventions, provided that, as between EXEL and EPC, EPC shall be the joint owner of any and all Patents claiming such Joint Inventions (**"Joint Invention Patents"**), and EXEL hereby assigns to EPC its entire right, title and interest in and to its Joint

Invention Patents. BMS and Exelixis (EPC for Joint Invention Patents and EXEL for other Joint Inventions) as joint owners each shall have the right to exploit and to grant licenses under such Joint Inventions, and where exercise of such rights require, under the laws of a country, with the consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned) unless otherwise specified in this Agreement (including where such rights are exclusively licensed to the other Party hereunder).

(c) All employees, agents and contractors of each Party shall be under written obligation to assign any inventions and related intellectual property to the Party for whom they are employed or are providing services.

(d) The Parties acknowledge and agree that this Agreement shall be deemed to be a **"Joint Research Agreement"** as defined under 35 U.S.C. 103(c).

7.6 Disclosure. Each Party shall submit a written report to the other Parties no less frequently than within [*] of the end of each [*] describing any Sole Invention or Joint Invention arising during the prior [*] in the course of the Agreement which it believes may be patentable or at such earlier time as may be necessary to preserve patentability of such invention. Each Party shall provide to the other Parties such assistance and execute such documents as are reasonably necessary to permit the filing and prosecution of such patent application to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension of any resulting Patent.

7.7 Patent Prosecution and Maintenance; Abandonment.

(a) Joint Patent Committee.

(i) Establishment & Meetings. Promptly after the Original Effective Date (as defined in the TGR5 License Agreement), the Parties shall establish a committee (the "**Joint Patent Committee**" or "**JPC**"). The JPC shall be composed of at least one (1) representative from each of BMS and EXEL, at least one of which shall be a patent counsel for such Party. Each such Party may change its representative(s) by giving the other such Party at least [*] prior written notice. The JPC shall meet within [*] after the Original Effective Date (as defined in the TGR5 License Agreement), and once per [*] thereafter, or as may be requested by either Party as necessary, by teleconference, videoconference or in person (as determined by the JPC).

(1) Duties. As between EXEL and EPC, EXEL shall carry out the day-to-day responsibility for filing, prosecution and maintenance on behalf of EPC under Section 7.1 through 7.8. Promptly after the Original Effective Date (as defined in the TGR5 License Agreement), [*] shall oversee (subject to **Sections 7.7(a)(ii), (iv)** and **(v)** below) the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all [*] Patents, [*] Patents Controlled by [*], and [*] Patents that in each case are [*] (the **"**[*] **Patents"**), provided that, unless otherwise agreed by the Parties, such responsibilities shall be carried out by: (A) [*] by [*] the [*], unless there exists [*] of [*] and [*]; (B) [*] by [*], but only in the case where [*] described in subsection (A) had [*] of [*]; or (C) [*] in conjunction with [*] described in the preceding subsection (A) or (B), as applicable. [*], or [*], shall provide [*] with an update of the filing, prosecution and maintenance status for each of the [*] Patents on a periodic basis, and shall use commercially reasonable efforts to consult with and

cooperate with [*] with respect to the filing, prosecution and maintenance of the [*] Patents, including providing [*] with drafts of proposed filings to allow [*] a reasonable opportunity for review and comment before such filings are due. [*], or [*], shall provide to [*] copies of any papers relating to the filing, prosecution and maintenance of the [*] Patents promptly upon their being filed and received.

(2) Decisions. Subsequent to the Original Effective Date (as defined in the TGR5 License Agreement), in the event of a dispute between the Parties with regard to the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of any [*] Patent, the matter shall be promptly referred to the [*] of EXEL and [*] for BMS. If these two (2) individuals are unable to resolve the dispute promptly, then the matter shall be promptly elevated to the [*] of EXEL and the [*] of BMS. If these two (2) individuals are unable to resolve the dispute promptly, then, subject to **Sections 7.7(a)(i)(3)**, **7.7(a)(i)(4), 7.7(a)(ii)**, [*], and [*], [*] shall have the final decision, except if such decision: (A) conflicts with the terms of the Agreement; (B) would result in [*] described in [*] or a [*] of the [*]; or (C) materially impacts [*] prosecution of Patents that [*] a [*], in which case of **subsection 7.7(a)(i)(2)(A) - (C)**, [*] shall have the final decision.

(3) Limitation on Subsection 7.7(a)(i)(2)(B). If [*] reasonably believes that filing a new patent application covering a [*] (other than the [*] of a [*]) would result in potential claims [*] for [*], and if [*] disputes with [*] that such patent application should be filed, then such dispute shall be discussed as described in the first two (2) sentences of Section 7.7(a)(i)(2), and, if still unresolved, shall be arbitrated pursuant to **Section** [*], and [*] shall not have the right to exercise its final-decision making authority pursuant to **Subsection 7.7(a)(i)(2)(B)** unless the dispute is resolved in [*] favor.

(4) Limitation on Subsection 7.7(a)(i)(2)(C). [*] hereby covenants that it shall not, without the prior written consent of [*] (which shall not be unreasonably delayed or conditioned), during the term of this Agreement, [*] the decision-making authority granted to [*] pursuant to **Subsection 7.7(a)(i)(2)(C)** [*] that is [*] as of the Original Effective Date or [*]. Furthermore, if [*] the decision-making authority granted to [*] pursuant to **Subsection 7.7(a)(i)(2)(C) [*]** by [*], [*] or [*], and such [*] is [*] or [*] a [*] that is [*], then [*] and [*] shall agree, pursuant to **Section** [*], on [*] the decision-making authority granted to [*] pursuant to **Subsection 7.7(a)(i)(2)(C)**.

(ii) Abandonment. In no event shall [*] knowingly permit any of the [*] Patents to be abandoned in any country, or elect not to file a new patent application claiming priority to a patent application within the [*] Patents either before such patent application's issuance or within the time period required for the filing of an international (i.e., Patent Cooperation Treaty), regional (including European Patent Office) or national application, without [*] written consent (such consent not to be unreasonably withheld, delayed or conditioned) or [*] otherwise first being given an opportunity to assume full responsibility (at [*] expense) for the continued prosecution and maintenance of such [*] Patents or the filing of such new patent application. Accordingly, [*], or [*], shall provide [*] with notice of the allowance and expected issuance date of any patent within the [*] Patents, or any of the aforementioned filing deadlines, and [*] shall provide [*] with prompt notice as to whether [*] desires [*] to file such new patent application. In the event that [*] decides either: (A) not to continue the prosecution or maintenance of a patent application or patent within

the [*] Patents in any country; or (B) not to file such new patent application requested to be filed by [*], [*] shall provide [*] with notice of this decision at least [*] prior to any pending lapse or abandonment thereof, and [*] shall thereafter have the right to assume responsibility for the filing, prosecution and maintenance of such patent or patent application. In the event that [*] assumes such responsibility for such filing, prosecution and maintenance, [*] shall no longer have the responsibility for such filing, prosecution and maintenance of such patent applications and patents, and [*] shall cooperate as reasonably requested by [*] to facilitate control of such filing, prosecution and maintenance by [*]. In the case where [*] takes over the filing, prosecution or maintenance of any patent or patent application as set forth above, such patent or patent application shall [*] be [*] the [*], and [*] shall [*] such patent or patent application.

(iii) Filing, Prosecution and Maintenance of Sole Invention Patents Controlled by BMS. In accordance with this **Section 7.7(a)(iii)**, BMS shall be responsible for the filing, prosecution (including any interferences, reissues and reexaminations) and maintenance of all Sole Invention Patents Controlled by BMS. BMS shall provide to EXEL copies of any papers relating to the filing, prosecution and maintenance of the Sole Invention Patents Controlled by BMS promptly upon their being filed and received.

(iv) Patent Term Extension. EXEL and BMS shall each cooperate with each another and shall use commercially reasonable efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to patent rights covering the Products. If elections with respect to obtaining such patent term extensions are to be made, [*] shall have the right to make the election to seek patent term extension or supplemental protection.

(v) Exelixis Right to Separate Claims. To the extent that any Sole Invention Patent owned by EPC contains claims that cover compounds that are not Licensed Compounds (such compounds, **"Separable Compounds"**), EXEL shall have the right to separate any claims that cover such Separable Compounds (and not Licensed Compounds) and to file such claims in a separate application (e.g., a continuation, continuation-in-part, or divisional application). EXEL shall notify BMS in writing prior to separating such claims, and such separation shall be at EXEL's sole expense.

(b) Payment of Prosecution Costs. [*] shall bear the out-of-pocket expenses (including reasonable fees for any outside counsel, [*]) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of: (X) Patents covering [*]; and (Y) the [*] Patents other than those [*] Patents that are [*], *provided* that if any [*] or [*] is part of a patent application or patent that is [*] but [*] that are [*], then the Parties shall mutually agree upon an appropriate allocation of the expenses so that [*] does not bear any portion of the out-of-pocket expenses attributable to [*].

(c) Payment of Expenses for Joint Invention Patents. EXEL and BMS shall mutually agree on the percentage of expenses that each of EXEL and BMS shall bear with respect to Joint Invention Patents for which the cost of filing, prosecuting or maintaining such Joint Invention is not the responsibility of a Party under **Section 7.7(b)** hereof (which, in the absence of any other agreement between EXEL and BMS, shall be divided evenly).

(d) Non-payment of Expenses.

(i) If either EXEL or BMS elects not to pay its share of any expenses with respect to [*] Patent in a given country under any of **Section [*]**, such Party shall inform such 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 such other Party assumes the expenses associated with the [*] Patent, then the assuming Party (in the case of EXEL, EPC) shall thereby become the sole owner of such [*] Patent in such country and such other Party shall assign to the assuming Party its rights, title and interests in such [*] Patent in such country.

(ii) If either EPC or BMS is the assignee or owner of a Patent (other than [*]) that is licensed to such other Party under any of **Sections 7.1 or 7.2**, and such owning Party elects not to pay its share of expenses pursuant to **Section [*]** in a given country, such owning Party shall inform such 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 such other Party assumes the expenses associated with the Patent in such country, then the assuming Party shall thereby [*] such Patent and the owning Party shall [*] such Patent in such country.

(iii) If either EPC or BMS is the licensee of a Patent (other than [*]) under any of **Sections 7.1** or **7.2**, and such Party elects not to pay its share of expenses pursuant to **Section [*]** in a given country, such Party shall inform such other Party (in the case EPC is the licensee, EPC or EXEL shall inform BMS, and in the case BMS is the licensee, BMS shall inform EXEL) in writing not less than [*] before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable) (such Patent(s) in such countries, as identified in such notice, being a **"Cost-Terminated Patent Right"**), and shall no longer have any rights under such **Sections 7.1** or **7.2**, as applicable, with respect to the relevant Patent in such country, *provided* that all remaining rights and licenses under all other Patent(s) within such licensed Patents would remain in effect. It is also understood that such licensee shall be offered the opportunity to assume its share of the responsibility for the costs of filing, prosecution and maintenance of any Patent(s) claiming priority directly or indirectly from any such Cost-Terminated Patent Right, and that where such expenses are assumed by such licensee, it shall be afforded all the rights and licenses as provided under this Agreement for the licensed Patents (other than the Cost-Terminated Patent Right) with respect to such Patent(s) claiming priority directly or indirectly from any such Cost-Terminated Patent Right.

(e) Each of EXEL and BMS shall provide to such other Party, on [*] basis, a patent report that includes the serial number, docket number and status of each Patent for which such Party has the right to direct the filing, prosecution and maintenance and which [*] (in the case of [*] such [*] that are [*]) or [*]. EXEL and BMS through their patent counsel shall discuss as appropriate (but not more than [*]) ways in which to allocate such out-of-pocket expenses in an appropriate, cost-effective manner consistent with the purposes of this Agreement [*].

7.8 Enforcement of Patent Rights.

(a) Enforcement of Exelixis Sole Patents.

(i) Enforcement by [*]. In the event that management or in-house counsel for any Party becomes aware of a suspected infringement by a Third Party of a Patent claiming a Sole Invention owned by EPC that claims the composition of matter (including formulation), manufacture or use of one or more Products that is being Developed or Commercialized by BMS or its Affiliate or sublicensee using Diligent Efforts and which is exclusively licensed to BMS under **Section 7.1(c)** (for purposes of this **Section 7.8(a)(i)** only, an "**Exelixis Sole Patent**"), such Party shall notify the other Parties promptly, and following such notification, the Parties shall confer. As between EXEL and EPC, EXEL shall carry out the patent enforcement activities on behalf of EPC under this 7.8, and shall pay costs and expenses on behalf of EPC in connection therewith. Each Party of EXEL and BMS shall provide the same level of disclosure to the other Party's in-house counsel concerning suspected infringement of an Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a product directed against ROR, [*] shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and EPC shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions at [*] request. [*] 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 [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(ii) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 7.8(a)(i)** and so notifies [*], or where [*] ([*] such Exelixis Sole Patent) otherwise desires to bring an action or to defend any proceeding directly involving an Exelixis Sole Patent, then [*] may bring such action or defend such proceeding at its own expense, in [*] own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Exelixis Sole Patent that is a Patent [*] the [*] (or foreign equivalent(s) of such Patent or the [*]) by [*] (a **"[*] Patent"**), if [*] fails to consent to any such action or proceeding, the [*] for any [*] such Exelixis Sole Patent shall in no event [*] by any failure to enforce such Exelixis Sole Patent. **[*]** shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a [*]

Patent, may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(b) Enforcement of Joint Invention Patents.

(i) Joint Product Patents.

(1) Enforcement by [*]. In the event that management or in-house counsel for either EXEL or BMS becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter (including formulation), manufacture or use of one or more Products that is being developed or commercialized by BMS or its Affiliate or sublicensee using Diligent Efforts and which is exclusively licensed to BMS under **Section 7.1(c)** (a "**Joint Product Patent**"), such Party shall notify such other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to such other Party's in-house counsel concerning suspected infringement of a Joint Product Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. [*] shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. [*] shall reasonably assist [*] (at [*] expense) in such actions or proceedings if so requested, and [*] shall lend its name to such actions or proceedings if requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 7.8(b)(i)(1)** and so notifies [*], or for any other enforcement by [*] of a Joint Product Patent which is exclusively licensed to BMS under **Section 7.1(c)**, then [*] may bring such action or defend such proceeding at its own expense, in [*] own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Joint Product Patent that is a [*] Patent, if [*] fails to consent to any such action or proceeding, the [*] for any [*] such Joint Product Patent shall in no event [*] by any failure to enforce such Joint Product Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] or required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(ii) Other Joint Patents.

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

(2) Enforcement by [*]. If [*] elects not to bring any action for infringement or to defend any proceeding described in **Section 7.8(b)(ii)(1)** and so notifies [*], then [*] may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that [*] must confer with [*] with respect to any such action or proceeding and obtain the prior written consent of [*] to commence such action or proceeding, such consent not to be unreasonably withheld, delayed or conditioned; *provided further*, that with respect to any Other Joint Patent that is a [*] Patent, if [*] fails to consent to any such action or proceeding, the [*] for any [*] such Other Joint Patent shall in no event [*] by any failure to enforce such Other Joint Patent. [*] shall reasonably assist [*] (at [*] expense) in any action or proceeding being prosecuted or defended by [*], if so requested by [*] required by law, and [*] shall hold [*] harmless from any liability incurred by [*] arising out of any such proceedings or actions. [*] shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by [*] without the prior consent of [*] (such consent not to be unreasonably withheld, delayed or conditioned).

(c) General Provisions Relating to Enforcement of Patents.

(i) Withdrawal. If either EXEL or BMS brings such an action or defends such a proceeding under this **Section 7.8** and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify such other Party and the other Party (in the case of EXEL, on behalf of EPC) may substitute itself for the withdrawing Party under the terms of this **Section 7.8** (including such prior written consent as provided for under this **Section 7.8**) at its own expense; provided, however, that [*] right to substitute itself for [*] pursuant to this **Section 7.8(c)(i)** shall be limited, with respect to [*] Patents, to actions and proceedings that [*] initially had the first right to bring or defend pursuant to **Section [*]**.

(ii) Recoveries. In the event either Party exercises the rights conferred in this **Section 7.8** and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be[*].

(d) Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (such as those periods listed in the FDA's Orange Book (including any available pediatric extensions) or periods under national implementations of Article 9.1(a)(iii) of Directive 2001/EC/83, and all international equivalents), BMS shall use commercially reasonable efforts consistent with its obligations under applicable law (including any applicable consent order) to seek, maintain and enforce all such data exclusivity periods available for the Products. With respect to filings in the FDA Orange Book (and foreign equivalents) for issued patents for a Product, upon request by BMS (and at BMS' expense), Exelixis shall provide reasonable cooperation to BMS in filing and maintaining such Orange Book (and foreign equivalent) listings.

(e) No Action in Violation of Law. None of the Parties shall be required to take any action pursuant to this **Section 7.8** that such Party reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree applicable to such Party.

(f) Notification of Patent Certification. [*] shall notify and provide [*] with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of any [*] Patent [*] hereunder pursuant to a Paragraph IV Patent Certification by a Third Party filing an Abbreviated New Drug Application, an application under §505(b)(2) or other similar patent certification by a Third Party, and any foreign equivalent thereof. Such notification and copies shall be provided to [*] by [*] as soon as practicable and at least within [*] after [*] receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below:

[*]

7.9 Defense of Third Party Claims. If a claim is brought by a Third Party that any activity related to work performed by a Party under the Agreement infringes the intellectual property rights of such Third Party, each Party shall give prompt written notice to the other Parties of such claim, and following such notification, the Parties shall confer on how to respond.

8. COMPENSATION

8.1 Upfront Payment. BMS shall pay Exelixis an upfront payment of Five Million Dollars ($5,000,000) on the earlier to occur of the following: (a) [*] after the Original Effective Date; or (b) [*] after the Original Effective Date (as defined in the TGR5 License Agreement). Such payment shall be noncreditable and nonrefundable.

8.2 Milestone Payments to EPC.

(a) Development and Regulatory Milestones.

(i) BMS shall make the milestone payments set forth below to EPC within [*] after the first achievement of each indicated event by BMS or any of its Affiliates or sublicensees and, subject to **Section 8.2(a)(iii)**, with respect to each of the events described in [*] below, after the first achievement of each such event with respect to any Licensed Compound. For clarity, with respect to milestones that are triggered by the [*], such [*] must be [*] that is [*] and [*] the [*] or [*] of the [*]. All such milestone payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable.

Event	Milestone Payment
(1) [*]	$[*]
(2) [*]	$[*]
(3) [*]	$[*]
(4) [*]	$[*]
(5) [*]	$[*]
(6) [*]	$[*]
(7) [*]	$[*]
(8) [*]	$[*]
(9) [*]	$[*]
(10) [*]	$[*]
(11) [*]	$[*]
(12) [*]	$[*]
(13) [*]	$[*]
(14) [*]	$[*]

(ii) Milestone Payment Restrictions. Each milestone payment set forth in **Section 8.2(a)(i)** shall be paid [*] with respect to [*], [*] the [*] or [*] the [*] in [*] for [*], or the [*] or [*] for [*].

(iii) Milestone Payments for [*]. If BMS is diligently developing and paying milestones to EPC under **Section 8.2(a)(i)** [*], the payments [*] made to EPC under **Sections 8.2(a)(i)** for [*] shall be [*] such [*] the [*] in [*], in which case BMS shall pay EPC the [*] the [*] in [*] within [*] of the [*] such [*]; provided, however, that if this Agreement terminates before such [*], then BMS shall [*] pay EPC the [*]. If [*] the [*] or [*], then BMS shall only pay milestones [*] for the events that [*] the [*] such [*]; however, if a [*], then BMS shall pay the milestones [*] a [*] have been paid [*]. For clarity, the Parties agree that [*] shall [*], [*], or [*] of the [*] the [*].

(b) Commercial Milestones. BMS shall make the milestone payments set forth below to EPC after first achievement of each indicated event by BMS or any of its Affiliates or sublicensees with respect to each Product. Each milestone payment shall be made by BMS [*], [*] due and payable [*] after the end of the [*] in which such milestone event is met. BMS shall pay [*] to [*] if, at the time [*], the [*] the payment obligation (the **"[*]"**) was [*] for the [*]. Otherwise, the [*] shall be [*], provided that [*]. BMS shall pay [*] to EPC [*] if, at the time [*], the [*] for the [*]. Otherwise, the [*] shall be [*], provided that [*]. All such milestone payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, and shall be paid only once with respect to each Product, regardless of [*] or [*] for that Product, or [*] or [*] for that Product.

Event	Milestone Payment
[*]	$[*]
[*]	$[*]
[*]	$[*]

8.3 Royalty Payments to EPC for Net Sales of Products. For each Product, BMS shall pay to EPC royalties on Net Sales of such Product by BMS (or its Affiliates or sublicensees) in the Territory at a royalty rate determined by aggregate Net Sales in the Territory of such Product in a calendar year as follows:

Calendar year Net Sales of Products	Royalty Rate for Products Comprising an Exelixis ROR Compound	Royalty Rate for Products Not Comprising an Exelixis ROR Compound
First $[*]	[*]%	[*]%
Portion above $[*] and up to and including $[*]	[*]%	[*]%
Portion above $[*]	[*]%	[*]%

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

For clarity, Net Sales shall be [*]. For the purpose of this Section 8.3, all Products [*] shall be [*] and the Net Sales of such Products shall be [*] the [*], regardless of whether [*] or [*], or [*] or [*]. All royalty payments made by BMS to EPC hereunder shall be noncreditable and nonrefundable, [*] royalties to EPC, in which case such [*] shall be [*] (or, in the event that [*], such [*] shall be [*]).

8.4 Third Party Royalties

(a) [*] all Third Party royalties owed with respect to a Product in the Territory on intellectual property that is intellectual property that: (A) [*] from a Third Party prior to the Original Effective Date and [*]; and (B) [*]. Subject to **Section 8.4(b)**, [*] Third Party royalties owed on intellectual property in connection with the development and commercialization of a Product in the Territory; *provided* that each Party shall bear all Third Party royalties arising from any infringing activities by such Party prior to the Original Effective Date.

(b) BMS may deduct from the royalties it would otherwise owe to EPC pursuant to **Section 8.3** for a particular Product, an amount equal to [*] of all royalties payable to a Third Party in consideration for rights necessary or reasonably useful for the manufacture, use or sale of such Product, up to a maximum deduction of [*] of the royalties due EPC for such Product.

8.5 [*]. During the applicable Royalty Term for a particular Product, if the Patents claiming the composition of matter of such Product have expired, and if any [*]: (a) [*] in any given country in any year; and (b) such [*] in such country for such year are, [*]:

(i) [*], but [*] of the [*] in such country, then [*]; or

(ii) [*] of the [*] in such country, then [*].

8.6 Limitation on Deductions. Notwithstanding anything to the contrary in this Agreement, the operation of **Sections 8.4** and **8.5** for a given Product, whether singularly or in combination with each other, shall not [*].

8.7 Quarterly Payments and Reports. All royalties due under **Section 8.3** shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant quarter for which royalties are due. BMS shall provide to EPC within[*] after the end of each quarter a report that summarizes the Net Sales of a Product during such quarter, *provided* that to the extent additional information is reasonably required by EPC and/or EXEL to comply with its obligations to any of its licensors, the Parties shall work together in good faith to timely compile and produce such additional information. Such reports shall also include detailed information regarding the calculation of royalties due pursuant to **Section 8.3**, including allowable deductions in the calculation of Net Sales of each Product on which royalties are paid, and, to the extent **Section 8.5** is applicable, the calculation of [*] and [*] of [*].

8.8 Term of Royalties. EPC's right to receive royalties under **Section 8.3** shall expire on a country-by-country and Product-by-Product basis upon the later of: (a) [*]; or (b) [*] (the "**Royalty Term**"). Upon the expiration of the Royalty Term with respect to a Product in a country,

BMS shall have a fully-paid-up perpetual license under **Section 7.1(c)** for the making, using, selling, offering for sale and importing of such Product in such country.

8.9 Payment Method. All payments due under this Agreement to EPC shall be made by bank wire transfer in immediately available funds to an account designated by EPC. All payments hereunder shall be made in Dollars.

8.10 Taxes. EPC shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, BMS shall: (a) deduct those taxes from the remittable payment; (b) pay the taxes to the proper taxing authority; and (c) send evidence of the obligation together with proof of tax payment to EXEL within [*] following that tax payment. The Parties shall discuss appropriate mechanisms for minimizing such taxes to the extent possible in compliance with applicable law.

8.11 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 EPC in Dollars based on the Dollar reported sales for the quarter (translated for such country per Statement of Financial Standards No. 52), unless otherwise mutually agreed.

8.12 Sublicenses. In the event BMS grants any permitted licenses or sublicenses to Third Parties to sell Products that are subject to royalty payments under **Section 8.3**, BMS shall have the responsibility to account for and report sales of any Product by a licensee or a sublicensee on the same basis as if such sales were Net Sales by BMS. BMS shall pay to EPC (or cause the licensee or sublicensee to pay to EPC, with BMS remaining responsible for any failure of the licensee or sublicensee to pay amounts when due under this Agreement): (a) royalties on such sales as if such sales of the licensee or sublicensee were Net Sales of BMS or any of its Affiliates; and (b) milestones payments pursuant to **Section 8.2** based on the achievement by such licensee or sublicensee of any milestone event contemplated in such Sections as if such milestone event had been achieved by BMS or any of its Affiliates hereunder. Any sales by BMS' Affiliates and sublicensees of BMS or such sublicensee's Affiliates, in each case to Third Parties, shall be aggregated with sales by BMS for the purpose of calculating the aggregate Net Sales in **Sections 8.2(b)** and **8.3**.

8.13 Foreign Exchange. Conversion of sales recorded in local currencies to Dollars shall be performed in a manner consistent with BMS' normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a widely accepted source of published exchange rates.

8.14 Records. BMS shall keep (and shall ensure that its Affiliates and sublicensees shall keep) such records as are required to determine, in a manner consistent with GAAP and this Agreement, the sums due under this Agreement, including Net Sales. All such books, records and accounts shall be retained by BMS until the later of (a) [*] after the end of the period to which such books, records and accounts pertain and (b) the [*] (or any extensions thereof), or for such longer period as may be required by applicable law. BMS shall require its sublicensees to provide to it a report detailing the foregoing expenses and calculations incurred or made by such sublicensee, which report shall be made available to Exelixis in connection with any audit conducted by Exelixis pursuant to **Section 8.15**.

8.15 Audits. Exelixis shall have the right to have an independent certified public accountant, reasonably acceptable to BMS, to have access during normal business hours, and upon reasonable prior written notice, to examine only those records of BMS (and its Affiliates and sublicensees) as may be reasonably necessary to determine, with respect to any calendar year ending not more than [*] prior to Exelixis' request, the correctness or completeness of any report or payment made under this Agreement. The foregoing right of review may be exercised [*]. Results of any such examination shall be: (a) limited to information relating to the Products; (b) made available to both Parties; and (c) subject to **Article 10.** Exelixis shall bear the full cost of the performance of any such audit, unless such audit discloses a variance to the detriment of Exelixis of more than [*] from the amount of the original report, royalty or payment calculation, in which case BMS shall bear the full cost of the performance of such audit. The results of such audit shall be [*].

8.16 Interest. Any payments or portions thereof due hereunder that are not paid on the date such payments are due under this Agreement shall bear interest at a rate equal to the lesser of: (a) [*] Rate as published by Citibank, N.A., New York, New York, or any successor thereto, at 12:01 a.m. on the first day of each quarter in which such payments are overdue; or (b) the maximum rate permitted by law, in each case calculated on the number of days such payment is delinquent, compounded monthly.

8.17 Non-Monetary Consideration. In the event that BMS or its Affiliate or sublicensee receives any non-monetary consideration in connection with the sale of a Product, BMS' payment obligations under this **Article 8** shall be based on the fair market value of such other consideration. In such case, BMS shall disclose the terms of such arrangement to EPC and EXEL and the Parties shall endeavor in good faith to agree on such fair market value.

8.18 Payments to or Reports by Affiliates. Any payment required under any provision of this Agreement to be made to either BMS or EPC or any report required to be made by any Party shall be made to or by an Affiliate of that Party if designated in writing by that Party as the appropriate recipient or reporting entity.

9. EXCLUSIVITY

9.1 Licensed Compounds. This Agreement will be exclusive with respect to the Development, Manufacture, and Commercialization of [*] that are intended to [*] as described below [*].

(a) Prior to Commercialization. Subject to **Sections 9.2, 9.3** and **9.4**, [*], [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Agreement any programs: (i) that [*] that [*]; or (ii) where [*].

(b) Subsequent to Commercialization. Subject to **Sections 9.2, 9.3** and **9.4**, [*], [*] (directly or indirectly, and either with or without a *bona fide* collaborator) outside the scope of this Agreement any programs to [*] that [*], and any [*] subject to the following terms and conditions:

(i) Commercial Launch of [*]. [*], any product [*]: (A) that is [*] and [*]; or (B) where the [*] that [*] (any such product, a "[*]"), for a [*] of a [*].

(ii) [*] of a [*]. In the event of any [*] of a [*] that is permitted under Section [*], the Party [*] shall [*] a [*]: [*] of any [*] for a [*] subsequent to [*] of a [*] and [*] the [*] the [*] with respect to such [*] or [*] of this Agreement (in either case, [*]).

9.2 [*]. Notwithstanding anything to the contrary set forth in this **Article 9**, if either BMS or EXEL is engaged in [*] a program that is [*] that is [*], and [*] such program [*], such Party shall [*] with such [*] in order to [*] so the [*] the [*] for [*].

9.3 Not Applicable to [*] or [*]. The restrictions and obligations in **Section 9.1** shall not apply with respect to either BMS or EXEL for [*] that are [*] by such Party [*] (either with or without a *bona fide* collaborator) or for any [*].

9.4 [*] Right. [*] may [*] with a [*] that [*] a [*] solely with respect to the [*] of [*] and/or a [*] that [*]: (a) any [*] product that is [*] a [*]; and (b) such [*] a [*], on the condition that [*] to [*] of [*] with respect to [*] as set forth herein (assuming such [*] and/or a [*]).

10. CONFIDENTIALITY

10.1 Nondisclosure of Confidential Information. For the purpose of this Article 10, unless otherwise set forth herein, EXEL and EPC shall be deemed collectively as one (1) "Party" and shall be referred to as Exelixis. All Information or Materials disclosed by one Party to the other Party pursuant to this Agreement, and, subject to **Section 10.6**, Information that is generated pursuant to this Agreement with respect to Licensed Compounds or Products (for so long as such Licensed Compound or Product is not removed from the Agreement as a result of a Product specific termination pursuant to **Section 11.3**), shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that, during term of this Agreement and for a period of [*] thereafter, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party (such consent not to be unreasonably withheld, delayed or conditioned), except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (b) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement (it being understood that this **Section 10.1** shall not create or imply any rights or licenses not expressly granted under **Article 4, 7** or **11** hereof).

10.2 Exceptions. The obligations in **Section 10.1** shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(a) Is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

(b) Was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party; or

(c) Is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without obligation to keep it confidential; or

(d) Is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement; or

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of the disclosing Party's Confidential Information.

10.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances; *provided* that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products, in each case pursuant to activities under this Agreement;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental laws and regulations; and

(e) Disclosure, in connection with the performance of this Agreement, or exercise of its rights hereunder, to Affiliates, potential collaborators, partners, and actual and potential licensees (including potential co-marketing and co-promotion contractors, research contractors and manufacturing contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 10.**

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to individuals or entities covered by **Section 10.3(e)** above, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 10.** In addition, a copy of this Agreement may be filed by either Party with the Securities and Exchange Commission in connection with any public offering of such Party's securities, in connection with such Party's on-going periodic reporting requirements under the federal securities laws, or as otherwise necessary under applicable law or regulations. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic, competitively sensitive, and trade secret information.

10.4 Prior Confidentiality Agreement. All Information exchanged between the Parties under the Confidential Disclosure Agreement between EXEL and BMS executed as of [*], and amended as of [*] and [*] (such confidential disclosure agreement, as amended, the "**Prior CDA**")

that relates to ROR, ROR Antagonists, [*] and [*] ROR Antagonists, Licensed Compounds or Products shall be deemed Confidential Information and shall, commencing upon the Original Effective Date, be subject to the terms of this **Article 10** rather than the Prior CDA. The Prior CDA shall otherwise remain in full force and effect, including with respect to each Party's rights with respect to breaches thereof, if any, that occurred prior to the Original Effective Date with respect to Information described in the first sentence of this **Section 10.4**.

10.5 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as **Exhibit 10.5**. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; *provided, however*, that any disclosure which is required by law, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded, as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

10.6 Publications. Subject to **Section 10.3**, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which contains Confidential Information of the other Party and would or may constitute an oral, written or electronic public disclosure if made (including the full content of proposed abstracts, manuscripts or presentations) which relate to any Inventions, 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; *provided, however*, that BMS may publish results of clinical studies relating to Licensed Compounds without the prior review or approval of Exelixis. 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 Alliance Managers (or the Parties), as appropriate, shall review such requests and recommend subsequent action. Subject to **Section 10.3,** neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to **Section 10.1**. Nothing contained in this **Section 10.6** shall prohibit the inclusion of Confidential Information of the non-filing Party necessary for a patent application, *provided* the non-filing Party is given a reasonable opportunity to review the extent and necessity for its Confidential Information to be included prior to submission of such patent application related to the Agreement. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the Alliance Managers (or the Parties), as appropriate.

11. TERM AND TERMINATION

11.1 Term. For the purpose of this Article 11, unless otherwise set forth herein, EPC and EXEL shall be deemed collectively as one (1) "Party" and shall be referred to as Exelixis. This Agreement shall become effective on the Effective Date and shall remain in effect, subject to earlier termination in accordance with **Sections 11.2 or 11.3** or by mutual written agreement, until the expiration of all payment obligations under **Article 8**. The period of time between the Original

Effective Date until the expiration of this Agreement shall be deemed the **Term**, provided that, for the period of time between the Original a Effective Date and the Effective Date, the terms and conditions of the Collaboration Agreement shall apply.

11.2 BMS' Right to Terminate. BMS shall have the right to terminate this Agreement, at any time, [*]: (a) [*] prior written notice to each of EXEL and EPC, in the event that such termination is [*] of the [*]; or (b) [*] prior written notice to each of EXEL and EPC, in the event that such termination is [*] of the [*].

11.3 Termination for Material Breach or Patent Challenge

(a) Notice. If either Party believes that the other is in material breach of this Agreement (including any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in **Article 8**, the allegedly breaching Party shall have [*] to cure such breach. For any breach arising from a failure to make a payment set forth in **Article 8**, the allegedly breaching Party shall have [*] to cure such breach.

(b) Cure Period. Subject to **Section 11.3(c)**, if the Party receiving notice of breach fails to cure such breach within the [*] period or [*] period (as applicable), or the Party providing the notice reasonably determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon [*] advance written notice, *provided*, that if the breach [*] or [*], the non-breaching Party may [*] the [*] with respect to [*].

(c) [*] Material Breach. If a Party gives notice of termination under **Section 11.3(a)** and the other Party [*], or if a Party determines under **Section 11.3(b)** that the [*] or the [*] is [*] and such [*] such [*], then the [*]: (i) [*]; or (ii) [*] or the [*], shall in any case [*]. If [*] of such [*] it is [*] the [*], then such termination shall [*] if the breaching Party fails [*] to cure such breach in accordance with the [*] within the time period set forth in **Section 11.3(a)** for the applicable breach [*]. If [*] of such [*] it is [*] the [*], then [*] and [*].

(d) Termination for Patent Challenge. Exelixis may terminate this Agreement with respect to a given Product in a given country if BMS or its Affiliates or sublicensees, directly or indirectly, individually or in association with any other person or entity, challenge the validity, enforceability or scope of any Exelixis Licensed Patents that relate to such Product in such country; *provided* that, if BMS, due to a Change of Control transaction, acquires control of a company that is challenging, directly or indirectly, individually or in association with another person or entity, the validity, enforceability or scope of any Exelixis Licensed Patents, BMS shall have [*] from the date of such acquisition to terminate such challenge to such Exelixis Licensed Patents before Exelixis' right to terminate under this **Section 11.3(d)** becomes effective. For clarity, any dispute as to whether a given Patent is within the scope of Exelixis Licensed Patents, such matter shall be subject to dispute resolution as set forth in **Section 14.3**.

11.4 Survival; Effect of Termination.

(a) In the event of expiration or termination of this Agreement, the following provisions of this Agreement shall survive: **Articles [*]**; and **Sections [*]** (with respect to [*] (and [*] for such purposes)); the last sentence of Section [*] with respect to [*] in the event of expiration of this Agreement pursuant to **Section [*]** and with respect to [*] in the event of termination of this Agreement [*], **[*]**.

(b) Notwithstanding anything to the contrary in this Agreement, in the event of termination of this Agreement pursuant to **Section [*]**, [*] under this Agreement [*] of the [*] shall [*]. 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).

(c) In any event, expiration or termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such expiration or 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.

11.5 Licenses and Payments on Expiration or Termination.

(a) Research, Development and Commercialization of Reverted Compounds by Exelixis.

(i) Upon termination of this Agreement (other than for Exelixis' uncured material breach pursuant to **Section 11.3**), subject to **Section 11.5(b)**, BMS hereby grants EPC a worldwide, royalty-bearing (solely to the extent provided in the Reverted Compounds License Agreement) license (with the right to sublicense) to clinically develop, make, have made, use, import, sell, offer to sell and have sold products incorporating any Reverted Compounds that are described in **Section 1.55(a)**, under any Information and Patents Controlled by BMS that (A) cover one (1) or more of such Reverted Compounds, and/or any composition containing any of the foregoing, or the manufacture or use thereof or (B) are [*] to clinically develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any such Reverted Compound. The license described in this **Section 11.5(a)(i)** shall be [*] for [*] and [*] for [*].

(ii) Upon expiration of this Agreement pursuant to **Section 11.1** or termination of this Agreement, subject to **Section 11.5(b)** and **Section 11.6**, BMS hereby grants EPC a worldwide, royalty-free license (with the right to sublicense) to clinically develop, make, have made, use, import, sell, offer to sell and have sold products incorporating any Reverted Compounds that are described in **Section 1.55(b)**, under any Information and Patents Controlled by BMS that (A) cover one (1) or more of such Reverted Compounds, and/or any composition containing any of the foregoing, or the manufacture or use thereof or (B) are [*] to clinically develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any such Reverted Compound. The license described in this **Section 11.5(a)(ii)** shall be [*] for [*] and [*] for [*].

(iii) Upon termination of this Agreement, subject to Section 11.5(b) and Section 11.6, BMS hereby grants EPC a worldwide, royalty-free license (without the right to sublicense except to Third Party contract research providers and manufacturers) to research, identify, derivatize, pre-clinically develop, make, have made and use Licensed Compounds for research purposes, under any BMS Licensed Know-How and BMS Licensed Patents covering one (1) or more Licensed Compounds, and/or any composition containing any of the foregoing, or the manufacture or use thereof. The license described in this Section 11.5(a)(iii) shall be: (A) [*] with respect to [*]; (B) [*] for [*]; and (C) [*] for [*]. Notwithstanding anything to the contrary in this Agreement, the foregoing license grant shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by BMS.

(iv) Upon termination of this Agreement, subject to Section 11.5(b) and Section 11.6, BMS hereby grants EPC a [*], worldwide, royalty-free license (without the right to sublicense except to Third Party contract research providers and manufacturers) to research, identify, derivatize, pre-clinically develop, make, have made and use Licensed Compounds for research purposes, under any Information or Patents Controlled by BMS that are [*] for the research, identification, derivatization, pre-clinical development, making, having made and use of Licensed Compounds in a manner consistent with the activities performed by (A) the Parties under the Research Plan or (B) BMS pursuant to the BMS Independent Program. Notwithstanding anything to the contrary in this Agreement, the foregoing license grant shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by BMS.

(v) Upon termination of this Agreement, BMS shall transfer via assignment, license or sublicense to EPC: (A) all Information reasonably necessary for the development and commercialization of Reverted Compounds; (B) [*] in BMS' name; (C) [*] to the extent that [*]; (D) [*] Controlled by BMS; and (E) supplies of Product (including any intermediates, retained samples and reference standards) that in each case ((A) through (E)) are existing and in BMS' Control and that [*] relate to such Reverted Compounds. Any such transfer(s) shall be [*] of [*]. BMS and EXEL shall promptly meet, over a [*] period, to negotiate in good faith the commercially reasonable terms of a license agreement to such Reverted Compounds (the "Reverted Compounds License Agreement"), including: (1) the licenses described in Sections 11.5(a)(i) – (iv); (2) [*] under Section 11.5(a)(i), and [*] of other Reverted Compounds; (3) a provision requiring BMS to use commercially reasonable efforts to maintain ([*]) and not to breach any agreements with Third Parties that provide a grant from such Third Party to BMS of rights that are Controlled by BMS and that are licensed to EPC pursuant to the Reverted Compounds License Agreement; and (4) other customary terms and provisions, including terms and provisions relating to diligence, audit rights, and intellectual property maintenance and enforcement, in each case substantially similar to the terms of this Agreement.

(b) BMS Internal Compound Research License. Notwithstanding the licenses granted to EPC pursuant to **Section 11(a)**, upon termination or expiration of this Agreement, BMS shall have a non-exclusive, worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers), under the Exelixis Licensed Patents and Exelixis Licensed Know-How, to research, identify, derivatize, pre-clinically develop, make, have made and use Licensed Compounds that are BMS ROR Compounds solely for research purposes.

Notwithstanding anything to the contrary in this Agreement, the foregoing non-exclusive license grant shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by EPC.

11.6 Exception for Termination for [*]. The licenses granted to [*] under **Sections [*]** shall be [*] with respect to any given Product where [*] termination of Development and/or Commercialization of such Product was due to [*]. For purposes of this **Section 11.6**, "[*]" means it is [*] or [*] or [*] that there is [*] for [*]: (i) [*], including [*]; or (ii) the [*] of [*] a Product [*] or [*], such as [*] or [*] a Product. Notwithstanding anything to the contrary, this **Section 11.6** shall not prevent [*] (or its sublicensees) from using its licenses in **Sections [*]** to [*] by [*] that was [*]. [*] shall provide [*] with all [*] for such [*] but shall not [*] to [*] any [*] relating to such [*].

11.7 Interim Supply. In the event of any termination pursuant to **Section 11.2**, or **Section 11.3** (where BMS is the breaching Party), in each case [*], at the written request of EPC (or its sublicensee), BMS shall supply, or cause to be supplied, to EPC or such sublicensee sufficient quantities of Product to satisfy EPC (or its sublicensee's)requirements for Product for a period of up to [*] following the effective date of termination, as EPC or its sublicensee may require until EPC or its sublicensee can itself assume or transition to a Third Party such manufacturing responsibilities; *provided*, *however* that EPC or its sublicensee shall use Diligent Efforts to affect such assumption (or transition) as promptly as practicable. Such supply shall be [*] such Product(s) with respect to development supply, and shall be [*] such Product(s) with respect to commercial supply. Any such supply will be made pursuant to a supply agreement between the Parties with typical provisions relating to quality, forecasting and ordering to forecast, force majeure and product liability and indemnity. In the event that BMS has one or more agreements with Third Party manufacturers with respect to the manufacture of a Product, at EPC (or its sublicensee's) request, BMS shall use commercially reasonable efforts to transfer its rights and obligations under such agreement(s) to EPC upon any such termination.

12. REPRESENTATIONS AND WARRANTIES AND COVENANTS

12.1 Mutual Authority. EXEL, EPC and BMS each represents and warrants to the other Parties as of the Original Effective Date that: (a) it has the authority and right to enter into and perform this Agreement, (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (c) its execution, delivery and performance of this Agreement shall not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

12.2 Rights in Technology.

(a) During the term of this Agreement, each Party shall use commercially reasonable efforts to maintain (but without an obligation to renew) and not to breach any agreements with Third Parties that provide a grant of rights from such Third Party to a Party that are

Controlled by such Party and are licensed or become subject to a license from such Party to the other Party under **Article 7.** Each Party agrees to provide promptly the other Parties with notice of any such alleged breach or obligation to renew. As of the Original Effective Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

(b) Each of EPC and BMS represents and warrants that it: (i) has the ability to grant the licenses contained in or required by this Agreement; and (ii) is not currently subject to any agreement with any Third Party or to any outstanding order, judgment or decree of any court or administrative agency that restricts it in any way from granting to another Party such licenses or the right to exercise its rights hereunder.

(c) Each of EPC and BMS represents and warrants that: (i) it has not granted, and covenants that it shall not grant after the Original Effective Date and during the term of this Agreement, any right, license or interest in or to, or an option to acquire any of the foregoing with respect to, the intellectual property rights licensed to another Party hereunder (including the Exelixis Licensed Patents and the BMS Licensed Patents, as the case may be) that is in conflict with the rights (including the rights set forth in **Article 7**) or licenses granted or to be granted (including any conditional license rights) to another Party under this Agreement; and (ii) it has not granted any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to another Party hereunder that would prevent it from performing its obligations under this Agreement, or permitted such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to another Party hereunder.

12.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates; *provided*, *however*, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates under this Agreement with respect to Licensed Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Licensed Compounds shall apply equally to the activities of such Affiliate; and (b) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in **Article 7**) as if such intellectual property had been developed by the Party.

12.4 Third Party Rights. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Original Effective Date, its performance of work as contemplated by this Agreement shall not infringe the valid patent, trade secret or other intellectual property rights of any Third Party. Each of BMS and EXEL represents and warrants to the other Party that, to its Knowledge as of the Original Effective Date, it will not violate a contractual or fiduciary obligation owed to any Third Party (including misappropriation of trade secrets) by performing its work as contemplated by this Agreement.

12.5 Notice of Infringement or Misappropriation. Each of EXEL and IMS represents and warrants to the other Party that, as of the Original 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 that such Party intends, as of the Original Effective Date, to use in connection with the Agreement.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 Mutual Indemnification. For the purpose of this Article 13, EPC and EXEL shall be deemed collectively as one (1) "Party" and referred to as "Exelixis." Subject to **Section 13.3**, each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, employees and agents from and against any and all Third Party suits, claims, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and reasonable attorneys' fees ("**Losses**") to the extent such Losses result from any: (a) breach of warranty by the indemnifying Party contained in the Agreement; (b) breach of the Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of the indemnifying Party, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including misappropriation of trade secrets).

13.2 Indemnification.

(a) Indemnification by BMS. Subject to **Section 13.3**, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from [*] or [*] by BMS or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by Exelixis contained in the Agreement; (b) breach of the Agreement or applicable law by Exelixis; (c) negligence or willful misconduct by Exelixis, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by Exelixis to a Third Party (including misappropriation of trade secrets).

(b) Indemnification by Exelixis. Subject to **Section 13.3**, Exelixis hereby agrees to indemnify, defend and hold harmless BMS and its directors, employees and agents from and against any and all Losses to the extent such Losses result from [*] or [*] by Exelixis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: (a) breach of warranty by BMS contained in the Agreement; (b) breach of the Agreement or applicable law by BMS; (c) negligence or willful misconduct by BMS, its Affiliates or (sub)licensees, or their respective directors, employees and agents in the performance of the Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by BMS to a Third Party (including misappropriation of trade secrets).

13.3 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of **Sections 13.1** or **13.2**. A condition precedent to each Indemnitee's right to seek indemnification under such **Sections 13.1** or **13.2** is that such Indemnitee shall:

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

(b) if the indemnifying Party acknowledges that such Loss falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Loss (including the right to settle the claim solely for monetary consideration); *provided*, that the indemnifying Party shall seek the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(c) fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Loss.

Provided that an Indemnitee has complied with all of the conditions described in **subsections 13.3(a) – (c)**, as applicable, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Loss. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Loss using attorneys of the Indemnitee's choice and at the Indemnitee's expense. In no event may an Indemnitee settle or compromise any Loss for which the Indemnitee intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party (such consent not to be unreasonably withheld, delayed or conditioned), or the indemnification provided under such **Section 13.1** or **13.2** as to such Loss shall be null and void.

13.4 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO **SECTIONS 13.1 AND 13.2**, AND EXCEPT FOR BREACH OF **SECTION 10.1** HEREOF, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THE AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY (INCLUDING GROSS NEGLIGENCE OR WILLFUL BREACH WITH REEPCCT TO A PARTY'S REPRESENTATIONS AND WARRANTIES IN **ARTICLE 12**). FOR CLARITY, THE AMOUNT OF THE UPFRONT PAYMENTS DESCRIBED IN **SECTION 8.1** MAY SERVE AS A MEASURE OF A REMEDY IN THE EVENT OF A BREACH WITH REEPCCT TO EXELIXIS' REPRESENTATIONS AND WARRANTIES IN **ARTICLE 12.**

13.5 Agreement Disclaimer. EXCEPT AS PROVIDED IN **ARTICLE 12** ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES

WITH RESPECT TO ANY COMPOUNDS, MATERIALS OR INFORMATION (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 THE AGREEMENT. EXCEPT AS PROVIDED IN **ARTICLE 12** ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY COMPOUNDS, MATERIALS OR INFORMATION (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THE AGREEMENT.

14. MISCELLANEOUS

14.1 Dispute Resolution. For the purpose of Sections 14.1 through 14.3, EPC and EXEL shall be deemed collectively as one (1) "Party" and referred to as Exelixis. Unless otherwise set forth in this Agreement and excluding in particular any dispute described in **Section 14.3(a), Section 14.3(b), Section [*]** (which will be handled exclusively in accordance with **Section [*]**), **Section [*]** (which will be handled exclusively in accordance with **Section [*]**)and any dispute handled pursuant to **Sections [*],** in the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Party's respective Executive Officers. Any Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within [*] after such notice, such Executive Officers shall meet for attempted resolution by good faith negotiations. If such Executive Officers are unable to resolve such dispute within [*] of their first meeting for such negotiations, any Party may seek to have such dispute resolved in any U.S. federal or state court of competent jurisdiction and appropriate venue, *provided*, that if such suit includes a Third Party claimant or defendant, and jurisdiction and venue with respect to such Third Party appropriately resides outside the U.S., then in any other jurisdiction or venue permitted by applicable law.

14.2 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, without regard to conflicts of law rules.

14.3 Patents and Trademarks; Equitable Relief.

(a) General Patent and Trademark Disputes. Except as set forth in **Sections 14.3(c)** and **(d)**, any dispute, controversy or claim arising out of, relating to or in connection with: (i) the scope, validity, enforceability or infringement of any Patent rights covering the research, development, manufacture, use or sale of any Product; or (ii) any trademark rights related to any Product, shall in each case be submitted to a court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

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

(b) Equitable Relief. Any dispute, controversy or claim arising out of, relating to or in connection with the need to seek preliminary or injunctive measures or other equitable relief (e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in **Article 10**) need not be resolved through the procedure described in **Section 14.1** but may be immediately brought in a court of competent jurisdiction.

(c) Disputes Related to Subsection [*]. Any dispute that concerns whether [*] a [*] (other than [*] of a [*]) would [*] and that is not resolved by discussion pursuant to **Section [*]** shall be finally resolved through binding arbitration by JAMS (formerly, the Judicial Arbitration and Mediation Service) ("**JAMS**"), in accordance with its Streamlined Arbitration Rules and Procedures in effect at the time the dispute arises, and applying the substantive law specified in **Section 14.2**. Either Party may initiate arbitration under this **Section 14.3(c)** by written notice to the other Party of its intention to arbitrate, and such notice shall specify in reasonable detail the nature of the dispute. Promptly following receipt of such notice, the Parties shall meet and discuss in good faith and agree on an arbitrator to resolve the issue, which arbitrator shall be neutral and independent of both Parties, shall have significant experience and expertise in [*] pharmaceutical products, and shall have some experience in mediating or arbitrating issues relating to such [*]. If the Parties cannot agree on such arbitrator within [*] of request by a Party for arbitration, then such arbitrator shall be appointed by JAMS, which arbitrator must meet the foregoing criteria. For each arbitration: (i) each Party shall submit to the arbitrator its memorandum (the **"Support Memorandum"**) in support of its position in the dispute; and (ii) the arbitrator shall determine which Party's position is correct. If the arbitrator's determination is in [*] favor, then [*] would not [*] under **Section [*]** for such [*]; however, if the arbitrator's determination is in [*] favor, then [*] would [*] under **Section [*]** for such [*]. The decision of the arbitrator shall be final and judgment upon such decision may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision and order of enforcement. The arbitration proceedings shall be conducted at such location as shall be determined by the arbitrator. The Parties agree that they shall share equally the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each Party shall bear its own attorneys' fees and associated costs and expenses.

(d) Disputes Related to Subsection [*]. If [*] and the [*] that [*] pursuant to **Subsection [*]** do not agree upon [*] that reasonably [*] within [*] after the [*] such [*], then either party may, by written notification to the other party, submit the matter to binding "baseball" arbitration to determine the terms of such [*], as follows. Promptly following receipt of such notice, the parties shall meet and discuss in good faith and agree on an arbitrator to resolve the issue, which arbitrator shall be neutral and independent of both parties, shall have significant experience and expertise in [*] pharmaceutical products and in [*] as part of collaboration agreements, and shall have some experience in mediating or arbitrating issues relating to such [*]. If the parties cannot agree on such arbitrator within [*] of request by a party for arbitration, then such arbitrator shall be appointed by JAMS, which arbitrator must meet the foregoing criteria. Within [*] after an arbitrator is selected (or appointed, as the case may be), each party will deliver to both the arbitrator and the other party a detailed written proposal setting forth its proposed terms for the [*] containing the reasonable [*] (the **"Proposed Terms"** of the party) and a Support Memorandum, not exceeding [*] in length. The parties will also provide the arbitrator a copy of this Agreement, as may be amended at such time. Within [*] after receipt of the other party's Proposed Terms and Support Memorandum, each party may submit to the arbitrator (with a copy to

the other party) a response to the other party's Support Memorandum, such response not exceeding [*] in length. Neither party may have any other communications (either written or oral) with the arbitrator other than for the sole purpose of engaging the arbitrator or as expressly permitted in this **Section 14.3(d)**; provided that, the arbitrator may convene a hearing if the arbitrator so chooses to ask questions of the parties and hear oral argument and discussion regarding each party's Proposed Terms. Within [*] after the arbitrator's appointment, the arbitrator will select one of the two (2) Proposed Terms (without modification) provided by the parties that he or she believes is most consistent with the intention underlying and agreed principles set forth in this Agreement and most accurately reflects industry norms for a transaction of this type. The decision of the arbitrator shall be final, binding, and unappealable and the parties shall promptly [*] having the terms set forth in the Proposed Terms selected by the arbitrator. For clarity, the arbitrator must select as the only method to determine the [*] one of the two (2) sets of Proposed Terms, and may not combine elements of both Proposed Terms or take any other action. Except as expressly stated in this **Section 14.3(d),** such arbitration shall be conducted in accordance with JAMS' Streamlined Arbitration Rules and Procedures then in effect.

14.4 Entire Agreement; Amendments. This Agreement, the LXR Collaboration Agreement and the license agreement (for the discovery, development and commercialization of compounds that agonize the target known as TGR5) that is between Exelixis and BMS and that is dated as of the Original Effective Date and amended as of the Effective Date (the **"TGR5 License 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. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth in this Agreement, the LXR Collaboration Agreement and the TGR5 License Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. The Collaboration Agreement shall be effective from the Original Effective Date until the Effective Date and shall govern the Parties' respective rights and obligations during such period of time.

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

14.6 Bankruptcy.

(a) For the purpose of this 14.6, EPC and EXEL shall be deemed collectively as one (1) "Party" and referred to as Exelixis. All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("**Title 11**"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate

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

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held 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 14.6**, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of Products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this **Section 14.6** 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.

14.7 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the

other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, acts of terrorism, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

14.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Parties confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For EXEL:	Exelixis, Inc. 210 East Grand Aveue South San Francisco, CA 94080 Attention: EVP and General Counsel
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For EPC:	Exelixis Patent Company, LLC 210 East Grand Aveue South San Francisco, CA 94080 Attention: VP, Legal Services
With a copy to:	Cooley LLP 3175 Hanover Street Palo Alto, CA 94304 Attention: Marya A. Postner, Esq.
For BMS:	Bristol-Myers Squibb Company P.O. Box 4000 Route 206 and Province Line Road Princeton, NJ 08543-4000 Attention: Senior Vice President, Strategy, Alliances and Transactions Phone: 609-252-5333 Fax: 609-252-7212

With a copy to: Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Vice President and Senior Counsel, Corporate and Business Development
Phone: 609-252-5328
Fax: 609-252-4232

Furthermore, a copy of any notices required or given under **Article 7** of this Agreement shall also be addressed to the [*] of [*] at the address set forth in **Section 7.8(f)**.

14.9 Maintenance of Records Required by Law or Regulation. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Parties upon request.

14.10 Assignment. For the purpose of this 14.10, EPC and EXEL shall be deemed collectively as one (1) "Party". Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other (such consent not to be unreasonably withheld, delayed or conditioned), except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to all or substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction; *provided* that any such permitted successor or assignee of rights and/or obligations hereunder is obligated, by reason of operation of law or pursuant to a written agreement with the other Party, to assume performance of this Agreement or such rights and/or obligations; and *provided, further*, that if assigned to an Affiliate, the assigning Party shall remain jointly and severally responsible for the performance of this Agreement by such Affiliate. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this **Section 14.10** shall be null and void and of no legal effect.

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

14.12 Non-Solicitation of Employees. For the purpose of this 14.12, EPC and EXEL shall be deemed collectively as one (1) "Party". [*], each Party agrees that neither it nor any of its divisions, operating groups or Affiliates shall recruit, solicit or induce any employee of the other Party directly involved in the activities conducted pursuant to this Agreement to terminate his or her employment with such other Party and become employed by or consult for such Party, whether or not such employee is a full-time employee of such other Party, and whether or not such employment is pursuant to a written agreement or is at-will. For purposes of the foregoing, **"recruit"**, **"solicit"** or **"induce"** shall not be deemed to mean: (a) circumstances where an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (b) general solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

14.13 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

14.14 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

14.15 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

14.16 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" are used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

14.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, or electronically in PDF format, each of which shall be binding when sent.

Signature page follows.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers. Further, the Parties agree that the signature dates below reflect the actual date of signatures by the Parties and may not be the effective date of this Agreement.

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Graham R. Brazier
Title: Vice President, Business Development
Date: 4/20/11

EXELIXIS, INC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

EXELIXIS PATENT COMPANY, LLC.

By: /s/ Michael M. Morrissey
Title: President and CEO
Date: 4/13/11

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

Exhibit 4.2

Form of Transfer Addendum

This Transfer Addendum No. ____ (the "**Transfer Addendum**") to the license agreement between Bristol-Myers Squibb Company and Exelixis, Inc., effective as of _____, 2010 (the "**License Agreement**"), is made as of _____ **{Note: Please insert date} (**the **"Addendum Effective Date"),** by and between:

Transferring Party: **Exelixis, Inc.**

And

Receiving Party: **Bristol-Myers Squibb Company**

for the transfer of:

(1) Information:

{Note: Please identify any Information other than the Materials that would be transferred, e.g., assay protocols, or else add "N/A" if not applicable.}

(2) Materials:

(i) the following biological materials:

{Note: Please identify any cell-lines, reagents, genes, vectors and constructs that would be transferred, or else add "N/A" if not applicable.}

(ii) the following {Licensed Compounds} known as:

{Note: Please insert identifier of the applicable compounds, or else add "N/A" if not applicable.}

Terms and Special Terms

The Parties agree that the transfer of the above defined Information and Materials pursuant to this Transfer Addendum shall be covered and submitted to the terms and conditions of the License Agreement. Any special terms and conditions identified on Appendix A, attached hereto and incorporated herein, shall also apply to the transfer of the Materials under this Transfer Addendum.

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

IN WITNESS WHEREOF, this Transfer Addendum is entered into as of the Addendum Effective Date, and it is accepted and agreed to by the Parties' authorized representatives. The date that this Transfer Addendum is signed shall not be construed to imply that the document was made effective on that date.

Name: **{Note: insert name of AM}** For Exelixis	Name: **{Note: insert name of AM}** For BMS
Title: Alliance Manager	Title: Alliance Manager
Date:	Date:

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

Appendix A to Transfer Addendum
Special Terms

The following special terms and conditions apply to the transfer of the Materials under this Transfer Addendum.

{Note: Please identify any special terms and conditions, or else add "N/A" if not applicable.}

[*] = 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 10.5

Press Release

Contact:
Charles Butler
Vice President
Corporate Communications
& Investor Relations
Exelixis, Inc.
(650) 837-7277
cbutler@exelixis.com

DeDe Sheel
Associate Director,
Investor Relations
Exelixis, Inc.
(650) 837-8231
dsheel@exelixis.com

EXELIXIS LICENSES PROGRAMS TO BRISTOL-MYERS SQUIBB COMPANY

-Exelixis to receive initial payment of $60 million-

SOUTH SAN FRANCISCO, Calif., October XX, 2010 — Exelixis, Inc. (NASDAQ: EXEL) announced today that it has entered into two new collaboration agreements with Bristol-Myers Squibb Company (NYSE:BMY). Under the first agreement, Exelixis will grant to Bristol-Myers Squibb an exclusive license to its small-molecule TGR5 agonist program including backups. Under the second agreement, the companies will collaborate to discover, optimize, and characterize small-molecule ROR antagonists. The companies have also made minor amendments to their XL281 and liver X receptor (LXR) agreements. Finally, under the companies' cancer collaboration agreement Exelixis has opted to exercise its right to opt out of further co-development of XL139 and will receive an accelerated milestone payment.

Under the terms of the new agreements, Bristol-Myers Squibb will make a combined initial payment of $60 million to Exelixis. Exelixis will be eligible for potential development and approval milestone payments of up to $250 million on TGR5 and $255 million on the ROR antagonists. Exelixis will also be eligible for combined sales performance milestones, and royalties on net sales of products from each of the TGR5 and ROR programs. Bristol-Myers Squibb will receive an exclusive worldwide license to develop and commercialize small molecule TGR5 agonists and ROR antagonists. Under the TGR5 agreement, Bristol-Myers Squibb will have sole responsibility for research, development, manufacturing, and commercialization. Under the ROR agreement, Bristol-Myers Squibb and Exelixis will collaborate on ROR antagonist programs up to a pre-clinical transition point and then Bristol-Myers Squibb will have sole responsibility for the further research, development, manufacture, and commercialization.

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Exelixis is granting rights to the ROR program in exchange for Bristol-Myers Squibb waiving rights to receive a third Investigational New Drug (IND) candidate as agreed to under a collaboration signed in 2006 between the two companies in the area of oncology.

After Exelixis opts-out of further co-development of XL139, Bristol-Myers Squibb will receive an exclusive worldwide license to develop and commercialize, and will have sole responsibility for the further development, manufacture, and commercialization of the compound.

“We continue our strong relationship with Bristol-Myers Squibb and are excited for these collaborations to maximize the potential of these novel programs and bring benefits to patients with serious diseases,” said Michael M. Morrissey, Ph.D., president and chief executive officer of Exelixis. “These transactions leverage our discovery expertise with the development expertise of Bristol-Myers Squibb in inflammation and metabolic diseases, and provide important additional resources for us to continue our focus on our clinical stage development pipeline.”

TGR5 is a G-protein coupled bile acid receptor (GPCR) which is highly expressed in the gall bladder and intestine. Through TGR5, bile acids promote the secretion of glucogen-like peptide-1 (GLP-1), a hormone that affects multiple metabolic parameters including increased insulin secretion from the pancreas and lowering of blood glucose. Stimulating GLP-1 secretion by activation of TGR5 has the potential to be complementary to the use of dipeptidyl peptidase-4 (DPP-IV) inhibitors for the treatment of diabetes.

ROR is a member of the nuclear hormone receptor family that is expressed in multiple cell types including T-cells. ROR plays a prominent role in the development and activity of the TH17 subset of T-cells, which secrete IL-17 and are associated with a variety of inflammatory disorders. Small molecule antagonists of ROR inhibit production of these pro-inflammatory cytokines and have broad potential as novel anti-inflammatory compounds.

The TGR5 license agreement and the amendment to the 2007 cancer collaboration agreement are subject to antitrust clearance under the Hart-Scott-Rodino Antitrust Improvements Act and other customary regulatory approvals.

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company is leveraging its biological expertise and integrated research and development capabilities to generate a pipeline of development compounds with significant therapeutic and commercial potential for the treatment of cancer and potentially other serious diseases. Currently, Exelixis’ broad product pipeline includes investigational compounds in phase 3, phase 2, and phase 1 clinical development. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including Bristol-Myers Squibb Company, sanofi-aventis, GlaxoSmithKline, Genentech (a wholly owned member of the Roche Group), Boehringer Ingelheim, and Daiichi-Sankyo. For more information, please visit the company’s web site at http://www.exelixis.com.

{Insert Forward-Looking Statements}

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

Exhibit 31.1

CERTIFICATION

I, Michael M. Morrissey, Ph.D., Chief Executive Officer of Exelixis, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2011

/s/ Michael M. Morrissey

Michael M. Morrissey, Ph.D.
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Frank Karbe, Chief Financial Officer of Exelixis, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2011

/s/ Frank Karbe

Frank Karbe
Executive Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Michael M. Morrissey, Chief Executive Officer of Exelixis, Inc. (the "Company"), and Frank Karbe, Chief Financial Officer of the Company, each hereby certifies, to his knowledge, that:

1. The Company's Quarterly Report on Form 10-Q for the period ended July 1, 2011 (the "Periodic Report"), to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 4th day of August, 2011.

/s/ Michael M. Morrissey
Michael M. Morrissey, Ph.D.
President and Chief Executive Officer
(Principal Executive Officer)

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