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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 September 28, 2007

Or

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

For the transition period from __________ to__________

Commission File Number: 0-30235

Exelixis, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**04-3257395**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

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

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

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

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

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

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

As of October 26, 2007, 104,523,993 shares of the registrant's common stock, $0.001 par value, were outstanding.

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EXELIXIS, INC.

QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 28, 2007

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ITEM 1. FINANCIAL STATEMENTS

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

	September 30, 2007 (unaudited)	December 31, 2006 [1]
ASSETS		
Current assets:		
Cash and cash equivalents	$ 141,326	$ 123,369
Marketable securities	95,965	55,516
Investments held by Symphony Evolution, Inc.	38,731	55,087
Other receivables	8,256	22,197
Prepaid expenses and other current assets	9,755	6,082
Total current assets	294,033	262,251
Restricted cash and investments	8,078	9,635
Long-term marketable securities	13,516	19,573
Property and equipment, net	36,266	32,294
Goodwill	65,999	67,364
Other intangibles, net	328	2,605
Other assets	2,071	1,695
Total assets	$ 420,291	$ 395,417
LIABILITIES, NONCONTROLLING INTEREST AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 5,041	$ 3,699
Accrued clinical trial liabilities	19,554	12,209
Other accrued liabilities	11,499	7,018
Accrued compensation and benefits	14,610	11,456
Current portion of notes payable and bank obligations	12,527	13,579
Deferred revenue	57,260	63,476
Total current liabilities	120,491	111,437
Notes payable and bank obligations	14,841	23,074
Convertible loans	85,000	85,000
Other long-term liabilities	24,419	20,491
Deferred revenue	74,906	64,804
Total liabilities	319,657	304,806
Noncontrolling interest in Symphony Evolution, Inc.	15,838	38,071
Commitments		
Stockholders' equity:		
Common stock	104	96
Additional paid-in-capital	855,403	756,568
Accumulated other comprehensive income	1,017	1,145
Accumulated deficit	(771,728)	(705,269)
Total stockholders' equity	84,796	52,540
Total liabilities, noncontrolling interest and stockholders' equity	$ 420,291	$ 395,417

(1) The condensed consolidated balance sheet at December 31, 2006 has been derived from the audited consolidated financial statements at that date but does not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements.

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Revenues:				
Contract	$ 17,496	$ 13,347	$ 49,040	$ 42,609
License	9,329	10,193	35,180	26,290
Total revenues	26,825	23,540	84,220	68,899
Operating expenses:				
Research and development	58,643	46,048	165,159	133,344
General and administrative	10,757	8,843	33,151	27,834
Amortization of intangible assets	51	210	195	722
Total operating expenses	69,451	55,101	198,505	161,900
Loss from operations	(42,626)	(31,561)	(114,285)	(93,001)
Other income (expense):				
Interest income and other, net	2,908	1,889	9,786	5,800
Interest expense	(970)	(1,071)	(3,001)	(3,943)
Gain on sale of business	18,808	—	18,808	—
Total other income	20,746	818	25,593	1,857
Loss before noncontrolling interest in Symphony Evolution, Inc.	(21,880)	(30,743)	(88,692)	(91,144)
Loss attributed to noncontrolling interest in Symphony Evolution, Inc.	8,184	5,546	22,233	14,834
Net loss	$ (13,696)	$ (25,197)	$ (66,459)	$ (76,310)
Net loss per share, basic and diluted	$ (0.14)	$ (0.30)	$ (0.68)	$ (0.91)
Shares used in computing basic and diluted loss per share amounts	98,551	84,178	97,313	83,972

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

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

	Nine Months Ended September 30,	
	2007	**2006**
Cash flows from operating activities:		
Net loss	$ (66,459)	$ (76,310)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	7,988	12,566
Loss attributed to noncontrolling interest	(22,233)	(14,834)
Stock-based compensation expense	14,950	13,155
Amortization of intangible assets	195	722
Gain on sale of business	(18,808)	—
Loss from the sale of equipment	13	35
Other	546	552
Changes in assets and liabilities:		
Other receivables	18,441	3,584
Prepaid expenses and other current assets	(3,673)	(2,063)
Other assets	(602)	674
Accounts payable and other accrued liabilities	18,003	4,064
Other long-term liabilities	3,928	4,705
Deferred revenue	3,886	(2,313)
Net cash used in operating activities	(43,825)	(55,463)
Cash flows from investing activities:		
Purchases of investments held by Symphony Evolution, Inc.	(1,836)	(41,593)
Proceeds on sale of investments held by Symphony Evolution, Inc.	18,192	15,892
Purchases of property and equipment	(14,150)	(8,333)
Proceeds on sale of business	18,000	—
Changes in restricted cash and investments	1,557	1,462
Proceeds from maturities of marketable securities	141,187	91,508
Purchases of marketable securities	(173,091)	(36,599)
Net cash (used in) provided by investing activities	(10,141)	22,337
Cash flows from financing activities:		
Proceeds from sale of stock, net of offering costs	71,897	—
Proceeds from exercise of stock options and warrants	7,821	2,519
Proceeds from employee stock purchase plan	1,742	1,267
Payments on capital lease obligations	—	(98)
Proceeds from notes payable and bank obligations	—	2,424
Principal payments on notes payable and bank obligations	(9,285)	(38,683)
Proceeds from purchase of noncontrolling interest by preferred stockholders in Symphony Evolution, Inc.	—	40,000
Net cash provided by financing activities	72,175	7,429
Effect of foreign exchange rate changes on cash and cash equivalents	(252)	69
Net increase (decrease) in cash and cash equivalents	17,957	(25,628)
Cash and cash equivalents, at beginning of period	123,369	81,328
Cash and cash equivalents, at end of period	$ 141,326	$ 55,700
Supplemental cash flow disclosure:		
Warrants issued in conjunction with the Symphony Evolution, Inc. transaction	$ —	$ 3,984

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

EXELIXIS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2007
(unaudited)

NOTE 1. Organization and Summary of Significant Accounting Policies

Organization

Exelixis, Inc. (“Exelixis,” “we,” “our” or “us”) is committed to developing innovative therapies for cancer and other serious diseases. Through our drug discovery and development activities, we are building a portfolio of novel compounds that we believe have the potential to be high-quality, differentiated pharmaceutical products. Our most advanced pharmaceutical programs focus on drug discovery and development of small molecules in cancer.

We believe that our proprietary technologies and drug discovery engine are also valuable to other industries whose products can be enhanced by an understanding of DNA or proteins, including the agrochemical and agricultural industries. We also maintain operations in Germany, which are engaged in activities dedicated towards the provision of transgenic mouse generation services, tools and related licenses to the industrial and academic communities.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and pursuant to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (“SEC”). Accordingly, they do not include all of the information and footnotes required by U.S. generally accepted accounting principles 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. Operating results for the three- and nine-month periods ended September 30, 2007 are not necessarily indicative of the results that may be expected for the fiscal year ending December 28, 2007 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 29, 2006 included in our Annual Report on Form 10-K filed with the SEC on February 27, 2007.

In 2006, we adopted a 52-or 53-week fiscal year that ends on the last Friday in December, and the fiscal quarters end on the last Friday of the quarter. Fiscal year 2006, a 52-week year, ended on December 29, 2006, and fiscal year 2007, a 52-week year, will end on December 28, 2007. For convenience, references in these Condensed Consolidated Financial Statements and Notes as of and for the fiscal year ended December 29, 2006 are indicated on a calendar year basis, ending December 31, 2006, and as of and for the three-and nine-month periods ended September 28, 2007 are indicated as ending September 30, 2007.

Basis of Consolidation

The consolidated financial statements include the accounts of Exelixis and our wholly owned subsidiaries as well as one variable interest entity, Symphony Evolution, Inc., for which we are the primary beneficiary as defined by Financial Accounting Standards Board (“FASB”) Interpretation No. 46 (revised 2003), *Consolidation of Variable Interest Entities* (“FIN 46R”). All significant intercompany balances and transactions have been eliminated. We have determined that Artemis Pharmaceuticals, our German subsidiary, is an operating segment. Selected segment information is provided in Note 8 of the Notes to the Condensed Consolidated Financial Statements.

Net Loss Per Share

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

Recent Accounting Pronouncements

We adopted FASB Interpretation 48, Accounting for Uncertainty in Income Taxes (“FIN 48”), on January 1, 2007. As a result of the implementation of FIN 48, we did not recognize any adjustment for uncertain tax positions and therefore did not record any adjustment to the beginning balance of accumulated deficit on the balance sheet. As of the date of adoption, we had a $17.8 million reduction to deferred tax assets for unrecognized tax benefits. All deferred tax assets were fully offset by a valuation allowance as of the date of adoption.

In June 2007, the FASB ratified EITF 07-3, "Accounting for NonRefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities" ("EITF 07-3"). EITF 07-3 requires that nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities be deferred and capitalized and recognized as an expense as the goods are delivered or the related services are performed. EITF 07-3 is effective, for fiscal years on a prospective basis, beginning after December 15, 2007. We will adopt EITF 07-3 in the first quarter of our fiscal 2008. We do not believe the adoption of EITF 07-03 will have a material effect on our consolidated results of operations and financial condition.

NOTE 2. Comprehensive Loss

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Net loss	$(13,696)	$(25,197)	$(66,459)	$(76,310)
Increase in unrealized gains on available-for-sale securities	36	156	62	320
Reclassification for losses on marketable securities recognized in earnings	—	43	—	43
Decrease in foreign cumulative translation adjustment	(121)	(20)	(190)	(129)
Comprehensive loss	$(13,781)	$(25,018)	$(66,587)	$(76,076)

NOTE 3. Stock-Based Compensation

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Research and development expense	$ 3,021	$ 2,520	$ 8,461	$ 8,515
General and administrative expense	1,869	1,525	5,431	4,513
Total employee stock-based compensation expense	$ 4,890	$ 4,045	$13,892	$13,028

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 September 30,		ESPP Three Months Ended September 30,	
	2007	2006	2007	2006
Weighted average fair value of awards	$ 6.12	$ 5.67	$ 3.25	$ 2.99
Risk-free interest rate	4.71%	4.84%	5.01%	4.90%
Dividend yield	0%	0%	0%	0%
Volatility	59%	68%	52%	53%
Expected life	4.9 years	4.7 years	0.5 years	0.5 years

	Stock Options Nine Months Ended September 30,		ESPP Nine Months Ended September 30,	
	2007	2006	2007	2006
Weighted average fair value of awards	$ 5.26	$ 5.37	$ 3.02	$ 2.62
Risk-free interest rate	4.69%	4.38%	5.06%	4.53%
Dividend yield	0%	0%	0%	0%
Volatility	60%	64%	52%	54%
Expected life	4.9 years	4.7 years	0.5 years	0.5 years

A summary of all stock option activity for the nine months ended September 30, 2007 is presented below:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at December 31, 2006	17,210,626	$ 10.34		
Granted	4,146,305	9.60		
Exercised	(1,039,656)	7.62		
Cancelled	(1,009,852)	9.73		
Options outstanding at September 30, 2007	19,307,423	10.36	7.2 years	$28,655,910
Exercisable at September 30, 2007	10,044,218	11.32	5.8 years	$16,109,986

As of September 30, 2007, $43.5 million of total unrecognized compensation expense related to stock options was expected to be recognized over a weighted-average period of 2.7 years.

NOTE 4. Bristol-Myers Squibb

Oncology Collaboration

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

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

LXR Collaboration

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

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

In August 2007, Bristol-Myers Squibb exercised its existing option to extend the LXR collaboration research period for an additional one-year term, through January 2009. Under the terms of the extension, Bristol-Myers Squibb is obligated to provide us research and development funding of $7.5 million during the extension period. In addition, the LXR collaboration agreement was amended to grant Bristol-Myers Squibb an option to extend the research period for an additional one-year term, which would be through January 2010.

NOTE 5. Sale of Plant Trait Assets

Consistent with our overall strategy of focusing on the development of our clinical pipeline, on September 4, 2007 (the “Closing Date”), we and two of our wholly-owned subsidiaries, Exelixis Plant Sciences, Inc. (“EPS”) and Agrinomics, LLC, entered into an asset purchase and license agreement (the “APA”) with Agrigenetics, Inc. and Mycogen Corporation, which are wholly-owned subsidiaries of The Dow Chemical Company.

Under the terms of the APA, EPS and Agrinomics sold to Agrigenetics a major portion of their assets used for crop trait discovery, including a facility owned by EPS, and granted to Agrigenetics licenses to certain other related assets and intellectual property. As consideration for these assets and licenses, Agrigenetics paid EPS $18.0 million and is obligated to pay an additional $4.5 million upon the first anniversary of the Closing Date. Under the APA, EPS and Agrinomics have agreed to indemnify Agrigenetics, Mycogen and their affiliates up to a specified amount if they incur damages due to any infringement or alleged infringement of certain patents.

Concurrently with the execution of the APA, we and EPS also entered into a contract research agreement (the “CRA”) with Agrigenetics and Mycogen. Agrigenetics has agreed to pay up to a maximum of $24.7 million in research and development funding over the term of the CRA, of which $1.8 million was received as of September 30, 2007. The research funding will cover employee costs, facilities expenses and capital expenditures. After the Closing Date, the research and development funding to be received over the term of the CRA will be recognized as a reduction to expenses incurred by EPS in connection with its performance under the CRA. In order for EPS to perform its obligations under the CRA, EPS will lease at no cost the facility that Agrigenetics acquired under the APA. EPS is also entitled to receive additional payments of up to a maximum of $13.5 million from Agrigenetics if EPS achieves the development of up to three designated assets during the term of the CRA. If development of any of the three designated assets is completed, the related payment will be treated as additional proceeds from the sale of our plant trait business.

The term of the CRA is five years, unless earlier terminated. Agrigenetics may terminate the CRA if EPS fails to complete the development of any of the three designated assets within their respective specified research periods or if EPS fails to cure a material breach within specified time periods. Following EPS’ development and transfer to Agrigenetics of the second designated asset, either EPS or Agrigenetics may terminate the CRA upon expiration of a specified notice period. In the event that the CRA is terminated prior to the end of the term, we will receive less than the maximum amount of research and development funding described above.

The transaction was accounted for as a sale of our plant trait business based on the guidance contained in EITF 98-3, “Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business” and as a result we recognized a gain of $18.8 million, net of $0.2 million in transaction costs. The gain of $18.8 million primarily consists of a purchase price of $22.5 million, less a net book value of $0.3 million of property and equipment, $2.1 million of intangible assets (acquired patents) and derecognition of $1.4 million of goodwill as a result of the sale of our plant trait business. We allocated goodwill to the disposed business based on the relative fair value of our plant trait business to Exelixis on the Closing Date.

NOTE 6. Lease Agreement

In September 2007, we entered into an operating lease agreement for approximately 66,000 square feet of office space in a building under construction located at 249 East Grand Avenue South San Francisco, California (the “Lease”). Under the terms of the Lease, we have the right to rent all of the remaining 62,393 rentable square feet of the building. This expansion right expires on December 31, 2008.

The initial term of the Lease is 90 months and will commence upon completion of the building construction, which is currently targeted for May 2008. We have an option to extend the Lease for a period of three years beyond the initial term. In addition to the three year extension, if we exercise our right to lease the entire building, we will have the option to extend the Lease for an additional ten years.

The base rent during the Lease's initial term is $1.75 per square foot during the first year, $3.25 per square foot during the second year, and $3.50 per square foot during the third year. Thereafter, we are subject to a 3% annual increase for each year we continue the Lease. In addition to base rent, we will be responsible for certain operating expenses specified in the Lease, including a proportionate share of real estate taxes and other customary costs, and paying as additional rent, those costs, if any, relating to tenant improvements that exceed a specified portion of the tenant improvement allowance.

NOTE 7. Sale of Equity Shares

In September 2007, we completed a public offering of seven million shares of our common stock pursuant to an immediately effective automatic shelf registration statement filed with the SEC in September 2007. We received approximately $71.9 million in net proceeds from the offering after deducting offering expenses of approximately $0.2 million.

NOTE 8. Artemis Pharmaceuticals

Artemis Pharmaceuticals ("Artemis") based in Cologne, Germany is a wholly owned subsidiary of Exelixis, which we have determined is an operating segment. Artemis' activities are directed toward providing transgenic mouse generation services, tools and related licenses to the industrial and academic community. Artemis' revenues for the three- and nine-month periods ended September 30, 2007 were greater than 10% of Exelixis' revenues and therefore we have provided the following selected segment information for Artemis (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Revenues	$ 3,713	$ 1,719	$ 9,322	$ 5,620
Net income (loss)	$ 898	(441)	$ 1,124	$ (305)

Artemis' total tangible assets as of September 30, 2007 and December 31, 2006 were $6.7 million and $5.8 million, respectively. Intangible assets associated with this segment, including goodwill, as of September 30, 2007 and December 31, 2006 were $2.6 million and $2.7 million, respectively.

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

The following discussion and analysis contains forward-looking statements. These statements are based on our current expectations, assumptions, estimates and projections about our business and our industry, and involve known and unknown risks, uncertainties and other factors that may cause our or our industry's results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied in, or contemplated by, the forward-looking statements. Words such as "believe," "anticipate," "expect," "intend," "plan," "will," "determine," "may," "could," "would," "estimate," "predict," "potential," "continue," "suggest" 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, the financial statements and accompanying notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2006, filed with the Securities and Exchange Commission on February 27, 2007. Operating results are not necessarily indicative of results that may occur in future periods. We undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

Overview

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

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

To date, we have filed 14 investigational new drug applications, or INDs. We believe that our deep pool of drug candidates will enable us to continue to file multiple new INDs each year for the foreseeable future. As our compounds advance into clinical development, we expect to generate a critical mass of data that will help us to understand the full clinical and commercial potential of our product candidates. In addition to guiding the potential commercialization of our innovative therapies, these data may contribute to the understanding of disease and help improve treatment outcomes.

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

Our current development portfolio includes the following compounds, for which we are leading development:

Compound	Principal Targets	Indication	Stage of Development
XL647*	EGFR, HER2, VEGFR2	Cancer	Phase 2
XL784*	ADAM10, MMP2	Diabetic nephropathy	Phase 2
XL880	MET, VEGFR2	Cancer	Phase 2
XL999*	VEGFR2, PDGFR, FGFR, FLT3	Cancer	Phase 1
XL820	KIT, VEGFR2, PDGFR	Cancer	Phase 1
XL184	MET, VEGFR2, RET	Cancer	Phase 1

Compound	Principal Targets	Indication	Stage of Development
XL844	CHK1, CHK2	Cancer	Phase 1
XL518**	MEK	Cancer	Phase 1
XL418	AKT, S6K	Cancer	Phase 1
XL281	RAF	Cancer	Phase 1
XL228	ABL, SRC, IGF1R	Cancer	Phase 1
XL147	PI3K	Cancer	Phase 1
XL765	PI3K, mTOR	Cancer	Phase 1
XL019	JAK2	Cancer	Phase 1

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

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

Pursuant to a product development and commercialization agreement between Exelixis and GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by Exelixis, to elect to develop up to three compounds in Exelixis' product pipeline, which may include XL784, XL880, XL999, XL820, XL184, XL844, XL418, XL281 and XL228.

In addition to the compounds identified in the above table, we have compounds in various stages of development that are being developed by our partners, such as Bristol-Myers Squibb, Daiichi Sankyo Company Limited and Wyeth Pharmaceuticals. We also have compounds in preclinical development that we are developing internally.

Recent Developments

Data Report for XL880 Submitted to GlaxoSmithKline

In August 2007, we agreed to a request from GlaxoSmithKline to initiate its review of XL880 before the compound reached clinical proof-of-concept and in mid-September 2007, we delivered a data report relating to XL880 to GlaxoSmithKline. Under the terms of our product development and commercialization agreement with GlaxoSmithKline, GlaxoSmithKline's review period would have otherwise commenced once clinical proof-of-concept data became available. GlaxoSmithKline has 90 days from the date of submission of the data report to determine whether it will select XL880 for further development and commercialization. We and GlaxoSmithKline have also initiated preliminary transition activities in the event that GlaxoSmithKline selects XL880 for further clinical development and commercialization.

If GlaxoSmithKline exercises its purchase option with respect to XL880, and XL880 is the first of our compounds selected by GlaxoSmithKline, we will be entitled to a selection milestone of $35.0 million. However, under our product development and commercialization agreement with GlaxoSmithKline, the full amount of this selection milestone would be retained by GlaxoSmithKline to offset a milestone payment that GlaxoSmithKline advanced to us in 2005 under an amendment to the product development and commercialization agreement.

In addition to the selection milestone that would be earned if GlaxoSmithKline exercises its purchase option with respect to XL880, we would also be entitled to receive commercialization milestones and royalties on product sales related to XL880 and, under certain conditions, we would also have an option to co-promote XL880 in North America.

Interim data from an ongoing phase 2 clinical trial of XL880 in patients with papillary renal carcinoma were presented at the "Molecular Targets and Cancer Therapeutics" International Conference sponsored by the American Association for Cancer Research (AACR), the National Cancer Institute (NCI), and the European Organisation for Research and Treatment of Cancer (EORTC), or the AACR-NCI-EORTC Conference, which was held on October 22-26, 2007 in San Francisco. The data reported at the AACR-NCI-EORTC Conference suggest that XL880 has anti-tumor activity in papillary renal carcinoma.

Phase 2 Trial of XL784 Did Not Meet Primary Endpoint

On October 16, 2007, we announced that a recently completed phase 2 clinical trial of XL784 did not meet its primary endpoint of reducing proteinuria compared with placebo in patients with proteinuria associated with diabetic nephropathy. Various analyses of the results with respect to subgroups in the trial suggest that the compound may have the potential to benefit patients with this disease.

On October 22, 2007, we delivered a data report relating to XL784 to GlaxoSmithKline. GlaxoSmithKline has 90 days from the date of submission of the data report to determine whether it will select XL784 for further development and commercialization. Under our product development and commercialization agreement with GlaxoSmithKline, clinical proof-of-concept for XL784 was met by completing a phase 2 clinical trial.

XL784 is a part of our clinical development financing arrangement with SEI. In 2005, we licensed three of our compounds, XL784, XL647 and XL999, to SEI in return for $80.0 million for the clinical development of these compounds and an exclusive option to reacquire the compounds from SEI's investors at a specified purchase price. If GlaxoSmithKline exercises its purchase option with respect to XL784, then, to satisfy our contractual obligations to GlaxoSmithKline, we would be required to exercise our purchase option with SEI's investors to purchase all of the equity of SEI in order to reacquire XL784 and the other two product candidates we previously licensed to SEI, XL647 and XL999.

Agreement to Sell Plant Trait Assets

Consistent with our overall strategy of focusing on the development of our clinical pipeline, on September 4, 2007, we and two of our wholly-owned subsidiaries, Exelixis Plant Sciences, Inc., or EPS, and Agrinomics, LLC, or Agrinomics, entered into an asset purchase and license agreement with Agrigenetics, Inc. and Mycogen Corporation, which are wholly-owned subsidiaries of The Dow Chemical Company, or Dow.

Under the terms of the asset purchase and license agreement, EPS and Agrinomics sold to Agrigenetics a major portion of their assets used for crop trait discovery, including a facility owned by EPS, and granted to Agrigenetics licenses to certain other related assets and intellectual property. As consideration for these assets and licenses, Agrigenetics paid EPS and Agrinomics $18.0 million on the effective date and is obligated to pay an additional $4.5 million on September 4, 2008, the first anniversary of the effective date of the agreement. The asset purchase and license agreement includes customary representations, warranties, covenants and indemnities. In addition, under the asset purchase and license agreement, EPS and Agrinomics have agreed to indemnify Agrigenetics, Mycogen and their affiliates up to a specified amount if they incur damages due to any infringement or alleged infringement of certain patents. We are a party to the asset purchase and license agreement principally to guarantee the performance of EPS and Agrinomics, and Mycogen is a party to the asset purchase and license agreement principally to guarantee the performance of Agrigenetics.

Concurrently with the execution of the asset purchase and license agreement, we and EPS entered into a contract research agreement with Agrigenetics and Mycogen. Under the contract research agreement, EPS is responsible for developing new assets for crop trait discovery and for completing certain research commenced under a previous technology development agreement among us, EPS, Agrigenetics and Mycogen and a plant traits research and license agreement between EPS and Dow AgroSciences LLC, another wholly-owned subsidiary of Dow. Agrigenetics has agreed to pay EPS up to a maximum of approximately $24.7 million in research funding over the term of the agreement. The research funding will cover employee costs, facilities expenses and capital expenditures. Upon the effective date of the agreement, the research and development funding received under the contract research agreement will be recognized as a reduction to expenses incurred. In order for EPS to perform its obligations under the CRA, EPS will lease at no cost the facility that Agrigenetics acquired under the APA. EPS is also entitled to receive additional payments of up to a maximum of $13.5 million from Agrigenetics if EPS achieves the development of up to three designated assets during the term of the contract research agreement.

The term of the contract research agreement is five years, unless earlier terminated. Agrigenetics may terminate the contract research agreement if EPS fails to complete the development of any of the three designated assets within their respective specified research periods or if EPS fails to cure a material breach within specified time periods. In addition, following EPS' development and transfer to Agrigenetics of the second designated asset, either EPS or Agrigenetics may terminate the contract research agreement upon expiration of a specified notice period. In the event that the CRA is terminated prior to the end of the term, we will receive less than the maximum amount of research and development funding described above. We are a party to the contract research agreement principally to guarantee the performance of EPS, and Mycogen is a party to the contract research agreement principally to guarantee the performance of Agrigenetics.

Certain Factors That May Affect Our Business

Industry-wide Factors

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

Company-specific Factors

Our financial performance is driven by many factors, including:

- *Clinical Trials.* We currently have multiple compounds in clinical development and expect to continue to advance more compounds into clinical trials. Our compounds may fail to show adequate safety or efficacy in clinical testing. Furthermore, predicting the timing of the initiation or completion of clinical trials is exceedingly difficult and our trials may be delayed due to many factors, including factors outside of our control. The future development path of each of our compounds depends upon the results of each stage of clinical development. In general, we will incur increased operating expenses for compounds that advance to the next stage of clinical development, whereas expenses will end for compounds that do not warrant further clinical development.
- *Liquidity.* As of September 30, 2007, we had $297.6 million in cash and cash equivalents and short-term and long-term marketable securities, which included investments held by SEI of $38.7 million and restricted cash and investments of $8.1 million. In September 2007, we received approximately $71.9 million in net proceeds from the sale of seven million shares of our common stock under an immediately effective automatic shelf registration statement we filed with the Securities and Exchange Commission. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, investments held by SEI and other funding that we expect to receive from collaborators, which assumes a moderate level of business development activity, will enable us to maintain our operations for a period of at least 12 months following the filing date of this report. However, our future capital requirements will be substantial and depend on many factors, including the timing of key events in our agreements with GlaxoSmithKline and SEI that may require us to consume available capital significantly earlier than we currently anticipate. We will have to obtain additional funding in order to support our plans for the aggressive development of our broad clinical and preclinical pipelines. Our minimum liquidity needs are also determined by certain financial covenants contained in our loan and security agreement with GlaxoSmithKline, which require us to maintain working capital of at least $25.0 million and cash and investments of at least $50.0 million. Our ability to raise additional funds may be severely impaired if any of our product candidates fails to show adequate safety or efficacy in clinical testing.
- *Reliance on Partners.* We currently have no pharmaceutical products that have received marketing approval, and we have generated no revenues from the sale of such products. We do not expect to generate product revenues from the sale of pharmaceutical products in the near term and expect that all of our near term revenues, such as research and development funding and milestone and royalty revenues, will be generated from collaboration agreements with our partners. Milestones under these agreements may be tied to factors that are outside of our control, such as significant clinical or regulatory events with respect to compounds that have been licensed to our partners.
- *GlaxoSmithKline Compound Selection*. Pursuant to our product development and commercialization agreement with GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by us, to elect to develop up to three compounds in our product pipeline, which may include XL784, XL880, XL999, XL820, XL184, XL844, XL418, XL281 and XL228. As described below, two of these compounds, XL784 and XL999, have been licensed to SEI. A compound selection by GlaxoSmithKline could potentially trigger significant milestone payments to us. The size of these milestone payments depends on how quickly we can advance compounds to clinical proof-of-concept, how many compounds GlaxoSmithKline selects and whether a selected compound was funded through our agreement with SEI. Any future delays in obtaining clinical proof-of-concept for compounds subject to GlaxoSmithKline's election rights may decrease the size of any GlaxoSmithKline milestone payments and negatively affect our financial position. Decreased milestones with respect to compounds funded through our agreement with SEI may require us to raise additional funds and/or to issue to SEI's investors a substantial number of shares of our common stock in order for us to exercise our SEI purchase option. On July 26, 2007, we announced that GlaxoSmithKline decided not to exercise its option under our product development and commercialization agreement to elect to develop and commercialize XL647 at clinical proof-of-concept. On September 14, 2007, we submitted a data report to GlaxoSmithKline for XL880 and, on October 22, 2007, we submitted a data report to GlaxoSmithKline for XL784. GlaxoSmithKline has 90 days from the date of submission of each data report to determine whether it will select the compound to which such data report relates for further development and commercialization. If GlaxoSmithKline exercises its purchase option with respect to XL880, and XL880 is the first of our compounds selected by GlaxoSmithKline, we will be entitled to a selection milestone of $35.0 million. However, under our product development and commercialization agreement with GlaxoSmithKline, the full amount of this selection milestone would be retained by GlaxoSmithKline to offset a milestone payment that GlaxoSmithKline advanced to us in 2005 under an amendment to the product development and commercialization agreement. If GlaxoSmithKline then selects a second compound prior to the end of the development term under the product development and commercialization agreement in October 2008, the amount of the selection milestone for the second compound would be at least $55.0 million. If the second compound is not licensed to SEI, the selection milestone for such compound must be used to pay down our loan with GlaxoSmithKline as long as the loan is outstanding. See "—Liquidity and Capital Resources—Cash Requirements."

- *Symphony Evolution, Inc.* In 2005, we licensed three of our lead compounds, XL784, XL647 and XL999, to SEI in return for an $80.0 million investment for the clinical development of these compounds. We continue to be primarily responsible for the development of these compounds in accordance with specified development plans and related development budgets. We have retained an exclusive option to reacquire the compounds from SEI's investors at a specified purchase price. We may repurchase the compounds for cash, shares of our common stock or a combination of cash and shares of our common stock, at our sole discretion. The purchase price for the compounds increases over the length of the option period. If GlaxoSmithKline selects any of the compounds licensed to SEI for further development and commercialization or if we determine to enter into a collaboration agreement or other arrangement with a third party with respect to any of these compounds, we would be required to repurchase all of the compounds from SEI's investors. If we repurchase the compounds, we would need to raise additional funds to cover the purchase price or issue to SEI's investors a substantial number of 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, or GAAP, which requires us to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses and related disclosure of contingent assets and liabilities. We have based our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for 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. There have been no changes during the nine months ended September 30, 2007 to the items that we disclosed as our critical accounting estimates in Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2006.

Fiscal Year Convention

In 2006, Exelixis adopted a 52- or 53-week fiscal year that ends on the last Friday in December, and the fiscal quarters end on the last Friday of the quarter. Fiscal year 2006, a 52-week year, ended on December 29, 2006 and fiscal year 2007, a 52-week year, will end on December 28, 2007. For convenience, references in this report as of and for the fiscal year ended December 29, 2006 are indicated on a calendar year basis, ending December 31, 2006, and as of and for the three- and nine-month periods ended September 28, 2007 are indicated as ending September 30, 2007.

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 September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Contract revenue:				
Research and development services	$ 13.7	$ 11.5	$ 39.7	$ 34.0
Milestones	3.8	1.8	9.3	8.6
License revenue:				
Amortization of upfront payments, including premiums paid on equity purchases	9.3	10.2	35.2	26.3
Total revenues	$ 26.8	$ 23.5	$ 84.2	$ 68.9
Dollar increase	$ 3.3		$ 15.3	
Percentage increase	14%		22%	

The increase in revenues from research and development services for the three months ended September 30, 2007, as compared to the comparable period for the prior year, was primarily the result of increases in research and development services of $1.9 million attributable to our German subsidiary, Artemis Pharmaceuticals, and $0.6 million received from Agrigenetics prior to the sale of our plant trait business.

The increase in revenues from research and development services for the nine months ended September 30, 2007, as compared to the comparable period for the prior year, was primarily the result of increases in research and development services of $3.7 million attributable to Artemis Pharmaceuticals, $1.5 million from Agrigenetics prior to the sale of our plant trait business and $1.1 million from our agreement with Daiichi-Sankyo. These increases were partially offset by a decrease of $0.8 million in funding from one of our Bristol-Myers Squibb collaborations.

The increase in milestone revenues for the three months ended September 30, 2007, as compared to the comparable period for the prior year, was primarily due to $1.3 million in revenues associated with a milestone achieved under our co-development collaboration with Genentech relating to XL518 and $0.7 million in revenues associated with a milestone achieved under one of our collaborations with Bristol-Myers Squibb.

The increase in milestone revenues for the nine months ended September 30, 2007, as compared to the comparable period for the prior year, was primarily due to $3.8 million in revenues associated with a milestone achieved under our co-development collaboration with Genentech relating to XL518 and $1.0 million in revenues associated with a milestone achieved under one of our collaborations with Bristol-Myers Squibb. These increases were partially offset by $4.0 million in revenues in 2006 associated with a milestone achieved under our collaboration with Helsinn Healthcare S.A.

The decrease in the amortization of upfront payments, including amortization of premiums paid for equity purchases, for the three months ended September 30, 2007, as compared to the comparable period in the prior year, was driven primarily by the conclusion of the amortization of the upfront payments from Daiichi-Sankyo, resulting in decreased revenues of $4.1 million, and from Wyeth Pharmaceuticals, resulting in decreased revenues of $2.5 million. These decreases were partially offset by upfront payments from the oncology collaboration we entered into with Bristol-Myers Squibb in December 2006, resulting in increased revenues of $3.8 million, and our co-development collaboration with Genentech relating to XL518, resulting in increased revenues of $2.1 million.

The increase in the amortization of upfront payments, including amortization of premiums paid for equity purchases, for the nine months ended September 30, 2007, as compared to the comparable period in the prior year, was driven primarily by upfront payments from the oncology collaboration we entered into with Bristol-Myers Squibb in December 2006, resulting in increased revenues of $10.8 million and our co-development collaboration with Genentech relating to XL518, resulting in increased revenues of $6.3 million. These increases were partially offset by the conclusion of the amortization of the upfront payments from Wyeth Pharmaceuticals, resulting in decreased revenues of $7.5 million and from Daiichi-Sankyo, resulting in decreased revenues of $0.5 million.

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 September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Research and development expenses	$ 58.6	$ 46.0	$165.2	$133.3
Dollar increase	$ 12.6		$ 31.8	
Percentage increase	27%		24%	

Research and development expenses consist primarily of personnel expenses, clinical trials, consulting, laboratory supplies, stock-based compensation expense and facilities costs. The increase for the three months ended September 30, 2007, as compared to the comparable period in 2006, resulted primarily from the following:

- Clinical Trials—Clinical trial and preclinical expenses, which include services performed by third-party contract research organizations and other vendors, increased by $6.2 million, or 55%, primarily due to phase 2 clinical trial activity for XL784, XL880, XL647 and XL820 and phase 1 clinical trial activity for XL999, XL844, XL228, XL281, XL518, XL184, XL418, XL147, XL765 and XL019, as well as preclinical activity for XL443 and XL139, which were partially offset by a decrease in phase 2 trial clinical activity for XL999 during 2007.
- Personnel—Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, increased by $3.4 million, or 22%, primarily due to the expanded workforce supporting drug development operations to advance our clinical and preclinical development programs and, to a lesser degree, an increased investment in drug discovery.

- Lab Supplies—Lab supplies expense increased by $1.9 million, or 45%, primarily due to an increase in our drug discovery activities.

The increase for the nine months ended September 30, 2007, as compared to the comparable period in 2006, resulted primarily from the following:

- Clinical Trials—Clinical trial and preclinical expenses increased by $14.0 million, or 46%, primarily due to phase 2 clinical trial activity for XL784, XL880, XL647 and XL820 and phase 1 clinical trial activity for XL999, XL844, XL228, XL281, XL518, XL184, XL418, XL147, XL765 and XL019, as well as preclinical activity for XL443 and XL139.
- Personnel—Personnel expense increased by $10.2 million, or 24%, primarily due to the expanded workforce supporting drug development operations to advance our clinical and preclinical development programs and, to a lesser degree, an increased investment in drug discovery.
- Lab Supplies—Lab supplies expense increased by $4.6 million, or 35%, primarily due to an increase in our drug discovery activities.

We currently estimate that typical phase 1 clinical trials last approximately one year, phase 2 clinical trials last approximately one to two years and phase 3 clinical trials last approximately two to four years. However, the length of time may vary substantially according to factors relating to the particular clinical trial, such as the type and intended use of the product candidate, the clinical trial design and the ability to enroll suitable patients. We expect that research and development expenses will continue to increase as we advance our compounds through development.

We currently do not have 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 September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
General and administrative expenses	$ 10.8	$ 8.8	$ 33.2	$ 27.8
Dollar increase	$ 1.9		$ 5.3	
Percentage increase	22%		19%	

General and administrative expenses consist primarily of personnel expenses, stock-based compensation expense, facility costs and consulting and professional expenses, such as legal and accounting fees. The increase in expenses for the three months ended September 30, 2007, as compared to the comparable period in 2006, resulted primarily from increases of $0.8 million in personnel expenses, $0.6 million in stock-based compensation expense and $0.6 million in legal and accounting expenses. The increase in expenses for the nine months ended September 30, 2007, as compared to the comparable period in 2006, resulted primarily from increases of $2.6 million in personnel expenses, $1.8 million in stock-based compensation expense and $0.9 million in legal and accounting expenses. These increases are primarily due to our expanded workforce to support our expanding general operating activities.

Amortization of Intangibles

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Amortization of intangible assets	$ 0.1	$ 0.2	$ 0.2	$ 0.7
Dollar decrease	$ (0.2)		$ (0.5)	
Percentage decrease	76%		73%	

Intangible assets result from our acquisitions of X-Ceptor Therapeutics, Genomica, Artemis Pharmaceuticals and Agritope (renamed Exelixis Plant Sciences). The decrease in amortization of intangibles expense for the three- and nine-month periods ended September 30, 2007, as compared to the comparable periods in 2006, was due to fully amortized expenses for the assembled workforce related to our acquisition of X-Ceptor Therapeutics and the developed technology related to our acquisition of Artemis Pharmaceuticals. In addition, amortization of intangibles expense decreased as a result of our transaction in September 2007 with Agrigenetics when we sold $2.1 million of acquired patents, which were part of our plant trait business.

Total Other Income

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Total other income	$ 20.7	$ 0.8	$ 25.6	$ 1.9
Dollar increase	$ 19.9		$ 23.7	

Total other income typically consists of interest income earned on cash and cash equivalents, short-term and long-term marketable securities and investments held by SEI, offset by interest expense incurred on our notes payable, bank obligations, capital lease obligations and convertible notes and loans. However, in September 2007, we sold our plant trait business to Agrigenetics, and, as a result, we recognized a gain of $18.8 million in total other income. The gain of $18.8 million primarily consists of a purchase price of $22.5 million, less $2.4 million in net book value of tangible and intangible assets and derecognition of $1.4 million of goodwill as a result of the sale of our plant trait business.

The increase in interest income and other, net of $1.0 million for the three months ended September 30, 2007, as compared to the comparable period in 2006, and an increase of $4.0 million for the nine months ended September 30, 2007, as compared to the comparable period in 2006, were primarily due to an increase in interest income as a result of higher cash and investment balances and higher average interest rates.

The decrease in interest expense of $0.1 million for the three months ended September 30, 2007, as compared to the comparable period in 2006, and a decrease of $0.9 million for the nine months ended September 30, 2007, as compared to the comparable period in 2006, were primarily due to an overall lower debt balance, which includes the repayment of our $30.0 million convertible promissory note to PDL BioPharma, Inc. in May 2006.

Noncontrolling Interest in Symphony Evolution, Inc.

Pursuant to the agreements that we entered into with SEI and certain other parties in June 2005, we consolidate SEI's financial condition and results of operations in accordance with FIN 46R. Accordingly, we have deducted the losses attributable to the noncontrolling interest (SEI's losses) from our net loss in the consolidated statement of operations and we have also reduced the noncontrolling interest holders' ownership interest in SEI in the consolidated balance sheet by SEI's losses. SEI's losses consist primarily of the development expenses for XL647, XL784 and XL999. The noncontrolling interest holders' ownership in the consolidated balance sheet was $15.8 million as of September 30, 2007. Once SEI's losses are in excess of the noncontrolling interest holders' ownership, SEI's losses will no longer be deducted from our net losses. For the three months ended September 30, 2007, the loss attributed to the noncontrolling interest holders was $8.2 million, as compared to $5.5 million for the comparable period in 2006, and for the nine month period ended September 30, 2007 the loss attributed to the noncontrolling interest holders was $22.2 million, as compared to $14.8 million for the comparable period in 2006. The increases in the losses attributed to the noncontrolling interest holders for the respective periods were due primarily to increases in clinical trial activity for XL647, XL784 and XL999.

Liquidity and Capital Resources

Sources and Uses of Cash

The following table summarizes our cash flow activities for the nine-month periods ended September 30, 2007 and 2006, respectively (dollar amounts are presented in thousands):

	Nine Months Ended September 30,	
	2007	2006
Net loss	$ (66,459)	$(76,310)
Adjustments to reconcile net loss to net cash used in operating activities	(17,349)	12,196
Changes in operating assets and liabilities	39,983	8,651
Net cash used in operating activities	(43,825)	(55,463)
Net cash provided by (used in) investing activities	(10,141)	22,337
Net cash provided by financing activities	72,175	7,429
Effect of foreign exchange rate changes on cash and cash equivalents	(252)	69
Net increase (decrease) in cash and cash equivalents	17,957	(25,628)
Cash and cash equivalents, at beginning of period	123,369	81,328
Cash and cash equivalents, at end of period	$141,326	$ 55,700

To date, we have financed our operations primarily through the sale of equity, payments and loans from collaborators, equipment financing facilities and interest income. We have also financed certain of our research and development activities under our agreements with SEI. As of September 30, 2007, we had $297.6 million in cash and cash equivalents and short-term and long-term marketable securities, which includes investments held by SEI of $38.7 million and restricted cash and investments of $8.1 million.

Operating Activities

Our operating activities used cash of $43.8 million for the nine month period ended September 30, 2007, compared to $55.5 million for the comparable period in 2006. Cash used in our operating activities for the 2007 period related primarily to our net loss, loss attributed to the noncontrolling interest and a gain on the sale of our plant trait business. The cash used was partially offset by cash provided by changes in receivables, accounts payable and other accrued expenses and deferred revenues from collaborators. While cash used in operating activities was primarily driven by our net loss, operating cash flows differed from our net loss as a result of differences in the timing of cash receipts and earnings recognition, expenses related to the noncontrolling interest and non-cash charges.

The decrease of $11.6 million in cash used in our operating activities for the nine month period ended September 30, 2007, as compared to the comparable period in 2006, was primarily driven by a decrease in receivables and increases in accounts payable and other accrued expenses and deferred revenues. The decrease in cash used was partially offset by a gain on the sale of our plant trait business. The increase in deferred revenues was due primarily to $60.0 million that we received from Bristol-Myers Squibb and $15.0 million that we received from Genentech during the nine months ended September 30, 2007. We expect to recognize the Bristol-Myers Squibb payment as revenue over a four-year period and the Genentech payment over a three-year period, commencing upon the effective date of the relevant collaboration agreement.

Investing Activities

Our investing activities used cash of $10.1 million for the nine month period ended September 30, 2007, compared to cash provided of $22.3 million for the comparable period in 2006. Cash used in investing activities for the 2007 period was primarily driven by purchases of marketable securities of $173.1 million and purchases of property and equipment of $14.2 million. These uses of cash were partially offset by proceeds of $141.2 million from the maturities of marketable securities, $18.2 million from the sales of investments held by SEI and $18.0 million from the sale of our plant trait business. The proceeds provided by maturities of our marketable securities and the sale of investments by SEI were principally used to fund our operations. We expect to continue to make significant investments in property and equipment to support our expanding operations.

Cash provided by investing activities for the 2006 period was primarily attributable to proceeds of $91.5 million provided by maturities of our marketable securities and $15.9 million from the sales of investments held by SEI. The cash provided was partially offset by purchases of investments held by SEI of $41.6 million, marketable securities of $36.6 million and property and equipment of $8.3 million.

Financing Activities

Our financing activities provided cash of $72.2 million for the nine month period ended September 30, 2007, compared to $7.4 million for the comparable period in 2006. Cash provided by our financing activities for the 2007 period was primarily from net proceeds of $71.9 million from the sale of seven million shares of our common stock in September 2007 and proceeds of $7.8 million from the exercise of stock options, which was partially offset by $9.3 million of principal payments on notes payable and bank obligations. Cash provided by our financing activities for the 2006 period was primarily from the proceeds of the purchase of noncontrolling interest by investors in SEI of $40.0 million, which was partially offset by $38.7 million of principal payments on notes payable and bank obligations.

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

Cash Requirements

We have incurred net losses since inception, including a net loss of $13.7 million for the three-month period ended September 30, 2007 and $66.5 million for the nine-month period ended September 30, 2007, and we expect to incur substantial losses for at least the next several years as we continue our research and development activities, including manufacturing and development expenses for compounds in preclinical and clinical studies. In September 2007, we received approximately $71.9 million in net proceeds from the sale of seven million shares of our common stock under an immediately effective automatic shelf registration statement we filed with the Securities and Exchange Commission. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, investments held by SEI and other funding that we expect to receive from collaborators, which assumes a moderate level of business development activity, will enable us to maintain our operations for a period of at least 12 months following 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 consume available capital resources significantly earlier than we currently anticipate. These factors include:

- the timing and progress of the clinical development of our product candidates XL647, XL999 and XL784, which are out-licensed to SEI – If any of the phase 2 clinical trials for XL647, XL999 or XL784 show positive results that support further clinical development of any such product candidate, in order for us or GlaxoSmithKline to pursue further development and commercialization of such product candidate(s), we would be required to reacquire all three of these product candidates from SEI's investors through the exercise of our exclusive purchase option, which is described in this report. Under our amended purchase option agreement with SEI, we cannot repurchase a single product candidate without also repurchasing the other two product candidates. The purchase price, which may be paid in cash and/or shares of our common stock, at our sole discretion, would be equal to the sum of (i) the total amount of capital invested in SEI by its investors ($80.0 million) and (ii) an amount equal to 25% per year on such funded capital. As a result, the purchase price for the compounds licensed to SEI increases over time;
- whether and when GlaxoSmithKline selects at clinical proof-of-concept for further development and commercialization XL999 or XL784 – GlaxoSmithKline has the right to select for further clinical development at clinical proof-of-concept XL999 and XL784, two of the three product candidates licensed to SEI. If GlaxoSmithKline selects any of these product candidates, it would be necessary for us to repurchase all three product candidates licensed to SEI through the exercise of our purchase option, if we have not previously done so, in order to satisfy our contractual obligations to GlaxoSmithKline. Under our product development and commercialization agreement with GlaxoSmithKline, a product candidate selection by GlaxoSmithKline would trigger milestone payments. The size of these milestone payments for any candidate depends, in part, on when that candidate achieves clinical proof-of-concept. As a result, if there are delays in achieving clinical proof-of-concept for XL999 or XL784, the amount of any GlaxoSmithKline selection milestone payment could be significantly decreased and would therefore cover only a small portion of the purchase price for the exercise of our purchase option with respect to SEI. In addition, if either XL999 or XL784 is the first compound selected by GlaxoSmithKline, $36.0 million of the selection milestone would be retained by GlaxoSmithKline to offset a milestone payment that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement. As described under "—Recent Developments—Phase 2 Trial of XL784 Did Not Meet Primary Endpoint," on October 22, 2007, we delivered a data report relating to XL784 to GlaxoSmithKline. GlaxoSmithKline has 90 days from the date of submission of the data report to determine whether it will select XL784 for further development and commercialization. In July 2007, GlaxoSmithKline declined to exercise its option to select XL647 for further development and commercialization after the compound achieved clinical proof-of-concept;

- whether and when GlaxoSmithKline selects at clinical proof-of-concept for further development and commercialization any product candidates not licensed to SEI – Under our product development and commercialization agreement with GlaxoSmithKline, any milestone payments relating to product candidates not licensed to SEI must be used to pay down our loan with GlaxoSmithKline as long as the loan is outstanding. As of September 30, 2007, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $97.7 million. In addition, if the first product candidate selected by GlaxoSmithKline prior to the end of the development term under the product development and commercialization agreement in October 2008 is not licensed to SEI, such as XL880, we will be entitled to a selection milestone of $35.0 million, but the full amount of this selection milestone would be retained by GlaxoSmithKline to offset a milestone payment that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement. In this circumstance, the selection milestone would not be used to pay down our loan with GlaxoSmithKline;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements as well as our ability to enter into new collaboration agreements, licensing agreements and other arrangements that provide additional payments;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the progress and scope of our collaborative and independent clinical trials and other research and development projects;
- future clinical trial results;
- our need to expand our product and clinical development efforts;
- our ability to share the costs of our clinical development efforts with third parties;
- the cost and timing of regulatory approvals;
- the cost of clinical and research supplies of our product candidates;
- the effect of competing technological and market developments;
- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights;
- the cost of any acquisitions of or investments in businesses, products and technologies; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

In addition, we will have to obtain additional funding in order to stay in compliance with financial covenants contained in our collaboration with GlaxoSmithKline. Our loan and security agreement with GlaxoSmithKline dated October 28, 2002, as amended, contains financial covenants pursuant to which our working capital must not be less than $25.0 million and our cash and investments must not be less than $50.0 million. If we were to default on the financial covenants under the loan and security agreement, GlaxoSmithKline may, among other remedies, declare immediately due and payable all outstanding obligations thereunder.

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

We have contractual obligations in the form of operating leases, notes payable and licensing agreements. The following chart details our contractual obligations as of September 30, 2007 (in thousands):

	Payments Due by Period				
Contractual Obligations	Total	Less than 1 year(2)	1-3 years(2)	4-5 years	More than 5 years
Licensing and other agreements	$ 1,701	$ 1,511	$ 185	$ 5	$ —
Notes payable and bank obligations	27,368	12,527	14,135	706	—
Convertible loans (1)	97,733	—	32,252	65,481	—
Operating leases (3)	162,362	16,710	34,455	33,777	77,420
Total contractual cash obligations	$289,164	$30,748	$ 81,027	$99,969	$ 77,420

(1) Includes interest payable on the convertible loans of $12.7 million. The debt and interest payable can be repaid in cash or common stock at our election.

(2) If GlaxoSmithKline were to select one of the compounds licensed by us to SEI for further development and commercialization, we would be required to exercise our option to repurchase all three compounds licensed to SEI in order to satisfy our obligations under our agreements with GlaxoSmithKline. As described under "—Recent Developments—Phase 2 Trial of XL784 Did Not Meet Primary Endpoint", on October 22, 2007, we submitted a data report to GlaxoSmithKline for XL784. GlaxoSmithKline has ninety days from the date of submission of the data report for XL784 to determine whether it will select the compound for further development and commercialization.

(3) In September 2007, we entered into an operating lease agreement for approximately 66,000 square feet of office space in a building under construction. The initial term of the Lease is 90 months and will commence upon completion of the building construction, which is currently targeted for May 2008. These amounts assume the lease payments will begin in May 2008.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our market risks at September 30, 2007 have not changed significantly from those discussed in Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2006 on file with the Securities and Exchange Commission. 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 September 30, 2007 and December 31, 2006, respectively. As of September 30, 2007 and December 31, 2006, 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 $1.2 million and $2.4 million, respectively.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures. Based on the evaluation of our disclosure controls and procedures (as defined in Securities Exchange Act of 1934 Rules 13a-15(e) and 15d-15(e)) required by Securities Exchange Act Rules 13a-15(b) or 15d-15(b), our Chief Executive Officer and 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 filed with the Securities and Exchange Commission on February 27, 2007.

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 September 30, 2007, we had $297.6 million in cash and cash equivalents and short-term and long-term marketable securities, which included investments held by SEI of $38.7 million and restricted cash and investments of $8.1 million. We anticipate that our current cash and cash equivalents, short-term and long-term marketable securities, investments held by SEI and other funding that we expect to receive from collaborators, which assumes a moderate level of business development activity, will enable us to maintain our operations for a period of at least 12 months following 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 consume available capital resources significantly earlier than we currently anticipate. These factors include:

- the timing and progress of the clinical development of our product candidates XL647, XL999 and XL784, which are out-licensed to SEI – If any of the phase 2 clinical trials for XL647, XL999 or XL784 show positive results that support further clinical development of any such product candidate, in order for us or GlaxoSmithKline to pursue further development and commercialization of such product candidate(s), we would be required to reacquire all three of these product candidates from SEI's investors through the exercise of our exclusive purchase option, which is described in this report. Under our amended purchase option agreement with SEI, we cannot repurchase a single product candidate without also repurchasing the other two product candidates. The purchase price, which may be paid in cash and/or shares of our common stock, at our sole discretion, would be equal to the sum of (i) the total amount of capital invested in SEI by its investors ($80.0 million) and (ii) an amount equal to 25% per year on such funded capital. As a result, the purchase price for the compounds licensed to SEI increases over time;
- whether and when GlaxoSmithKline selects at clinical proof-of-concept for further development and commercialization XL999 or XL784 – GlaxoSmithKline has the right to select for further clinical development at clinical proof-of-concept XL999 and XL784, two of the three product candidates licensed to SEI. If GlaxoSmithKline selects any of these product candidates, it would be necessary for us to repurchase all three product candidates licensed to SEI through the exercise of our purchase option, if we have not previously done so, in order to satisfy our contractual obligations to GlaxoSmithKline. Under our product development and commercialization agreement with GlaxoSmithKline, a product candidate selection by GlaxoSmithKline would trigger milestone payments. The size of these milestone payments for any candidate depends, in part, on when that candidate achieves clinical proof-of-concept. As a result, if there are delays in achieving clinical proof-of-concept for XL999 or XL784, the amount of any GlaxoSmithKline selection milestone payment could be significantly decreased and would therefore cover only a small portion of the purchase price for the exercise of our purchase option with respect to SEI. In addition, if either XL999 or XL784 is the first compound selected by GlaxoSmithKline, $36.0 million of the selection milestone would be retained by GlaxoSmithKline to offset a milestone payment that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement. As described under "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations—Recent Developments—Phase 2 Trial of XL784 Did Not Meet Primary Endpoint," on October 22, 2007, we delivered a data report relating to XL784 to

GlaxoSmithKline. GlaxoSmithKline has 90 days from the date of submission of the data report to determine whether it will select XL784 for further development and commercialization. In July 2007, GlaxoSmithKline declined to exercise its option to select XL647 for further development and commercialization after the compound achieved clinical proof-of-concept;

- whether and when GlaxoSmithKline selects at clinical proof-of-concept for further development and commercialization any product candidates not licensed to SEI – Under our product development and commercialization agreement with GlaxoSmithKline, any milestone payments relating to product candidates not licensed to SEI must be used to pay down our loan with GlaxoSmithKline as long as the loan is outstanding. As of September 30, 2007, the aggregate principal and interest outstanding under our GlaxoSmithKline loan was $97.7 million. In addition, if the first product candidate selected by GlaxoSmithKline is not licensed to SEI, such as XL880, we will be entitled to a selection milestone of $35.0 million, but the full amount of this selection milestone would be retained by GlaxoSmithKline to offset a milestone payment that GlaxoSmithKline advanced to us in 2005 as part of an amendment to the product development and commercialization agreement. In this circumstance, the selection milestone would not be used to pay down our loan with GlaxoSmithKline;
- the level of payments received under existing collaboration agreements, licensing agreements and other arrangements as well as our ability to enter into new collaboration agreements, licensing agreements and other arrangements that provide additional payments;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- the progress and scope of our collaborative and independent clinical trials and other research and development projects;
- future clinical trial results;
- our need to expand our product and clinical development efforts;
- our ability to share the costs of our clinical development efforts with third parties;
- the cost and timing of regulatory approvals;
- the cost of clinical and research supplies of our product candidates;
- the effect of competing technological and market developments;
- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights;
- the cost of any acquisitions of or investments in businesses, products and technologies; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

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

In addition, we will have to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. For example, as part of our collaboration with GlaxoSmithKline, we entered into a loan and security agreement, dated October 28, 2002, which, as amended, contains financial covenants pursuant to which our “working capital” (the amount by which our current assets exceed our current liabilities as defined by the agreement) must not be less than $25.0 million and our “cash and investments” (total cash, cash equivalents and investments as defined by the agreement, which excludes restricted cash) must not be less than $50.0 million. As of September 30, 2007, our “working capital” was $173.5 million and our “cash and investments” were $289.5 million. If we were to default on the financial covenants under the loan and security agreement, GlaxoSmithKline may, among other remedies, declare immediately due and payable all obligations under the loan and security agreement. Outstanding borrowings and accrued interest under the loan and security agreement totaled $97.7 million at September 30, 2007.

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

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

We have incurred net losses since inception, including a net loss of $13.7 million for the three month period ended September 30, 2007 and $66.5 million for the nine month period ended September 30, 2007. As of that date, we had an accumulated deficit of $771.7 million. We expect these losses to continue and anticipate negative operating cash flow for the foreseeable future. We have not yet completed the development, including obtaining regulatory approval, of any of our pharmaceutical product candidates and, consequently, have not generated revenues from the sale of pharmaceutical products. Except for revenues associated with the transgenic mouse business of our German subsidiary, Artemis Pharmaceuticals, our only revenues to date are license revenues and revenues under contracts with our partners. The amount of our net losses will depend, in part, on the rate of growth, if any, in our license and contract revenues and on the level of our expenses. These losses have had and will continue to have an adverse effect on our stockholders' equity and working capital. Our research and development expenditures and general and administrative expenses have exceeded our revenues to date, and we expect to spend significant additional amounts to fund research and development in order to enhance our technologies and undertake product development. We currently have numerous product candidates in various stages of clinical development and we anticipate filing additional IND applications for additional product candidates within the next 12 months. As a result, we expect that our operations will continue to increase, and, consequently, we will need to generate significant additional revenues to achieve profitability. Because of the numerous risks and uncertainties associated with developing drugs, we are unable to predict the extent of any future losses or when we will become profitable, if at all. Even if we do increase our revenues and achieve profitability, we may not be able to maintain or increase profitability.

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

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

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

In addition, under our collaboration with GlaxoSmithKline, GlaxoSmithKline may continue to select at clinical proof-of-concept for further development one or both of XL999 and XL784, in which case we would be required under our amended purchase option agreement with SEI to repurchase all three product candidates licensed to SEI through the exercise of our purchase option. If, after receiving any selection milestones from GlaxoSmithKline, we are unable to pay the purchase option exercise price in cash and/or delivery of our shares of our common stock, we could be in breach of our product development and commercialization agreement with GlaxoSmithKline. In the event of such breach, GlaxoSmithKline could terminate the collaboration and, among other remedies, declare all amounts under our loan facility with GlaxoSmithKline immediately due and payable, which would have a significant adverse effect on our business, operating results and financial condition.

Risks Related to Development of Product Candidates

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

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

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

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

If any of these events were to occur and, as a result, we were to have significant delays in or termination of our clinical testing, our expenses could increase or our ability to generate revenue from the affected product candidates could be impaired, either of which could adversely impact our financial results. For example, as described under “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Recent Developments—Phase 2 Trial of XL784 Did Not Meet Primary Endpoint,” on October 16, 2007, we announced that a recently completed phase 2 clinical trial of XL784 did not meet its primary endpoint of reducing proteinuria compared with placebo in patients with proteinuria associated with diabetic nephropathy. We are continuing to analyze the data to assess whether further evaluation of the compound is warranted.

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

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

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

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

Any serious adverse cardiovascular events observed in our phase 1 clinical trial evaluating XL999 in patients with NSCLC may result in significant delays or termination of clinical testing, which could harm our business, operating results and financial condition.*

In April 2007, we were notified by the FDA that it had completed its review of a clinical trial protocol for a phase 1 dose-escalation trial of XL999 in patients with NSCLC and agreed that the trial may be initiated. XL999 was previously evaluated in phase 1 and 2 clinical trials in which cardiovascular adverse events were observed. These observations caused us to suspend new patient enrollment in the ongoing XL999 clinical trials in November 2006. The FDA subsequently placed the

clinical program on partial clinical hold in December 2006. The previous phase 1 and 2 clinical trials will not be re-initiated at this time. Given acceptance by the FDA of the new clinical trial protocol for XL999 in patients with NSCLC, the XL999 development program is now focused on this indication.

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

- analysis of data from the new XL999 clinical trial may show that XL999 cannot be administered safely at a therapeutic dose;
- failure to enroll patients in the new XL999 clinical trial in sufficient numbers or in a timely manner;
- regulators or institutional review boards may not authorize or may delay, suspend or terminate the clinical trial program for XL999 due to the observed adverse cardiovascular or other effects; and
- any disagreements between SEI and the company regarding the further clinical development of XL999.

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

Risks Related to Our Relationships with Third Parties

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

We have licensed to SEI our intellectual property rights, including commercialization rights, to our product candidates XL647, XL999 and XL784 in exchange for SEI's investment of $80.0 million to advance the clinical development of XL647, XL999 and XL784. We are responsible for developing XL647, XL999 and XL784 in accordance with a specified development plan and related development budget. Our development activities are supervised by SEI's development committee, which is comprised of an equal number of representatives from Exelixis and SEI. If the development committee cannot resolve a particular development issue, the issue will be referred to the chief executive officers of Exelixis and SEI. Any disagreements between SEI and us regarding a development decision may cause significant delays in the development and commercialization of our product candidates XL647, XL999 and XL784 as well as lead to development decisions that do not reflect our interests. Any such delays or development decisions not in our interest could negatively affect the value of XL647, XL999 and XL784.

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

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

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

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

We are conducting proprietary research programs in specific disease, therapeutic modality and agricultural product areas that are not covered by our collaboration agreements. Our pursuit of opportunities in pharmaceutical and agricultural markets could result in conflicts with our collaborators in the event that any of our collaborators takes the position that our internal activities overlap with those areas that are exclusive to our collaboration agreements, and we should be precluded from such internal activities. Moreover, disagreements with our collaborators could develop over rights to our intellectual property. In addition, our collaboration agreements may have provisions that give rise to disputes regarding the respective rights and obligations of the parties, including the rights of collaborators with respect to our internal programs and disease area research. Any conflict with or among our collaborators could lead to the termination of our collaborative agreements, delay collaborative activities, impair our ability to renew agreements or obtain future collaboration agreements or result in litigation or arbitration and would negatively impact our relationship with existing collaborators. If our collaborators fail to develop or commercialize any of our compounds or product candidates, we would not receive any future royalties or milestone payments for such compounds or product candidates. We have limited or no control over the resources that our collaborators may choose to devote to our joint efforts. Our collaborators may breach or terminate their agreements with us or fail to perform their contractual obligations. Also, our collaboration agreements may be subject to early termination by mutual agreement. Further, our collaborators may elect not to develop products arising out of our collaboration arrangements, may experience financial difficulties, may undertake business combinations or significant changes in business strategy that adversely affect their willingness or ability to complete their obligations under any arrangement with us or may fail to devote sufficient resources to the development, manufacture, marketing or sale of such products. Certain of our collaborators could also become competitors in the future. If our collaborators develop competing products, preclude us from entering into collaborations with their competitors, fail to obtain necessary regulatory approvals, terminate their agreements with us prematurely or fail to devote sufficient resources to the development and commercialization of our products, our product development efforts could be delayed or otherwise adversely effected and may fail to lead to commercialized products.

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

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

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

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

Our third-party manufacturers may not be able to comply with the GMP regulations, other applicable FDA regulatory requirements or similar regulations applicable outside of the United States. Additionally, if we are required to enter into new supply arrangements, we may not be able to obtain approval from the FDA of any alternate supplier in a timely manner, or at all, which could delay or prevent the clinical development and commercialization of any related product candidates. Failure of our third-party manufacturers or us to obtain approval from the FDA or to comply with applicable regulations could result in sanctions being imposed on us, including fines, civil penalties, delays in or failure to grant marketing approval of our

product candidates, injunctions, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products and compounds, operating restrictions and criminal prosecutions, any of which could have a significant adverse affect on our business.

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

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

Risks Related to Regulatory Approval of Our Product Candidates

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

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

Risks Related to Commercialization of Products

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

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

- the effectiveness, or perceived effectiveness, of our products in comparison to competing products;
- the existence of any significant side effects, as well as their severity in comparison to any competing products;

- potential advantages over alternative treatments;
- the ability to offer our products for sale at competitive prices;
- relative convenience and ease of administration;
- the strength of marketing and distribution support; and
- sufficient third-party coverage or reimbursement.

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

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

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

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

A primary trend in the United States health care industry is toward cost containment. In December 2003, President Bush signed into law legislation creating a prescription drug benefit program for Medicare recipients. The new prescription drug program may have the effect of reducing the prices that we are able to charge for products we develop and sell through plans under the program. The new prescription drug program may also cause third-party payors other than the federal government, including the states under the Medicaid program, to discontinue coverage for products we develop or to lower the price that they will pay.

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

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

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

The biotechnology industry is highly fragmented and is characterized by rapid technological change. In particular, the area of kinase-targeted therapies is a rapidly evolving and competitive field. We face, and will continue to face, intense competition from biotechnology and pharmaceutical companies, as well as academic research institutions, clinical reference laboratories and government agencies that are pursuing research activities similar to ours. Some of our competitors have entered into collaborations with leading companies within our target markets, including some of our existing collaborators. In addition, significant delays in the development of our product candidates could allow our competitors to bring products to

market before us, which would impair our ability to commercialize our product candidates. Our future success will depend upon our ability to maintain a competitive position with respect to technological advances. Any products that are developed through our technologies will compete in highly competitive markets. Further, our competitors may be more effective at using their technologies to develop commercial products. Many of the organizations competing with us have greater capital resources, larger research and development staff and facilities, more experience in obtaining regulatory approvals and more extensive product manufacturing and marketing capabilities. As a result, our competitors may be able to more easily develop technologies and products that would render our technologies and products, and those of our collaborators, obsolete and noncompetitive. In addition, there may be product candidates of which we are not aware at an earlier stage of development that may compete with our product candidates.

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

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

Risks Related to Our Intellectual Property

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

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

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

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

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

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

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

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

Risks Related to Employees, Growth and Location

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

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

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

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

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

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

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

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

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

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

Risks Related to Environmental and Product Liability

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

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

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

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

We may be held liable if any product we or our collaborators develop causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing or sale. Regardless of merit or eventual outcome, product liability claims could result in decreased demand for our product candidates, injury to our reputation, withdrawal of patients from our clinical trials, substantial monetary awards to trial participants and the inability to commercialize any products that we may develop. These claims might be made directly by consumers, health care providers, pharmaceutical companies or others selling or testing our products. We have obtained limited product liability insurance coverage for our clinical trials in the amount of

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

Risks Related to Our Common Stock

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

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

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

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

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

Our stock price may be extremely volatile.

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

- adverse results or delays in clinical trials;
- announcement of FDA approval or non-approval, or delays in the FDA review process, of our or our collaborators’ product candidates or those of our competitors or actions taken by regulatory agencies with respect to our, our collaborators’ or our competitors’ clinical trials;
- the announcement of new products by us or our competitors;
- quarterly variations in our or our competitors’ results of operations;
- conflicts or litigation with our collaborators;

- litigation, including intellectual property infringement and product liability lawsuits, involving us;
- failure to achieve operating results projected by securities analysts;
- changes in earnings estimates or recommendations by securities analysts;
- financing transactions;
- developments in the biotechnology or pharmaceutical industry;
- sales of large blocks of our common stock or sales of our common stock by our executive officers, directors and significant stockholders;
- departures of key personnel or board members;
- developments concerning current or future collaborations;
- FDA or international regulatory actions;
- third-party reimbursement policies;
- acquisitions of other companies or technologies;
- disposition of any of our subsidiaries, technologies or compounds; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

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

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

We are exposed to risks associated with acquisitions.

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

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

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

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

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

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

Due to their combined stock holdings, our officers, directors and principal stockholders (stockholders holding more than 5% of our common stock), acting together, may be able to exert significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. In addition, this

concentration of ownership may delay or prevent a change in control of our company, even when a change may be in the best interests of our stockholders. In addition, the interests of these stockholders may not always coincide with our interests as a company or the interests of other stockholders. Accordingly, these stockholders could cause us to enter into transactions or agreements that would not be widely viewed as beneficial.

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

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

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

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

ITEM 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.

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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: November 5, 2007	EXELIXIS, INC.
	/s/ Frank Karbe
	Frank Karbe Executive Vice President, Chief Financial Officer *(Principal Financial and Accounting Officer)*

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INDEX TO EXHIBITS

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation of the Exelixis, Inc. (1)
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc. (2)
3.3	Amended and Restated Bylaws of Exelixis, Inc. (3)
10.1*	Asset Purchase and License Agreement, dated as of September 4, 2007, by and among Agrigenetics, Inc., Mycogen Corporation, Exelixis Plant Sciences, Inc., Agrinomics, LLC and Exelixis, Inc.
10.2*	Contract Research Agreement, dated as of September 4, 2007, by and among Agrigenetics, Inc., Mycogen Corporation, Exelixis Plant Sciences, Inc. and Exelixis, Inc.
10.3*	Amendment No. 1, dated January 11, 2007, to the Collaboration Agreement, dated December 15, 2006, between Exelixis, Inc. and Bristol-Myers Squibb Company.
10.4*	Letter, dated August 20, 2007, relating to Notice under and Amendment to the Collaboration Agreement, dated December 5, 2005, between Exelixis, Inc. and Bristol-Myers Squibb Company.
10.5	Lease Agreement, dated September 14, 2007, between ARE-San Francisco No. 12, LLC and Exelixis, Inc.
31.1	Certification required by Rule 13a-14(a) or Rule 15d-14(a).
31.2	Certification required by Rule 13a-14(a) or Rule 15d-14(a).
32.1**	Certification by the Chief Executive Officer and the Chief Financial Officer of Exelixis, Inc., as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(1) Filed as an Exhibit to the registrant's registration statement on Form S-1 (File No. 333-96335), as filed with the Securities and Exchange Commission on February 7, 2000, as amended, and incorporated herein by reference.

(2) Filed as an Exhibit to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, filed with the Securities and Exchange Commission on August 5, 2004 and incorporated herein by reference.

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

* 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.

EXHIBIT 10.1

EXECUTION COPY

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

ASSET PURCHASE AND LICENSE AGREEMENT

by and among

AGRIGENETICS, INC.,
a Delaware corporation;

MYCOGEN CORPORATION,
a California corporation;

EXELIXIS PLANT SCIENCES, INC.,
a Delaware corporation;

AGRINOMICS, LLC,
a Delaware limited liability company;

and

EXELIXIS, INC.,
a Delaware corporation.

Dated as of September 4, 2007

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ASSET PURCHASE AND LICENSE AGREEMENT

This **Asset Purchase and License Agreement** is entered into as of September 4, 2007 by and among **Agrigenetics, Inc.,** a Delaware corporation (the "**Purchaser**"), **Mycogen Corporation**, a California corporation ("**Mycogen**"), **Exelixis Plant Sciences, Inc.,** a Delaware corporation ("**EPS**"), **Agrinomics, LLC,** a Delaware limited liability company ("**Agrinomics**"), and **Exelixis, Inc.**, a Delaware corporation ("**Exelixis**"). EPS and Agrinomics are collectively referred to herein as the "**Seller**". The Purchaser, EPS and Agrinomics are individually referred to herein as a "**Party**" or collectively as the "**Parties**". Mycogen is a party to this Agreement pursuant to Section 7.3 and Section 8, and Exelixis is a party to this Agreement pursuant to Section 7.3 and Section 8. Certain capitalized terms used in this Agreement are defined in Exhibit A.

Recitals

WHEREAS, the Seller wishes to sell to the Purchaser, and the Purchaser wishes to purchase from the Seller, the Purchased Assets, and in connection therewith the Purchaser is willing to assume certain liabilities and obligations of the Seller relating thereto, all upon the terms and subject to the conditions set forth in this Agreement (the "**Acquisition**");

WHEREAS, in connection with the Acquisition, the Seller wishes to grant certain licenses to the Purchaser, and the Purchaser wishes to grant certain licenses and covenants not to sue to the Seller, all upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, EPS and the Purchaser are executing a contract research agreement (the "**Contract Research Agreement**") which sets forth the terms and conditions under which EPS will provide contract research to the Purchaser after the Effective Date and potentially transfer additional assets to the Purchaser for additional consideration.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions set forth herein, the parties hereto, intending to be legally bound hereby, agree as follows:

SECTION 1. Sale of Purchased Assets; Licenses.

1.1 Sale of Purchased Assets. Effective as of the Closing, the Seller hereby sells, assigns, transfers, conveys, and delivers to the Purchaser all of the Seller's right, title and interest (other than the rights expressly licensed back to or otherwise conferred upon the Seller pursuant to Section 2 of this Agreement) in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) on the terms of, and subject to the conditions set forth in, this Agreement, and the Purchaser hereby purchases from the Seller, all of the Seller's right, title and interest, in, to and under the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

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

1.2 Closing; Delivery and Payment.

(a) Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place concurrently with the execution and delivery of this Agreement (the time and date on which the Closing occurs is hereinafter referred to as the "**Effective Date**").

(b) Delivery and Payment. At the Closing:

(i) the Purchaser shall pay the Purchase Price to the Seller in immediately available funds by wire transfer to the account or accounts designated in writing by the Seller at least two (2) business days prior to the Effective Date;

(ii) the Seller shall deliver to the Purchaser such instruments of transfer, assignment, conveyance and other instruments sufficient to evidence and effectuate the sale, assignment and transfer to the Purchaser of all right, title and interest in and to the Purchased Assets all in form and substance reasonably satisfactory to the Purchaser, including (1) the Statutory Warranty Deed in the form of Exhibit B attached hereto (the "**Statutory Warranty Deed**"), (2) the Bill of Sale in the form of Exhibit C attached hereto (the "**Bill of Sale**") and (3) the Patent Assignment Agreement in the form of Exhibit D attached hereto (the "**Patent Assignment Agreement**");

(iii) the Purchaser shall deliver to the Seller such instruments of assumption sufficient to assume, discharge or perform when due, all of the Assumed Liabilities, all in form and substance reasonably satisfactory to the Seller, including the Assignment and Assumption Agreement in the form of Exhibit E attached hereto (the "**Assignment and Assumption Agreement**"); and

(iv) the Purchaser and the Seller shall execute an instrument demonstrating that the parties to the **[*]** have terminated such agreements (the "**Letter**").

(c) Acknowledgement. The Purchaser hereby acknowledges that, except with regard to the Purchased Assets specifically described in Sections 7.2(b) and (e) below as requiring delivery, the Seller shall have no obligation to deliver the physical possession of any other Purchased Assets to the Purchaser, and, as of the Closing, all such other Purchased Assets are located at and, immediately after Closing, shall remain located at the Purchased Facility or the PDX Facility.

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1.3 Partially Exclusive License.

(a) The Seller hereby grants the Purchaser a fully-paid, royalty-free, perpetual, irrevocable, worldwide, exclusive license, with the right to grant sublicenses, under the Partially Exclusive Patents for any purpose, subject only to the licenses and the options described in Sections 1.3(b), 1.3(c) and 1.3(d) that the Seller previously granted to Third Parties under the Exelixis Existing Agreements and any future licenses granted pursuant to the exercise of such options.

(b) The Purchaser hereby acknowledges that, as of the Effective Date, **[*]** has, pursuant to the **[*]** Agreement, (i) **[*]** and (ii) **[*]**. Each such research license will **[*]**.

(c) The Purchaser hereby acknowledges that, as of the Effective Date, **[*]** has, pursuant to the **[*]** Agreement, **[*]**.

(d) The Purchaser hereby acknowledges that, as of the Effective Date, **[*]** has, pursuant to **[*]** Agreement, **[*]**, and **[*]** has, pursuant to **[*]** Agreement, the **[*]**. Prior to the Effective Date, **[*]** and, as of the Effective Date, **[*]**. **[*]**.

(e) The Purchaser: (i) covenants that during the term of the **[*]** Agreement, **[*]** in any jurisdiction in which an applicable unexpired **[*]** has not been held, by a court or governmental agency of competent jurisdiction, to be unpatentable, invalid or unenforceable in a decision from which no appeal can be taken, **[*]**; and (ii) acknowledges that **[*]**.

(f) Between the Effective Date and **[*]**, the Purchaser: (i) covenants **[*]** in any jurisdiction in which an applicable unexpired **[*]** has not been held, by a court or governmental agency of competent jurisdiction, to be unpatentable, invalid or unenforceable in a decision from which no appeal can be taken**[*]**; and (ii) acknowledges that **[*]**.

(g) If **[*]** with respect to a particular patent or patent application **[*]**, the Seller will notify the Purchaser in writing and will **[*]**; provided, however, that if any patent or patent application **[*]**.

1.4 Non-Exclusive License. The Seller hereby grants the Purchaser a fully-paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive license, with the right to grant sublicenses, under the Non-Exclusive Assets for any purpose.

SECTION 2. EXCLUDED ASSETS; LICENSE TO SELLER; RETAINED RIGHTS.

2.1 Excluded Assets.

(a) Generally. Subject to Section 2.1(c), the Purchaser shall not acquire any rights or interests in, and, further subject to Sections 2.1(b) and 8.15, the Seller shall retain all rights and interests in, including the rights to use, exploit, sell and otherwise transfer for all purposes, the Excluded Assets. Subject to Section 7.3(f), specifically, but not as a limitation to the generality of the foregoing, EPS shall have the right to grant a license to the Sellable Assets Purchaser to use the Non-Exclusive Know-How identified in Schedule 1.4(a) in connection with the Sellable Assets.

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(b) Sellable Assets.

(i) The Seller agrees **[*]** provided that the Seller **[*]** sell or otherwise transfer the Sellable Assets or any portion thereof to any Person (other than Exelixis) for any use by such Person and to receive consideration in exchange for such sale or transfer, including cash, equity or other ownership interest in such Person **[*]** (the closing of such sale of the Sellable Assets, the "**Sellable Assets Sale**", and such purchaser or transferee of the Sellable Assets, the "**Sellable Assets Purchaser**"), provided further that EPS **[*]**.

(ii) EPS agrees that:

(1) prior to the Sellable Assets Sale, **[*]** any potential Sellable Assets Purchaser regarding the Sellable Assets;

(2) EPS shall not, and it will cause its Affiliates not to, directly or indirectly, **[*]** in connection with the Sellable Assets Sale;

(3)(A) EPS shall **[*]** transfer of the Sellable Assets and the provision of technical assistance to the Sellable Assets Purchaser, which may include the packaging, transferring and tracking of seeds, the transfer of data and database(s), and the transfer of licenses and permits **[*]**; (B) EPS shall **[*]**; and (C) **[*]** transfer of the Sellable Assets and the provision of technical assistance to the Sellable Assets Purchaser;

(4) after **[*]** the Sellable Assets Purchaser with respect to the Sellable Assets, provided that the foregoing **[*]**; and

(5)(A) it **[*]** the agreement governing the sale or transfer of the Sellable Assets (the "**Sellable Assets Purchase Agreement**") **[*]**; and (B) for any Sellable Assets Sale that occurs before the earlier of the Anticipated Delivery Date (as defined in the Contract Research Agreement) of **[*]**; provided, however, that the following shall **[*]**.

(c) Cell Factory Assets.

(i) Subject to the Purchaser's rights as described in this Section 2.1(c)(i) and in Section 2.1(c)(ii) below, the Seller expressly reserves all rights to use and exploit the Cell Factory Assets for all purposes, including entering into collaboration with any Third Party to further develop the Cell Factory Assets with such Third Party, or selling or otherwise transferring the Cell Factory Assets to any Third Party. In particular and without limiting the foregoing, unless and until the Parties enter into a Cell Factory Purchase Agreement, the Seller shall have the right to: (1) fund, by itself or with or through their Affiliates or Third Parties, and continue to operate the Cell Factory Assets **[*]**; and (2) use the Cell Factory Assets to initiate

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and conduct new research and collaborations, and to continue existing research and collaborations, at the Seller's sole discretion; provided that the Seller **[*]**. Any and all new inventions, materials and intellectual property generated by the Seller pursuant to any such Cell Factory Asset-focused research or collaboration shall be deemed to be Cell Factory Assets (and therefore subject to Section 2.1(c)(ii)), except to the extent any Third Party has rights to such inventions, materials or intellectual property pursuant to an agreement between the Seller and such Third Party. The Seller shall notify the Purchaser within **[*]**. If the Purchaser notifies the Seller in writing, within **[*]** thereafter, of its interest in the development and/or commercialization of **[*]** then EPS shall grant the Purchaser **[*]**. If the Purchaser does not notify the Seller, within such **[*]** period, of the Purchaser's interest in the development and/or commercialization of such **[*]**, then the Seller shall have no further rights with respect to, and EPS will have no further obligation to the Purchaser with respect to, such **[*]**. The foregoing obligation to notify the Purchaser of **[*]**.

(ii) Notwithstanding Section 2.1(c)(i) above, during the Notice Period, if the Seller desires to sell all or substantially all of the Cell Factory Assets, or if the Seller receives a bona fide offer from a Third Party to purchase all or substantially all of the Cell Factory Assets, the Seller shall provide written notice thereof (the "**Notice**") to the Purchaser within **[*]**. Within **[*]** after receiving such Notice, the Purchaser shall notify the Seller in writing as to whether the Purchaser is interested in purchasing the Cell Factory Assets. If the Purchaser informs the Seller in writing within such **[*]** that it is interested in **[*]** or, if within the Notice Period, the Purchaser otherwise notifies the Seller in writing that it is interested in purchasing the Cell Factory Assets, then the Purchaser and the Seller shall engage in good faith negotiations regarding the terms and conditions of an agreement pursuant to which the Seller would sell such Cell Factory Assets to the Purchaser (the "**Cell Factory Purchase Agreement**"). If the Purchaser and the Seller enter into such Cell Factory Purchase Agreement, then the Parties' rights and obligations with respect to the Cell Factory Assets shall be governed under the Cell Factory Purchase Agreement and no longer under this Agreement. The Seller's obligations to the Purchaser pursuant to this Section 2.1(c)(ii) shall (1) expire upon the earlier of **[*]** and (2) provided that the Seller has complied with this Section 2.1(c)(ii), not be interpreted as restricting the Seller from (A) negotiating with Third Parties with respect to purchase of all or substantially all of the Cell Factory Assets or (B) accepting, in its sole and absolute discretion, any offer to purchase all or substantially all of the Cell Factory Assets. The "**Notice Period**" shall mean the period that commences on the Effective Date and ends **[*]** thereafter, unless the Purchaser notifies the Seller within **[*]** after the Effective Date that the Purchaser and/or its Affiliates **[*]**, in which case the period shall end **[*]** after the Effective Date.

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2.2 Right to Use; Licenses; Covenants.

(a) The Purchaser hereby grants to EPS a fully-paid, royalty-free, worldwide, non-exclusive license, under all intellectual property included in the Purchased Assets and the Partially Exclusive Patents, solely for EPS to perform its obligations under the Contract Research Agreement during the term thereof.

(b) The Purchaser hereby grants to EPS access to, and the rights to use:

(i) all tangible items and data included in the Purchased Assets, free of charge, for EPS to perform its obligations under the Contract Research Agreement during the term thereof;

(ii) all office equipment such as telephones, computers and photocopy machines located at the Purchased Facility and the PDX Facility, free of charge, for EPS's incidental use of such equipment in connection with any sale or transfer of the Sellable Assets in accordance with Section 2.1(b); and

(iii) all Purchased Operative Assets, free of charge **[*]** and in connection with:

(1) the research, development and commercialization of, and the potential management, transfer or sale of: (A) the Cell Factory Assets; (B) the Dual-Use Assets and the Non-Exclusive Assets in connection with the development, use, exploitation or transfer of the Cell Factory Assets; and (C) all assets arising from the above activities in connection with the development, use, exploitation or transfer of the Cell Factory Assets; and

(2) the research, development and commercialization of, and the potential management, transfer or sale of the Contractual Assets and the assets arising therefrom to preserve and maintain such assets and fulfill or transfer the Seller's contractual obligations with respect to such assets.

(c) The Purchaser hereby grants to the Seller **[*]**, solely for use with: (i) the Cell Factory Assets, (ii) Dual-Use Assets and Non-Exclusive Assets in connection with the development, use, exploitation or transfer of the Cell Factory Assets and (iii) assets arising from any of the assets described in subsection (i) or (ii) above, with the right to sublicense, provided that **[*]** will be explicitly limited to **[*]** to **[*]**. For clarity and without limiting the Seller's rights set forth in the foregoing sentence, the Seller's license under this Section 2.2(c) shall be fully transferable by the Seller to any purchaser(s) or transferee(s) of the Cell Factory Assets without the prior consent of the Purchaser.

(d) The Purchaser hereby covenants that neither it nor its Affiliates (and in each case, nor any such entity's successors or assigns) shall assert or enforce against the Seller, their Affiliates or their respective successors, assigns, employees, directors, agents, subcontractors, licensees, sublicensees, distributors or customers (the "**Seller Parties**"), any **[*]**.

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The Purchaser hereby covenants that neither it nor its Affiliates (and in each case, nor any such entity's successors or assigns) shall assert or enforce against any **[*]**, its Affiliates or their successors, assigns, employees, directors, agents, subcontractors, licensees, sublicensees, distributors or customers **[*]**; provided, however, this covenant does not apply to the use of **[*]**. The Purchaser and its Affiliates shall **[*]** the Seller Parties and the Transferee Parties shall be third-party beneficiaries of **[*]**. The Seller Parties (other than the Seller) and the Transferee Parties shall also be third-party beneficiaries of this Section 2.2(d).

(e) The Purchaser hereby grants the Seller a fully paid, royalty free, non-exclusive, perpetual, irrevocable, worldwide license under the **[*]**.

(f) The Purchaser hereby grants the Seller a fully paid, royalty free, non-exclusive, perpetual, irrevocable, worldwide license, under the **[*]**.

(g) The Purchaser hereby grants the Seller a fully paid, royalty free, non-exclusive, perpetual, irrevocable, worldwide license under the **[*]**.

2.3 Retained Rights. The Seller shall have the right to retain copies of the Non-Exclusive Assets, practice the Non-Exclusive Assets for any purpose (subject to Section 7.3(f) and Section 8.15), and, in addition to licenses existing as of the Effective Date under the Exelixis Existing Agreement, to grant licenses under the Non-Exclusive Assets for any purpose to any Third Party purchasing all or substantially all of the Sellable Assets or the Cell Factory Assets, or any Third Party collaborator with respect to the Cell Factory Assets; provided, however, that the Seller shall **[*]**, and provided further however that the Non-Exclusive Know-How licensed to the Sellable Assets Purchaser shall be limited to that specifically identified in Schedule 1.4(a).

2.4 [*]. The Seller shall notify the Purchaser within **[*]** after **[*]**. If the Purchaser notifies the Seller in writing, within **[*]** thereafter, of its interest in **[*]**, then **[*]**. The Purchaser shall **[*]** pursuant to the preceding sentence; such **[*]** will be **[*]**. The Purchaser shall also **[*]**. If the Purchaser does not notify the Seller, within such **[*]** period, of the Purchaser's interest in **[*]**, then the Seller shall have no further rights with respect to, and EPS will have no further obligation to the Purchaser with respect to, such **[*]**.

SECTION 3. ASSUMED LIABILITIES AND EXCLUDED LIABILITIES.

3.1 Assumed Liabilities. The Purchaser shall assume all of the obligations and liabilities of any kind, character or description whatsoever, whether direct or indirect, known or unknown, absolute or contingent, matured or unmatured, that are (a) exclusively associated with the Purchased Assets or (b) associated with, but not exclusively, the Purchased Assets, to the extent such obligations and liabilities are associated with the Purchased Assets, in each case to the extent such obligations and liabilities arise after the Effective Date (collectively, the **"Assumed Liabilities"**). For clarity, Assumed Liabilities shall expressly include all obligations and liabilities associated with the Purchased Assigned Agreements arising after the Effective Date, and the Purchaser hereby agrees to be bound by the terms and conditions of the Purchased Assigned Agreements. The fact that a contract has been entered into by the Seller at or prior to

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the Effective Date shall not determine whether a particular liability or obligation under such contract arose at or prior to the Effective Date. The Purchaser shall assume such Assumed Liabilities by executing and delivering to the Seller the Assignment and Assumption Agreement pursuant to Section 1.2(b)(iii).

3.2 Excluded Liabilities. Except for the Assumed Liabilities, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge, and the Seller shall retain, pay, perform, remain responsible for and otherwise discharge, any and all obligations and liabilities of the Seller of any kind, character or description whatsoever, whether direct or indirect, known or unknown, absolute or contingent, matured or unmatured, and currently existing or hereinafter arising (collectively, the "**Excluded Liabilities**"). Without limiting the foregoing, the Purchaser expressly does not assume and the following shall be considered Excluded Liabilities:

(a) any obligations and liabilities related to the Purchased Assets or the Partially Exclusive Patents that arose or required performance prior to the Effective Date;

(b) any obligations and liabilities related to **[*]**; and

(c) any obligations and liabilities related to the Excluded Assets, whether arising prior to, on or after the Effective Date.

SECTION 4. CONSIDERATION AND RELATED MATTERS.

4.1 Purchase Price. In consideration for the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to the Purchaser, the Purchaser shall: (a) on the Effective Date, pay to the Seller, by wire transfer of immediately available funds, a non-refundable, non-creditable amount equal to EIGHTEEN MILLION DOLLARS ($18,000,000) (the "**Purchase Price**"); (b) on the Effective Date, assume the Assumed Liabilities; and (c) on or before the first (1st) anniversary of the Effective Date, pay to the Seller, by wire transfer of immediately available funds to an account or accounts designated by the Seller, a non-refundable, non-creditable amount equal to FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS ($4,500,000) (such payment, the "**First Anniversary Payment**"). The Purchaser's obligation with respect to the First Anniversary Payment shall not be cancelable or conditioned upon any performance, rights or obligations of any Party under this Agreement or the Contract Research Agreement.

4.2 Transfer Taxes. The Purchaser and the Seller shall each bear and pay 50% of any transfer, documentary, sales (imposed by the State of Oregon), stamp, registration and other similar Taxes and all conveyance fees, recording charges and other similar fees and charges that may become payable (whether by the Seller or the Purchaser) in connection with the sale of the Purchased Assets to the Purchaser, the assumption of the Assumed Liabilities by the Purchaser or any of the other transactions contemplated by this Agreement. The Purchaser shall bear 100% of all use Taxes in connection with the use or relocation of the Purchased Assets and any sales Taxes imposed by any state other than the State of Oregon. For the avoidance of doubt, the Seller shall be solely responsible for all Taxes imposed upon the Seller with respect to any income or gain recognized by the Seller as a result of (a) the sale of the Purchased Assets to the Purchaser, (b) the assumption of the Assumed Liabilities by the Purchaser and (c) the other transactions contemplated by this Agreement.

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4.3 Allocation. Except for the portion of the Purchase Price allocated to the purchase of the Purchased Facility, which has been agreed upon by the Parties prior to the Effective Date, as soon as practicable after the Closing, the Purchaser will deliver to the Seller a statement allocating the Purchase Price, the First Anniversary Payment (excluding the portion thereof required to be treated as interest for U.S. federal income tax purposes), and the Assumed Liabilities (to the extent relevant) among the Purchased Assets (the "**Allocation Statement**") in a manner consistent with Section 1060 of the Internal Revenue Code. If within fifteen (15) days after the delivery of the Allocation Statement, the Seller, in a manner consistent with Section 1060 of the Internal Revenue Code, objects to the allocation set forth in such Allocation Statement, the Purchaser and the Seller will negotiate with each other in good faith and will use commercially reasonable efforts to resolve such dispute within thirty (30) days. If the Purchaser and the Seller reach agreement on such allocation, then each of them will timely file IRS Form 8594 and report all relevant matters consistently with such agreement.

4.4 Real Estate Transaction Expenses. The Purchaser shall bear one hundred percent (100%) of all fees and costs incurred in connection with the transfer of the Purchased Facility at Closing, such as title insurance costs, documentation fees, any survey costs and other similar fees and costs.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

5.1 By the Seller. As of the Effective Date, except as set forth in the corresponding Sections or subsections of the disclosure schedule delivered to the Purchaser on the Effective Date (collectively, the "**Disclosure Schedule**") (each of which shall qualify the specifically identified Sections or subsections hereof to which such Disclosure Schedule relates or such other representations and warranties where it is reasonably apparent on the face of such disclosure that such disclosure is applicable to such representations or warranties), the Seller hereby represents and warrants to the Purchaser as follows:

(a) Purchased Assets. Either EPS or Agrinomics owns and has good and valid title to the Purchased Assets (other than to the Intellectual Property Rights included in the Purchased Patents and the Purchased Know-How), free and clear of all Encumbrances, except for Permitted Encumbrances.

(b) Partially Exclusive Patents and Non-Exclusive Assets. EPS or Agrinomics Controls the Partially Exclusive Patents and the Non-Exclusive Assets and has the right to grant to the Purchaser the licenses thereto set forth in Sections 1.3 and 1.4.

(c) Intellectual Property.

(i) Except as set forth in Section 5.1(c)(i) of the Disclosure Schedule, either EPS or Agrinomics owns all right, title and interest in the Purchased Know-How and the Purchased Patents expressly listed on Schedule 1.1(c) (the "**Listed Patents**"), free and clear of all Encumbrances except for (A) Permitted Encumbrances, (B) the rights granted to Third Parties pursuant to the Purchased Assigned Agreements, (C) the rights granted to the Purchaser and the Purchaser's Affiliates pursuant to the **[*]** and (D) **[*]**.

(ii) Except for the previously granted rights identified in Section 5.1(c)(i) and the previously granted licenses and options described in Sections 1.3(b), 1.3(c) and 1.3(d), and the obligation to grant licenses pursuant to such options, (A) no Third Party has any rights, including any license (whether royalty-bearing or royalty-free) from EPS or Agrinomics to any Purchased Know-How, Listed Patents or Partially Exclusive Patents, and (B) neither EPS nor Agrinomics is subject to any obligation to grant rights to such Intellectual Property Rights to any other Third Party.

(iii) The Listed Patents, the Partially Exclusive Patents and the Non-Exclusive Patents: (A) have not been the subject of any prior litigation or administrative proceeding; (B) are not the subject of any pending litigation or administrative proceeding; (C) are not the subject(s) of any Claim for which the Seller has received written notification; and (D) are not the subject of any threatened Claim of which the Seller has knowledge. For purposes of this Section 5.1(c)(iii), "administrative proceeding" shall mean an opposition, revocation, reexamination, interference or similar proceeding in any country.

(iv) The consummation of the transactions contemplated hereby will not result in the loss or impairment of any of the Intellectual Property Rights included in Purchased Know-How, the Listed Patents, the Partially Exclusive Patents or the Non-Exclusive Assets.

(v) To the knowledge of Seller, no Third Party is currently infringing, misappropriating or otherwise violating, any of the Intellectual Property Rights included in the Purchased Know-How, the Listed Patents, the Partially Exclusive Patents or the Non-Exclusive Assets.

(vi) The Seller has not received from any Third Party any written notification of alleged infringement, misappropriation or other violation of any Intellectual Property Rights of any Third Party arising from the Seller's development or use of any tangible Purchased Assets or any Intellectual Property Rights included in the Purchased Know-How, the Listed Patents, the Partially Exclusive Patents or the Non-Exclusive Assets, and the Seller does not reasonably believe that the Seller's development or use, prior to the Effective Date, of any tangible Purchased Assets or use of any Intellectual Property Rights included in the Purchased Know-How, Listed Patents, the Partially Exclusive Patents or the Non-Exclusive Assets constituted infringement, misappropriation or other violation of any valid and enforceable Intellectual Property Rights of any Third Party.

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(d) Purchased Assigned Agreements. The Exelixis Existing Agreements and the Purchased Assigned Agreements constitute all contracts, agreements, arrangements or understandings, whether written or oral, to which EPS or Agrinomics is a party, that grant to any Third Party rights to any Purchased Assets. EPS has delivered to the Purchaser accurate and complete copies of each Purchased Assigned Agreement, including all amendments thereto. Each Purchased Assigned Agreement is valid, binding and enforceable (subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights) and is in full force and effect. Neither EPS nor Agrinomics, nor to the knowledge of the Seller, any other party, is in breach or violation of, or (with or without notice or lapse of time or both) default under, any Purchased Assigned Agreement, nor has either EPS or Agrinomics received any written claim of any such breach, violation or default.

(e) Sufficiency. Except as set forth in Section 5.1(e) of the Disclosure Schedule, the Purchased Assets, the Partially Exclusive Patents and the Non-Exclusive Assets include all tangible assets and Intellectual Property Rights Controlled by EPS or Agrinomics as of the Effective Date that are necessary for EPS to perform its obligations under the Contract Research Agreement in accordance with the Research Plan (as defined in the Contract Research Agreement) in effect as of the Effective Date with respect to genes expressly identified therein. The representation set forth in this Section 5.1(e) does not extend to specific technologies, techniques, methodologies, equipment, software or biological or chemical materials that the Parties decide after the Effective Date to use or employ in the course of performing work pursuant to the Contract Research Agreement.

(f) Legal Proceedings. There are no material Claims pending or, to the knowledge of the Seller, threatened against EPS or Agrinomics or any of their respective Affiliates that involve or would otherwise affect the Purchased Assets, the Partially Exclusive Patents or the Assumed Liabilities.

(g) Valid Existence. EPS is a corporation validly existing and in good standing under the laws of the State of Delaware. Agrinomics is a limited liability company validly existing and in good standing under the laws of the State of Delaware.

(h) Authority. EPS has the requisite corporate power and authority to enter into and to deliver the Transaction Agreements to which it is a party and to perform its obligations thereunder, and the execution, delivery and performance by EPS of the Transaction Agreements to which it is a party have been duly authorized by all necessary action on the part of EPS and its board of directors and its stockholders, if required. Agrinomics has the requisite corporate power and authority to enter into and to deliver the Transaction Agreements to which it is a party and to perform its obligations thereunder, and the execution, delivery and performance by Agrinomics of the Transaction Agreements to which it is a party have been duly authorized by all necessary action on the part of Agrinomics and its board of managers and its members, if required.

(i) Binding Nature of Agreements. The Transactional Agreements to which either EPS or Agrinomics is a party constitute the legal, valid and binding obligations of EPS or Agrinomics, as applicable, enforceable against it in accordance with their terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(j) Non-Contravention. The execution and delivery by EPS and Agrinomics of the Transactional Agreements to which they are a party and the sale of the Purchased Assets to the Purchaser or the license of the Partially Exclusive Patents or the Non-Exclusive Assets to the Purchaser hereunder will not: (i) conflict with, or result in a violation of, the certificate of incorporation, bylaws or other equivalent organizational documents of EPS or Agrinomics; (ii) result in a violation of any Law that is applicable to EPS, Agrinomics, the Purchased Assets, the Partially Exclusive Patents or the Non-Exclusive Assets; (iii) result in the imposition of any Encumbrance upon any of the Purchased Assets, the Partially Exclusive Patents or the Non-Exclusive Assets; or (iv) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of any Person pursuant to, give to others any right of termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties under, require the offering or making of any payment or redemption under, or give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other contract to which the Seller is a party and which pertains directly to the Purchased Assets, the Partially Exclusive Patents or the Non-Exclusive Assets.

(k) No Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the sale of the Purchased Assets to the Purchaser or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of EPS or Agrinomics or their respective Affiliates.

(l) Real Property. Except as set forth in Section 5.1(l) of the Disclosure Schedule, the Purchased Facility and the PDX Facility are the only real property owned or leased by the Seller that are used by the Seller as of the Effective Date in connection with plant traits research and development. EPS or Agrinomics has good and marketable title in fee simple to the Purchased Facility, free and clear of all Encumbrances, except Permitted Encumbrances. The PDX Facility Lease is in full force and effect, and there exists no default under such lease by EPS or, to the knowledge of the Seller, any other party thereto, nor any event which, with notice or lapse of time or both, would constitute a default thereunder by EPS or, to the knowledge of the Seller, any other party thereto. Neither the Purchased Facility nor the PDX Facility is subject to any governmental decree or order to be sold or is being condemned, expropriated or otherwise taken by any public authority with or without payment of compensation therefore, nor, to the knowledge of the Seller, has any such condemnation, expropriation or taking been proposed. There are no contractual or legal restrictions, other than those set forth in the PDX Facility

Lease, that preclude or restrict the ability of the Purchaser to use the Purchased Facility or the PDX Facility for the purposes for which they are currently being used, and there are no latent defects or adverse physical conditions affecting the Purchased Facility or the PDX Facility, or improvements thereon. As of the Effective Date and except as otherwise provided in Section 6.1(c) of the Contract Research Agreement, the PDX Facility, the Purchased Facility and the Purchased Operative Assets are in good working order and are sufficient for EPS to fulfill its obligations under the Contract Research Agreement as contemplated in the Research Plan in effect as of the Effective Date.

(m) Purchased Operative Assets. All of the Purchased Operative Assets have been maintained in accordance with past practice and generally accepted industry practice. Each item of the Purchased Operative Assets is in good operating condition and repair, ordinary wear and tear excepted, and is adequate for the uses to which it is being put.

(n) Insurance. Section 5.1(n) of the Disclosure Schedule sets forth a true and complete list of all casualty, general liability, product liability and all other types of insurance maintained by EPS or Agrinomics or their respective Affiliates with respect to the Purchased Assets and the Partially Exclusive Patents, together with the carriers and liability limits for each such policy. All such policies are in full force and effect. No notice of cancellation, termination or reduction of coverage has been received with respect to any such policy. No claim currently is pending under any such policy.

(o) Compliance with Law; Permits. Each of EPS and Agrinomics is and has been, since January 1, 2005, in material compliance with all Laws applicable to it in connection with the ownership or use of the Purchased Assets and the Partially Exclusive Patents. Since January 1, 2005, neither EPS nor Agrinomics has received any written notice, order, complaint or other written communication from any Governmental Authority or any other Person that it is not in compliance in all material respects with any such Laws with respect to the Purchased Assets or the Partially Exclusive Patents. Either EPS or Agrinomics is in possession of all permits necessary for EPS or Agrinomics to own and operate the Purchased Facility, to lease and operate the PDX Facility and to use the Purchased Assets and the Partially Exclusive Patents in all material respects, in each case as currently operated or used (the "**Permits**"). Each of EPS and Agrinomics is and has been in compliance in all material respects with all such Permits applicable to it. No suspension, cancellation, modification, revocation or nonrenewal of any such Permit is pending or, to the knowledge of the Seller, threatened.

(p) Taxes. There are no liens for Taxes (other than Permitted Encumbrances) on any of the Purchased Assets. There is no dispute or claim concerning any Tax liability of EPS or Agrinomics or their respective Affiliates claimed or raised by any taxing authority in writing with respect to any Purchased Assets or Partially Exclusive Patents.

(q) Environmental Matters. Neither EPS nor Agrinomics has received, or is aware of any basis for, any communication or complaint from a Governmental Authority or other Person alleging that EPS or Agrinomics or their respective Affiliates has any liability under any

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Environmental Law or is not in compliance with any Environmental Law with respect to the use of the Purchased Facility, the PDX Facility, the other Purchased Assets or the Partially Exclusive Patents. To Seller's knowledge, and except with respect to such matters as would not reasonably be expected to result in any liability under any Environmental Law, **[*]**, and there is and has been no Release or threatened Release of Hazardous Substances nor any clean-up or corrective action of any kind relating thereto, on the Purchased Facility (including any buildings, structures, improvements, soils and surface, subsurface and ground waters thereof) or the PDX Facility. To Seller's knowledge, except as set forth in Section 5.1(q) of the Disclosure Schedule, no underground improvement, including any treatment or storage tank or water, gas or oil well, that is subject to regulation under Environmental Laws, is or has been located on any property described in the foregoing sentence. To Seller's knowledge, neither EPS nor Agrinomics are actually, contingently, potentially or allegedly liable (i) for any Release of, threatened Release of or contamination by Hazardous Substances with respect to the Purchased Facility or the PDX Facility or (ii) under any Environmental Law with respect to the Purchased Facility or the PDX Facility. To Seller's knowledge, there has been no Release or threatened Release of Hazardous Substances nor any clean-up or corrective action of any kind relating thereto, on the Purchased Facility (including any buildings, structures, improvements, soils and surface, subsurface and ground waters thereof) or the PDX Facility that was or would have been required to be reported to Governmental Authorities under any Environmental Law. There is no pending or, to the knowledge of the Seller, threatened investigation by any Governmental Authority nor any pending or, to the knowledge of the Seller, threatened Action with respect to the Purchased Facility or the PDX Facility in connection with Hazardous Substances or otherwise under any Environmental Law. Either EPS or Agrinomics holds all Environmental Permits necessary in connection with the use of the Purchased Facility, the PDX Facility, the other Purchased Assets, or the Partially Exclusive Patents as they are currently being used or operated and is and has been in material compliance therewith, and the Seller has provided the Purchaser with copies of all such Environmental Permits. To Seller's knowledge, neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) require any notice to or consent of any Governmental Authority or other Person pursuant to any applicable Environmental Law or Environmental Permit or (ii) subject any Environmental Permit to suspension, cancellation, modification, revocation or non-renewal. The Seller has disclosed to the Purchaser all "Phase I", "Phase II" or other environmental assessment reports ("**Environmental Reports**") that they have knowledge of and have provided copies of such Environmental Reports that they have in their possession or Control addressing the Purchased Facility or the PDX Facility.

5.2 By the Purchaser. The Purchaser represents and warrants to the Seller that, as of the Effective Date:

(a) Valid Existence; Subsidiary. The Purchaser is a corporation validly existing and in good standing under the laws of the State of Delaware. The Purchaser is a wholly owned subsidiary of Mycogen.

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(b) Authority. The Purchaser has the requisite corporate power and authority to enter into and to deliver the Transactional Agreements to which it is a party and to perform its obligations thereunder, and the execution, delivery and performance by the Purchaser of the Transactional Agreements to which it is a party have been duly authorized by all necessary action on the part of the Purchaser and its board of directors and its stockholders, if required.

(c) Binding Nature of Agreements. The Transactional Agreements to which the Purchaser is a party constitute the legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(d) Non-Contravention. The execution and delivery by the Purchaser of this Agreement and the purchase of the Purchased Assets by the Purchaser from the Seller will not: (i) conflict with, or result in a violation of, the certificate of incorporation, bylaws or other equivalent organizational documents of the Purchaser; and (ii) result in a material violation by the Purchaser of any Law that is applicable to the Purchaser or the Purchased Assets or Partially Exclusive Patents.

(e) No Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the sale of the Purchased Assets to the Purchaser or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser or its Affiliates.

(f) Financing. The Purchaser has or will have sufficient cash to enable it to make all timely payments under this Agreement and all other Transactional Agreements.

(g) [*]. The Purchaser and its Affiliates have not received any written notification of a **[*]**, and have no knowledge of any **[*]**.

5.3 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 OR AS EXPRESSLY SET FORTH IN THE TRANSACTION AGREEMENTS, EACH PARTY 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 WITH RESPECT TO ANY KNOW-HOW, DATA, CONSTRUCTS, CELL LINES, GENES, SEED, ORGANISMS, COLLECTION, PORTFOLIO, DATABASE, TECHNOLOGY, INVENTIONS OR INTELLECTUAL PROPERTY RIGHTS SOLD, LICENSED OR OTHERWISE TRANSFERRED TO THE OTHER PARTY PURSUANT TO THE TERMS OF THIS AGREEMENT.

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

SECTION 6. INDEMNIFICATION.

6.1 Indemnification by the Seller. Subject to the limitations set forth in this Section 6, the Seller shall indemnify the Purchaser and its Affiliates and each of their trustees, directors, officers, employees and agents and their respective successors, heirs and assigns (collectively, the "**Purchaser Indemnitees**") against (a) any Damages incurred by or imposed upon the Purchaser Indemnitees or any one of them arising or resulting from any Claim brought by **[*]** or any of its licensees against one or more Purchaser Indemnitees with respect to any infringement or alleged infringement of **[*]**, in each case only with respect to **[*]** having occurred prior to the Effective Date (such Claim, the "**[*] Claim**"), provided that the Seller shall not have any obligation pursuant to this Section 6.1(a) to indemnify the Purchaser Indemnitees (i) in the event that such **[*]** Claim is first brought or made after any Purchaser Indemnitee brings a Claim challenging the validity, enforceability, scope or infringement of **[*]**, or (ii) with respect to Damages resulting from any Claim or portion thereof that is not a **[*]** Claim, including any Claim brought by **[*]** or any of its licensees with respect to any infringement or alleged infringement of any **[*]** that is not **[*]** or any other cause of action that does not concern **[*]**; and (b) any Damages that the Purchaser Indemnitees or any one of them incurs resulting or arising from or otherwise relating to (i) any Excluded Liabilities, including any liabilities arising from the use, license, sale or exploitation of any of the Purchased Assets prior to the Effective Date, except that this Section 6.1(b)(i) shall not be construed as limiting the Purchaser's indemnification obligations under the Contract Research Agreement, (ii) any breach of the representations and warranties of the Seller set forth in Section 5.1 or (iii) any breach of any of the covenants of the Seller set forth in this Agreement.

6.2 Indemnification by the Purchaser. Subject to the limitations set forth in this Section 6, the Purchaser shall indemnify the Seller and their Affiliates and each of their trustees, directors, officers, employees and agents and their respective successors, heirs and assigns (collectively, the "**Seller Indemnitees**") against any Damages that the Seller Indemnitees or any one of them incurs resulting or arising from or otherwise relating to (a) any breach of the representations and warranties of the Purchaser set forth in Section 5.2; (b) any breach by the Purchaser of the covenants of the Purchaser set forth in this Agreement; (c) any Assumed Liability; or (d) any liability arising from (i) the post-Effective Date use, license, sale or exploitation of any of the Purchased Assets by the Purchaser, its Affiliates and their respective successors, assigns, licensees (except for the Seller and their Affiliates), sublicensees (except for the Seller, their Affiliates and their and their Affiliates' licensees or sublicensees) and transferees, but excluding any such liability resulting from or relating to an infringement of **[*]**, or (ii) the Purchaser's or its Affiliates' or sublicensees' (except for the Seller, their Affiliates and their and their Affiliates' licensees or sublicensees) practice of the licenses set forth in Sections 1.3 and 1.4, excluding any such liability resulting from or relating to an infringement of **[*]**. In addition, the Purchaser shall indemnify the Seller, the Sellable Assets Purchaser, and their respective Affiliates and each of their respective trustees, directors, officers, employees and agents and their respective successors, heirs and assigns (collectively, the "**Other Indemnitees**") against any Damages that the Other Indemnitees or any one of them incurs resulting or arising from or otherwise relating to **[*]** or the reasonable efforts by the Other Indemnitees or any one of them to **[*]**.

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6.3 Limitations on Liability.

(a) If a party entitled to be indemnified under this Section 6 (an **"Indemnified Party"**) wishes to assert an indemnification claim against the party subject to such indemnification obligation under this Section 6 (the **"Indemnifying Party"**), the Indemnified Party will deliver to the Indemnifying Party, as soon as reasonably practicable, a written notice (a **"Claim Notice"**) setting forth: (i) the specific representation, warranty or covenant alleged to have been breached by the Indemnifying Party or the specific other matter with respect to which the Indemnified Party is making such an indemnification claim; (ii) a reasonably detailed description of the facts and circumstances giving rise to the alleged breach of such representation, warranty or covenant or other matter; and (iii) a reasonably detailed description of, and a good faith estimate of the total amount of, the Damages actually incurred or expected to be incurred by the Indemnified Party as a result of such alleged breach or other matter, which estimate shall not limit the indemnification obligations of any Indemnifying Party hereunder. Notwithstanding anything to the contrary contained in this Agreement, the Indemnified Party will not be permitted to deliver any Claim Notice to the Indemnifying Party (and will not be entitled to assert any claim set forth in any Claim Notice) unless the Indemnified Party has reasonably determined that the breach alleged in such Claim Notice has actually occurred or, in the case of indemnification with respect **[*]**, that **[*]** or its licensee has actually filed or threatened in writing to file a suit that names one or more Purchaser Indemnitees and alleges infringement of **[*]** by the Purchaser or DAS **[*]**, or by EPS or its Affiliates, prior to the Effective Date.

(b) The Claims Period will begin on the date hereof and will terminate and expire, and will cease to be of any force or effect as follows: with respect to Damages arising from or otherwise relating to (i) any breach of the Core Representations, on the date that is the **[*]**, (ii) any breach of a covenant herein, **[*]** and (iii) any breach of any representation or warranty other than a Core Representation, **[*]**. Notwithstanding the foregoing, if the Indemnified Party shall have duly delivered to the Indemnifying Party, in conformity with all of the applicable procedures set forth in Section 6.3(a), a Claim Notice setting forth a claim for indemnification based upon a breach by the Indemnifying Party of any of such representations, warranties or covenants, then the specific claim set forth in such Claim Notice will survive the Claims Period. The Indemnifying Party will not be liable for any claim for indemnification **[*]**, provided that the foregoing shall **[*]**. **[*]**, the Indemnifying Party will be required to indemnify the Indemnified Party **[*]**. The total amount of indemnifiable Damages required to be paid by the Seller to the Purchaser Indemnitees **[*]** is limited to an amount equal to **[*]**, provided that the foregoing limitation shall not apply to Damages arising out of or relating to the breach of any representation or warranty in the event of fraud, intentional misrepresentation or intentional breach. For clarity, except in the case of Damages arising out of or relating to the breach of any representation or warranty in the event of fraud, intentional misrepresentation or intentional breach, **[*]**. The total amount of indemnifiable Damages required to be paid by the Seller to the Purchaser Indemnitees under **[*]** is limited to an amount equal to **[*]**, provided that the foregoing limitation shall not apply to Damages arising out of or relating to the **[*]** in the event of fraud, intentional misrepresentation or intentional breach. For clarity, except in the case of Damages arising out of or relating to the **[*]** in the event of fraud, intentional misrepresentation or intentional breach, **[*]**.

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(c) The Purchaser Indemnitees' indemnification rights under Section 6.1(a) will terminate and expire, and will cease to be of any force or effect, on the **[*]**, and any and all liabilities of the Seller with respect thereto will thereupon be extinguished; provided, however, that if, prior to the **[*]**, the Purchaser shall have duly delivered to the Seller, in conformity with all of the applicable procedures set forth in Section 6.3(a), a Claim Notice setting forth a claim for indemnification under Section 6.1(a), then the specific claim set forth in such Claim Notice will survive the **[*]**. With respect to the Seller's indemnification obligations under Section 6.1(a), the Seller shall indemnify the Purchaser for **[*]** (the "**Initial Threshold**"). Thereafter, the Seller's indemnification obligations under Section 6.1(a) shall be **[*]** incurred by or imposed upon any of the Purchaser Indemnitees in excess of the Initial Threshold. Notwithstanding anything to the contrary in this Agreement, the total amount of indemnifiable Damages required to be paid by Seller to the Purchaser Indemnitees under Section 6.1(a) is limited to an amount equal to **[*]**. For clarity, **[*]**.

(d) An Indemnified Party seeking indemnification from the Indemnifying Party shall specify in the Claim Notice the cause under which it seeks indemnification so that the Parties can determine the applicable limitation under this Section 6.3, if any, on the Indemnifying Party's obligations with respect to such indemnification. In no event shall the Indemnified Party be entitled, with respect to a particular indemnification-triggering event, to indemnification from the Indemnifying Party for multiple causes to which different limitations apply. In addition, the Purchaser Indemnitees shall not be entitled to indemnification pursuant to Section 6.1(b) with respect to any Claim brought by [*] or any of its licensees with respect to infringement or alleged infringement of [*].

(e) The total amount of all indemnifiable Damages required to be paid by the Purchaser under Section 6.2 with respect to **[*]** is limited to an amount equal to **[*]**, provided that the foregoing limitation shall not apply to Damages arising out of or relating to the breach of **[*]** in the event of fraud, intentional misrepresentation or intentional breach. For clarity, except in the case of Damages arising out of or relating to any representation or warranty in the event of fraud, intentional misrepresentation or intentional breach, **[*]**. The total amount of indemnifiable Damages required to be paid by the Purchaser to the Seller Indemnitees under Section 6.2 with respect to **[*]** is limited to an amount equal to **[*]**, provided that the foregoing limitation shall not apply to Damages arising out of or relating to **[*]** in the event of fraud, intentional misrepresentation or intentional breach. For clarity, except in the case of Damages arising out of or relating to the breach of any Core Representation or covenant in the event of fraud, intentional misrepresentation or intentional breach, **[*]**.

(f) No current or former individual, director, officer or employee of an Indemnifying Party shall have any personal or individual liability of any nature to the Indemnified Party.

(g) Without limiting the effect of any other limitation set forth in this Section 6.3, for purposes of this Agreement, no representation or warranty of the Indemnifying Party shall be deemed to have been breached if the Indemnified Party had knowledge, on or prior to the Effective Date, of the inaccuracy in or breach of such representation or warranty or of any facts or circumstances constituting or resulting in an inaccuracy in or breach of such representation or warranty.

(h) The amount of any Damages for which indemnification is provided under this Section 6 shall be calculated net of any actual Tax benefit received by the Indemnified Party or any Affiliate of the Indemnified Party in connection with such Damages or any of the events or circumstances giving rise or otherwise related to such Damages. If the Indemnified Party or any Affiliate of the Indemnified Party actually receives a Tax benefit after an indemnification payment is made, the Indemnified Party shall promptly pay the amount of such Tax benefit to the Indemnifying Party at such time or times as and to the extent that such Tax benefit is realized, but only to the extent of the aggregate related indemnification payments made to the Indemnified Party by the Indemnifying Party.

(i) To the extent the Indemnifying Party makes or is required to pay Damages to the Indemnified Party under this Section 6, the Indemnifying Party will be entitled to exercise, and will be subrogated to, any rights and remedies (including rights of indemnity, rights of contribution and other rights of recovery) that the Indemnified Party or any of the Indemnified Party's Affiliates may have against any other Person with respect to any Damages, circumstances or Claim to which such indemnification payment is directly or indirectly related. The Indemnified Party will take such actions (at the sole expense of the Indemnifying Party) as the Indemnifying Party may reasonably request for the purpose of enabling the Indemnifying Party to perfect or exercise the Indemnifying Party's right of subrogation hereunder.

(j) Promptly after the Indemnified Party becomes aware of any event or circumstance that could reasonably be expected to constitute or give rise to any indemnification claim by the Indemnified Party under this Section 6, the Indemnified Party shall take all commercially reasonable steps to mitigate and minimize all Damages that may result from such event or circumstance.

(k) Neither Party shall have any right to set-off, against payments owed by such Party pursuant to this Agreement or the Contract Research Agreement, any amount of Damages incurred by such Party or its respective indemnitees for which the other Party has not yet fulfilled its obligation to indemnify such Party or its respective indemnitees.

6.4 Defense of Third Party Claims.

(a) Subject to Section 6.4(c), upon its receipt of a Claim Notice, the Indemnifying Party will have the right, at its election and at its sole expense, to assume the defense with its own counsel of the Claim to which such Claim Notice pertains. If the Indemnifying Party elects to assume the defense of such Claim, then:

(i) notwithstanding anything to the contrary contained in this Agreement, the Indemnifying Party will not be required to pay or otherwise indemnify the Indemnified Party against any attorneys' fees or other expenses incurred on behalf of the Indemnified Party in connection with such Claim following the Indemnifying Party's election to assume the defense of such Claim unless (A) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party, (B) the named parties to the Third Party Claim (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably determines that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Indemnified Party may present such counsel with a conflict of interest, or (C) the Purchaser is defending a **[*]** Claim;

(ii) the Indemnified Party will make available to the Indemnifying Party all books, records and other documents and materials that are under the control of the Indemnified Party or any of the Indemnified Party's Affiliates, advisors or representatives and that the Indemnifying Party reasonably considers necessary or desirable for the defense of such Claim;

(iii) the Indemnified Party will execute such documents and take such other actions, at the Indemnifying Party's expense, as the Indemnifying Party may reasonably request for the purpose of facilitating the defense of, or any settlement, compromise or adjustment relating to, such Claim;

(iv) the Indemnified Party will otherwise cooperate at the Indemnifying Party's expense, as reasonably requested by the Indemnifying Party in the defense of such Claim;

(v) the Indemnified Party will not admit any liability with respect to such Claim; and

(vi) the Indemnifying Party may settle, adjust or compromise such Claim, on such terms as the Indemnifying Party considers appropriate; provided, however, that the Indemnifying Party will not settle, adjust or compromise such Claim, or admit any liability with respect to such Claim, without the prior written consent of the Indemnified Party, unless such settlement would not have any impact on the Indemnified Party.

(b) If the Indemnifying Party elects not to assume the defense of such Claim, then the Indemnified Party will proceed diligently to defend, at the Indemnifying Party's expense, such Claim with the assistance of counsel reasonably satisfactory to the Indemnifying Party; provided, however, that the Indemnified Party will not settle, adjust or compromise such Claim, or admit any liability with respect to such Claim, without the prior written consent of the Indemnifying Party, unless such settlement would not have any impact on the Indemnifying Party.

(c) Notwithstanding Sections 6.4(a) and 6.4(b), the Seller shall not have the right to assume the defense of any **[*]** Claim with respect to **[*]**. The Purchaser Indemnitees will proceed diligently to defend such Claim; provided, however, that the Purchaser Indemnitees will not settle, adjust or compromise such **[*]**, without the prior written consent of the Seller, unless such settlement would not have any impact on the Seller.

6.5 Exclusive Remedy. The right of a Party to assert indemnification claims against and receive indemnification payments from the other Party pursuant to this Section 6 shall be the sole and exclusive right and remedy exercisable by such Party with respect to any breach by the other Party of any representation, warranty or covenant set forth in this Agreement; provided, however, that this Section 6 shall not prevent either Party from asserting a tort claim for fraud against the other Party in appropriate circumstances or from otherwise seeking equitable relief under Section 8.8.

SECTION 7. COVENANTS.

7.1 Prosecution and Enforcement of Partially Exclusive Patents.

(a) As between the Parties, the Seller shall have the sole right to file, prosecute and/or maintain the Partially Exclusive Patents, for which they shall bear all associated costs and expenses. The Seller shall have the sole right to select the countries in which they file, continue to prosecute, or maintain the Partially Exclusive Patents. The Seller shall periodically notify the Purchaser with respect to the status of the Partially Exclusive Patents, shall provide or have provided to Purchaser copies of all office actions with respect to the Partially Exclusive Patents promptly after their receipt, and shall consider the comments of the Purchaser with respect to the Partially Exclusive Patents during prosecution thereof, provided that **[*]**. Should the Seller decide not to file or continue prosecuting or maintaining a particular Partially Exclusive Patent, the Seller shall notify the Purchaser in writing promptly after such decision is made and not less than sixty (60) days prior to any applicable deadline. Thereafter, the Purchaser shall have the right, but not the obligation, to assume such filing, prosecution and maintenance at its sole cost and expense, provided that: (i) **[*]**; and (ii) **[*]**.

(b) If either Party becomes aware of any Third Party activity that infringes a Partially Exclusive Patent or any allegation by a Third Party that a Partially Exclusive Patent is invalid or unenforceable, then that Party shall give prompt written notice to the other Party regarding such infringement or allegation. As between the Parties, the Seller shall have the first right, but not the obligation, to attempt to resolve such infringement or allegation, whether by settlement or judgment. In such event, the Purchaser agrees to be joined as a necessary party to the suit (if applicable), at the request and expense of the Seller, and to provide reasonable assistance in any such action, at the Seller’s expense. If the Seller declines to attempt to resolve such infringement or allegation, then, **[*]**, the Purchaser shall have the subsequent right, but not the obligation, to attempt to resolve such infringement or allegation, whether by settlement or judgment. In such event, the Seller agrees to be joined as a necessary party to the suit (if applicable), at the request and expense of the Purchaser, and to provide reasonable assistance in any such action, at the Purchaser’s expense.

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7.2 Further Assurances; Access to Books and Records.

(a) Following the Effective Date, each Party shall, to the extent reasonably requested by the other Party and at such other Party's sole expense, execute and deliver such documents and instruments and take such other actions as such other Party may reasonably request in order to consummate and make effective the transactions contemplated by this Agreement.

(b) Prior to the **[*]**, the Seller shall transfer to the Purchaser copies of all EPS laboratory notebooks pertaining to the Purchased Assets, provided that the Seller may redact from such copies all entries with respect to experiments that do not pertain to or are not used or held in connection with the Purchased Assets or which the Seller is prohibited from disclosing pursuant to the Exelixis Existing Agreements (such copies and data and all intellectual property rights associated therewith, contained therein, the "**Notebook Copies**").

(c) On the Effective Date, the Seller shall notify its external patent counsel managing the prosecution of the Purchased Patents of the transfer of ownership of such Purchased Patents to the Purchaser pursuant to this Agreement, and shall instruct such counsel to maintain all records, files, notes and other information relating to prosecution of the Purchased Patents on behalf of the Purchaser. The Seller shall instruct such patent counsel to provide the Purchaser, within seven (7) days after the Effective Date, with a list of deadlines for the three (3) months subsequent to the Effective Date.

(d) After the Effective Date, to the extent necessary for the Seller's performance under the Contract Research Agreement or for the Seller to investigate or confirm performance of contractual, financial or legal obligations documented in such Books and Records, the Purchaser shall give the Seller and the Seller's advisors and representatives reasonable access to all Books and Records to the extent such Books and Records relate to any period prior to the Effective Date.

(e) As soon as practicable after the Effective Date, the Seller shall transfer the Purchased Promoter Samples to the Purchaser at a location designated by the Purchaser in writing.

7.3 Confidentiality.

(a) After the Effective Date, neither the Seller nor the Purchaser shall, and the Seller and the Purchaser shall cause their respective Affiliates not to, issue any press release or otherwise make any public statement or any other public (or non-confidential) disclosure (whether or not in response to an inquiry) regarding the terms of this Agreement and the transactions contemplated by this Agreement without the prior written consent of the other Party; provided, however, that (i) the Parties have agreed upon and will jointly issue the press release

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set forth in Exhibit F no more than two (2) business days after the Effective Date; (ii) either Party (or any of its Affiliates) shall have the right to make such disclosure to the extent required by law or court order, including securities laws and applicable securities exchange regulations, without first obtaining such written consent from the other Party; (iii) either Party may disclose the terms of this Agreement, on a need-to-know basis, to its Affiliates; (iv) a Party or any of its Affiliates may disclose the terms of this Agreement, on a need-to-know basis, to its investment bankers, employees, consultants and agents, and to its potential or actual lenders, potential or actual acquirors of all or a portion of the assets or stock of such Party or any of its Affiliates, and potential or actual investors in connection with a private financing (including a private investment in a public entity) by such Party or any of its Affiliates; (v) the Seller may disclose the terms of this Agreement pertaining to the Sellable Assets to any potential or actual Sellable Assets Purchaser; (vi) the Seller may disclose the terms of this Agreement pertaining to the Cell Factory Assets to any potential or actual purchaser or collaborator of the Cell Factory Assets; and (vii) the Seller may disclose the terms of this Agreement to any sublicensee solely to the extent necessary for such sublicensee to ascertain the scope of the sublicense so granted; provided further that, prior to any such disclosure to any Person set forth in (iv), (v), (vi) or (vii), such Person must be bound by obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Section 7.3. A copy of this Agreement may be filed by either Party with the Securities and Exchange Commission. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic and trade secret information, shall provide the other Party with an opportunity to review and comment on such Party's proposed redactions, and shall give due consideration to any such comments, and shall use commercially reasonable efforts to obtain acceptance of redactions reasonably requested by the other Party.

(b) For a period of **[*]** each party hereto shall (i) use commercially reasonable efforts to maintain in confidence the Confidential Information of any other Party who is not its Affiliate (but shall use not less than those efforts as it 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 Party to whom such Confidential Information belongs, and (ii) not use such Confidential Information for any purpose except those permitted by this Agreement (it being understood that this subsection (ii) shall not create or imply any rights or licenses not expressly granted under Sections 1.3, 1.4 or 2.2.)

(c) The obligations in Section 7.3(b) shall not apply with respect to any portion of the Confidential Information of a party (the **"Disclosing Party"**) that an unaffiliated party hereto (the **"Recipient Party"**) can show:

(i) is or was publicly disclosed by the Disclosing Party or any of its Affiliates, either before or after it is disclosed to the Recipient Party hereunder;

(ii) was known to the Recipient Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the Disclosing Party;

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(iii) is or was disclosed to the Recipient Party or any of its Affiliates by a Third Party without obligation to keep it confidential;

(iv) is or was published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the Recipient Party; or

(v) has been or is independently developed by employees or contractors of the Recipient Party or any of its Affiliates without the aid, application or use of Confidential Information of the Disclosing Party.

(d) A Party may disclose the Confidential Information of another Party to the extent such disclosure is reasonably necessary in any of the following instances:

(i) disclosures requested or required by operation of law or court order, provided that such Party gives such other Party as much prior notice as is reasonably practicable and legally permissible and discloses only such information as it is obligated to disclose; and

(ii) disclosures, to the extent necessary for the performance of this Agreement or exercise of rights (including the licenses and covenants not to sue set forth in Section 2), to its Affiliates, employees, consultants and agents, as well as actual or potential licensees or sublicensees, each of whom prior to such disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Section 7.3.

(e) The Purchased Know-How will be fully disclosed to the Purchaser and will be treated by the Seller as Confidential Information of the Purchaser hereunder.

(f) The Non-Exclusive Know-How will be disclosed by the Seller to the Purchaser during the term of the Contract Research Agreement. After the Effective Date, EPS shall **[*]**. The Seller covenants that **[*]**. The obligations of **[*]** this Section 7.3(f) shall expire on **[*]**.

7.4 Tax Cooperation; Allocation of Certain Taxes.

(a) The Purchaser and the Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets (including, access to books and records) as is reasonably necessary for the filing of all Tax Returns, and making of any election related to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return.

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(b) All real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Effective Date (collectively, the **"Apportioned Obligations"**) shall be apportioned between the Seller and the Purchaser as of the Effective Date based on the number of days of such taxable period ending on the Effective Date (the **"Pre-Closing Tax Period"**) and the number of days of such taxable period after the Effective Date (with respect to any such taxable period, the **"Post-Closing Tax Period"**). The Seller shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and the Purchaser shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Post-Closing Tax Period. In the event that either the Seller or the Purchaser shall receive any bill relating to the Apportioned Obligations or shall make any payment for which it is entitled to reimbursement under this Section 7.4(b), the other Party shall make such reimbursement promptly but in no event later than twenty (20) days after the presentation of a statement setting forth the amount of reimbursement to which the presenting Party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement.

SECTION 8. MISCELLANEOUS PROVISIONS.

8.1 Guaranty.

(a) Exelixis acknowledges that EPS and Agrinomics are each a direct wholly owned subsidiary of Exelixis. Exelixis hereby unconditionally and irrevocable guarantees to the Purchaser the full performance by the Seller, as and when due hereunder, of all obligations of the Seller under this Agreement.

(b) Mycogen acknowledges that the Purchaser is a wholly owned subsidiary of Mycogen. Mycogen hereby unconditionally and irrevocable guarantees to the Seller the full performance by the Purchaser, as and when due hereunder, of all obligations of the Purchaser under this Agreement.

8.2 Time of the Essence. Time is of the essence in this Agreement.

8.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as DHL or Federal Express), the next business day after delivery to such courier; (c) if sent by facsimile transmission or by electronic transmission, including email, when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any Party or Mycogen or Exelixis shall provide by like notice to the other Parties or Mycogen or Exelixis to this Agreement:

if to the Seller or Exelixis:

Exelixis Plant Sciences, Inc.
16160 SW Upper Boones Ferry Road
Portland, Oregon 97224
Attention: Vice President of
Facsimile: (503) 670-7703

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with copies to:

Exelixis, Inc.
170 Harbor Way, P.O. Box 511
South San Francisco, California 94083
Attention: Senior VP, Patents and Licensing
Facsimile: (650) 837-8205

and

Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Attention: Marya A. Postner, Esq.
Facsimile: (650) 849-7400

if to the Purchaser or Mycogen:

Agrigenetics, Inc.
9330 Zionsville Road
Indianapolis, Indiana 46268
Attn: General Counsel
Facsimile: (317) 337-6954

with copies to:

Dow AgroSciences LLC
9330 Zionsville Road
Indianapolis, Indiana 46268
Attn: General Counsel
Facsimile: (317) 337-6954

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and

King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309
Attention: C. William Baxley, Esq.
Anne M. Cox, Esq.
Facsimile: (404) 572-5132

8.4 Headings. The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

8.5 Counterparts and Exchanges by Electronic Transmission or Facsimile. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission, including by email, or facsimile shall be sufficient to bind the parties hereto to the terms and conditions of this Agreement.

8.6 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York (without giving effect to principles of conflicts of laws).

8.7 Dispute Resolution.

(a) In the event of a claimed breach of this Agreement by either Party, or any other dispute arising out of or related to this Agreement, the Parties shall try to settle their differences amicably between themselves by first referring the disputed matter to the respective heads of research of each Party, and if not resolved by such research heads, by referring the disputed matter to the respective Chief Executive Officers of each Party. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and within **[*]** after receipt of such notice, such representatives of the Parties shall meet either in person or by teleconference or video conference to attempt in good faith to resolve any such dispute. If such personnel are unable to resolve such dispute within **[*]** of their first meeting, either Party may initiate arbitration by following the procedures set forth in the commercial arbitration rules of the American Arbitration Association (**"AAA"**) in effect on the Effective Date (the **"AAA Rules"**). Within **[*]** of the date provided for any answering statement to be filed by the answering Party, each Party shall select an arbitrator from AAA's National Roster who is experienced in the field of biotechnology, preferably plant biotechnology, and shall provide written notice thereof to the other Party and to AAA. The two (2) arbitrators so selected shall mutually select a third (3rd) arbitrator from AAA's National Roster who is experienced in the field of biotechnology, preferably plant biotechnology. The arbitration shall be conducted in accordance with the procedures set forth below and under the AAA Rules in the

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Denver, Colorado office of the AAA. The arbitrators so selected shall hold a preliminary conference with the Parties within **[*]** after their appointment, at which they will schedule a date for the arbitration hearing that will accommodate no more than **[*]** for pre-hearing discovery. The arbitrators shall render their decision after the hearing, in writing, as expeditiously as is possible, and such decision shall be delivered based on written materials submitted by the Parties to the arbitrators and on any oral presentation or testimony offered at the hearing, but provided that neither Party shall be required to attend any such hearing except that individual representatives of the Parties may be required by subpoena to testify at the hearing as ordered by the arbitrators. Each Party shall supply to the other Party a copy of any written materials to be submitted to the arbitrators at least **[*]** prior to the scheduled hearing. A default judgment may be entered against any Party that fails to provide written materials to the other Party for the arbitration hearing. The decision of the three arbitrators shall be final, binding and unappealable and shall be filed as a judgment or record in any court having proper jurisdiction. **[*]**.

(b) Discovery shall be (i) limited to the exchange of and timely responding to document requests, interrogatories, and depositions, not to exceed **[*]** per witness, (ii) limited to information directly relevant to the disputed issues and (iii) take into account claims of privilege, work product and other restrictions on discovery as appear to be warranted. The Parties shall comply with the AAA Rules and the scheduling order issued by the arbitrators in serving and responding to discovery.

(c) The arbitrators may award the prevailing Party its attorneys' and experts' fees and disbursements incurred in resolving the dispute and may award other sanctions to the extent the arbitrators find any dispute advanced in the proceedings to be frivolous or without a good faith basis in fact and in law when the dispute was first presented for arbitration.

(d) The arbitration shall be absolutely confidential. As a condition precedent to the nomination or appointment of any person as arbitrator, such person shall execute a confidentiality agreement with the Parties **("Arbitrator Confidentiality Agreement")**. Participation in the arbitration shall be strictly limited to employees, agents, experts and counsel for the respective Parties with an absolute "need to know", and to Third Party witnesses with relevant information that testify as ordered by the arbitrators. The identities of all such employees, agents, experts, counsel of a Party and necessary Third Party witness shall be disclosed to the other Party before such employee, agent, expert, counsel or necessary Third Party witness participates in arbitration. All pleadings, briefs and other written submissions shall be presented solely to the arbitrators and exchanged between the Parties; copies shall not be lodged with the AAA. All evidence likewise shall be presented solely to the arbitrators. No copies of any submission by a Party or any documentary evidence presented by a Party shall be made by the other Party or any of the arbitrators except as necessary to prosecute or defend against claims at issue in the dispute. The award shall not disclose any Confidential Information of any Party. Promptly following the award, all submissions and documentary evidence presented by a Party shall be returned to that Party by the other Party and by each of the arbitrators, provided that neither of the Parties, as opposed to the arbitrators, shall be obligated to return the submissions and documentary evidence presented by the other Party until such time as the award is satisfied.

(e) Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of this Section 8.7, including any contention that all or any part of this Section 8.7 is invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators, not the court.

8.8 Injunctive Relief.

(a) Each party hereto acknowledges and agrees that any violation of the terms of this Agreement may result in irreparable injury and damage to the other parties hereto that may not be adequately compensable in money damages, and for which the other parties hereto will have no adequate remedy at law. Each party hereto therefore consents and agrees that the other parties hereto may obtain such interlocutory injunctions, orders and decrees as may be necessary to enforce their respective rights under this Agreement, which rights shall be cumulative and in addition to any other rights or remedies to which such parties may be entitled.

(b) [*]

8.9 Successors and Assigns; Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the Seller and their successors and assigns (if any) and the Purchaser and its successors and assigns (if any). Except as set forth in Section 2.2(d), none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties to this Agreement and their respective successors and assigns (if any).

8.10 Waiver. No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

8.11 Amendments. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of the Purchaser and the Seller (and, if such amendment affects Section 6, 7.3 or Section 8.1, Mycogen and Exelixis, or if such amendment affects Section 8.15, Exelixis).

8.12 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

[*] = 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.

8.13 Entire Agreement. The Transactional Agreements set forth the entire understanding of the parties relating to the subject matter thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter thereof.

8.14 Assignment. None of the Seller, the Purchaser, Mycogen nor Exelixis may assign any of their respective rights or delegate any of their respective obligations under this Agreement to any other Person without the prior written consent of the other parties hereto, provided that the Seller and the Purchaser may assign all of their respective rights and obligations under this Agreement, but not less than all, without such consent to any of their respective Affiliates or to their respective successors in interest in connection with the sale of all or substantially all of their respective assets to which this Agreement pertains, through merger, acquisition or other similar transactions.

8.15 Non-Competition.

(a) For a period of **[*]** (the "**Covered Period**"), EPS, Agrinomics and Exelixis and their respective Affiliates, other than a Permitted Affiliate, shall not for themselves or for any other Person: **[*]**. A "**Permitted Affiliate**" shall mean a Person who acquires all or substantially all of the stock or assets of EPS, Agrinomics or Exelixis.

(b) Each of EPS, Agrinomics and Exelixis acknowledges that the covenants of EPS, Agrinomics and Exelixis set forth in this Section 8.15 are an essential element of this Agreement and that any breach by EPS, Agrinomics or Exelixis of any provision of this Section 8.15 will result in irreparable injury to the Purchaser. Each of EPS, Agrinomics and Exelixis have independently consulted with their counsel and after such consultation agrees that the covenants set forth in this Section 8.15 are reasonable and proper to protect the legitimate interest of the Purchaser.

8.16 Expenses. Except as otherwise provided herein, all fees and expenses payable in connection with the consummation of the transactions contemplated by this Agreement shall be borne by the party incurring the fees or expenses or seeking such consent or approval.

8.17 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) Except as otherwise indicated, all references in this Agreement to “Sections,” “Exhibits” and “Schedules” are intended to refer to Sections of this Agreement and Exhibits and Schedules to this Agreement. The Exhibits and Schedules attached hereto are deemed to be part of this Agreement as if fully set forth herein.

{Remainder of page intentionally left blank}

The parties to this Agreement have caused this Agreement to be executed and delivered as of the Effective Date.

AGRIGENETICS, INC.,
a Delaware corporation

By: /s/ Antonio Galindez
Name: Antonio Galindez Sept. 4, 2007
Title: President

MYCOGEN, INC.,
a California corporation
solely pursuant to Section 7.3 and Section 8 hereunder

By: /s/ Jerome Peribere
Name: Jerome A. Peribere Sept. 4, 2007
Title: President

{Signature Page to Asset Purchase and License Agreement}

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EXELIXIS PLANT SCIENCES, INC.,
a Delaware corporation

By: /s/ George Scangos
Name: George A. Scangos
Title: President and Chief Executive Officer

AGRINOMICS, LLC,
a Delaware limited liability company

By: /s/ George Scangos
Name: George A. Scangos
Title: Chief Executive Officer

EXELIXIS, INC.,
a Delaware corporation
solely pursuant to Section 7.3 and Section 8 hereunder

By: /s/ George Scangos
Name: George A. Scangos
Title: President and Chief Executive Officer

{Signature Page to Asset Purchase and License Agreement}

EXHIBIT A

CERTAIN DEFINITIONS

For purposes of the Agreement (including this Exhibit A), the following terms shall have the meaning set forth or as referenced below:

“**AAA**” shall have the meaning set forth in Section 8.7(a).

“**AAA Rules**” shall have the meaning set forth in Section 8.7(a).

“**Activation Tagging Patents**” shall mean (a) all Purchased Patents identified as such on Schedule 1.1(c), (b) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof, (c) all patents issuing from or claiming priority to any of the foregoing and (d) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing.

“**ACTTAG**” shall mean the Seller’s proprietary activation tagging technology.

“**Acquisition**” shall have the meaning set forth in the Recitals.

“**Affiliate**”, with respect to a Person, shall mean any person, corporation, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with such Person. For purposes of this definition, the term “control” (including, with correlative meaning, the terms “controlled by” or “under common control with”) means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of fifty percent (50%) or more of the voting stock of such entity, or by contract or otherwise.

“**Aggregate Payment**” shall have the meaning set forth in Section 6.3(b).

“**Agreement**” shall mean the Asset Purchase and License Agreement to which this Exhibit A is attached, as it may be amended from time to time.

“**Agrinomics**” shall have the meaning set forth in the Preamble.

“**Allocation Statement**” shall have the meaning set forth in Section 4.3.

“**Apportioned Obligations**” shall have the meaning set forth in Section 7.4(b).

“***Arabidopsis* ACTTAG Database**” shall mean **[*]**.

[*].

“**Arbitrator Confidentiality Agreement**” shall have the meaning set forth in Section 8.7(d).

[*]

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“**Assignment and Assumption Agreement**” shall have the meaning set forth in Section 1.2(b)(iii).

“**Assumed Liabilities**” shall have the meaning set forth in Section 3.1.

[*] shall mean **[*]** and its Affiliates.

[*]

[*]

[*] shall mean: (a) all patents and patent applications set forth on Schedule 2.2; (b) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof; (c) all patents issuing from or claiming priority to any of the foregoing; and (d) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing.

[*]

[*]

[*] shall mean:

(a) (i) all patents and patent applications set forth on Schedules 1.3(a) and (c); (ii) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof; (iii) all patents issuing from or claiming priority to any of the foregoing; and (iv) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing; and

(b) **[*]**

[*]

“**Bill of Sale**” shall have the meaning set forth in Section 1.2(b)(ii).

[*]

[*]

“**Books and Records**” shall mean all books, records, ledgers and files or other similar information of the Seller (in any form or medium) in Seller’s possession as of the Effective Date that are (a) related to, used or held for use in connection with the Purchased Facility, the operation thereof or the Purchased Operative Assets, (b) files with respect to filing, prosecution, maintenance or enforcement of the Purchased Patents prior to the Effective Date, or (c) invention disclosures owned by the Seller that do not relate to any Excluded Assets.

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“**Cell Culture Applications**” shall mean the use of technology and Know-How in **[*]**

“**Cell Factory Assets**” shall mean the assets set forth on Schedule 2.1(d) hereto that are Controlled by the Seller.

“**Cell Factory Purchase Agreement**” shall have the meaning set forth in Section 2.1(c)(ii).

[*] means a patent application that is Controlled by EPS and claims or contains **[*]**.

“**Claim**” shall mean any claim, demand, dispute, action, suit, proceeding, investigation or other similar matter.

“**Claim Notice**” shall have the meaning set forth in Section 6.3(a).

“**Claims Period**” shall mean the period during which a claim for indemnification may be asserted hereunder by an Indemnified Party.

“**Closing**” shall have the meaning set forth in Section 1.2(a).

“**Combined Payment**” shall have the meaning set forth in Section 6.3(e).

“**Computers**” shall mean the computers expressly set forth on Schedule 2.1(a) hereto, including all data and software stored thereon.

“**Confidential Information**” shall mean (a) all information disclosed by the Seller to the Purchaser, whether before, on or after the Effective Date, with respect to the Non-Exclusive Assets and (b) all information disclosed by the Seller to the Purchaser or the Purchaser to the Seller, whether before, on or after the Effective Date, with respect to the Purchased Assets or Partially Exclusive Patents. The Confidential Information described in subsection (a) of this definition shall be deemed the Confidential Information of the Seller. The Confidential Information described in subsection (b) of this definition shall be deemed the Confidential Information of the Purchaser.

“**Contract Research Agreement**” shall have the meaning set forth in the Recitals.

“**Contractual Assets**” shall mean **[*]**.

“**Control**” or “**Controlled**” shall mean ownership or other legal authority or right of a Party or any of its Affiliates to grant a license or sublicense of intellectual property rights to another Party or its Affiliates or to transfer materials to another Party or its Affiliates, without the grant or such license, sublicense or transfer alone constituting a material breach of an agreement between that Party (or its Affiliates) and a Third Party.

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

"Core Representation" shall mean any of the representations and warranties set forth in the following Sections: **[*]**.

[*]

[*]

"**Covered Crops**" shall mean **[*]**.

"**Covered Period**" shall have the meaning set forth in Section 8.15(a).

[*]

"**Damages**" shall mean all obligations, liabilities, damages, losses, expenses (including reasonable attorney's fees and reasonable expenses of litigation), penalties, fines and judgments, but excluding incidental, consequential, indirect, special and punitive damages.

"**DAS**" shall mean Dow AgroSciences LLC.

"**Disclosing Party**" shall have the meaning set forth in Section 7.3(c).

"**Disclosure Schedule**" shall have the meaning set forth in Section 5.1.

"Dollars" shall mean United States dollars.

[*]

[*]

[*]

[*]

"**Dual-Use Assets**" shall mean: **[*]**.

"**Effective Date**" shall have the meaning set forth in Section 1.2(a).

"**Encumbrance**" shall mean any charge, claim, mortgage, lien, option, pledge, security interest, easement, encroachment, right of first refusal, adverse claim or other restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

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"**Environmental Laws**" shall mean any Laws of any Governmental Authority relating to (a) releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; (b) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances or materials containing Hazardous Substances; or (c) pollution or protection of the environment, health, safety or natural resources.

"**Environmental Permits**" shall mean all Permits under any Environmental Law.

"**Environmental Reports**" shall have the meaning set forth in Section 5.1(q).

"**EPS**" shall have the meaning set forth in the Preamble.

"**Excluded Assets**" shall mean all assets of the Seller that are not Purchased Assets, Partially Exclusive Patents or Non-Exclusive Assets, including:

(a) the Cell Factory Assets;

(b) the Sellable Assets;

(c) the Contractual Assets;

(d) the Dual-Use Assets; and

(e) the Excluded Patents.

"**Excluded Patents**" shall mean (a) all patents and patent applications listed on Schedule 2.1(d) or Schedule 2.1(e), (b) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts of any of the foregoing, (c) all patents issuing from or claiming priority to any of the foregoing and (d) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing.

"**Excluded Portfolios**" shall mean the **[*]**.

"**Excluded Liabilities**" shall have the meaning set forth in Section 3.2.

"**Exelixis**" shall have the meaning set forth in the Preamble.

"**Exelixis Existing Agreements**" shall mean the following:

(a) **[*]**

"**Field Crops**" shall mean **[*]**

[*]

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"**First Anniversary Payment**" shall have the meaning set forth in Section 4.1.

[*]

[*]

[*]

[*]

"**Governmental Authority**" shall mean any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury).

"**Greenhouse Lease**" shall mean the Lease Agreement by and between Purchaser and EPS, effective as of the Effective Date.

"**Hazardous Substances**" shall mean (a) those substances defined in or regulated under the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act, the Federal Insecticide, Fungicide, and Rodenticide Act and the Clean Air Act, and their state counterparts, as each may be amended from time to time, and all regulations thereunder; (b) petroleum and petroleum products, including crude oil and any fractions thereof; (c) natural gas, synthetic gas, and any mixtures thereof; (d) polychlorinated biphenyls, asbestos and radon; (e) any other pollutant or contaminant; and (f) any substance, material or waste regulated by any Governmental Authority pursuant to any Environmental Law.

[*] shall mean **[*]**

"**Indemnified Party**" shall have the meaning set forth in Section 6.3(a).

"**Indemnifying Party**" shall have the meaning set forth in Section 6.3(a).

"**Initial Threshold**" shall have the meaning set forth in Section 6.3(c).

"**Intellectual Property Rights**" shall mean all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights; (b) trade secret rights; (c) patent and industrial property rights; and (d) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses "(a)" through "(c)" above.

"**Internal Revenue Code**" shall mean the United States Internal Revenue Code of 1986, as amended.

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“**Key Employee**” shall mean any of the following: **[*]**.

“**Key Personnel**” shall have the meaning set forth in the Contract Research Agreement.

“**Know-How**” shall mean all data, inventions, discoveries, findings, methods, information, processes, informatics, techniques and technology (whether or not patentable), including, formulae, materials, including biological materials, practices, methods, knowledge, know-how, processes, experience, test data (including biological, field trial and test data, and related reports, statistical analyses, expert opinions and the like), analytical and quality control data, marketing data, which in all cases are not generally known, and the trade secret rights to the foregoing.

“**Law**” shall mean any statute, law, ordinance, regulation, rule, code, executive order, injunction, judgment, policy, decree or order of any Governmental Authority.

“**Letter**” shall have the meaning set forth in Section 1.2(b)(iv).

“**Listed Patents**” shall have the meaning set forth in Section 5.1(c)(i).

[*]

[*]

“**Mycogen**” shall have the meaning set forth in the Preamble.

[*]

[*] shall have the meaning set forth in Section 2.4.

[*] means a patent application that is Controlled by EPS and claims or contains [*].

“**Non-Exclusive Assets**” shall mean:

(a) the Non-Exclusive Know-How; and

(b) the Non-Exclusive Patents.

“**Non-Exclusive Know-How**” shall mean the Know-How possessed and Controlled by the Seller on the Effective Date, subject to any obligation the Seller has with respect to any Third Party as of the Effective Date, that relates to:

(a) **[*]**

excluding Know-How that is Purchased Know-How or a Contractual Asset. Non-Exclusive Know-How includes, but is not limited to, the Know-How identified on Schedule 1.4(a) attached hereto.

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“**Non-Exclusive Patents**” shall mean (a) all patents and patent applications set forth on Schedule 1.4(b); (b) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof; (c) all patents issuing from any of the foregoing; and (d) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing.

“**Notebook Copies**” shall have the meaning set forth in Section 7.2(b).

“**Notice**” shall have the meaning set forth in Section 2.1(c)(ii).

“**Notice Period**” shall have the meaning set forth in Section 2.1(c)(ii).

[*]

“**Partially Exclusive Patents**” shall mean:

(a) (i) all patents and patent applications set forth on Schedules 1.3(a), (b) and (c); (ii) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof; (iii) all patents issuing from or claiming priority to any of the foregoing; and (iv) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing; and

(b) **[*]**

“**Parties**” shall have the meaning set forth in the Preamble.

“**Party**” shall have the meaning set forth in the Preamble.

“**[*] Claim**” shall have the meaning set forth in Section 6.1.

“**Patent Assignment Agreement**” shall have the meaning set forth in Section 1.2(b)(ii).

“**Patent Expiration Date**” shall have the meaning set forth in Section 6.3(c).

“[*]” shall mean the owner of the **[*]**.

“**PDX Facility**” shall mean the facility with an address of 16160 SW Upper Boones Ferry Road, Portland, Oregon 97224.

“**PDX Facility Lease**” shall mean the Lease Agreement by and between Pacific Realty Associates and EPS dated March 7, 2006, as amended on or before the Effective Date.

“**PDX Facility License**” shall mean the PDX Facility License Agreement by and between Purchaser and EPS, effective as of the Effective Date.

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"**Permits**" shall have the meaning set forth in Section 5.1(o).

"**Permitted Affiliate**" shall have the meaning set forth in Section 8.15.

"**Permitted Contacts**" shall have the meaning set forth in Section 2.1(b)(ii)(1).

"**Permitted Encumbrance**" shall mean (a) any lien for current Taxes and assessments not yet past due, (b) any mechanics', workmen's, repairmen's, warehousemen's and carriers' lien arising in the ordinary course of business consistent with past practice of the Seller, (c) statutory or common law liens arising in the ordinary course of business for sums not yet past due, including statutory or common law liens to secure obligations arising in the ordinary course of business to landlords, lessor or renters under leases or rental agreements, (d) security given in the ordinary course of business to any public utility, Governmental Authorities or other statutory or public authority, wherein the underlying obligations are not yet past due, (e) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law, (f) zoning, building code, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities that do not materially interfere with the present use of the Purchased Assets, and (g) all covenants, conditions, restrictions, easements, charges and rights-of-way and other similar matters of record set forth in any state, local or municipal franchise applicable to the Purchased Assets that do not materially interfere with the present use of the Purchased Assets.

"**Permitted Purposes**" shall have the meaning set forth in Section 7.3(f).

"**Person**" shall mean an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

[*]

[*]

"**Post-Closing Tax Period**" shall have the meaning set forth in Section 7.4(b).

"**Pre-Closing Tax Period**" shall have the meaning set forth in Section 7.4(b).

"**Purchase Price**" shall have the meaning set forth in Section 4.1.

"**Purchased Agreement Assets**" shall mean EPS's interest in the materials, data, information and intellectual property generated under the **[*]**.

[*] = 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.

"**Purchased Assets**" shall mean all of the Seller's right, title and interest in, to and under the following:

(a) the Purchased Agreement Assets;

(b) the Purchased **[*]**;

(c) the Purchased **[*]**;

(d) the Purchased Facility;

(e) the Purchased Know-How;

(f) the Purchased Operative Assets;

(g) the Purchased Patents;

(h) the Purchased **[*]**;

(i) the Purchased Assigned Agreements;

(j) the Purchased Promoter Samples;

(k) the Notebook Copies; and

(l) the Books and Records.

The Purchased Assets do not include any assets that are included in the Partially Exclusive Patents, Non-Exclusive Assets, or the Excluded Assets.

"**Purchased Assigned Agreements**" shall mean the following agreements:

(a) the **[*]**; and

(b) the **[*]**.

"**Purchased [*]**" shall mean all **[*]**.

"**Purchased [*]**" shall mean the portion of the **[*]**.

[*]

"**Purchased Know-How**" shall mean the Know-How set forth on Schedule 1.1(a).

"**Purchased Operative Assets**" shall mean (a) **[*]**.

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"**Purchased Patents**" shall mean:

(a) (i) all patents and patent applications owned by the Seller as of the Effective Date, including those patents and patent applications listed on Schedule 1.1(c) or Schedule 2.2, (ii) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts of any of the foregoing, (iii) all patents issuing from or claiming priority to any of the foregoing and (iv) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing; and

(b) **[*]**,

provided, however, that the Purchased Patents shall not include any Excluded Patent, Non-Exclusive Patent or Partially Exclusive Patent

"**Purchased Promoters**" shall mean the promoters set forth on Schedule 1.1(d), without consideration of the plasmid that the promoter is present in or whether the promoter exhibits the putative function/specificity.

"**Purchased Promoter Patents**" shall mean all Purchased Patents pertaining to the Purchased Promoters, including: (a) the Purchased Patents identified as such on Schedule 1.1(c), (b) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof, (c) all patents issuing from or claiming priority to any of the foregoing and (d) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing.

"**Purchased Promoter Samples**" shall mean, **[*]**.

"**Purchased [*]**" shall mean all **[*]** pursuant to the **[*]**.

"**Purchased [*]**" shall mean all **[*]**.

"**Purchaser**" shall have the meaning set forth in the Preamble.

"**Purchaser Indemnitees**" shall have the meaning set forth in Section 6.1.

[*] shall mean any and all **[*]**.

"**Recipient Party**" shall have the meaning set forth in Section 7.3(c).

"**Release**" shall have the meaning set forth in Section 101(22) of CERCLA.

[*]

[*]

[*] = 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.

[*] shall mean:

(a) (i) all patents and patent applications set forth on Schedules 1.3(a) and (b); (ii) all continuations, continued prosecutions, continuations-in-part, divisionals, substitutes and foreign counterparts thereof; (iii) all patents issuing from or claiming priority to any of the foregoing; and (iv) all re-examinations, reissues, renewals, extensions and term restorations of any of the foregoing; and

(b) **[*]**.

"**Representation Threshold**" shall have the meaning set forth in Section 6.3(b).

"**Restriction Period**" shall have the meaning set forth in Section 2.1(b)(ii)(5).

"Sellable Agreements" shall mean the agreements set forth in Schedule 2.1(b).

"**Sellable Assets**" shall mean the **[*]**.

"**Sellable Assets Purchase Agreement**" shall have the meaning set forth in Section 2.1(b)(ii)(5).

"**Sellable Assets Purchaser**" shall have the meaning set forth in Section 2.1(b)(i).

"**Sellable Assets Sale**" shall have the meaning set forth in Section 2.1(b)(i).

[*] shall have the meaning set forth in Section **[*]**.

"**Seller**" shall have the meaning set forth in the Preamble.

"**Seller Indemnitees**" shall have the meaning set forth in Section 6.2.

"**Seller Parties**" shall have the meaning set forth in Section 2.2(d).

"**Statutory Warranty Deed**" shall have the meaning set forth in Section 1.2(b)(ii).

"**Tax**" or "**Taxes**" shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other matter, including any interest, penalty or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

"**Tax Return**" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

[*]

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“**Third Party**” shall mean any Person that is not a Party to this Agreement or an Affiliate of a Party to this Agreement.

“Third Party [*]” shall mean all **[*]**.

“**Third Party [*]**” shall mean the portion of the **[*]**.

“**Third Party [*]**” shall mean the portion of the **[*]**.

[*]

[*]

“**Transactional Agreements**” shall mean (a) this Agreement, (b) the Contract Research Agreement, (c) the Statutory Warranty Deed, (d) the Bill of Sale, (e) the Patent Assignment Agreement, (f) the Assignment and Assumption Agreement, (g) the Letter, (h) the Greenhouse Lease and (i) the PDX Facility License.

“**Transferee Parties**” shall have the meaning set forth in Section 2.2(d).

[*]

[*] shall mean data **[*]**.

[*] shall mean any database in Seller’s possession and Control as of the Effective Date **[*]**.

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Exhibit B

Statutory Warranty Deed

AFTER RECORDING RETURN TO, and
UNTIL FURTHER NOTICE, ALL FUTURE
TAX STATEMENTS SHALL BE SENT TO:

Agrigenetics, Inc.
9330 Zionsville Road
Indianapolis, Indiana 46268
Attention: General Counsel
Facsimile: (317) 337-6954
[*]

STATUTORY WARRANTY DEED

EXELIXIS PLANT SCIENCES, INC., a Delaware corporation, formerly known as AGRITOPE, INC., an Oregon Corporation, as Grantor, conveys and warrants to AGRIGENETICS, INC., a Delaware corporation as Grantee, the following described real property free of encumbrances except an specifically set forth herein situated in **[*]**, to-wit:

PARCEL I – **[*]**.

PARCEL II – **[*]**.

The said property is free from encumbrances EXCEPT: PREMISES HEREIN DESCRIBED HAVE BEEN ZONED OR CLASSIFIED FOR **[*]**, PROPERTY MAY BE SUBJECT TO ADDITIONAL TAXES OR PENALTIES AND INTEREST; RIGHTS OF THE PUBLIC IN AND TO ANY PORTION OF PREMISES; AGREEMENT FOR MAINTENANCE OF PUBLIC ROAD RECORDED **[*]**.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

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The true consideration for this conveyance is $**[*]**.

Dated this 31st day of August, 2007

Grantor:

EXELIXIS PLANT SCIENCES, INC.,
a Delaware corporation

By: /s/ George Scangos
Name: George Scangos
Title: President & Chief Executive Officer

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

On Aug-31-2007, 2007 before me, J. Cohen, Notary Public, Notary Public, personally appeared George Scangos, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

/s/ J. Cohen
Commission # 1745073
Signature of Notary Public

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Exhibit C

Bill of Sale

THIS BILL OF SALE is made as of September 4, 2007, by **EXELIXIS PLANT SCIENCES, INC.,** a Delaware corporation (“**EPS**”) and **AGRINOMICS, LLC,** a Delaware limited liability corporation (“**Agrinomics**”) (and collectively with EPS, the “**Seller**”) for the benefit of **AGRIGENETICS, INC.,** a Delaware corporation (the “**Purchaser**”). Capitalized terms used but not defined in this Bill of Sale shall have the meanings given to them in the Asset Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Purchaser, the Seller, Mycogen Corporation and Exelixis, Inc. have entered into that certain Asset Purchase and License Agreement on September 4, 2007 (the “**Asset Purchase Agreement**”), which provides for the sale of the Purchased Assets to, and the assumption of the Assumed Liabilities by, the Purchaser, for consideration in the amount and on the terms and conditions set forth in the Asset Purchase Agreement; and

WHEREAS, by this instrument the Seller is vesting in the Purchaser all rights, title and interest in, to and under the Purchased Assets free and clear of all Encumbrances except for Permitted Encumbrances as provided in the Asset Purchase Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby sells, assigns, transfers, conveys and delivers to the Purchaser all right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances except for Permitted Encumbrances as provided in the Asset Purchase Agreement.

The Seller hereby constitutes and appoints the Purchaser, its successors and assigns, as the Seller’s true and lawful attorney, with full power of substitution, in the Seller’s name and stead, on behalf of and for the benefit of the Purchaser, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute in the Seller’s name, at the sole expense and for the benefit of the Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Purchaser, its successors and assigns, reasonably may require for the collection or reduction to possession of any of the Purchased Assets.

Nothing contained in this Bill of Sale is intended to provide any rights to the Purchaser or the Seller beyond those rights expressly provided to the Purchaser and the Seller in the Asset Purchase Agreement. Nothing contained in this Bill of Sale is intended to impose any obligations or liabilities on the Purchaser or the Seller beyond those obligations and liabilities expressly imposed on the Purchaser or the Seller in the Asset Purchase Agreement. Nothing contained in this Bill of Sale is intended to limit any of the rights or remedies available to the Purchaser or the Seller under the Asset Purchase Agreement.

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Nothing contained in this Bill of Sale shall be deemed to alter or amend the terms and provisions of the Asset Purchase Agreement, and in the event of any conflict between the terms and provisions of this Bill of Sale and the Asset Purchase Agreement, the terms and provisions of the Asset Purchase Agreement shall be deemed to govern and be controlling.

Nothing contained in this Bill of Sale is intended to provide any right or remedy to any person or entity, other than the Purchaser.

This Bill of Sale may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Bill of Sale (in counterparts or otherwise) by electronic transmission, including by email, or facsimile shall be sufficient to bind the parties hereto to the terms and conditions of this Bill of Sale. This Bill of Sale shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York (without giving effect to principles of conflicts of laws).

{Signature page follows}

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed and delivered as of the date first written above.

EXELIXIS PLANT SCIENCES, INC.

By /s/ George A. Scangos
Name George A. Scangos
Title President and Chief Executive Officer

AGRINOMICS, LLC

By /s/ George A. Scangos
Name George A. Scangos
Title Chief Executive Officer

{Signature Page to Bill of Sale}

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Exhibit D

Patent Assignment Agreement

THIS **PATENT ASSIGNMENT AGREEMENT** (this "**Agreement**") is entered into this 4th day of September, 2007, ("**Effective Date**") by and among **AGRIGENETICS, INC.,** a Delaware corporation (the "**Purchaser**"), **EXELIXIS PLANT SCIENCES, INC.,** a Delaware corporation ("**EPS**"), and **AGRINOMICS, LLC,** a Delaware limited liability company ("**Agrinomics**"). EPS and Agrinomics are collectively referred to herein as the "**Seller**". The Purchaser, EPS and Agrinomics are individually referred to herein as a "**Party**" or collectively as the "**Parties**".

RECITALS

WHEREAS, the Purchaser, the Seller, Mycogen Corporation, and Exelixis, Inc. are party to that certain Asset Purchase and License Agreement of even date herewith (the "**Purchase Agreement**"; capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Purchase Agreement); and

WHEREAS, the Seller desires to transfer and assign to the Purchaser the Purchased Patents.

NOW, THEREFORE, in consideration of the covenants, conditions, and undertakings hereinafter set forth, it is agreed by and among the Parties as follows:

1. For the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Seller, the Seller does hereby sell, assign, transfer and convey to the Purchaser all of the Seller's right, title and interest in, to and under: (a) the patents and patent applications set forth on Schedule A, in and to the inventions claimed or claimable therein, in the United States and its territories and in foreign countries, as well as any reissue, renewal, division, continuation or continuation-in-part or any foreign counterpart thereof or any other application that claims priority to the patents and patent applications set forth in Schedule A, together with all past, present, or future claims arising out of any infringement thereof, and all rights to claim priority on the basis of such patent applications and/or patents in the United States or in any foreign country; and (b) the patents and patent applications set forth on Schedule B, in and to the inventions claimed or claimable therein as well as any reissue, renewal, division, continuation or continuation-in-part or any other application that claims priority to the patents and patent applications set forth in Schedule B, in each case solely in the applicable country set forth in Schedule B and in no other countries, together with all past, present, or future claims arising out of any infringement thereof, and all rights to claim priority on the basis of such patent applications and/or patents solely in the applicable countries set forth on Schedule B and in no other countries, all such rights under (a) and (b) above to be held and enjoyed by the Purchaser, for its own use and benefit and for the use and benefit of its successors, assigns or other legal representatives as fully and entirely as the same would have been held and enjoyed by the Seller if this Agreement and sale had not been made.

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2. The Seller hereby binds itself, its successors, assigns or other legal representatives, properly to execute without further consideration, any and all applications, petitions, oaths and assignments or other papers and instruments that may be necessary in order to carry into full force and effect the sale, assignment, transfer and conveyance hereby made or intended to be made.

3. Nothing contained in this Agreement is intended to limit any of the rights or remedies available to the Seller or the Purchaser under the Purchase Agreement. In the event of any conflict between this Agreement and the Purchase Agreement, the Purchase Agreement shall control.

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IN WITNESS WHEREOF, each party has executed this Agreement by its proper officers thereunto duly authorized.

EXELIXIS PLANT SCIENCES, INC.

Name: /s/ George Scangos
Title: President and Chief Executive Officer
Date: Aug-31-2007

State of ____________________)
) ss.
County of __________________)

(California All-purpose acknowledgement and notary certificate attached. /s/ J. Cohen)

AGRINOMICS, INC.

Name: /s/ George Scangos
Title: Chief Executive Officer
Date: Aug-31-2007

State of ____________________)
) ss.
County of __________________)

(California All-purpose acknowledgement and notary certificate attached. /s/ J. Cohen)

{Signature Page to Patent Assignment Agreement}

AGRIGENETICS, INC.

Name: /s/ Antonio Galindez
Title: Antonio Galidez President
Date: September 4, 2007

State of Indiana)
) ss.
County of Marion)

On this 4th day of September, 2007 before me personally appeared the foregoing individual, who executed the foregoing instrument and who acknowledged to me that he/she executed the same of his/her own free will for the purposes therein set forth.

/s/ Robin A. Erlenbaugh
Notary Public, Robin A. Erlenbaugh

(seal)

Hendricks County, State of Indiana
My Commission Expires: May 10, 2008

{Signature Page to Patent Assignment Agreement}

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SCHEDULE A

[*] Patents

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[*] Portfolio

Title	County	Filing Date	Application No.
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[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

[*] Portfolio

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

Purchased Promoter Patents

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[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**

[*] Related IP

Title	App. Type	App. Number	Filing Date
[*]	**[*]**	**[*]**	**[*]**
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Title	App. Type	App. Number	Filing Date
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[*] Portfolio

Title	Country	Filing Date	Application No.
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[*] Portfolio [*]

Title	Country	Filing Date	Application No.
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[*] Portfolio

Title	Country	Filing Date	Application No.
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[*] Portfolio

Title	Country	Filing Date	Application No.
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SCHEDULE B

Title	Country	Filing Date	Application No.
[*]	**[*]**	**[*]**	**[*]**
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Exhibit E

Assignment and Assumption Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this ***"Agreement"***) is entered into as of September 4, 2007 by and among **AGRIGENETICS, INC.**, a Delaware corporation (the "***Assignee***"), **MYCOGEN CORPORATION**, a California corporation ("***Mycogen***"), **EXELIXIS PLANT SCIENCES, INC.,** a Delaware corporation ("***EPS***"), and **AGRINOMICS, LLC,** a Delaware limited liability corporation ("***Agrinomics***"). EPS and Agrinomics are collectively referred to herein as the "***Assignor***". The Assignee, EPS and Agrinomics are individually referred to herein as a "***Party***" or collectively as the "***Parties***". Mycogen is a party to this Agreement solely as a guarantor pursuant to Section 4. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Purchase Agreement (as defined below).

WHEREAS, the Assignor, the Assignee and Exelixis, Inc. have entered into that certain Asset Purchase and License Agreement on September 4, 2007 (the "***Purchase Agreement***"), which provides for the sale of the Purchased Assets, including the Purchased Assigned Agreements set forth on **Schedule I** attached hereto, to, and the assumption of the Assumed Liabilities by, the Assignee.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Assignment of the Purchased Assigned Agreements**. The Assignor hereby assigns to the Assignee the Purchased Assigned Agreements and all of the Assignee's rights, title and interest in and benefits arising out of or accruing thereunder after the Effective Date.

2. **Other Assumed Liabilities**. The Assignee hereby assumes and agrees with the Assignor to pay, perform, discharge or otherwise satisfy the Assumed Liabilities, pursuant to and in accordance with the Purchase Agreement.

3. **Relationship with Purchase Agreement**. Nothing contained in this Agreement is intended to limit any of the rights or remedies available to the Assignor or the Assignee under the Purchase Agreement. In the event of any conflict between this Agreement and the Purchase Agreement, the Purchase Agreement shall control.

4. **Guarantee**. Mycogen acknowledges that the Assignee is a wholly owned subsidiary of Mycogen. Mycogen hereby unconditionally and irrevocable guarantees to the Assignor the full performance by the Assignee, as and when due hereunder, of all obligations of the Assignee under this Agreement.

5. **Miscellaneous** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission, including by email, or facsimile shall be sufficient to bind the parties hereto to the terms and conditions of this Agreement. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York (without giving effect to principles of conflicts of laws).

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The parties to this Agreement have caused it to be executed and delivered as of the Effective Date.

AGRIGENETICS, INC.,
a Delaware corporation

By: /s/ Antonio Galindez
Name: Antonio Galindez September 4, 2007
Title: President

MYCOGEN CORPORATION,
a California corporation
solely as the Assignee's guarantor pursuant to Section 4 hereunder

By: /s/ Jerome A. Peribere
Name: Jerome A. Peribere September 4, 2007
Title: President

EXELIXIS PLANT SCIENCES, INC.,
a Delaware corporation

By: /s/ George A. Scangos
Name: George A. Scangos
Title: President and Chief Executive Officer

AGRINOMICS, LLC,
a Delaware limited liability corporation

By: /s/ George A. Scangos
Name: George A. Scangos
Title: President and Chief Executive Officer

{SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION AGREEMENT}

Schedule I

Purchased Assigned Agreements

1. **[*]**
2. **[*]**

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Execution Copy

Exhibit F

Joint Press Release

Contacts:
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Director,
Investor Relations
Exelixis, Inc.
(650) 837-7277
cbutler@exelixis.com

Kenda Resler Friend
Dow AgroSciences
(317) 337-4743
Kresler@dow.com

DOW AGROSCIENCES AND EXELIXIS PLANT SCIENCES ANNOUNCE MAJOR RESEARCH COLLABORATION, ASSET PURCHASE TO ADVANCE GENE DISCOVERY AND VALIDATION

INDIANAPOLIS and SOUTH SAN FRANCISCO – September 4, 2007 - Dow AgroSciences LLC, a wholly owned subsidiary of The Dow Chemical Company (NYSE: Dow), and Exelixis Plant Sciences, a wholly owned subsidiary of Exelixis, Inc. (Nasdaq: EXEL), announced today that the companies have signed a major research collaboration agreement which includes the purchase of selected assets by Dow AgroSciences' affiliate Agrigenetics Inc. The agreement is focused on the development of new tools for gene discovery and validation of novel crop traits. The asset purchase by Dow AgroSciences includes certain intellectual property and physical assets used for crop trait discovery.

In the rapidly advancing field of biotechnology, the capability to quickly identify and validate genes of interest in key crops is a competitive advantage. This contract research agreement and asset purchase combines the unique skills and technologies of both companies to deliver differentiated capabilities in gene discovery and validation.

"At Dow AgroSciences we continue to add cutting-edge tools to our Research and Development portfolio, and are excited about what this agreement will enable us to add to our existing capabilities," said Daniel R. Kittle, Ph.D., vice president of Research and Development for Dow AgroSciences. He adds, "This asset purchase and collaboration will accelerate our gene discovery and validation efforts as we work to bring revolutionary solutions for our customers. Our past collaborations with Exelixis Plant Sciences have been highly productive, and we look forward to continuing that tradition in our relationship."

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“This deal with Dow AgroSciences will ensure that the assets that have been developed at Exelixis Plant Sciences are developed in a way in which they receive the critical mass of agricultural expertise and resources they deserve,” said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. “We have collaborated with Dow AgroSciences over the past several years and believe they are one of the leaders in agricultural research and development and we believe the Exelixis Plant Science assets will be a valuable addition to their portfolio.”

About Exelixis

Exelixis, Inc. is a development-stage biotechnology company dedicated to the discovery and development of novel small molecule therapeutics for the treatment of cancer and other serious diseases. The company is leveraging its fully integrated drug discovery platform to fuel the growth of its development pipeline, which is primarily focused on cancer. Currently, Exelixis’ broad product pipeline includes investigational compounds in phase 2 and phase 1 clinical development for cancer and renal disease. Exelixis has established strategic corporate alliances with major pharmaceutical and biotechnology companies, including GlaxoSmithKline, Bristol-Myers Squibb Company, Genentech, Wyeth Pharmaceuticals and Daiichi-Sankyo. For more information, please visit the company’s web site at http://www.exelixis.com.

About Dow AgroSciences

Dow AgroSciences LLC, based in Indianapolis, Indiana, USA, is a top-tier agricultural company providing innovative crop protection, pest and vegetation management, seed, and agricultural biotechnology solutions to serve the world’s growing population. Global sales for Dow AgroSciences, a wholly owned subsidiary of The Dow Chemical Company, are $3.4 billion. Learn more at www.dowagro.com.

Exelixis Forward-Looking Statement

This press release contains forward-looking statements, including, without limitation, all statements related to the respective capabilities of Exelixis Plant Sciences and Dow AgroSciences with respect to gene discovery and validation of novel crop traits, the companies’ research agreement and Dow AgroSciences’ asset purchase. Words such as “will,” “believe,” “continuing,” 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 U.S. Food and Drug Administration approval process; and the therapeutic and commercial value of the company’s compounds and risks related to the company’s need for additional financing. These and other risk factors are discussed under “Risk Factors” and elsewhere in Exelixis’ quarterly report on Form 10-Q for the quarter ended June 30, 2007 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 Exelixis’ expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

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Schedule 1.1(a)

Purchased Know-How

1. **[*]**
2. **[*]**
3. Purchased **[*]**
4. **[*]**

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Schedule 1.1(b)

Purchased Operative Assets

[*]

Schedule 1.1(c)
Purchased Patents

[*] Patents

[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

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[*] Portfolio [*]

[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

[*] Portfolio

[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

[*] Portfolio

[*]	[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]	[*]

Purchased Promoter Patents

1. **[*]**

[*] Related IP

[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**

Schedule 1.1(c) Purchased Patents

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[*]

Title	Country	Filing Date	Application No.
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**

Schedule 1.1(c) Purchased Patents

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Schedule 1.1(c)(A)

[*]

[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**
[*]	**[*]**	**[*]**	**[*]**

Schedule 1.1(c)(A) [*]

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Schedule 1.1(d)

Purchased Promoters

[*]

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Schedule 1.3(a)

Partially Exclusive Patents

[*]

Schedule 1.3(b)

Partially Exclusive Patents

[*]

Schedule 1.3(c)

Partially Exclusive Patents

[*]

Schedule 1.3(d)

[*] Partially Exclusive Patents

[*]

Schedule 1.3(d)(A)

[*] Partially Exclusive Patents

[*]

Schedule 1.4(a)

Non-Exclusive Know-How

1. **[*]**
2. **[*]**
3. **[*]**
4. **[*]**
5. **[*]**

Schedule 1.4(b)

Non-Exclusive Patents

1. **[*]**
2. **[*]**

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Schedule 2.1(a)

Computers

[*]

Schedule 2.1(b)

Sellable Agreements

1. **[*]**
2. **[*]**

Schedule 2.1(c)

Excluded Portfolios

[*]

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Schedule 2.1(d)

Cell Factory Assets

[*]

Schedule 2.1(e)

Excluded Patents

[*]

Schedule 2.2

[*]

[*]

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EXHIBIT 10.2

EXECUTION COPY

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CONTRACT RESEARCH AGREEMENT

This **CONTRACT RESEARCH AGREEMENT** (this "**Agreement**") is made and entered into as of the Effective Date (as defined below), by and among **AGRIGENETICS, INC.**, a Delaware corporation having its principal place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268 ("**Agrigenetics**"), **MYCOGEN CORPORATION**, a California corporation having its principal place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268 ("**Mycogen**"), **EXELIXIS PLANT SCIENCES, INC.**, a Delaware corporation having its principal place of business at 16160 SW Upper Boones Ferry Road, Portland, Oregon 97224 ("**EPS**"), and **EXELIXIS, INC.**, a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083 ("**Exelixis**"). Agrigenetics and EPS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". Mycogen is a party to this Agreement solely pursuant to Sections 9.4, 9.5, 9.6 and 11.1 and as a guarantor pursuant to Section 14.1. Exelixis is a party to this Agreement solely pursuant to Sections 8.2, 8.4(d), 8.7, 9.4, 9.5, 9.6 and 11.1 and as a guarantor pursuant to Section 14.1.

RECITALS

WHEREAS, Agrigenetics is interested in the research, development and commercialization of crops having enhanced characteristics suitable for food, feed and processing industries;

WHEREAS, EPS, a wholly owned subsidiary of Exelixis, has the expertise and the capability to develop assets in the field of functional genomics, particularly with respect to crop research and model plant systems;

WHEREAS, Agrigenetics and EPS, together with Mycogen, Exelixis and Agrinomics, LLC ("**Agrinomics**"), are entering into an Asset Purchase and License Agreement (the "**APA**") on even date herewith, pursuant to which EPS and Agrinomics are selling certain assets to Agrigenetics and granting Agrigenetics licenses to certain other assets and intellectual property rights of EPS or Agrinomics; and

WHEREAS, Agrigenetics desires to engage EPS to develop additional assets under this Agreement and to complete certain research started pursuant to the **[*]**, and EPS desires to accept such engagement, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

The following terms, as used in this Agreement, have the following meanings.

1.1 "AAA" has the meaning set forth in Section 14.6(a).

1.2 "AAA Rules" has the meaning set forth in Section 14.6(a).

1.3 "Actual Annual FTE Payment" has the meaning set forth in Section 6.3(a).

1.4 "Actual Capital Expenditure" has the meaning set forth in Section 6.3(c)(i).

1.5 "Additional Purchased Asset" has the meaning set forth in Section 4.1(a).

1.6 "Additional Purchased Asset 1" has the meaning set forth in Section 4.1(a)(i).

1.7 "Additional Purchased Asset 2" has the meaning set forth in Section 4.1(a)(ii).

1.8 "Additional Purchased Asset 3" has the meaning set forth in Section 4.1(a)(iii).

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

1.10 "Agreement" has the meaning set forth in the Preamble.

1.11 "Agrigenetics" has the meaning set forth in the Preamble.

1.12 "**Agrigenetics Advance Facilities Payments**" has the meaning set forth in Section 6.2(b)(iii)(2).

1.13 "**Agrigenetics Employee**" has the meaning set forth in Section 8.4(c).

1.14 "Agrigenetics Estimated Annual Facility Expenses" has the meaning set forth in Section 6.2(b)(i).

1.15 “Agrigenetics Indemnitees” has the meaning set forth in Section 12.2.

1.16 “Agrigenetics Know-How” means all Know-How Controlled by Agrigenetics as of the Effective Date or during the Term that is necessary or useful for EPS to perform its obligations under this Agreement, including Research Know-How.

1.17 “Agrigenetics Patents” means all Patents Controlled by Agrigenetics as of the Effective Date or during the Term that are necessary or useful for EPS to perform its obligations under this Agreement, including the Research Patents.

1.18 “Agrigenetics PDX Facility License” has the meaning set forth in Section 5.1.

1.19 “Agrigenetics Technology” means Agrigenetics Patents and Agrigenetics Know-How.

1.20 “Agrigenetics’ Share of Facilities Expenses” means the sum of (a) Agrigenetics’ Share of PDX Facility Expenses plus (b) all Purchased Facility Expenses.

1.21 “Agrigenetics’ Share of PDX Facility Expenses” has the meaning set forth in Section 6.1(b)(i).

1.22 “Agrinomics” has the meaning set forth in the Recitals.

1.23 “Anticipated Delivery Date” has the meaning set forth in Section 4.1(a).

1.24 “APA” has the meaning set forth in the Recitals.

1.25 “Arbitrator Confidentiality Agreement” has the meaning set forth in Section 14.6(d).

1.26 [*]

1.27 “Base Pay” shall mean the **[*]**.

1.28 “Candidate Gene” has the meaning set forth in Section 4.1(a)(iii).

1.29 “CDA” has the meaning set forth in Section 9.5.

1.30 “Claims” has the meaning set forth in Section 12.1.

1.31 “Confidential Information” has the meaning set forth in Section 9.1.

1.32 “Contract Year” has the meaning set forth in Section 6.1(a).

1.33 “Control” means ownership or other legal authority or right of a Party to grant a

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license or sublicense of intellectual property rights to another Party or its Affiliates or to transfer materials to another Party or its Affiliates, without the grant of such license or sublicense or transfer alone constituting a material breach of an agreement between that Party (or its Affiliates) and a Third Party.

1.34 “Covered Period” has the meaning set forth in Section 14.14.

1.35 “Damages” means all obligations, liabilities, damages, losses, expenses (including reasonable attorney’s fees and reasonable expenses of litigation), penalties, fines and judgments, but excluding indirect, consequential, incidental, special and punitive damages.

1.36 “DAS” has the meaning set forth in the Recitals.

1.37 “Disclosing Party” has the meaning set forth in Section 9.1.

1.38 “Diligent Efforts” means **[*]**.

1.39 [* **]**.

1.40 “Effective Date” has the meaning assigned to it in the APA.

1.41 “Environmental Laws” has the meaning assigned to it in the APA.

1.42 “EPS” has the meaning set forth in the Preamble.

1.43 “EPS Greenhouse Lease” has the meaning set forth in Section 5.1.

1.44 “EPS Indemnitees” has the meaning set forth in Section 12.1.

1.45 “EPS’s Share of PDX Facility Expenses” has the meaning set forth in Section 6.1(b)(i).

1.46 [*].

1.47 “Estimated Agrigenetics PDX Facility Share” has the meaning set forth in Section 6.2(b)(iii)(1).

1.48 “Estimated Annual FTE Payment” has the meaning set forth in Section 6.2(a)(i).

1.49 “Estimated EPS PDX Facility Share” has the meaning set forth in Section 6.2(b)(iii)(1).

1.50 “Exelixis” has the meaning set forth in the Preamble.

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1.51 “Facilities” means the Purchased Facility and the PDX Facility.

1.52 “Facilities Expenses” means the PDX Facility Expenses and the Purchased Facility Expenses.

1.53 “FTE” means the equivalent of a full-time employee’s work time over a twelve (12)-month period (including normal vacations, sick days and holidays).

1.54 “FTE Rate” means the amount to be paid by Agrigenetics to EPS to support one (1) EPS FTE over one (1) twelve (12)-month period. The annual FTE Rate for each Contract Year is set forth in Section 6.1(a).

1.55 “Governmental Authority” means any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury).

1.56 “Indemnifying Party” has the meaning set forth in Section 12.3(a).

1.57 “Indemnitee” has the meaning set forth in Section 12.3.

1.58 “Informatics Code” means any code generated by either Party under this Agreement **[*]**.

1.59 [*]

1.60 [*] means **[*]**.

1.61 “Joint Management Team” or “JMT” has the meaning assigned to it in Section 3.1(a).

1.62 “Key Personnel” means **[*]**.

1.63 “Key Personnel List” means **[*]**.

1.64 “Know-How” means data, inventions, discoveries, findings, methods, information, processes, informatics, techniques and technology (whether or not patentable), including, but not limited to, formulae, materials, including biological materials, practices, methods, knowledge, know-how, processes, experience, test data (including biological, field trial and test data, and related reports, statistical analyses, expert opinions and the like), analytical and quality control data, marketing data, which in all cases are not generally known, and the trade secret rights to the foregoing.

1.65 “Lease” means the Lease Agreement by and between Pacific Realty Associates and EPS dated March 7, 2006, as amended on or before the Effective Date.

1.66 [*].

1.67 “Mycogen” has the meaning set forth in the Preamble.

1.68 “Net First Year FTE Payment” has the meaning set forth in Section 6.2(a)(ii)(1).

1.69 [*].

1.70 “Parties” has the meaning set forth in the Preamble.

1.71 “Party” has the meaning set forth in the Preamble.

1.72 “Patents” means: (a) United States and foreign patents, together with any and all reexaminations, reissues, renewals, extensions and term restorations, inventors’ certificates; and (b) United States and foreign patent applications, including provisionals, continuations, continued prosecutions, divisionals and substitute applications.

1.73 “PDX Facility” has the meaning assigned to it in the APA.

1.74 “**PDX Facility Expenses**” means all costs and expenses in connection with the operation (such as maintenance, repairs, janitorial services, technology services including telephone and internet, insurance and utilities) of the PDX Facility and the Purchased Operative Assets therein, including all costs and expenses paid or payable by EPS as tenant under the Lease during the Term.

1.75 “Permitted Affiliate” has the meaning set forth in Section 14.14(a).

1.76 “Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

1.77 “Personnel Committee” has the meaning set forth in Section 8.1.

1.78 [*].

1.79 [*] has the meaning set forth in the Recitals.

1.80 [*] has the meaning set forth in Section 2.3(d).

1.81 “Purchased Assets” has the meaning assigned to it in the APA.

1.82 “Purchased Facility” has the meaning assigned to it in the APA.

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1.83 “Purchased Facility Expenses” means all costs and expenses in connection with the operation (such as maintenance, repairs, janitorial services, technology services including telephone and internet, insurance and utilities) of the Purchased Facility and the Purchased Operative Assets therein, including all costs and expenses paid or payable by Agrigenetics as the owner of the Purchased Facility or EPS as the operator of the Purchased Facility, but expressly excluding real property taxes and assessments.

1.84 “Purchased Operative Assets” has the meaning assigned to it in the APA.

1.85 “Receiving Party” has the meaning set forth in Section 9.1.

1.86 “Research Budget” means the written budget prepared by EPS and Agrigenetics outlining a good faith approximation of FTE expenditures and all other costs and expenses the Parties expect to incur in carrying out the activities in the Research Plan.

1.87 “Research Inventions” means any and all data, results, inventions, improvements, or discoveries, including the Informatics Code, whether patentable or not, that are made by the Parties, either solely or jointly, in the course of conducting activities under the Research Program, or that are made by subcontractors or other personnel performing activities under the Research Program, including all intellectual property rights therein.

1.88 “Research Know-How” means all Know-How created by the Parties, either solely or jointly, in the course of conducting activities under the Research Program or created by subcontractors or other personnel performing activities under the Research Program.

1.89 “Research Patents” means all Patents that disclose or claim any Research Invention.

1.90 “Research Plan” has the meaning set forth in Section 2.2.

1.91 “Research Program” means, collectively, all research activities set forth in the Research Plan or as approved pursuant to Section 2.7.

1.92 [*] has the meaning set forth in Section 8.6.

1.93 [*]

1.94 [*] has the meaning set forth in Section 3.5(d).

1.95 [*] has the meaning set forth in Section 2.3(e).

1.96 [*] has the meaning set forth in the Recitals.

1.97 “Term” has the meaning set forth in Section 10.1.

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1.98 “Third Party” means any Person other than: EPS, Agrigenetics or an Affiliate of either Party.

1.99 “Transactional Agreements” has the meaning assigned to it in the APA.

1.100 “[*]” has the meaning set forth in Exhibit A.7.

1.101 [*]

1.102 [*]

1.103 [*]

1.104 [*]

ARTICLE 2

CONDUCT OF RESEARCH

2.1 Overview. EPS and Agrigenetics will conduct research pursuant to the Research Plan at the Purchased Facility, the PDX Facility and certain other facilities, provided that (a) EPS’ research at such other facilities is unanimously approved by the JMT and (b) EPS is reimbursed for all reasonable out-of-pocket travel- and lodging-related expenses it incurs with respect to research at such other facilities.

2.2 Research Plan. The Parties shall conduct all research under this Agreement pursuant to a written research plan (the “**Research Plan**”), which shall set forth the activities to be performed by employees of each Party (including the Key Personnel) to meet the objectives of the Research Program, timelines for performing such activities, and the Research Budget, **[*]**. The Parties have agreed to an initial Research Plan and an associated Research Budget, which is attached to this Agreement as Exhibit A. The Research Plan and Research Budget may be amended only by unanimous written agreement of the JMT. In the event of a conflict between this Agreement and the Research Plan or Research Budget, this Agreement shall govern.

2.3 Research Program. EPS and Agrigenetics shall conduct the Research Program pursuant to the terms and conditions set forth in this Agreement, and in particular in accordance with the Research Plan. The objectives of the Research Program are to:

(a) [*];

(b) [*];

(c) [*];

(d) [*]; and

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(e) [*].

2.4 Conduct of Research. Each Party shall use Diligent Efforts to conduct the tasks assigned to it pursuant to the Research Plan and to attempt to achieve the objectives of the Research Program efficiently and expeditiously. Each Party's employees and consultants shall conduct the Research Program in a good scientific manner, and in compliance with the requirements of all applicable laws and regulations. Each Party shall maintain complete and accurate records of all work conducted by it under the Research Program and all results, data and developments made by it in the course of conducting the activities under the Research Program. EPS hereby covenants that **[*]** Diligent Efforts to conduct the tasks assigned to it pursuant to the Research Plan or to attempt to achieve the objectives of the Research Program efficiently and expeditiously **[*]**.

2.5 Implementation of the Research Plan. The Parties agree that, subject to Section 3.5, Exelixis' **[*]** shall have the primary responsibility for decision making with respect to the implementation of the Research Plan for activities with respect to Additional Purchased Asset 1 or Additional Purchased Asset 2. In addition, Exelixis' **[*]** shall serve as the primary contact at EPS for communications between the Parties with respect to such implementation.

2.6 Reporting. Within thirty (30) days after the end of each calendar quarter, each Party shall provide the JMT with summary reports of its activities and progress under the Research Plan during such calendar quarter.

2.7 Innovation Initiatives. In addition to Agrigenetics' payment obligations pursuant to Article 6 and Section 8.5, for the last quarter of the first Contract Year and for each subsequent Contract Year during the Term, Agrigenetics will provide funding for **[*]** to perform research projects proposed by EPS and approved by Agrigenetics that are outside the scope of the Research Plan. Decisions regarding any allocation of such funds among such research projects will be made by the Personnel Committee, provided that the total funding amount is distributed among such research projects. Agrigenetics will pay EPS the greater of (a) funding for **[*]** or (b) the full amount of funding for such approved research projects for each quarter in the Term beginning with the last quarter of the first Contract Year, no later than the first day of such quarter (January 1, April 1, July 1, October 1). All data, results, inventions, improvements or discoveries arising from such research projects shall be deemed to be Research Inventions. EPS will be a preferred source of resources to Agrigenetics for all such proposed research projects that are enhancements to or extensions of the Additional Purchased Assets.

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ARTICLE 3

JOINT MANAGEMENT TEAM

3.1 Membership. The Research Program shall be managed by a joint management team (the "**Joint Management Team**" or the "**JMT**"). The JMT shall consist of **[*]** members, **[*]** of which shall be appointed by and represent Agrigenetics, and **[*]** of which shall be appointed by and represent EPS. The JMT members of each Party shall hold senior positions at such Party and be authorized to make strategic decisions on behalf of such Party. The initial members of the JMT are set forth in Exhibit B. Each Party may replace any of its JMT members at any time and for any reason upon written notice to the other Party.

3.2 Responsibilities. The responsibilities of the JMT shall be:

(a) to develop and communicate the overall strategy for the Research Program;

(b) to facilitate the exchange of information between the Parties with respect to the Research Program, the Research Plan and activities hereunder;

(c) to share and discuss the Parties' performance under the Research Plan at least on a semi-annual basis;

(d) to review and, where appropriate, revise the Research Plan and Research Budget;

(e) [*];

(f) in accordance with Section 3.5, to **[*]**; and

(g) to perform such other functions as appropriate to further the purposes of this Agreement, as determined by the Parties.

The JMT has no authority to amend or modify any of the terms or provisions of this Agreement. The JMT's role shall be directed towards strategic decision making.

3.3 Meetings. The JMT shall meet once every **[*]**, or more frequently at the request of either Party. Meetings for the JMT may be held in person, or by teleconference or videoconference, provided that at least one (1) meeting in each calendar year shall be held in person and that there shall be at least one (1) JMT member for each Party present at any such meeting. The in-person meetings shall be held on an alternating basis at locations chosen by each Party. A Party's JMT members may invite representatives of such Party who are not JMT members to attend JMT meetings as non-voting observers, provided that all such representatives are bound by confidentiality obligations substantially similar to those set forth in Article 9, and provided further that such Party provides at least **[*]** prior notice to the other Party and such other Party consents to such representatives attending the JMT meeting. Meetings of the JMT shall be effective only if at least one (1) member of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the JMT meetings. The Parties shall alternate preparing and circulating the minutes of the JMT meetings.

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3.4 Decision-Making. The JMT shall make its decisions by **[*]**; provided, however, that **[*]**.

3.5 [* **]** by the JMT.

(a) Within **[** * **]** of receipt of any **[** * **]**, the JMT shall use commercially reasonable efforts: **[** * **]**.

(b) Notwithstanding the requirements of Section 3.5(a), if at any point in the course of the Research Program, the JMT becomes aware of any technology that is being used in the conduct of the Research Program **[** * **]**.

(c) Exhibit F identifies all **[*]** used or developed under the **[*]** prior to the Effective Date that will be used in carrying out the Research Program. Agrigenetics acknowledges **[*]**, subject to Section 3.5(b) above.

(d) For **[*]** not included in Exhibit F, **[*]**. **[*]**. EPS shall provide the **[*]** to the JMT at least **[*]** in connection with its performance of its obligations under the Research Plan.

ARTICLE 4

ADDITIONAL PURCHASED ASSETS

4.1 Additional Purchased Assets.

(a) EPS shall use Diligent Efforts to develop the following assets pursuant to its activities under the Research Program (each such asset, an "**Additional Purchased Asset**"). The Parties estimate that each Additional Purchased Asset will be developed and fully achieved by the date specified below (each such date, an "**Anticipated Delivery Date**"):

(i) On or before **[*]**, **[*]** "**Additional Purchased Asset 1**");

(ii) On or before **[*]**, **[*]** ("**Additional Purchased Asset 2**"); and

(iii) On or before **[*]**, **[*]**.

(b) The first Party to achieve a particular Additional Purchased Asset shall promptly notify the other Party in writing of such achievement. Agrigenetics shall pay EPS for achievement of the Additional Purchased Assets as set forth in Section 6.5.

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4.2 Potential Delays.

(a) Any failure by Agrigenetics to perform its obligations under this Agreement (including any task allocated to Agrigenetics in the Research Plan) that causes, in whole or in part, a delay in development of an Additional Purchased Asset shall delay the applicable Anticipated Delivery Date by the length of such delay that is attributable to Agrigenetics' failure to perform its obligations under this Agreement (including any task allocated to Agrigenetics in the Research Plan), provided that EPS has given written notice to Agrigenetics of the delay and Agrigenetics has failed to remedy such delay, and the delay is reasonably attributable to Agrigenetics' failure to perform its obligations under the Agreement (including any task allocated to Agrigenetics in the Research Plan). Such delay by Agrigenetics shall include Agrigenetics' delays reasonably attributable to failure to maintain the Purchased Facility or the Purchased Operative Assets in good working order in accordance with Section 5.2(b)(ii).

(b) If the JMT instructs EPS **[*]** then, with respect to each Additional Purchased Asset **[*]**, the applicable Anticipated Delivery Date shall **[*]**. In addition, if, pursuant to Section 3.5(b), the JMT **[*]**.

(c) Provided EPS satisfies its obligations under Section 2.4, failure by EPS to develop any Additional Purchased Asset by the applicable Anticipated Delivery Date, shall not in and of itself be deemed a breach of this Agreement or any other agreement between the Parties or their Affiliates, including the APA. Agrigenetics' sole and exclusive remedy for such failure shall be either termination of this Agreement pursuant to Section 10.2 **[*]**.

ARTICLE 5

FACILITIES

5.1 Facility Use. During the Term, in order to enable the parties to perform the tasks assigned to them under the Research Plan using the Facilities, (a) EPS shall grant to Agrigenetics a license to use the PDX Facility, which license shall be in the form attached as Exhibit C (the "**Agrigenetics PDX Facility License**"), and (b) Agrigenetics shall lease the Purchased Facility to EPS, which lease shall be in the form attached as Exhibit D (the "**EPS Greenhouse Lease**"**)**.

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5.2 Facility Management; Reimbursement.

(a) PDX Facility. The Lease is an Excluded Asset (as such term is defined in the APA) and EPS shall continue to manage, operate and maintain the PDX Facility and the Purchased Operative Assets therein during the Term in accordance with the terms and conditions of the Lease and in compliance with all applicable laws during the Term. EPS shall implement appropriate policies, procedures and programs designed to protect employee and guest safety, further good industrial hygiene practices and ensure compliance with all applicable Environmental Laws with respect to the PDX Facility. Agrigenetics shall pay to EPS all of Agrigenetics' Share of PDX Facility Expenses in accordance with Article 6.

(b) Purchased Facility.

(i) For the First and Second Contract Years. For the first and second Contract Years, EPS shall manage, operate and maintain the Purchased Facility and the Purchased Operative Assets therein pursuant to the terms of the EPS Greenhouse Lease and in compliance with all applicable laws. During such period, EPS shall implement appropriate policies, procedures and programs designed to protect employee and guest safety, further good industrial hygiene practices and ensure compliance with all applicable Environmental Laws with respect to the Purchased Facility. For the first and second Contract Years, EPS shall pay directly, and Agrigenetics shall pay EPS for, all Purchased Facility Expenses in accordance with Article 6.

(ii) For all Subsequent Contract Years. For each of the third, fourth and fifth Contract Years, Agrigenetics shall manage, operate and maintain the Purchased Facility and the Purchased Operative Assets therein in compliance with all applicable laws. During such period, Agrigenetics shall implement appropriate policies, procedures and programs designed to protect employee and guest safety, further good industrial hygiene practices and ensure compliance with all applicable Environmental Laws with respect to the Purchased Facility. For each of the third, fourth and fifth Contract Years, Agrigenetics shall pay directly all Purchased Facility Expenses.

(iii) Property Tax and Assessment. Commencing upon the Effective Date, Agrigenetics shall be solely responsible for property taxes and assessments on the Purchased Facility, and shall make direct payment of such taxes and assessments to the applicable authority.

(c) Commercially Reasonable Efforts. Each Party shall use commercially reasonable efforts to manage, operate and maintain the PDX Facility, the Purchased Facility and the Purchased Operative Assets, during the period of each Party's management duties as allocated under this Article 5, and shall use commercially reasonable efforts to ensure that the PDX Facility, the Purchased Facility and the Purchased Operative Assets are in good working order and sufficient for EPS's performance of its obligations hereunder as contemplated in the Research Plan in effect as of the Effective Date.

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ARTICLE 6

COMPENSATION

6.1 Principles of Calculation.

(a) FTE Payments. During the Term, Agrigenetics shall pay EPS each year the applicable FTE Rate (as defined below) for each FTE performing work under the Research Plan (excluding **[*]**) who is an employee of EPS, and Agrigenetics shall also pay EPS a one-time payment during the first Contract Year of **[*]** for **[*]**. The FTE Rate shall be deemed to include all salaries, benefits and direct and indirect costs of such FTEs, but shall not be deemed to include any Facility Expenses or capital expenditures, which shall be separately reimbursed by Agrigenetics pursuant to Sections 6.2 and 6.3. All payments made by Agrigenetics to EPS pursuant to this Section 6.1 shall be noncreditable and nonrefundable, except as expressly set forth in Section 6.3 below. The FTE Rate applicable to each year during the Term is set forth below (each period below, a "**Contract Year**"):

(i) For the period between April 1, 2007 and March 31, 2008, the FTE Rate shall be **[*]**;

(ii) For the period between April 1, 2008 and March 31, 2009, the FTE Rate shall be **[*]**;

(iii) For the period between April 1, 2009 and March 31, 2010, the FTE Rate shall be **[*]**;

(iv) For the period between April 1, 2010 and March 31, 2011, the FTE Rate shall be **[*]**; and

(v) For the period between April 1, 2011 and March 31, 2012, the FTE Rate shall be **[*]**.

(b) Facilities Reimbursement.

(i) PDX Facility Expenses. During the Term, Agrigenetics shall be responsible for, and shall reimburse EPS for, Agrigenetics' proportionate share of the PDX Facility Expenses ("**Agrigenetics' Share of PDX Facility Expenses**"). EPS shall be responsible for the remainder of the PDX Facility Expenses that are not Agrigenetics' Share of PDX Facility Expenses ("**EPS's Share of PDX Facility Expenses**"). Agrigenetics' Share of PDX Facility Expenses shall be **[*]**.

(ii) Purchased Facility Expenses. During the Term, Agrigenetics shall be responsible for all Purchased Facility Expenses.

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(c) Capital Expenditures. The Parties agree that, from time to time during the Term (including the period during the first Contract Year that is prior to the Effective Date), EPS may incur certain capital expenditures authorized in the Research Budget. The Parties agree that EPS shall have discretion to incur, and Agrigenetics shall be responsible for, such capital expenditures in an amount not to exceed **[*]** during the first Contract Year for purposes described in the Research Plan, and the Parties further agree that Agrigenetics has already paid EPS **[*]** of such amount. EPS shall obtain the written consent of the JMT prior to incurring any additional capital expenditures in the first Contract Year or incurring any capital expenditures after the first Contract Year for (i) any asset in excess of **[*]** or (ii) assets totaling more than **[*]** in any Contract Year (which consent shall not be unreasonably withheld or delayed). Prior to incurring any additional capital expenditure in excess of **[*]**, EPS shall notify Agrigenetics' representatives on the JMT of such proposed capital expenditure for the purpose of assessing if Agrigenetics has surplus equipment that may satisfy the need and avoid incurring the added expense. Agrigenetics shall own all rights, title and interest in all assets created by or purchased through such capital expenditures and EPS hereby assigns to Agrigenetics all of EPS's rights, title and interest in and to such assets.

6.2 Estimated Payments; Advance Payments.

(a) FTE Payments.

(i) Estimated FTE Payments. EPS estimates that the FTE payments for each Contract Year of the Term (each, an "**Estimated Annual FTE Payment**") will be as follows:

(1) the Estimated Annual FTE Payment for the first Contract Year shall be: (A) **[*]** for the approximately **[*]** FTEs engaged in Research Program (excluding activities set forth in the **[*]**); plus (B) **[*]** in the amount of **[*]**, resulting in the Estimated Annual FTE Payment of **[*]**;

(2) the Estimated Annual FTE Payment for the second Contract Year shall be **[*]** for the approximately **[*]** FTEs engaged in the Research Program;

(3) the Estimated Annual FTE Payment for the third Contract Year shall be **[*]** for the approximately **[*]** FTEs engaged in the Research Program;

(4) the Estimated Annual FTE Payment for the fourth Contract Year shall be **[*]** for the approximately **[*]** FTEs engaged in the Research Program; and

(5) the Estimated Annual FTE Payment for the fifth Contract Year shall be **[*]** for the approximately **[*]** FTEs engaged in the Research Program.

Each Estimated Annual FTE Payment is subject to adjustment pursuant to Section 8.4(c).

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(ii) FTE Payment Schedule.

(1) For the First Contract Year. Agrigenetics shall pay to EPS the FTE payment for the first Contract Year in the amount equal to the Estimated Annual FTE Payment for such first Contract Year **[*]**, minus the FTE payments made by Agrigenetics to EPS under the **[*]** prior to the Effective Date **[*]**, resulting in such net FTE payment due after the Effective Date from Agrigenetics to EPS for the first Contract Year being **[*]** (the "**Net First Year FTE Payment**"). On each of October 1, 2007 and January 1, 2008, Agrigenetics shall make a payment to EPS equal to one-half (1/2) of such Net First Year FTE Payment, in each case in the amount of **[*]**. EPS shall invoice Agrigenetics in accordance with Section 6.9.

(2) For the Subsequent Contract Years. On the first day of each calendar quarter (April 1, July 1, October 1, January 1) during each subsequent Contract Year, Agrigenetics shall pay to EPS: one-quarter (1/4) of the Estimated Annual FTE Payment for such Contract Year as set forth in Section 6.2(a)(i) above. EPS shall invoice Agrigenetics in accordance with Section 6.9.

(b) Advance Facilities Payments.

(i) For the First Contract Year. Agrigenetics shall make payments to EPS for the amount of Agrigenetics' share of the estimated annual Facility Expenses (the "**Agrigenetics Estimated Annual Facility Expenses**") for the first Contract Year in an amount equal to **[*]** pursuant to the schedule set forth in this Section 6.2(b)(i). For the first Contract Year, EPS shall directly incur such Agrigenetics Estimated Annual Facility Expenses and Agrigenetics shall pay EPS for such Agrigenetics Estimated Annual Facility Expenses as follows: (A) on October 1, 2007, Agrigenetics shall pay to EPS three quarters (3/4) of **[*]**, resulting in a payment amount of **[*]**, and (B) on January 1, 2008, Agrigenetics shall pay to EPS one quarter (1/4) of **[*]**, resulting in a payment amount of **[*]**. EPS shall invoice Agrigenetics in accordance with Section 6.9.

(ii) For the Second Contract Year. The Agrigenetics Estimated Annual Facility Expenses for the second Contract Year is **[*]**. For the second Contract Year, EPS shall directly incur such Agrigenetics Estimated Annual Facility Expenses and Agrigenetics shall pay EPS for such Agrigenetics Estimated Annual Facility Expenses as follows: (A) on the first day of each calendar quarter (April 1, July 1, October 1, and January 1) during such Second Contract Year, Agrigenetics shall pay to EPS one-quarter (1/4) of the Agrigenetics Estimated Annual Facility Expenses for such second Contract Year, resulting in a payment amount of **[*]** for each payment. EPS shall invoice Agrigenetics in accordance with Section 6.9.

(iii) For Each Subsequent Contract Year.

(1) Estimates. During the Term, at least ninety (90) days before the start of each of the third, fourth and fifth Contract Years, EPS shall submit to Agrigenetics a good faith estimate of the amount of the PDX Facility Expenses to be incurred for

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such Contract Year, together with estimated amounts as to how much of such PDX Facility Expenses would be Agrigenetics' share and EPS's share (respectively, "**Estimated Agrigenetics PDX Facility Share**" and "**Estimated EPS PDX Facility Share**").

(2) Advance Payments. On the first day of each calendar quarter (April 1, July 1, October 1, and January 1) during each of the third, fourth and fifth Contract Years, Agrigenetics shall pay to EPS an amount equal to one-quarter (1/ 4) of the Estimated Agrigenetics PDX Facility Share. EPS shall invoice Agrigenetics in accordance with Section 6.9. All such advance payments made by Agrigenetics during a particular Contract Year shall be referred to collectively as the "**Agrigenetics Advance Facilities Payments**" during such Contract Year.

(c) Capital Expenditure Payments. The Parties acknowledge that Agrigenetics has paid EPS **[*]** under the **[*]** for capital expenditures incurred or to be incurred by EPS during the first Contract Year pursuant to Section 6.1(c). Agrigenetics shall pay to EPS an additional amount of **[*]** on October 1, 2007 for capital expenditures incurred or to be incurred by EPS during such first Contract Year pursuant to Section 6.1(c). EPS shall invoice Agrigenetics in accordance with Section 6.9.

6.3 True-Up Mechanisms. During the Term, EPS shall track and calculate the actual number of FTEs involved in the Research Program in accordance with EPS's then-current accounting methodology, and shall keep a complete and accurate record of all capital expenditures actually incurred by EPS pursuant to Section 6.1(c) above. EPS shall keep a complete and accurate record of all Facilities Expenses actually incurred by it.

(a) True-Up For FTE Payments. Within **[*]** after the end of each Contract Year, EPS shall submit an invoice to Agrigenetics setting forth in reasonable detail: (i) the actual FTEs utilized by EPS during the Contract Year for the Research Program (excluding **[*]**) immediately preceding the submission of such invoice; (ii) the calculation of the actual annual FTE payment for such Contract Year pursuant to Section 6.1(a) based on such actual FTEs utilized (for the first Contract Year, such actual annual FTE payment amount shall also include **[*]**, which shall be a fixed amount and not subject to any true-up mechanism) (the "**Actual Annual FTE Payment**"); and (iii) the difference between such Actual Annual FTE Payment incurred by EPS and the Estimated Annual FTE Payment for such Contract Year. If the Estimated Annual FTE Payments made by Agrigenetics to EPS for such Contract Year exceeds the sum of Actual Annual FTE Payment for such Contract Year, then such overage shall be credited against Agrigenetics' payment for subsequent Estimated Annual FTE Payments, or, if no more invoices will be issued under this Agreement, then such overage shall be refunded to Agrigenetics within **[*]** after the date of such invoice. If the amount paid by Agrigenetics to EPS for such Contract Year is less than the Actual Annual FTE Payment for such Contract Year, then Agrigenetics shall submit a payment to EPS within **[*]** after receiving such invoice equal to the amount of such underpayment.

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(b) True-Up for Facilities Expenses.

(i) For the First and Second Contract Years. Within **[*]** days after the end of each of the first and second Contract Years, EPS shall submit an invoice to Agrigenetics setting forth in reasonable detail: (A) the amount of Agrigenetics' Share of Facilities Expenses actually incurred by EPS during the Contract Year immediately preceding such submission; and (B) the difference between such Agrigenetics' Share of Facilities Expenses and the Agrigenetics Estimated Annual Facilities Expenses for such Contract Year. If the Agrigenetics Estimated Annual Facilities Expenses for such Contract Year exceeds Agrigenetics' Share of Facilities Expenses for such Contract Year, then such overage shall be credited against Agrigenetics' obligation to make payment for Agrigenetics' subsequent advance facilities payments pursuant to Section 6.2(b) above. If no more invoices will be issued under this Agreement, then such overage shall be refunded to Agrigenetics within **[*]** after the date of such invoice. If the amount paid by Agrigenetics to EPS as Agrigenetics Estimated Annual Facilities Expenses for such Contract Year is less than Agrigenetics' Share of the Facilities Expenses for such Contract Year, then Agrigenetics shall submit a payment to EPS within **[*]** after receiving such invoice equal to the amount of such underpayment.

(ii) For the Third, Fourth and Fifth Contract Year. Within **[*]** after the end of each of the third, fourth and fifth Contract Year, EPS shall submit an invoice to Agrigenetics setting forth in reasonable detail: (A) the amount of Agrigenetics' Share of PDX Facilities Expenses actually incurred by EPS during the Contract Year immediately preceding such submission, calculated pursuant to Section 6.1(b); and (B) the difference between such Agrigenetics' Share of PDX Facilities Expenses and the Agrigenetics Advance Facilities Payments for such Contract Year. If the Agrigenetics Advance Facilities Payments for such Contract Year exceeds Agrigenetics' Share of PDX Facilities Expenses for such Contract Year, then such overage shall be credited against Agrigenetics' obligation to make payment for Agrigenetics' subsequent advance facilities payments pursuant to Section 6.2(b) above. If no more invoices will be issued under this Agreement, then such overage shall be refunded to Agrigenetics within **[*]** after the date of such invoice. If the amount paid by Agrigenetics to EPS as Agrigenetics Advance Facilities Payments for such Contract Year is less than Agrigenetics' Share of the PDX Facilities Expenses for such Contract Year, then Agrigenetics shall submit a payment to EPS within **[*]** after receiving such invoice equal to the amount of such underpayment.

(c) True-Up for Capital Expenditures.

(i) For the First Contract Year. Within **[*]** after the first Contract Year, EPS shall submit to Agrigenetics an invoice of: (i) all capital expenditures incurred by EPS during such Contract Year (including all capital expenditures incurred by EPS under the **[*]**) (the "**Actual Capital Expenditure**"); and (ii) the difference between the amount set forth in subsection (i) above and **[*]**. If such Actual Capital Expenditure exceeds **[*]**, then to the extent such additional capital expenditures were either approved by the JMT or allowed pursuant to Section 6.1(c) above, Agrigenetics shall submit payment to EPS in the amount of such additional capital expenditure within **[*]** after Agrigenetics receives such invoice. If such Actual Capital Expenditure is less than **[*]**, then EPS shall refund Agrigenetics such difference within **[*]** after the date of such invoice.

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(ii) For Subsequent Contract Years. Within **[*]** after the end of each subsequent Contract Year, EPS shall submit to Agrigenetics an invoice of all capital expenditures incurred by EPS during such Contract Year. To the extent such capital expenditures were either approved by the JMT or allowed pursuant to Section 6.1(c) above, Agrigenetics shall submit payment to EPS in the amount of such capital expenditure within **[*]** after Agrigenetics receives such invoice.

(d) True-Up Upon Expiration or Termination. In addition to the true-up procedures described in Sections 6.3(a), (b) and (c) following the end of each Contract Year, the Parties shall perform corresponding true-up procedures within **[*]** after the effective date of any expiration or termination of this Agreement, with respect to payments made and expenses incurred, prior to the effective date of such termination or expiration, during the Contract Year in which such effective date occurred.

6.4 Reimbursed Expenses. Within **[*]** after the end of each calendar quarter, EPS shall submit to Agrigenetics an invoice setting forth in reasonable detail the expenses actually incurred by EPS during such calendar quarter for temporary employees, research consultants and contractors, and other research-related costs that are not included in FTE payments, Facilities Expenses, or capital expenditures under this Article 6. Within **[*]** of its receipt of such invoice, Agrigenetics shall reimburse EPS for all such expenses to the extent that such expenses, together with the amounts reimbursed by Agrigenetics for the preceding calendar quarters of the relevant Contract Year, do not exceed the applicable amounts set forth in the Research Budget plus all additional such expenses that the JMT approved in writing before the applicable expenses were incurred.

6.5 Payment for Additional Purchased Assets. Within **[*]** after each Additional Purchased Asset has been fully achieved, EPS shall invoice Agrigenetics the following amount, whichever is applicable, for such Additional Purchased Asset:

(a) if such achievement occurs prior to the applicable Anticipated Delivery Date (as adjusted under Section 4.2(a) or 4.2(b) if necessary) or within **[*]** thereafter, **[*]**; or

(b) if such achievement occurs more than **[*]**, after the applicable Anticipated Delivery Date (as adjusted under Section 4.2(a) or 4.2(b) if necessary), **[*]**.

Such payments shall be due for each and every Additional Purchased Asset, for a maximum aggregate payment by Agrigenetics under this Section 6.5 of $13,500,000. All payments made by Agrigenetics to EPS pursuant to this Section 6.5 shall be noncreditable and nonrefundable and shall be paid by Agrigenetics within thirty (30) days after Agrigenetics' receipt of the invoice from EPS.

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6.6 Payment Method. All payments due under this Agreement to EPS or Agrigenetics shall be made by wire transfer in immediately available funds to an account designated by EPS or Agrigenetics, as appropriate. All payments hereunder shall be made in United States dollars.

6.7 Taxes. EPS and Agrigenetics shall each 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, the Party making payment 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 payment of the taxes to the Party receiving payment within thirty (30) days following that tax payment.

6.8 Interest. If a Party fails to make any payment due to the other Party under this Agreement on time, then interest shall accrue on a daily basis at an annual rate equal to **[*]** above the then-applicable prime commercial lending rate of CitiBank, N.A., San Francisco, California, or at the maximum rate permitted by applicable law, whichever is the lower.

6.9 Invoices. All payments will be made against invoices and the due date shall be **[*]** following receipt of the invoice, unless otherwise specified herein.

ARTICLE 7

INTELLECTUAL PROPERTY

7.1 Ownership of Research Inventions.

(a) Agrigenetics shall own all rights, title and interests in and to all Research Inventions. EPS hereby assigns to Agrigenetics all of EPS's rights, title and interests in and to the Research Inventions. EPS shall maintain or enter into agreements with all subcontractors and other personnel performing activities under the Research Program requiring such subcontractors or personnel to assign all of their rights, title and interests in and to Research Inventions to EPS, and ownership of such Research Inventions will transfer to Agrigenetics pursuant to the first sentence of this Section 7.1.

(b) At Agrigenetics' reasonable request and expense, EPS will execute and deliver such documents and instruments and take such other actions reasonably necessary to ensure that all right, title and interest is properly passed to Agrigenetics in any Research Inventions.

(c) Agrigenetics shall own all rights, title and interest in and to all samples and tangible assets made by EPS and any subcontractors or other personnel in the course of conducting activities under the Research Program (including notebooks, protocols, printouts and other related materials). EPS hereby assigns to Agrigenetics all of EPS's rights, title and interests in and to such samples and tangible assets. EPS shall not deny Agrigenetics access to, nor remove from the Facilities, such samples and tangible assets or any portion thereof without Agrigenetics' prior consent.

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(d) At Agrigenetics' reasonable request and expense, EPS will provide Agrigenetics with copies of any documents or access to any personnel required to establish and/or support Agrigenetics' rights in the Research Inventions.

7.2 License Grants.

(a) Agrigenetics hereby grants to EPS during the Term a nonexclusive, royalty-free, non-sublicenseable (except to subcontractors and other personnel approved by the Personnel Committee pursuant to Section 8.1), non-transferable license under the Agrigenetics Technology (excluding the **[*]**) solely for EPS to perform its obligations under this Agreement.

(b) Agrigenetics hereby **[*]**.

(c) Agrigenetics hereby grants to EPS during the Term a nonexclusive, royalty-free, non-sublicenseable (except to subcontractors and other personnel approved by the Personnel Committee pursuant to Section 8.1), non-transferable license under the Research Inventions solely for EPS to perform its obligations under this Agreement.

(d) EPS hereby grants Agrigenetics a nonexclusive, royalty-free, non-sublicenseable, non-transferable sublicense of Agrinomics' license pursuant to Section 2.1 of the [*], solely for Agrigenetics to conduct research using Materials (as such term is defined in the [*]) provided by EPS.

7.3 Disclosure of Research Inventions; Patent Prosecution.

(a) EPS shall notify Agrigenetics as soon as practicable, in writing, of any Research Invention made by EPS or by any subcontractors or other personnel performing activities under the Research Program and shall disclose such Research Invention in reasonable detail to appropriate Agrigenetics personnel. Agrigenetics shall be responsible for the filing, prosecution and maintenance of all Research Patents, at its sole expense.

(b) Agrigenetics shall disclose, solely to the extent necessary for EPS to perform its obligations under this Agreement, any Agrigenetics activities, results or information that contributed to or form part of, a Research Invention.

(c) Agrigenetics and its Affiliates shall be solely responsible for the disclosure, in confidence, **[*]**.

7.4 Enforcement or Defense of Patents. If either Party becomes aware of any Third Party activity that infringes any Research Patent, or any allegation by a Third Party that a Research Patent is invalid or unenforceable, then such Party shall give prompt written notice to

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the other Party regarding such infringement or allegation. In the case of such Third Party infringement of a Research Patent, Agrigenetics shall have the sole right, but not obligation, to institute any action against such infringer, at its own expense. Upon Agrigenetics' reasonable request and sole expense, EPS shall assist Agrigenetics in any such action against such Third Party. In the case of such Third Party allegation of invalidity or unenforceability of a Research Patent, Agrigenetics shall have the sole right, but not obligation, to defend any action filed by such Third Party, at its own expense. Upon Agrigenetics' reasonable request and sole expense, EPS shall assist Agrigenetics in its defense of any such action filed by such Third Party. Such assistance by EPS in these proceedings shall include, access to any and all data, notebooks, or other records related to the Research Inventions and access to any personnel that may have knowledge of or have conducted any research that led, directly or indirectly, to a Research Invention.

ARTICLE 8

EMPLOYEES

8.1 General. EPS and Agrigenetics shall each be responsible for staffing the projects assigned to it under the Research Program. All EPS employees and Agrigenetics Employees shall perform activities under the Research Program under the direction and direct supervision of **[*]**, who shall also direct and manage the day-to-day activities under the Research Plan. EPS may only use subcontractors or any personnel other than employees of EPS or Agrigenetics to perform activities under the Research Program upon the prior approval of the Personnel Committee; provided, however, that EPS shall have the right to engage temporary personnel for field or green house activities without first obtaining such approval so long as such engagement(s) does not result in costs and expenses above the amount set forth in the Research Budget. EPS and Agrigenetics shall form a personnel committee to oversee and make decisions regarding employee staffing matters (the "**Personnel Committee**"), and such Personnel Committee shall have authority over personnel matters only as expressly set forth under this Agreement. Such Personnel Committee shall **[*]**. The initial representatives of such Personnel Committee **[*]**. In the event the Personnel Committee is unable to reach **[*]** on duties charged to it, the Dispute Resolution provisions of Section 14.6 shall be followed by the Parties.

8.2 Key Personnel. EPS shall be responsible for the management of all Key Personnel and shall have sole discretion as to all matters with respect to the employment of such Key Personnel, including terminating any Key Personnel or hiring any individual to replace any Key Personnel who departs from EPS after the Effective Date, subject to Section 8.3 below; provided, however, Exelixis shall **[*]**.

8.3 [*]

8.4 [*].

(a) Within **[*]**, Agrigenetics will use its commercially reasonable efforts to

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[*]. For the purposes of this Section 8.4(a), **[*]**. Within **[*]**, each **[*]**. In the event that Agrigenetics does not **[*]**, Agrigenetics shall notify EPS. If after Agrigenetics does not **[*]**, then Agrigenetics shall reimburse EPS in full for **[*]**; provided, however, in no event will the **[*]**.

(b) During the term of this Agreement, all **[*]** shall be made in the normal course of business, consistent with **[*]**. EPS shall provide Agrigenetics with an annual summary of all **[*]**.

(c) If **[*]**. If such individual, **[*]**, is assigned to carry out activities under projects assigned to EPS under the Research Program, such individual shall be deemed an **[*]**. **[*]**. Agrigenetics shall be directly responsible for **[*]**. **[*]**, the Estimated Annual FTE Payment for any applicable Contract Year and subsequent Contract Years shall **[*]**. **[*]** Estimated Annual FTE Payments shall be made with respect to **[*]**.

(d) [*].

8.5 [*].

(a) In addition to **[*]**.

(b) EPS shall, within **[*]**, **[*]** the Key Personnel. The **[*]** in a manner that is consistent with **[*]**. **[*]**.

8.6 [*].

8.7 [*].

ARTICLE 9

CONFIDENTIALITY

9.1 Nondisclosure of Confidential Information. All information disclosed by one Party or its Affiliates (the “**Disclosing Party**”) to the other Party or its Affiliates (the “**Receiving Party**”) pursuant to this Agreement shall be “**Confidential Information**” of the Disclosing Party for all purposes hereunder, except that all Research Inventions shall be Confidential Information of Agrigenetics, regardless of the identity of the party disclosing such information, and Agrigenetics shall be deemed the “Disclosing Party” to all such information. The Receiving Party shall: (i) use commercially reasonable efforts to maintain in confidence the Confidential Information of the Disclosing Party (but shall use not less than those efforts that 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 such Disclosing Party; and (ii) not use such Disclosing Party’s Confidential Information for any purpose except those permitted by this Agreement (it being understood that this subsection (ii) shall not create or imply any rights or licenses not expressly granted under this Agreement or the APA).

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9.2 Exceptions. A Receiving Party's obligations in Section 9.1 above shall not apply with respect to any portion of the Disclosing Party's Confidential Information that such Receiving Party can show:

(a) is or was publicly disclosed by the Disclosing Party, either before or after it is disclosed to the Receiving Party hereunder;

(b) was known to the Receiving Party, without obligation to keep it confidential, prior to disclosure by the Disclosing Party;

(c) is or was subsequently disclosed to the Receiving Party by a Third Party without obligation to keep it confidential;

(d) is or was published by a Third Party or otherwise becomes publicly available or enters the public domain through no fault of the Receiving Party, either before or after it is disclosed to the Receiving Party; or

(e) has been or is independently developed by employees or contractors of the Receiving Party without the aid, application or use of the Disclosing Party's Confidential Information.

9.3 Authorized Disclosure. A Receiving Party may disclose the Confidential Information belonging to the Disclosing Party to the extent such disclosure is reasonably necessary in the following instances:

(a) disclosures requested or required by operation of law or court order (provided that the Party required to disclose Confidential Information belonging to the other Party gives the other Party as much prior notice as is reasonably practicable and legally permissible and discloses only such information as it is obligated to disclose); and

(b) disclosures to Affiliates or employees necessary for a Party to perform its obligations under this Agreement or as otherwise permitted under this Agreement, provided that the recipient of such disclosure is bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 9.

9.4 Terms of Agreement. The parties hereto acknowledge that the terms of this Agreement shall be treated as Confidential Information of the Parties. Such terms may be only disclosed (a) by a Party, on a need to know basis, to its Affiliates, or (b) by a Party or any of its Affiliates, on a need to know basis, to its investment bankers, employees, consultants and agents, and to its actual or potential lenders, potential or actual acquirors of all or a portion of the assets or stock of such Party or any of its Affiliates, or actual or potential investors in connection with a

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private financing (including a private investment in a public entity) by such Party or any of its Affiliates, each of whom prior to disclosure must be bound by obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 9. A copy of this Agreement may be filed by either Party with the Securities and Exchange Commission. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic and trade secret information, shall provide the other Party with an opportunity to review and comment on such Party's proposed redactions, and shall give due consideration to any such comments, and shall use commercially reasonable efforts to obtain acceptance of redactions reasonably requested by the other Party.

9.5 Confidential Information under Prior Agreements. Commencing upon the Effective Date, all information exchanged between the Parties under the Nondisclosure Agreement by and between DAS, EPS and Exelixis, dated April 26, 2006, as amended (the "**CDA**") shall be deemed Confidential Information of the disclosing Party under this Article 9, and all Confidential Information of a Party or its Affiliate(s) under the **[*]** shall be deemed Confidential Information of such Party under this Article 9. Confidential Information that was EPS Confidential Information under a prior agreement that is included in Purchased Assets under the APA is Confidential Information of Agrigenetics, provided that EPS and its Affiliates and sublicensees shall have the right to disclose the Confidential Information of Agrigenetics or its Affiliates pursuant to the APA.

9.6 Publicity. No party to this Agreement shall issue any press release or otherwise make any public statement regarding the terms of the Transactional Agreements nor the transactions contemplated without the prior written consent of the other party hereto, except as provided in Section 9.4 of this Agreement and Section 7.3(a) of the APA.

9.7 Publications. As between the Parties, Agrigenetics shall have the sole right to publish or present the results of studies carried out under this Agreement, and EPS shall have an opportunity for prior review of such publication or presentation. Agrigenetics agrees to provide EPS the opportunity to review any proposed abstract, manuscript or presentation (including verbal presentation) that relates to the Research Program at least **[*]** prior to its intended submission for publication so that EPS can determine whether the proposed publication discloses any of EPS's Confidential Information and confirm the accuracy of the content of such publication. At EPS's reasonable request, Agrigenetics shall delete any of EPS's Confidential Information contained within such proposed publication and revise such publication to the extent EPS identifies any inaccuracy in its content. Agrigenetics shall determine the authorship to each such publication or presentation in a fair manner taking into consideration EPS's contribution to the research reported in such publication or presentation.

9.8 Survival. The receiving Party's obligations under this Article 9 shall survive any expiration or termination of this Agreement for a period of **[*]**. With respect to any information disclosed by Agrigenetics or its Affiliates to EPS that is confidential information of **[*]**, Agrigenetics (or such Affiliate(s), as the case maybe) shall have identified (if such information

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has been disclosed prior to the Effective Date) or identify (if such information is disclosed after the Effective Date) such information as the confidential information **[*]** and the obligations of Article 9 with respect to such information shall **[*]**.

9.9 Material Transfer.

(a) Each Party may wish, from time to time to supply to the other Party proprietary materials of the supplying Party for use in carrying out the Research Program. The supply of such materials shall be confirmed to the receiving Party by completing the form set forth in Exhibit G including the description of the proprietary material supplied.

(b) Each Party supplying its proprietary material hereunder grants to the other Party a non-exclusive right to use to such proprietary material solely for the purpose of carrying out the Research Program.

(c) The Parties agree that any other use of such proprietary materials and/or any sale of a product resulting from the use of such materials, including any formalized in-house screening program, will be made only pursuant to the terms of an applicable explicit license in this Agreement or in another license to be negotiated by the Parties.

(d) The Parties recognize that proprietary materials supplied pursuant to this Section remain the sole property of and under the control of the supplying Party and that no license is granted or implied to the receiving Party unless otherwise provided in this Agreement.

(e) A Party receiving proprietary materials from the other hereunder shall not apply for any patent or other form of protection or registration for such material or the use of such material without the permission of the supplying Party.

ARTICLE 10
TERM AND TERMINATION

10.1 Term. This Agreement shall become effective on the Effective Date, and shall expire at the end of the fifth Contract Year, unless earlier terminated in accordance with Section 10.2, 10.3 or 10.4 (such period during which the Agreement is effective, the "**Term**").

10.2 Termination for Delay in Delivering Additional Purchased Assets. Agrigenetics may terminate this Agreement upon **[*]** prior written notice to EPS if EPS fails to complete development of and fully achieve any Additional Purchased Asset within **[*]** after the applicable Anticipated Delivery Date (as adjusted pursuant to Section 4.2(a) or 4.2(b) if necessary). In the event of such termination, EPS and Agrigenetics shall cooperate to conduct an orderly transition prior to the effective date of such termination for Agrigenetics to assume EPS's role in the further development of the Purchased Assets, and EPS shall use commercially reasonable efforts to **[*]**.

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10.3 Termination for Material Breach.

(a) Either Party may terminate this Agreement for the other Party's material breach of its obligations under this Agreement by providing such other Party with prior written notice stating such alleged breach, provided that such other Party shall have a **[*]** after receiving such notice to cure any non-payment breach and **[*]** after receiving such notice to cure any payment breach, and such termination shall only become effective if such other Party fails to cure such breach within such period of time.

(b) If a Party gives notice of termination under this Section 10.3 and the other Party disputes in good faith whether it has committed a material breach under this Agreement or whether the notice was properly given, then the issue of whether this Agreement has been terminated shall be resolved in accordance with Section 14.6. If such dispute resolution process results in a determination in favor of the Party giving notice, then the breaching Party shall have the period as described in Section 10.3(a) above from the date of such determination to cure such breach, and the termination shall only be effective if such other Party fails to cure such breach within such period of time. If such dispute resolution process results in a determination in favor of the Party receiving notice, then such notice of termination shall be deemed null and void and of no legal effect, and this Agreement shall remain in full force and effect.

(c) In the event of termination of this Agreement pursuant to this Section 10.3, EPS and Agrigenetics shall cooperate to conduct an orderly transition prior to the effective date of such termination for Agrigenetics to assume EPS's role in the further development of the Purchased Assets, and EPS shall use commercially reasonable efforts to **[*]** for any remainder of its term.

10.4 Termination at Will.

(a) At any time that is at least [*], EPS or Agrigenetics, each in its respective sole discretion, may provide the other Party with written notice of its intent to terminate this Agreement, which termination shall become effective [*] after the other Party's receipt of such notice. During such [*] period, EPS and Agrigenetics shall cooperate to conduct an orderly transition for Agrigenetics to assume EPS's role in the further development of the Purchased Assets, and EPS shall use commercially reasonable efforts to [*]. If Agrigenetics gives notice of termination under this Section 10.4(a) [*], Agrigenetics shall [*].

(b) In the event: (i) Agrigenetics has **[*]**, (ii) EPS provides written notice to Agrigenetics pursuant to Section 10.4(a), and (iii) the Additional Purchased Asset 3 has not been achieved at the time Agrigenetics or EPS receives such written notice, then, at Agrigenetics' written request, EPS and Agrigenetics shall cooperate through the Personnel Committee prior to the effective date of such termination to **[*]**.

(c) Agrigenetics' obligation to make payment pursuant to Section 6.5 with respect to the Additional Purchased Asset 3 shall survive any termination of this Agreement pursuant to this Section 10.4.

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10.5 Effect of Termination; Survival.

(a) The following provisions of this Agreement shall survive any expiration or termination of this Agreement, regardless of cause: Articles 1, 9 (except for Sections 9.9(a) and (b)), 12 and 14 and Sections 6.3(d), 6.5 (with respect to Additional Purchased Asset 3 if this Agreement is terminated pursuant to 10.4(a)), 6.6, 6.7, 6.8, 6.9, 7.1, 7.4, 8.4(c), 8.6, 8.7, 10.4(a), 10.4(c) and 10.5.

(b) In any event, termination of this Agreement shall not relieve any party hereto of any liability which accrued hereunder prior to the effective date of such termination nor preclude any party hereto from pursuing any rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice any party hereto's right to obtain performance of any obligation.

(c) In the event this Agreement is terminated pursuant to Section 10.2, Agrigenetics shall remain obligated to reimburse EPS for non-cancelable costs and expenses. EPS shall use commercially reasonable efforts to minimize such costs and expenses.

ARTICLE 11

REPRESENTATIONS; WARRANTIES

11.1 Mutual Representations and Warranties. The parties to this Agreement each represent and warrant to the other that: (a) it has the requisite corporate power and authority to enter into and to deliver this Agreement and to perform its obligations under this Agreement, (b) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity), and (c) the execution, delivery and performance of this Agreement by it (i) has been duly authorized by all necessary action on its part and on the part of its board of directors, or board of managers as applicable, and (ii) will not (1) conflict with, or result in a violation of, its certificate of incorporation, bylaws or other equivalent organizational documents; or (2) result in a violation by it of any legal requirement or court order that is applicable to the Research Program.

11.2 EPS Representations and Warranties. EPS represents and warrants to Agrigenetics that as of the Effective Date:

(a) Employees to be hired by EPS to work on the Research Plan, including any subcontractors if applicable, are or will be under an obligation to assign ownership of any and all Research Inventions created during their term of employment by EPS under this Agreement to EPS.

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(b) EPS has not received written notice of any claim of infringement, misappropriation or other violation of any Intellectual Property Rights of any Third Party arising from any research that will be conducted under this Agreement, nor does EPS have any knowledge of any such threatened claim.

11.3 Agrigenetics Representations and Warranties. Agrigenetics represents and warrants to EPS that as of the Effective Date:

(a) [*]

(b) the Parties' exercise of their rights and performance of their obligations pursuant to this Agreement will not constitute a breach of **[*]**.

(c) Agrigenetics and its Affiliates have not received written notice of any claim of infringement, misappropriation or other violation of any Intellectual Property Rights of any Third Party arising from any research that will be conducted under this Agreement, nor does Agrigenetics have any knowledge of any such threatened claim.

(d) Agrigenetics will not take any action, or fail to take any action, that would cause or result in the **[*]**; and

(e) Agrigenetics owns Intellectual Property rights covering **[*]**.

11.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 11 OR AS SET FORTH IN THE TRANSACTION AGREEMENTS, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO ANY RESEARCH RESULTS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY SUCH PARTY AS PART OF THE RESEARCH PROGRAM OR OTHERWISE MADE AVAILABLE TO THE OTHER PARTY PURSUANT TO THE TERMS OF THIS AGREEMENT. SPECIFICALLY, EPS MAKES NO WARRANTY AS TO THE SUCCESS OF THE RESEARCH PROGRAM AND WHETHER OR WHEN THE ADDITIONAL PURCHASED ASSETS MAY BE GENERATED.

[*] =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.

ARTICLE 12

INDEMNIFICATION

12.1 Indemnification by Agrigenetics. Agrigenetics shall indemnify and hold harmless EPS and its Affiliates and their trustees, directors, officers, employees, consultants, contractors, sublicensees and agents and their respective successors, heirs and assigns (collectively, the "**EPS Indemnitees**") from and against any and all Damages payable to a Third Party claimant incurred by such EPS Indemnitee with respect to any claims, suits, proceedings or causes of action ("**Claims**") brought by such Third Party against such EPS Indemnitee as a result of: (a) either Party's performance of the Research Plan or its obligations under this Agreement; (b) Agrigenetics' gross negligence or willful misconduct; (c) Agrigenetics' breach of its representations or warranties under this Agreement; or (d) Agrigenetics' material breach of its obligations under this Agreement; subject in each of clauses (a), (b), (c) and (d) to the exclusion of such Damages that arise from: (x) the gross negligence or willful misconduct of any EPS Indemnitee; (y) EPS's breach of its representations or warranties under this Agreement; or (z) EPS's material breach of its obligations under this Agreement. Notwithstanding the foregoing, Agrigenetics shall have no obligation to indemnify EPS for [*].

12.2 Indemnification by EPS. EPS shall indemnify and hold harmless Agrigenetics and its Affiliates and their trustees, directors, officers, employees, consultants, contractors, sublicensees and agents and their respective successors, heirs and assigns (collectively, the "**Agrigenetics Indemnitees**") from and against any and all Damages incurred by such Agrigenetics Indemnitee with respect to any Claims brought by any Third Party against an Agrigenetics Indemnitee as a result of: (a) EPS's gross negligence or willful misconduct; (b) EPS's breach of its representations or warranties under this Agreement; (c) EPS's material breach of its obligations under this Agreement; or (d) **[*]**; subject in each of clauses (a), (b), and (c) to the exclusion of such Damages that arise from: (x) the gross negligence or willful misconduct of any Agrigenetics Indemnitee; (y) Agrigenetics' breach of its representations or warranties under this Agreement; or (z) Agrigenetics' material breach of its obligations under this Agreement.

12.3 Conditions to Indemnification. It shall be a condition precedent to the right of any Agrigenetics Indemnitee or EPS Indemnitee (each, an "**Indemnitee**") to seek indemnification under Section 12.1 or 12.2 that such Indemnitee:

(a) shall inform the other Party (the "**Indemnifying Party**") as soon as reasonably practicable after it receives notice of the Claim;

(b) shall, if the Indemnifying Party acknowledges that such Claim falls within the scope of its indemnification obligations hereunder, permit the Indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Claim; provided, however, that the Indemnifying Party will not settle, adjust or compromise such Claim, or admit any liability with respect to such Claim, without the prior written consent of the Indemnitee, unless such settlement, adjustment, compromise or admission would not have any impact on the Indemnitee; and

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(c) shall fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the Indemnifying Party in the defense of the Claim.

Provided that an Indemnitee has complied with the foregoing, the Indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Claim, provided that if the Indemnitee reasonably determines that representation by attorneys to the Indemnifying Party of both the Indemnitee and the Indemnifying Party would present such attorneys with a conflict of interest, then the Indemnitee may request that the Indemnifying Party engage separate legal counsel to represent the Indemnitee and upon receipt of such request, the Indemnifying Party will engage such separate legal counsel at its own expense. If the Indemnifying Party declines to engage separate counsel, then the Indemnitee shall be entitled to retain its own attorneys at the expense of the Indemnifying Party. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Claim using attorneys of its choice and at its expense, which expense shall not be included as Damages for which the Indemnifying Party has liability. In no event may an Indemnitee settle or compromise any Claim for which it intends to seek indemnification from the Indemnifying Party hereunder without the prior written consent of the Indemnifying Party, or the indemnification provided under Section 12.1 or 12.2, as applicable, as to such Claim shall be null and void.

12.4 Notice of Third Party Infringement Claim. If a Third Party asserts that a patent or other right Controlled by it is infringed by activities under the Research Program, the Party first obtaining knowledge of such a claim shall immediately provide the other Party with notice thereof and the related facts in reasonable detail.

12.5 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO SECTION 12.1 OR 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 THIS AGREEMENT.

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ARTICLE 13

INSURANCE

13.1 Insurance of EPS.

(a) EPS will maintain, either by itself or through any of its Affiliates under a consolidated policy, insurance in the following amounts, at its own expense, at all times while this Agreement is in effect: (i) workers' compensation insurance at statutory limits and employers' liability insurance at not less than **[*]** each accident; and (ii) commercial general liability insurance and/or excess liability insurance with a limit of **[*]** per occurrence for bodily injury and property damage.

(b) EPS will furnish Agrigenetics a certificate(s) from an insurance carrier (having a minimum AM Best rating of **[*]**) showing all the insurance set forth in Section 13.1(a) above. The insurance and the certificate(s) will (i) name Agrigenetics (including Agrigenetics' officers, directors, employees, Affiliates and agents and Agrigenetics' successors and assigns) as additional insureds with respect to EPS' performance under this Agreement, (ii) provide that such insurance shall be primary and non contributing with respect to any liability insurance carried by Agrigenetics and (iii) provide that underwriters and insurance companies of EPS will not have any right of subrogation against Agrigenetics (including Agrigenetics' officers, directors, employees, Affiliates and agents and Agrigenetics' successors and assigns). Such insurance may be canceled only after **[*]** prior written notice to Agrigenetics. EPS shall be responsible for the payment of any deductibles, retentions or retrospective premiums that may apply to any such coverage procured and maintained hereunder.

13.2 Insurance of Agrigenetics.

(a) Agrigenetics will procure and maintain, either by itself or through any of its Affiliates under a consolidated policy, insurance in the following amounts, at its own expense, at all times while this Agreement is in effect: (i) commercial general liability insurance and/or excess liability insurance with a limit of **[*]** per occurrence for bodily injury and property damage; and (ii) workers' compensation insurance at statutory limits and employers' liability insurance at not less than **[*]** each accident.

(b) Agrigenetics will furnish EPS a certificate(s) from an insurance carrier (having a minimum AM Best rating of **[*]**) showing all the insurance set forth in Section 13.2(a) above. The insurance and the certificate(s), will (i) name EPS (including EPS's officers, directors, employees, Affiliates and agents and EPS's successors and assigns) as additional insureds with respect to Agrigenetics' performance under this Agreement, (ii) provide that such insurance shall be primary and non-contributing with respect to any liability insurance carried by EPS, and (iii) provide that underwriters and insurance companies of Agrigenetics will not have any right of subrogation against EPS (including EPS's officers, directors, employees, Affiliates and agents and EPS's successors and assigns). Agrigenetics shall be responsible for the payment

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of any deductibles, retentions or retrospective premiums that may apply to any such coverage procured and maintained hereunder. Such insurance may be canceled only after **[*]** prior written notice to EPS.

ARTICLE 14

MISCELLANEOUS

14.1 Guaranty. Mycogen hereby unconditionally and irrevocably guarantees to EPS the full performance of Agrigenetics, as and when due hereunder, of all obligations of Agrigenetics under this Agreement. Exelixis hereby unconditionally and irrevocably guarantees to Agrigenetics the full performance of EPS, as and when due hereunder, of all obligations of EPS under this Agreement.

14.2 Notices . All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as DHL or Federal Express), the next business day after delivery to such courier; (c) if sent by facsimile transmission or by electronic transmission, including email, when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any Party or Mycogen or Exelixis shall provide by like notice to the other Parties or Mycogen or Exelixis to this Agreement:

if to EPS or Exelixis:

Exelixis Plant Sciences, Inc.
16160 SW Upper Boones Ferry Road
Portland, Oregon 97224
Attention: Vice President of Research
Facsimile: (503) 670-7703

with copies to:

Exelixis, Inc.
170 Harbor Way, P.O. Box 511
South San Francisco, California 94083
Attention: Senior VP, Patents and Licensing
Facsimile: (650) 837-8205

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and

Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Attention: Marya A. Postner, Esq.
Facsimile: (650) 849-7400

if to Agrigenetics or Mycogen:

Agrigenetics, Inc.
9330 Zionsville Road
Indianapolis, Indiana 46268
Attention: General Counsel
Facsimile: (317) 337-6954

with copies to:

Dow AgroSciences LLC
9330 Zionsville Road
Indianapolis, Indiana 46268
Attention: General Counsel
Facsimile: (317) 337-6954

and

King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309
Attention: C. William Baxley, Esq.
Anne M. Cox, Esq.
Facsimile: (404) 572-5132

14.3 Headings. The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

14.4 Counterparts and Exchanges by Electronic Transmission or Facsimile. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission, including by email, or facsimile shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

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14.5 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York (without giving effect to principles of conflicts of laws).

14.6 Dispute Resolution.

(a) In the event of a claimed breach of this Agreement by either Party, or any other dispute arising out of or related to this Agreement, the Parties shall try to settle their differences amicably between themselves by first referring the disputed matter to the respective heads of research of each Party, and if not resolved by such research heads, by referring the disputed matter to the respective Chief Executive Officers of each Party. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and within **[*]** after receipt of such notice, such representatives of the Parties shall meet either in person or by teleconference or video conference to attempt in good faith to resolve any such dispute. If such personnel are unable to resolve such dispute within **[*]** of their first meeting, either Party may initiate arbitration by following the procedures set forth in the commercial arbitration rules of the American Arbitration Association (**"AAA"**) in effect on the Effective Date (the **"AAA Rules"**). Within **[*]** of the date provided for any answering statement to be filed by the answering Party, each Party shall select an arbitrator from AAA's National Roster who is experienced in the field of biotechnology, preferably plant biotechnology, and shall provide written notice thereof to the other Party and to AAA. The two (2) arbitrators so selected shall mutually select a third (3rd) arbitrator from AAA's National Roster who is experienced in the field of biotechnology, preferably plant biotechnology. The arbitration shall be conducted in accordance with the procedures set forth below and under the AAA Rules in the Denver, Colorado office of the AAA. The arbitrators so selected shall hold a preliminary conference with the Parties within **[*]** after their appointment, at which they will schedule a date for the arbitration hearing that will accommodate no more than **[*]** for pre-hearing discovery. The arbitrators shall render their decision after the hearing, in writing, as expeditiously as is possible, and such decision shall be delivered based on written materials submitted by the Parties to the arbitrators and on any oral presentation or testimony offered at the hearing, but provided that neither Party shall be required to attend any such hearing except that individual representatives of the Parties may be required by subpoena to testify at the hearing as ordered by the arbitrators. Each Party shall supply to the other Party a copy of any written materials to be submitted to the arbitrators at least **[*]** prior to the scheduled hearing. A default judgment may be entered against any Party that fails to provide written materials to the other Party for the arbitration hearing. The decision of the three arbitrators shall be final, binding and unappealable and shall be filed as a judgment or record in any court having proper jurisdiction. **[*]**.

(b) Discovery shall be (i) limited to the exchange of and timely responding to document requests, interrogatories, and depositions, not to exceed **[*]** per witness, (ii) limited to information directly relevant to the disputed issues and (iii) take into account claims of privilege, work product and other restrictions on discovery as appear to be warranted. The Parties shall comply with the AAA Rules and the scheduling order issued by the arbitrators in serving and responding to discovery.

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(c) The arbitrators may award the prevailing Party its attorneys' and experts' fees and disbursements incurred in resolving the dispute and may award other sanctions to the extent the arbitrators find any dispute advanced in the proceedings to be frivolous or without a good faith basis in fact and in law when the dispute was first presented for arbitration.

(d) The arbitration shall be absolutely confidential. As a condition precedent to the nomination or appointment of any person as arbitrator, such person shall execute a confidentiality agreement with the Parties **("Arbitrator Confidentiality Agreement")**. Participation in the arbitration shall be strictly limited to employees, agents, experts and counsel for the respective Parties with an absolute "need to know", and to Third Party witnesses with relevant information that testify as ordered by the arbitrators. The identities of all such employees, agents, experts, counsel of a Party and necessary Third Party witness shall be disclosed to the other Party before such employee, agent, expert, counsel or necessary Third Party witness participates in arbitration. All pleadings, briefs and other written submissions shall be presented solely to the arbitrators and exchanged between the Parties; copies shall not be lodged with the AAA. All evidence likewise shall be presented solely to the arbitrators. No copies of any submission by a Party or any documentary evidence presented by a Party shall be made by the other Party or any of the arbitrators except as necessary to prosecute or defend against claims at issue in the dispute. The award shall not disclose any Confidential Information of any Party. Promptly following the award, all submissions and documentary evidence presented by a Party shall be returned to that Party by the other Party and by each of the arbitrators, provided that neither of the Parties, as opposed to the arbitrators, shall be obligated to return the submissions and documentary evidence presented by the other Party until such time as the award is satisfied.

(e) Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of this Section 14.6, including any contention that all or any part of this Section 14.6 is invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators, not the court.

14.7 Injunctive Relief.

(a) Each party hereto acknowledges and agrees that any violation of the terms of this Agreement may result in irreparable injury and damage to the other parties hereto that may not be adequately compensable in money damages, and for which the other parties hereto will have no adequate remedy at law. Each party hereto therefore consents and agrees that the other parties hereto may obtain such interlocutory injunctions, orders and decrees as may be necessary to enforce their respective rights under this Agreement, which rights shall be cumulative and in addition to any other rights or remedies to which such parties may be entitled.

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(b) [*]

14.8 Successors and Assigns; Parties in Interest. This Agreement shall be binding upon and inure to the benefit of EPS and its successors and assigns (if any) and Agrigenetics and its successors and assigns (if any). None of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the Parties to this Agreement and their respective successors and assigns (if any).

14.9 Waiver. No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

14.10 Amendments. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of Agrigenetics and EPS.

14.11 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

14.12 Entire Agreement. The Transactional Agreements set forth the entire understanding of the parties hereto relating to the subject matter thereof and supersede all prior agreements and understandings among or between any of the parties hereto relating to the subject matter thereof, including the CDA, the [*].

14.13 Assignment. Neither Party may assign any of their respective rights or delegate any of their respective obligations under this Agreement to any other Person without the prior written consent of the other Party, provided that either Party may assign all of their respective rights and obligations under this Agreement, but not less than all, without such consent to any of their respective Affiliates or to their respective successors in interest in connection with the sale of all or substantially all of their respective assets to which this Agreement pertains or through merger, acquisition or other similar transactions.

14.14 Non-Competition.

(a) For a period of **[*]** (the "**Covered Period**"), EPS and Exelixis and their respective Affiliates, other than a Permitted Affiliate, shall not for themselves or for any other Person: **[*]**. A "**Permitted Affiliate**" shall mean a Person who acquires all or substantially all of the stock or assets of EPS, Exelixis or Agrinomics. The Parties acknowledge that, if this Agreement expires or terminates on or prior to **[*]**, then there will not be any Covered Period,

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and EPS, Exelixis and their respective Affiliates shall not have any obligations pursuant to this Section 14.14. In the case of a breach or alleged breach of this Section 14.14 during the period defined in Section 8.15 of the APA as the “Covered Period”, Agrigenetics may only pursue those remedies available to it pursuant to the APA with respect to a breach or alleged breach of Section 8.15 of the APA and shall not be entitled to any remedy pursuant to this Agreement.

(b) Each of EPS and Exelixis acknowledges that the covenants of EPS and Exelixis set forth in this Section 14.14 are an essential element of this Agreement and that any breach by EPS or Exelixis of any provision of this Section 14.14 will result in irreparable injury to Agrigenetics. Each of EPS and Exelixis have independently consulted with their counsel and after such consultation agrees that the covenants set forth in this Section 14.14 are reasonable and proper to protect the legitimate interest of Agrigenetics.

14.15 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) Except as otherwise indicated, all references in this Agreement to “Sections,” “Exhibits” and “Schedules” are intended to refer to Sections of this Agreement and Exhibits and Schedules to this Agreement. The Exhibits and Schedules attached hereto are deemed to be part of this Agreement as if fully set forth herein.

14.16 Force Majeure. Both Parties shall be excused from the performance of their obligations (except for payment obligations) under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, “force majeure” shall mean conditions beyond the control of the Parties, including an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, terrorism, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe; provided, however, the payment of invoices due and owing hereunder shall not be delayed by the payer because of a force majeure affecting the payer.

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14.17 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.

14.18 Relationship Between the Parties. The Parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the Parties. Neither Party is a legal representative of the other Party, and neither Party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other Party for any purpose whatsoever.

{Remainder of page intentionally left blank}

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In Witness Whereof, the parties hereto have executed this Agreement in duplicate originals by their proper officers as of the Effective Date.

Agrigenetics, Inc.

By: /s/ Antonio Galindez
Title: Antonio Galindez, President
Date: September 4, 2007

Mycogen Corporation, solely pursuant to Sections 9.4, 9.5, 9.6 and 11.1 and as Agrigenetics' guarantor pursuant to Section 14.1 hereunder

By: /s/ Jerome Peribere
Title: Jerome A. Peribere, President
Date: September 4, 2007

Exelixis Plant Sciences, Inc.

By: /s/ George Scangos
Title: President and Chief Executive Officer
Date: September 4, 2007

Exelixis, Inc., solely pursuant to Sections 8.2, 8.4(d), 8.7, 9.4, 9.5, 9.6 and 11.1 and as EPS' guarantor pursuant to Section 14.1 hereunder

By: /s/ George Scangos
Title: President and Chief Executive Officer
Date: September 4, 2007

{Signature Page to Contract Research Agreement}

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

Exhibit A

Initial Research Plan

[*]

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Exhibit B

Joint Management Team Members

Agrigenetics JMT Members

[*]

EPS JMT Members

[*]

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Exhibit C

Agrigenetics PDX Facility License

PDX FACILITY LICENSE AGREEMENT

THIS PDX FACILITY LICENSE AGREEMENT (the "**License Agreement**") dated, for reference purposes only, as of September 4, 2007, is entered into by and between **EXELIXIS PLANT SCIENCES, INC.**, a Delaware corporation having its principal place of business at 16160 SW Upper Boones Ferry Road, Portland, OR 97224-7744 ("**EPS**") and Agrigenetics, Inc., a Delaware corporation having its principal place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268 (**"Agrigenetics"**) .

WITNESSETH:

A. EPS is the Tenant under that certain Lease Agreement dated for reference purposes only as of March 7, 2006 (as it may be amended from time to time, the "**PDX Facility Lease**") by and between EPS, as Tenant, and Pacific Realty Associates, L.P., a Delaware limited partnership, as Landlord (the **"Landlord**"), with respect to the leased facility located at 16160 S.W. Upper Boones Ferry Road, Portland, Oregon 97224, and more fully described in the PDX Facility Lease (the "**PDX Facility**").

B. Agrigenetics and EPS, together with Mycogen Corporation ("**Mycogen**"), Exelixis, Inc. ("**Exelixis")** and Agrinomics, LLC ("**Agrinomics**"), are entering into an Asset Purchase and License Agreement (the **"APA"**) of even date herewith, pursuant to which EPS and Agrinomics are selling certain assets to Agrigenetics and granting Agrigenetics licenses to other assets and intellectual property rights of EPS or Agrinomics.

C. Agrigenetics and EPS, together with Mycogen, Agrigenetics, Inc. ("Agrigenetics") and Exelixis, are entering into a Contract Research Agreement (the **"Contract Research Agreement"**) of even date herewith, pursuant to which Agrigenetics will engage EPS to develop additional assets and complete certain research started pursuant to the **[*]**. EPS shall conduct its activities related to such engagement (the **"Contracted Research**"), in part, in the PDX Facility, and Agrigenetics has requested access to the PDX Facility in order to observe and participate in the Contracted Research.

D. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Contract Research Agreement.

NOW, THEREFORE, it is agreed between EPS and Agrigenetics as follows:

LICENSE AGREEMENT

1. LICENSE. CONDITIONED UPON ITS RECEIPT OF THE WRITTEN CONSENT OF LANDLORD, EPS HEREBY GRANTS TO AGRIGENETICS AN IRREVOCABLE, NON-EXCLUSIVE LICENSE DURING THE TERM OF THE PDX FACILITY LEASE OR THE TERM OF THE CONTRACT RESEARCH AGREEMENT, WHICHEVER IS SHORTER, (THE **"License"**), on and subject to the terms and conditions set forth herein, to enter upon the PDX Facility in order to observe and participate in the performance of the Contracted Research.

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2. PDX Facility Expenses. During the Term, Agrigenetics shall be responsible for, and shall reimburse EPS for, Agrigenetics's proportionate share of PDX Facility Expenses and EPS shall be responsible for the remainder of the PDX Facility Expenses, all in accordance with the terms of the Contract Research Agreement.

3. Compliance with Lease; Rules and Regulations. Agrigenetics acknowledges and agrees that it has no right, title or interest in or to the PDX Facility and that the License hereby granted does not grant an estate or any interest in the PDX Facility and agrees that it shall not violate any term or provision of the Lease. Agrigenetics shall abide by such reasonable rules and regulations as EPS may from time to time provide to Agrigenetics in connection with Agrigenetics's exercise of the License.

4. Term. The term of the License shall commence on the later of the date of the Effective Date (as such term is defined in the APA) or the date EPS receives the written consent of Landlord to this License Agreement, and shall terminate concurrently with the termination of the PDX Facility Lease or the termination of the Contract Research Agreement, whichever comes first.

5. Notices. All notices, requests, demands and other communications under this License Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as DHL or Federal Express), the next business day after delivery to such courier; (c) if sent by facsimile transmission, when transmitted and receipt is confirmed; and (d) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this License Agreement:

if to EPS:

Exelixis Plant Sciences, Inc.
16160 SW Upper Boones Ferry Road
Portland, Oregon 97224
Attention: Vice President of Research
Facsimile: 503-670-7703

with copies to:

Exelixis, Inc.
170 Harbor Way, P.O. Box 511
South San Francisco, California 94083-0511
Attention: Senior VP, Patents and Licensing
Facsimile: 650-837-8205

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.

Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Marya A. Postner, Esq.
Facsimile: (650) 849-7400

if to Agrigenetics:

Agrigenetics, Inc.
9330 Zionsville Road
Indianapolis, Indiana 46268
Attention: General Counsel
Facsimile: (317) 337-6954

with copies to:

Dow AgroSciences LLC
9330 Zionsville Road
Indianapolis, IN 46268
Attn: General Counsel
Facsimile: (317) 337-6954

and

King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309
Attention: C. William Baxley, Esq.
Anne M. Cox, Esq.
Facsimile: (404) 572-5132

6. HEADINGS. The bold-faced headings contained in this License Agreement are for convenience of reference only, shall not be deemed to be a part of this License Agreement and shall not be referred to in connection with the construction or interpretation of this License Agreement.

7. COUNTERPARTS AND EXCHANGES BY ELECTRONIC TRANSMISSION OR FACSIMILE. This License Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission or facsimile shall be sufficient to bind the Parties to the terms and conditions of this License Agreement.

8. GOVERNING LAW. This License Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Oregon, without giving effect to principles of conflicts of laws, except that the governing law provision of the Contract Research Agreement shall apply with respect to the parties' rights and obligations with respect to the PDX Facility Expenses.

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9. Successors and Assigns; Parties in Interest. This License Agreement shall be binding upon and inure to the benefit of EPS and its successors and assigns (if any) and Agrigenetics and its successors and assigns (if any). None of the provisions of this License Agreement is intended to provide any rights or remedies to any person other than the parties to this License Agreement and their respective successors and assigns (if any).

10. Waiver. No failure on the part of any person to exercise any power, right, privilege or remedy under this License Agreement, and no delay on the part of any person in exercising any power, right, privilege or remedy under this License Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

11. Amendments. This License Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of Agrigenetics and EPS.

12. Severability. In the event that any provision of this License Agreement, or the application of any such provision to any person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this License Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

13. Entire Agreement. This License Agreement, together with the other Transactional Agreements (as such term is defined in the APA), sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes all prior agreements and understandings among or between any of the parties relating to the subject matter hereof.

14. Assignment. Neither party may assign any of their respective rights or delegate any of their respective obligations under this License Agreement to any other person without the prior written consent of the other party, provided that either party may assign all of their respective rights and obligations under this License Agreement, but not less than all, without such consent to any of their respective affiliates or to their respective successors in interest in connection with the sale of all or substantially all of their respective assets to which this License Agreement pertains or through merger, acquisition or other similar transactions.

15. Construction.

(a) For purposes of this License Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this License Agreement.

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

(c) As used in this License Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this License Agreement to "Sections" are intended to refer to Sections of this License Agreement.

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

17. 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 License Agreement.

18. RELATIONSHIP BETWEEN THE PARTIES. The parties' relationship, as established by this License Agreement, is solely that of independent contractors. This License Agreement does not create any tenancy, subtenancy, partnership, joint venture or similar business relationship between the parties. Neither party is a legal representative of the other party, and neither party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

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IN WITNESS WHEREOF, EPS and Agrigenetics have executed this License Agreement in duplicate originals by their proper officers as of the Effective Date.

AGRIGENETICS, INC.		**EXELIXIS PLANT SCIENCES, INC.**	
By:	/s/ Antonio Galindez	By:	/s/ George Scangos
Title:	Antonio Galindez, President	Title:	George A. Scangos; President & CEO
Date:	September 4, 2007	Date:	

{Signature Page to the PDX Facility License Agreement}

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Exhibit D

EPS Greenhouse Lease

LEASE AGREEMENT

This Lease Agreement (the "**Lease**") is dated as of September 4, 2007 and is entered into by and between **AGRIGENETICS, INC,** a Delaware corporation having its principal place of business at 9330 Zionsville Road, Indianapolis, Indiana 46268 ("**Landlord**"), and **EXELIXIS PLANT SCIENCES, INC.**, a Delaware corporation having its principal place of business at 16160 SW Upper Boones Ferry Road, Portland, OR 97224-7744 (alternatively, "**Tenant" or "EPS**"). In consideration of the mutual promises in this Lease and for other valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

RECITALS

A. Landlord and Tenant together with Mycogen Corporation ("**Mycogen**"), Exelixis, Inc. ("**Exelixis")** and Agrinomics LLC ("**Agrinomics**"), are entering into an Asset Purchase and License Agreement (the **"APA"**) of even date herewith, pursuant to which EPS and its Affiliates are selling certain assets to Landlord and granting Landlord licenses to other assets and intellectual property rights of EPS or Agrinomics.

B. Pursuant to the APA, Landlord is purchasing the Premises from Tenant.

C. Landlord and Tenant are entering into a Contract Research Agreement (the **"Contract Research Agreement"**) of even date herewith, pursuant to which Landlord will engage Tenant to develop additional assets and complete certain research started pursuant to the **[*]**. Tenant shall conduct its activities related to such engagement (the **"Contracted Research**"), in part, in the Premises.

D. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Contract Research Agreement.

1. **NOW, THEREFORE,** Landlord and Tenant agree as follows:

Summary of Basic Terms.

1.1 **Premises (and alternatively, the "Purchased Facility")**: The Purchased Facility, including the land described on the attached Exhibit A (the "**Land**"), the greenhouses and other structures on the Land (collectively the "**Building**"), all other improvements on the Land, and all easements, covenants, and other rights appurtenant to the Land, the Building, and the other improvements on the Land.

1.2 **Address of Premises**: **[*]**

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1.3 **Commencement Date**: The date the Closing (as defined in the APA) takes place under the APA.

1.4 **Expiration Date**: The date of termination or expiration of the Contract Research Agreement.

1.5 **Consideration**: Tenant's agreement to perform its obligations under this Lease and the Contract Research Agreement shall be the consideration for Landlord's grant to Tenant of the Tenant's rights under this Lease.

1.6 **Notice Addresses**:

To Landlord:

Agrigenetics, Inc.
9330 Zionsville Road
Indianapolis, Indiana 46268
Attention: General Counsel
Facsimile: (317) 337-6954

with copies to:

Dow AgroSciences LLC
9330 Zionsville Road
Indianapolis, IN 46268
Attn: General Counsel
Facsimile: (317) 337-6954

and

King & Spalding LLP
1180 Peachtree Street
Atlanta, Georgia 30309
Attention: C. William Baxley, Esq. and
Anne M. Cox, Esq.
Facsimile: (404) 572-5132

To Tenant:

Exelixis Plant Sciences, Inc.
16160 SW Upper Boones Ferry Road
Portland, Oregon 97224
Attention: Vice President of Research
Facsimile: 503-670-7703

with copies to:

Exelixis, Inc.
170 Harbor Way, P.O. Box 511
South San Francisco, California 94083-0511
Attention: Senior VP, Patents and Licensing
Facsimile: 650-837-8205

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and

Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Marya A. Postner, Esq.
Facsimile: (650) 849-7400

2. Demise and Term.

2.1 Demise. Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions set forth in this Lease, the Premises described in Section 1.1 (the "Premises").

2.2 Commencement and Expiration Dates. The Term of this Lease (the "**Term**"), shall commence on the date of the Closing (as defined in the APA) of the APA (the "**Commencement Date**") and shall expire, unless sooner terminated pursuant to the provisions of this Lease, on the Expiration Date.

2.3 Acceptance of Premises. Tenant is in possession of the Premises as of the date of this Lease and accepts the Premises **[*]** on the Commencement Date, subject to all laws, statutes, ordinances, orders, rules, regulations and requirements of the United States, or the state, county, city or political subdivision in which the Premises is located or that exercises jurisdiction over the Premises, Landlord or Tenant, or any agency, department, commission, board, bureau or instrumentality of any of the foregoing that exercises jurisdiction over the Premises, Landlord or Tenant (collectively "**Applicable Laws**"), covenants and restrictions. Landlord has **[*]**, and Tenant **[*]**. Except as otherwise expressly set forth in this Lease to the contrary, in no event shall Landlord have any obligation for any defects in effect on the Commencement Date in the Premises or any limitation on their respective uses.

2.4 Access. During the Term, Landlord, and Landlord's employees, representatives, agents and contractors, shall have the right to enter and pass through the Premises or any part thereof (i) at any time and for any purpose in the case of emergencies and (ii) otherwise during the Term in a manner causing no unreasonable interference with Tenant's business for the following purposes: (1) to examine and inspect the Premises and to show them to consultants and contractors and to prospective mortgagees or insurers, (2) for making such repairs or changes in or to the Premises as may be permitted or required by this Lease or as may be mutually agreed upon by the parties or as Landlord may desire to make by Applicable Laws, (3) for ascertaining whether Tenant has complied with its obligations and agreements under this Lease, and (4) for the purpose of observing, and participating in, the Contracted Research.

3 No Rent; Consideration. Tenant shall not be obligated to pay rent to Landlord, it being understood and agreed that the consideration for this Lease is Tenant's agreement to perform its obligations under the Contract Research Agreement and this Lease.

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4. **Taxes**.

4.1 Landlord's Obligation to Pay Real Property Tax. Landlord shall pay all Real Property Taxes, as defined below, on the Premises (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Premises by or for the benefit of Tenant in connection with the Contracted Research) during the Lease Term directly to the taxing authority prior to the date of delinquency.

4.1.1 Definition of "Real Property Taxes." "**Real Property Taxes**" means: (i) all real estate taxes, assessments and other governmental levies and charges of any kind and nature (including any interest payable on such taxes, assessments and levies whenever the same are permitted to be paid in installments) which may presently or hereafter be imposed, levied, assessed or confirmed by any lawful taxing authorities which may become due and payable out of or for, or which may become a lien or charge upon or against the whole, or any part, of the Premises; (ii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises by any governmental agency; (iii) any tax imposed upon this transaction or based upon a re-assessment of the Premises due to a change of ownership, as defined by Applicable Laws, or other transfer of all or part of Landlord's interest in the Premises; and (iv) any charge or fee replacing any tax previously included within the definition of real property tax.

4.2 Landlord's Obligation to Pay Personal Property Taxes. Landlord shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Landlord and located on the Premises. If any of Tenant's personal property is taxed with the Premises, Tenant shall pay Landlord the taxes for the personal property belonging to Tenant.

5. **Operation, Repairs and Maintenance; Managing Party**.

5.1 Tenant's Obligations During First and Second Contract Years. During the first and second Contract Years (during which time Tenant shall be the "**Managing Party**"): (i) Tenant shall manage, operate and maintain the Premises and the Purchased Operative Assets therein pursuant to the terms of Section 5.3 below and in material compliance with all Applicable Laws; and (ii) Tenant shall pay directly, and Landlord shall reimburse Tenant for, all Purchased Facility Expenses pursuant to the terms of the Contract Research Agreement.

5.2 Landlord's Obligation During Subsequent Contract Years. During each subsequent Contract Year (during which time Landlord shall be the "**Managing Party**") , Landlord shall manage, operate and maintain the Purchased Facility and the Purchased Operative Assets therein pursuant to the terms of Section 5.3 below and in material compliance with all Applicable Laws. Landlord shall pay directly all Purchased Facility Expenses and Tenant shall have no responsibility for any Purchased Facility Expenses.

5.3 Managing Party's Obligations. Landlord and Tenant each agree to use commercially reasonable efforts during the period of such party's tenure as Managing Party to ensure that the Premises and the Purchased Operative Assets are in good working order and sufficient for Tenant's performance of its obligations under the Contract Research Agreement

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during such period. The Managing Party shall arrange and pay for all utilities of any kind provided to the Premises, and shall keep all portions of the Premises (including structural, nonstructural, interior, exterior, and landscaped areas, portions, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Premises or any system or equipment in the Premises cannot be fully repaired or restored, Managing Party shall promptly replace such portion of the Premises or system or equipment in the Premises, regardless of whether the benefit of such replacement extends beyond the Term. Managing Party shall maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor. It is the intention of Landlord and Tenant that at all times Managing Party shall maintain the Premises in good working order and repair. If either Landlord or Tenant, as the Managing Party, fails to maintain, repair or replace the Premises as required by this Section, then the other party may, upon **[*]** prior notice to the Managing Party (except that no notice shall be required in the case of an emergency), perform such maintenance or repair (including replacement, as needed) on behalf of the Managing Party. In such case, if Landlord is the Managing Party, Landlord shall reimburse Tenant for all costs incurred in performing such maintenance or repair immediately upon demand.

5.4 Purchased Facility Expenses. During the Term, Landlord shall be responsible for all Purchased Facility Expenses, and shall pay such expenses either through the reimbursement procedures set forth in the Contract Research Agreement during the first Contract Year and the second Contract Year, or directly, in each subsequent Contract Year, as set forth in the Contract Research Agreement.

6. Use; Restrictions. Tenant shall have the right to use the Premises throughout the Term to perform the Contracted Research and related activities, but for no other purpose. Tenant shall have the right to possession of the Premises throughout the Term, subject to Landlord's right of access to observe and participate in the Contracted Research. Tenant shall not use or occupy the Premises, or permit the Premises to be used or occupied, in violation of any Applicable Laws, or in any manner which would violate any certificate of occupancy with respect to the Premises, that would cause damage to the Premises, or that would constitute a public or private nuisance.

7. Environmental Requirements. Except for Hazardous Substances (as such term is defined in the APA) used by Tenant in compliance with Applicable Laws in connection with the Contracted Research, Tenant shall not permit or cause any party to bring any Hazardous Substances upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Substances in or about the Premises.

8. Subordination and Attornment. This Lease shall be subordinate to any mortgages, trust deeds and other financing instruments given by Landlord to its lenders and encumbering the Premises (collectively, "**Mortgages**"), so long as the holders of the Mortgages (the "**Mortgagees**") agree not to disturb Tenant's rights under this Lease in connection with the exercise of their rights under the Mortgages. If Landlord's interest in the Premises is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises and recognize such transferee or successor as Landlord under this Lease. Tenant waives the

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protection of any statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord's interest. Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so.

9. Assignment and Subletting. No portion of the Premises or of Tenant's interest in this Lease may be assigned by Tenant to or acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, license, concession, right of occupancy or use, transfer, operation of law, or act of Tenant, except in connection with a permitted assignment of the Contract Research Agreement.

10. Liability and Insurance. Landlord and Tenant shall each procure and maintain such insurance as is required of them by the Contract Research Agreement.

11. Alterations.

11.1 Structural Alterations; Approved Renovation. Tenant will not make any structural alterations to the Premises without Landlord's prior written consent, which consent Landlord may grant or deny in Landlord's reasonable discretion. Landlord hereby expressly confirms that prior to execution of this Lease, Landlord granted its consent to the renovation of the Premises by Tenant for the purposes of conducting research, which renovation consists of (i) the removal and reconfiguration of greenhouse benches, and (ii) the addition and reconfiguration of lighting and associated electrical panels (the "**Approved Renovation**"), and acknowledges and confirms that Landlord has agreed to pay the costs and expenses of the Approved Renovation and the Approved Renovation may be completed during the Term of this Lease without Tenant having to obtain any additional consent or authorization from Landlord.

11.2 Minor Non-Structural Alterations. Tenant may make non-structural interior alterations to the Premises reasonably required in connection with the Contracted Research, without Landlord's consent, so long as such alterations do not materially alter the electrical, plumbing, HVAC, or other utility systems of the Premises and the estimated cost of such alterations is less than **[*]** (the aforesaid limitation on the cost of alterations shall apply to any single incident of alterations or to the aggregate cost of any series of alterations that are reasonably related so as to part of a single plan of alterations). If Tenant wishes to be reimbursed for the costs and expenses thereof, it shall give **[*]** prior written notice to Landlord specifying the scope of the intended alteration, the reason it is required in connection with the Contracted Research and the estimated cost and expense thereof, but Landlord shall have no obligation to provide any such reimbursement unless Landlord expressly agrees thereto in writing. Nothing in this Lease shall alter the provisions of the Contract Research Agreement or other Transactional Agreements, (as such term is defined in the APA) with respect to capital expenditures for items that, on account of not being permanently affixed to the Building or Land, do not become part of the realty. Nothing in this Section shall apply to the Approved Renovations.

11.3 Performance of Work. Whenever in this Lease Managing Party is permitted or required to maintain and repair, or make additions, alterations, substitutions or replacements, or reconstruct or restore the Improvements or the Premises, Managing Party shall cause such work

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(the “**Work**”) to be done and completed in a good, substantial and workmanlike manner, free from faults and defects, and in compliance with all Applicable Laws, and shall utilize only new first-class materials and supplies. Managing Party shall be solely responsible for construction means, methods, techniques, sequences and procedures, and for coordinating all activities related to the Work, and the other party shall have no duty or obligation to inspect the Work, but shall have the right to do so. If any such Work is required to be approved by the other party under this Lease, Managing Party shall deliver to the other party architectural plans and specifications for the work (by an architect of Managing Party’s choice), at least **[*]** before the beginning of such alteration, addition, or improvement, which plans and specifications shall be subject to the approval of the other party. Any and all Work approved by the other party hereunder shall be performed substantially in accordance with said approved plans and specifications.

11.4 Payment of Costs and Expenses. In performing any Work, Managing Party shall (i) provide and pay for all labor, materials, goods, supplies, equipment, appliances, tools, construction equipment and machinery and other facilities and services necessary for the proper execution and completion of the Work; (ii) promptly pay when due all costs and expenses incurred in connection with the Work; (iii) pay all sales, consumer, use and similar taxes required by law in connection with the Work; (iv) secure and pay for all permits, fees and licenses necessary for the performance of the Work; and (v) at all times maintain the Premises free and clear from any and all liens, claims, security interests and encumbrances arising from or in connection with the Work, including, without limitation, liens for materials delivered, supplied or furnished, or for services or labor performed or rendered. All materials, supplies, goods, appliances and equipment incorporated in the Work shall be free from any liens, security interests or title retention arrangements, other than the lien or security interest (if any) of the holder of any Mortgage placed upon the Premises by Landlord.

11.5 Trade Fixtures. In addition, Tenant may, without the consent of Landlord, install trade fixtures, equipment, and machinery in conformance with Applicable Laws and may remove such items upon termination or expiration of this Lease, provided Tenant repairs any damage to the Premises caused by their removal.

12. Landlord’s and Tenant’s Property.

12.1 Landlord’s Property. All improvements, wires, cables, conduits and appurtenances attached to or built into the Premises shall be and remain a part of the Premises, shall be deemed the property of Landlord and shall not be removed by Tenant without the written consent of Landlord.

12.2 Tenant’s Property. Except for the Purchased Assets, all business and trade fixtures, machinery and equipment that can be removed (provided any damage caused by removal is repaired by Tenant), communications equipment, and distribution equipment, whether or not affixed to the Building, which have been or are hereafter installed in the Premises by or for the account of Tenant or its subtenants or licensees, and all furniture, furnishings and other articles of personal property located in the Premises shall be and remain the property of Tenant, and may be removed by Tenant at any time during the Term.

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13. Casualty Damage; Condemnation.

13.1 Casualty. In the event that the Premises shall be damaged or destroyed by fire or other casualty insured under Landlord's standard fire and extended coverage insurance and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at Landlord's sole cost and expense to restore and repair the Premises to substantially the condition as existed prior to such casualty, exclusive of any alterations, additions, improvements, fixtures and equipment installed by Tenant. In the event (i) the Premises shall be destroyed or materially damaged by a casualty not covered by Landlord's insurance; or (ii) Landlord reasonably determines that such damage cannot be repaired within **[*]** after the date of such damage, not including force majeure delays; or (iii) any Mortgagee at the time of the casualty elects, pursuant to its Mortgage, to require the use of all or part of Landlord's insurance proceeds in satisfaction of all or part of the indebtedness secured by such Mortgage, then Landlord may elect, by written notice to Tenant within **[*]** after the occurrence of such casualty, to terminate this Lease. Nothing in this Section shall modify the term of the Contract Research Agreement.

13.2 Condemnation. If a condemning authority takes title by eminent domain or by agreement in lieu thereof to all or a part of any portion of the Premises sufficient to render any part of the Premises unsuitable for Tenant's use, then Tenant may elect to vacate the Premises effective on the date that possession is taken by the condemning authority. All compensation awarded for any taking, (or the proceeds of private sale in lieu thereof) of the Premises shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for Tenant's moving and relocation expenses or for the loss of any tenant improvements made and paid for by Tenant as well as Tenant's fixtures and other tangible personal property if a separate award for such items is made to Tenant.

14. Surrender. On the last day of the Term, or upon any earlier termination of this Lease, Tenant shall vacate the Premises and return possession of the Premises to Landlord in "broom-clean" condition, except for ordinary wear and tear, and damage caused by casualty. All alterations, additions and improvements approved by Landlord shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's property and shall repair any damage to the Premises caused by such removal.

15. Defaults; Remedies.

15.1 Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

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15.2 Defaults. Tenant shall be in material default under this Lease:

(a) If Tenant abandons the Premises;

(b) If Tenant fails to pay or perform any of Tenant's obligations under this Lease for a period of **[*]** after written notice from Landlord; provided that if more than **[*]** are reasonably required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the **[*]** period and thereafter diligently pursues its completion.

(c)(i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within **[*]**; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within **[*]**; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within **[*]**. If a court of competent jurisdiction determines that any of the acts described in this subsection (c) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive the amount, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease.

15.3 Remedies. On the occurrence of any default by Tenant, after exhausting the dispute resolution provision set forth in Section 14.6 of the Contract Research Agreement, Landlord may, at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any other right or remedy, pursue any one or more of the following remedies:

(a) Terminate this Lease by giving Tenant notice of termination, in which event Tenant shall immediately quit and vacate the Premises and deliver and surrender possession of the Premises to Landlord, and this Lease shall be terminated at the time designated by Landlord in its notice of termination to Tenant; or

(b) With or without terminating this Lease, Landlord may bring an action against Tenant to recover from Tenant all damages suffered, incurred or sustained by Landlord (including without limitation court costs and reasonable attorneys' fees actually incurred) as a result of, by reason of or in connection with such default, and/or to obtain specific performance of Tenant's obligations under this Lease; or

(c) Landlord may do whatever Tenant is obligated to do under the terms of this Lease, in which event Tenant shall reimburse Landlord on demand for any expenses, including, without limitation, reasonable attorneys' fees actually incurred, which Landlord may reasonably incur in thus effecting satisfaction and performance of or compliance with Tenant's duties and obligations under this Lease; or

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(d) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, at law or in equity.

No action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease.

15.4. Costs; Attorneys' Fees. A party's entitlement to attorneys' fees shall be governed by the terms of the Contract Research Agreement.

15.5 Non-Waiver; Forbearance. Landlord's pursuit of any one or more of its stated remedies shall not preclude pursuit of any other remedy or remedies provided for in this Lease or any other remedy or remedies provided for or allowed by law or in equity, separately or concurrently, or in any combination. Landlord's pursuit of any one or more of the remedies provided in this Lease shall not constitute an election of remedies excluding the election of another remedy or other remedies, or a forfeiture or waiver of any damages or other sums accruing to Landlord by reason of Tenant's default. Landlord's forbearance in pursuing or exercising one or more of its remedies shall not be deemed or construed to constitute a waiver of any default or any remedy. No waiver by Landlord of any right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any right or remedy then or thereafter existing. No failure of Landlord to pursue or exercise any of its powers, rights or remedies or to insist upon strict and exact compliance by Tenant with any agreement, term, covenant, condition, requirement, provision or restriction of this Lease, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver by Landlord.

15.6 Landlord Default. If Landlord fails to perform any of the terms, covenants, conditions, agreements or provisions of this Lease required to be performed by Landlord, for a period greater than **[*]** after written notice by Tenant to Landlord of said failure (except if the nature of Landlord's obligation is such that more than **[*]** are required for its performance, then Landlord shall not be deemed in default if it commences performance within the **[*]** period, thereafter diligently pursues the cure to completion), such failure shall be deemed a default by Landlord and a material breach of the Lease. In case of default by Landlord, Tenant may maintain any action against Landlord for damages and/or exercise any other remedies available at law or in equity. Tenant may (but shall not be required to) perform any obligation of Landlord if Landlord fails to do so after written notice as described in this paragraph. The cost of such performance shall be immediately recoverable from the Landlord plus interest at the legal rate for interest on judgments.

15.7 Cumulative Remedies. Unless stated otherwise herein, the remedies provided for in this Lease are cumulative and in addition to any other remedy available to Landlord or Tenant at law or in equity.

16. <u>Notices</u>. Any notice or other communication required or permitted to be given by either party to the other pursuant to this Lease shall be in writing and delivered in person to Landlord or Tenant or sent postage prepaid by overnight courier, addressed to the other party at the address set forth in Section 1.6 or such other address which may be designated by a party in writing. Notice shall be considered given and effective on the date of delivery to the addressee.

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17. Estoppel Certificates. Each party agrees that at any time requested by the other party, with not less than **[*]** prior notice, to execute and deliver to the other a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), stating whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which the signer shall have knowledge, and stating whether or not, to the best knowledge of the signer, any event has occurred which with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event.

18. Miscellaneous.

18.1 Integration. This Lease, together with the other Transactional Agreements (as such term is defined in the APA), sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes all prior agreements and understandings among or between any of the parties relating to the subject matter hereof. No agreement shall be effective to change or modify this Lease, unless such agreement is in writing, refers expressly to this Lease and is signed by the party against whom enforcement is sought.

18.2 Successors and Assigns. Neither party may assign any of their respective rights or delegate any of their respective obligations under this Agreement to any other person without the prior written consent of the other party, provided that either party may assign all of their respective rights and obligations under this Agreement, but not less than all, without such consent to any of their respective affiliates or to their respective successors in interest in connection with the sale of all or substantially all of their respective assets to which this Agreement pertains or through merger, acquisition or other similar transactions.

18.3 Non-Waiver. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing signed by the waiving party. A party's waiver of a breach of any term or condition of this Lease shall not be deemed a waiver of any subsequent breach.

18.4 No Presumption Against Drafter. Landlord and Tenant understand, agree and acknowledge that: (a) this Lease has been freely negotiated by both parties; and (b) in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

18.5 Quiet Enjoyment. Tenant, upon Tenant's performance of all of the terms, covenants and conditions of this Lease on its part to be kept and performed, may quietly have, hold and enjoy the Premises during the Term of this Lease without disturbance from Landlord or from any other person claiming through Landlord.

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18.6 Severability. If any portion of this Lease is held to be illegal, invalid or unenforceable under present or future Applicable Laws, the remainder of this Lease shall not be affected thereby.

18.7 "Force Majeure" Delays. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, acts of terror, war or other reason of like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease (a delay resulting from financial inability to perform, excepted), then performance of such work or act shall be excused for the period of the delay and the period for the performance of any such work or act shall be extended for a period equivalent to the period of such delay up to a maximum of thirty (30) days.

18.8 Lien Waiver. Landlord hereby waives any and all liens upon (whether arising by virtue of statute, common law or otherwise) Tenant's trade fixtures, furnishings, equipment, inventory and personal property.

18.9 Brokers. Neither party has used a real estate broker in connection with this Lease. Each party will defend, indemnify, and hold harmless from any claim, loss, or liability made or imposed by any other party claiming a commission or fee in connection with this Lease and arising out of its own conduct.

18.10 Governing Law. This Lease shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Oregon, without giving effect to principles of conflicts of laws, except that the governing law provision of the Contract Research Agreement shall apply with respect to the parties' rights and obligations with respect to the Purchased Facility Expenses.

18.11 Time of Essence. Time is of the essence of this Lease. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Lease.

18.12 Modifications. This Lease shall not be modified or amended in any respect except by a written agreement executed by Landlord and Tenant in the same manner as this Lease in executed.

18.13 Further Assurances. Each of the parties shall promptly execute and deliver such additional documents and shall do such acts that are reasonably necessary, in connection with the performance of its respective obligations under this Lease, to carry out the intent and purposes of this Lease. Tenant agrees to sign a recordable lease termination agreement upon termination of the Lease.

18.14 Consent not to be Unreasonably Withheld. Whenever a party's consent, approval or other decision is requested by the other party or required under this Lease, such consent, approval, or other decision shall not be unreasonably withheld, conditioned or delayed.

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IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the date first set forth on the first page of this Lease.

LANDLORD:
AGRIGENETICS, INC.

By: /s/ Antonio Galindez
Name: Antonio Galindez September 4, 2007
Its: President

TENANT:
EXELIXIS PLANT SCIENCES, INC.

By: /s/ George Scangos
Name: George A. Scangos
Its: President & Chief Executive Officer

Exhibits

A: Description of Premises

{Signature Page to the Lease Agreement}

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EXHIBIT A

DESCRIPTION OF PREMISES

PARCEL I – **[*]**.

PARCEL II – **[*]**.

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Exhibit E

Personnel Committee

[*]
[*]

[*]
[*]

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Exhibit F

[*]

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Exhibit G

Material Transmittal Form

Agreement Description: Contract Research Agreement entered into as of September 4, 2007 by and among Agrigenetics, Inc., Mycogen Corporation, Exelixis Plant Sciences, Inc., and Exelixis, Inc.

Name of supplying Party: ______________________________

Name of supplying Party representative (print): ______________________________

Signature: ______________________________
Date: ______________________________

DESCRIPTION:

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EXHIBIT 10.3

AMENDMENT NO. 1 TO THE COLLABORATION AGREEMENT
BETWEEN
EXELIXIS, INC., AND BRISTOL-MYERS SQUIBB COMPANY

THIS AMENDMENT NO. 1 (“**Amendment No. 1**”) to the Agreement (defined below) is effective on January 11, 2007 (the “**Amendment No. 1 Effective Date**”) by and between **Exelixis, Inc.**, a Delaware corporation located at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 (“**Exelixis**”) and **Bristol-Myers Squibb Company**, a Delaware corporation headquartered at 345 Park Avenue, New York, New York 10154 (“**BMS**”). Exelixis and BMS may be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Exelixis and BMS entered into that certain Collaboration Agreement executed as of December 15, 2006 (the “**Agreement**”) for the purposes of applying Exelixis’ technology and expertise to the discovery, lead optimization and characterization of small molecule compounds that directly bind and modulate certain oncology 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; and

WHEREAS, the Parties desire to amend the Agreement to amend the definition of “Effective Date” and to clarify the treatment of possible regulatory filings as set forth below.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. AMENDMENT OF THE AGREEMENT

The Parties hereby agree to amend the terms of the Agreement as provided below, effective as of the Amendment No. 1 Effective Date. To the extent that the Agreement is explicitly amended by this Amendment No. 1, the terms of this Amendment No. 1 will control where the terms of the Agreement are contrary to or conflict with the following provision. Where the Agreement is not explicitly amended, the terms of the Agreement will remain in full force and effect. Capitalized terms used in this Amendment No. 1 that are not otherwise defined herein shall have the same meanings as such terms have in the Agreement.

1.1 Amendment of Section 13.6. The Parties agree to delete Section 13.6 of the Agreement in its entirety and replace it with the following:

“13.6 Effective Date; HSR Act Filing.

(a) Effective Date. The Parties agree that the effective date of this Agreement is January 11, 2007 (the “**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.

(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."

2. MISCELLANEOUS

2.1 Full Force and Effect. This Amendment No. 1 amends the terms of the Agreement and is deemed incorporated into, and governed by all other terms of, the Agreement. The provisions of the Agreement, as amended by this Amendment No. 1, remain in full force and effect.

2.2 Further Actions. Each Party shall execute, acknowledge and deliver such further instruments, and do all other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Amendment No. 1.

2.3 Counterparts. This Amendment No. 1 may be signed in counterparts, each and every one of which shall be deemed an original, notwithstanding variations in format or file designation, which may result from the electronic transmission, storage and printing of copies of this Amendment No. 1 from separate computers or printers. Facsimile signatures shall be treated as original signatures.

Signature page follows

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IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to be executed by their duly authorized representatives as of the Amendment No. 1 Effective Date.

Bristol-Myers Squibb Company		**Exelixis, Inc.**	
Signature:	/s/ Graham R. Brazier	Signature:	/s/ George Scangos
Name:	Graham R. Brazier	Name:	George Scangos
Title:	Vice President, Business Development	Title:	President & CEO
Date:	01/07/2007	Date:	01/07/2007

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EXHIBIT 10.4

August 20, 2007 (the "Letter Effective Date")

Pamela A. Simonton
Senior Vice President, Patents and Licensing
Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, CA94083-0511

Re: Extension of Collaborative Research Period; BMS Option to Further Extend Collaborative Research Period

Dear Ms. Simonton:

Reference is hereby made to that certain Collaboration Agreement (the "***Agreement***") dated as of December 5, 2005, by and between Exelixis, Inc., a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("***Exelixis***"), and Bristol-Myers Squibb Company, a Delaware corporation headquartered at 345 Park Avenue, New York, NY 10154 ("***BMS***"). Capitalized terms used in this letter agreement (this ***"Letter***") that are not otherwise defined herein shall have the meanings given to them in the Agreement.

In connection with the Collaboration between the Parties conducted pursuant to the Agreement, this Letter is intended to (a) provide notice to Exelixis of BMS' desire to extend the Collaborative Research Period for an additional one-year period (i.e., through January 11, 2009) pursuant to Section 2.5 of the Agreement, and (b) set forth the Parties' mutual understandings with respect to BMS' option to extend the Collaborative Research Period by an additional one-year period from January 12, 2009 through January 11, 2010.

1. BMS hereby notifies Exelixis that the Collaborative Research Period shall be extended by one additional year (i.e. through January 11, 2009) pursuant to Section 2.5 of the Agreement. A revised Research Plan, which includes activities that will be performed by the Parties in the period from January 12, 2008 through January 11, 2009, has been approved by the JRC in accordance with Section 2.6 of the Agreement.
2. Exelixis hereby agrees that, notwithstanding the last sentence of Section 2.5 of the Agreement, BMS shall have the unilateral option to extend the Collaborative Research Period by an additional one-year period, from January 12, 2009 through January 11, 2010, with a level of research funding to be determined by the JRC pursuant to Section 2.6, and with research support payments to be made to Exelixis pursuant to Section 7.2 in the same manner as for the period from January 12, 2008 through January 11, 2009; provided that, in such event, the FTE Rate shall increase on January 1, 2010 by an amount equal to the Consumer Price Index (for the San Francisco, California

area as reported as of January 1st in such year when compared to the comparable statistic for January 1st of the preceding year).

3. BMS hereby agrees that, notwithstanding the language in **[*]** of the Agreement to the contrary, as of the Letter Effective Date, Exelixis shall not have any obligation to **[*]**; provided, however, that: (i) in the event that Exelixis desires to **[*]**, (A) Exelixis shall notify BMS, no later than ninety (90) days prior to the proposed date of such **[*]**, of the **[*]**, as well as the rationale for such **[*]**, in order to allow BMS the opportunity to assess the effects of any such **[*]** (and any benefits or obligations associated therewith), subject to **[*]**, and (B) in the event that BMS desires **[*]**, Exelixis shall use commercially reasonable efforts (without the necessity of providing any consideration) to facilitate any such **[*]** by BMS; (ii) Exelixis shall also notify BMS if Exelixis **[*]**; and (iii) where any such **[*]** provides for a **[*]**, Exelixis shall not, without BMS' prior written consent, **[*]**.

If you are in agreement with the terms and conditions of this Letter, please execute and return the enclosed duplicate copy of this Letter.

Sincerely,

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Michael Levy
Title: VP, Alliance Management

ACKNOWLEDGED AND AGREED

as of August 20, 2007

EXELIXIS, INC.

By: /s/ George Scangos
Title: President & CEO

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made as of the 14th day of September, 2007, between **ARE-SAN FRANCISCO NO. 12, LLC**, a Delaware limited liability company ("**Landlord**"), and **EXELIXIS, INC.**, a Delaware corporation ("**Tenant**").

Address:	The to be constructed building to be known as 249 East Grand Avenue, South San Francisco, California
Premises:	The third floor and fourth floor of the Building, containing approximately 64,000 rentable square feet and the server room on the first floor of the Building, containing approximately 2,000 rentable square feet, all as shown on **Exhibit A**, together with the non-exclusive right to use the Common Areas, including, without limitation, the Building's loading dock. The rentable square footage of the Premises is subject to adjustment as provided for in Section 6 hereof.
Project:	The real property on which the building (the "**Building**") in which the Premises are located, together with all improvements thereon and appurtenances thereto as described on **Exhibit B**.
Commencement Date:	The date upon which Landlord's Work is Substantially Completed
Base Rent:	$1.75 per rentable square foot per month for months 1 – 12
	$3.25 per rentable square foot per month for months 13 – 24
	$3.50 per rentable square foot per month for months 25 – 36
	The Base Rent described above is subject to adjustment as provided for in this Lease.

Rent Adjustment Percentage: 3% annual increase, commencing on the third anniversary of the Commencement Date.

Rentable Area of Premises: 66,000 sq. ft., subject to adjustment as provided for in Section 6 hereof.

Rentable Area of Building: 129,393 sq. ft., subject to adjustment as provided for in Section 6 hereof.

Rentable Area of Project: 129,393 sq. ft., subject to adjustment as provided for in Section 6 hereof.

Tenant's Share of the Building: 51%, subject to adjustment as provided for in Section 6 hereof.

Building's Share of the Project: 100%, being calculated by dividing the Rentable Area of the Building by the Rentable Area of the Project, subject to adjustment as provided for in Section 6 hereof.

Building's Share of the Project's Taxes: 25%, subject to adjustment as provided for in Section 6 hereof.

Security Deposit: None

Target Completion Date: May 17, 2008; provided, however, that the Target Completion Date shall be extended one day for each day after October 15, 2007 that the Construction Drawings (as defined in the Work Letter) have not been approved by both parties and the City of South San Francisco; provided, however, that Landlord has used reasonable diligence in submitting them to Tenant for approval in accordance with its obligations under the Work Letter.

Base Term: Beginning on the Commencement Date and ending 90 months from the first day of the first full month of the Term (as defined in Section 2) hereof

Permitted Use: Office and related uses consistent with the character of the Project and otherwise in compliance with the provisions of Section 7 hereof.

Address for Rent Payment:
P.O. BOX 79840
Baltimore, MD 21279-0840

Landlord's Notice Address:
385 E. Colorado Boulevard, Suite 299
Pasadena, CA 91101
Attention: Corporate Secretary

Tenant's Notice Address:
249 East Grand Avenue
South San Francisco, California 94080
Attention: Chief Financial Officer

With a copy to:
249 East Grand Avenue
South San Francisco, California 94080
Attention: Vice President, Corporate Legal Affairs and Secretary

The following Exhibits and Addenda are attached hereto and incorporated herein by this reference:

[X] **EXHIBIT A** – PREMISES DESCRIPTION
[X] **EXHIBIT B –** DESCRIPTION OF PROJECT
[X] **EXHIBIT C** – WORK LETTER
[X] **EXHIBIT D** – COMMENCEMENT DATE
[X] **EXHIBIT E** – RULES AND REGULATIONS
[X] **EXHIBIT F** – TENANT'S PERSONAL PROPERTY
[X] **EXHIBIT G** – DOG VISITATION POLICY

1. **Lease of Premises.** Upon and subject to all of the terms and conditions hereof (including, without limitation, the fulfillment of Landlord's obligation to Deliver the Landlord's Work Substantially Completed in accordance with the Work Letter attached hereto as Exhibit C), Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord. The portions of the Project which are for the non-exclusive use of tenants of the Project are collectively referred to herein as the "**Common Areas**." Landlord reserves the right to modify Common Areas, provided that such modifications do not materially adversely affect Tenant's use of the Premises for the Permitted Use.

2. **Delivery; Acceptance of Premises; Commencement Date.** Landlord shall use reasonable efforts to deliver the Premises to Tenant on or before the Target Completion Date, with Landlord's Work Substantially Completed ("**Delivery**" or "**Deliver**"). If Landlord fails to timely Deliver the Premises, Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, and this Lease shall not be void or voidable except as provided herein. If Landlord does not Deliver the Premises within 180 days of the Target Completion Date for any reason other than delays caused by Tenant Delays and Force Majeure (as defined in Section 34 below) provided that delays caused by Force Majeure shall not extend the Target Completion Date for more than an additional 90 days, this Lease may be terminated by Tenant by written notice to Landlord, and if so terminated, neither Landlord nor Tenant shall have any further rights, duties or obligations under this Lease, except with respect to provisions which expressly survive termination of this Lease. As used herein, the terms "**Landlord's Work**," "**Tenant Delays**" and "**Substantially Completed**" shall have the meanings set forth for such terms in the

Work Letter. If Tenant does not elect to void this Lease within 10 business days of the lapse of such 180 day period (as such date may be extended for delays caused by Tenant Delays and Force Majeure as provided for above), such right to void this Lease shall be waived and this Lease shall remain in full force and effect.

The "**Commencement Date**" shall be the date the Landlord's Work is Substantially Completed. Upon request of Landlord, Tenant shall execute and deliver a written acknowledgment of the Commencement Date and the expiration date of the Term when such are established in the form of the "Acknowledgement of Commencement Date" attached to this Lease as **Exhibit D**; provided, however, Tenant's failure to execute and deliver such acknowledgment shall not affect Landlord's rights hereunder. The "**Term**" of this Lease shall be the Base Term, as defined above on the first page of this Lease and any Extension Term which Tenant may elect pursuant to Section 40.

Except as set forth in the Work Letter and this Lease: (i) Tenant shall accept the Premises in their condition as of the Commencement Date, subject to all applicable Legal Requirements (as defined in Section 7 hereof); (ii) Landlord shall have no obligation for any defects in the Premises; and (iii) Tenant's taking possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken. Any occupancy of the Premises by Tenant before the Commencement Date shall be subject to all of the terms and conditions of this Lease, excluding the obligation to pay Base Rent and Operating Expenses.

Tenant agrees and acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Premises or the Project, and/or the suitability of the Premises or the Project for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises or the Project are suitable for the Permitted Use. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes any and all prior representations, inducements, promises, agreements, understandings and negotiations which are not contained herein. Landlord in executing this Lease does so in reliance upon Tenant's representations, warranties, acknowledgments and agreements contained herein.

3. **Rent.**

(a) **Base Rent.** Upon execution of this Lease, Tenant shall deliver to Landlord an amount equal to $115,500.00, the estimated amount of the first month's Base Rent. If this Lease is terminated pursuant to its terms prior to Substantial Completion of the Landlord's Work, the amount so deposited, together with interest at the rate of five percent per year, shall be returned to Tenant within thirty (30) days of such date of such termination. Beginning on the Commencement Date, Tenant shall pay to Landlord in advance, without demand, abatement, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month during the Term hereof, in lawful money of the United States of America, at the office of Landlord for payment of Rent set forth above, or to such other person or at such other place as Landlord may from time to time designate in writing. Payments of Base Rent for any fractional calendar month shall be prorated. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any Rent (as defined in Section 5) due hereunder except for any abatement as may be expressly provided in this Lease.

(b) **Additional Rent.** In addition to Base Rent, beginning on the Commencement Date, Tenant agrees to pay to Landlord as additional rent ("**Additional Rent**"): (i) Tenant's Share of the Building with respect to Operating Expenses (as defined in Section 5), and (ii) any and all other amounts Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation, any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period.

4. **Rent Adjustments.**

(a) **Tenant Improvement Allowance; Reduction in Base Rent.** Landlord shall, subject to the terms of the Work Letter, provide a tenant improvement allowance ("**TI Allowance**") for the construction of the Tenant Improvements (as defined in the Work Letter) in the Premises of up to $70.00 per rentable square foot of the Premises. Base Rent shall decrease by $0.012 for every $1.00 of TI Allowance that is not expended by Landlord, up to a maximum reduction of $0.12 per rentable square foot per month. For example, if only $60.00 per rentable square foot of the TI Allowance is expended by Landlord, the monthly Base Rent for months 1 though 12 of the Lease would be reduced from $1.75 to $1.63 per rentable square foot per month, the monthly Base Rent for months 13 though 24 of the Lease would be reduced from $3.25 to $3.13 per rentable square foot per month and the monthly Base Rent for months 25 though 36 of the Lease would be reduced from $3.50 to $3.37 per rentable square foot per month. The TI Allowance shall only be available for use by Tenant as part of the construction of the initial Tenant Improvements and, except for the reduction of Base Rent provided for in this Section 4(a), Tenant shall have no right thereafter to use any undisbursed portion thereof.

In addition, Landlord shall, subject to the terms of the Work Letter, provide an additional tenant improvement allowance ("**Additional TI Allowance**") for the construction of the Tenant Improvements in the Premises of up to $10.00 per rentable square foot of the Premises. The Additional TI Allowance shall only be available for use by Tenant as part of the construction of the initial Tenant Improvements and Tenant shall have no right thereafter to use any undisbursed portion thereof.

(b) **Adjustments Following Substantial Completion of Landlord's Work.** Upon Substantial Completion of the Landlord's Work, Tenant shall pay to Landlord, as Additional Rent, concurrently with its payment of Base Rent, the following: (i) an amount equal to the amount of the Additional TI Allowance expended by Landlord amortized over the Base Term at a rate of 9% per annum, in equal monthly installments so that the full amount shall be paid on or before the expiration of the Base Term, (ii) an amount equal to the first One Million Three Hundred Thousand Dollars ($1,300,000) **("$1.3M**") of Excess TI Costs (as defined in Section 5(d) of the Work Letter), amortized over the first year of the Base Term at a rate of 9% per annum, in equal monthly installments so that the full amount shall be paid on or before the expiration of the first year of the Base Term; (iii) an amount equal to the difference between the total Excess TI Costs and $1.3M shall be amortized over the Base Term at a rate of 12% per annum, in equal monthly installments so that the full amount shall be paid on or before the expiration of the Base Term; and (iv) in the event that Substantial Completion of Landlord's Work has been delayed as a result of a Tenant Delay, an amount equal to the Base Rent that would have accrued if the Landlord's Work had been Substantially Completed on the day it would have been Substantially Completed but for the Tenant Delay, amortized over the Base Term at a rate of 9% per annum, in equal monthly installments so that the full amount shall be paid on or before the expiration of the Base Term ("**Tenant Delay Rent**").

(c) **Periodic Adjustments.** Commencing on the third anniversary of the Commencement Date and on each annual anniversary thereafter (each an "**Adjustment Date**"), Base Rent shall be increased by multiplying the Base Rent payable immediately before such Adjustment Date by the Rent Adjustment Percentage and adding the resulting amount to the Base Rent payable immediately before such Adjustment Date. Base Rent, as so adjusted, shall thereafter be due as provided herein. Base Rent adjustments for any fractional calendar month shall be prorated.

5. **Operating Expense Payments.** Landlord shall deliver to Tenant a written estimate of Operating Expenses for each calendar year during the Term (the "**Annual Estimate of Operating Expenses**"), which may be revised by Landlord from time to time during such calendar year but not more frequently than quarterly. Beginning on the Commencement Date, during each month of the Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12th of Tenant's Share of the Building with respect to the Annual Estimate of Operating Expenses. Payments for any fractional calendar month shall be prorated.

The term "**Operating Expenses**" means all costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Landlord with respect to the Building (including the Building's Share of the Project of all costs and expenses of any kind or description incurred or accrued by Landlord with respect to the Project which are not specific to the Building or any other building located in the Project) (including, without duplication, Building's Share of Project's Taxes (as defined in Section 9), capital repairs and improvements amortized over the useful life of such capital items (calculated in accordance with U.S. generally accepted accounting principles ("**US GAAP**")), and the costs of Landlord's third party property manager not to exceed 1% of Base Rent or, if there is no third party property manager, administration rent in the amount of 1.0% of Base Rent, excluding only:

(a) the original design and/or construction costs of the Project and costs of correcting defects in such original design and/or construction or renovation;

(b) capital expenditures for expansion of the Project;

(c) interest, principal payments of Mortgage (as defined in Section 27) debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured and all payments of base rent (but not taxes or operating expenses) under any ground lease or other underlying lease of all or any portion of the Project;

(d) depreciation of the Project (except for capital improvements, a properly amortized portion of the cost of which is includable in Operating Expenses);

(e) advertising, legal and space planning expenses and leasing commissions and other costs and expenses incurred in procuring and leasing space to tenants for the Project, including any leasing office maintained in the Project, free rent and construction allowances for tenants;

(f) legal and other expenses incurred in the negotiation or enforcement of leases;

(g) completing, fixturing, improving, renovating, painting, redecorating or other work, which Landlord pays for or performs for other tenants within their premises, and costs of correcting defects in such work;

(h) costs of utilities outside normal business hours sold to tenants of the Project;

(i) costs to be reimbursed by other tenants of the Project or Taxes to be paid directly by Tenant or other tenants of the Project, whether or not actually paid;

(j) salaries, wages, benefits and other compensation paid to officers and employees of Landlord who are not assigned in whole or in part to the operation, management, maintenance or repair of the Project;

(k) general organizational, administrative and overhead costs relating to maintaining Landlord's existence, either as a corporation, partnership, or other entity, including general corporate, legal and accounting expenses;

(l) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred in connection with disputes with tenants, other occupants, or prospective tenants, and costs and expenses, including legal fees, incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building;

(m) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred by Landlord due to the violation by Landlord, its employees, agents or contractors or any tenant of the terms and conditions of any lease of space in the Project or any Legal Requirement (as defined in Section 7);

(n) penalties, fines or interest incurred as a result of Landlord's inability or failure to make payment of Taxes and/or to file any tax or informational returns when due, or from Landlord's failure to make any payment of Taxes required to be made by Landlord hereunder before delinquency;

(o) costs of goods and/or services in, for, or to the Project paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in, for, or to the Project to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(p) costs of Landlord's charitable or political contributions, or of fine art (and insurance therefor) maintained at the Project;

(q) costs in connection with services (including electricity), items or other benefits of a type which are not standard for the Project and which are not available to Tenant without specific charges therefor, but which are provided to another tenant or occupant of the Project, whether or not such other tenant or occupant is specifically charged therefor by Landlord;

(r) costs incurred in the sale or refinancing of the Project;

(s) net income taxes of Landlord or the owner of any interest in the Project, franchise, capital stock, gift, estate or inheritance taxes or any federal, state or local documentary taxes imposed against the Project or any portion thereof or interest therein;

(t) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by persons other than tenants of the Project under leases for space in the Project;

(u) costs of repairs and other work occasioned by fire, windstorm, or other casualty for which Landlord is reimbursed by insurance or for which Landlord would have been reimbursed by insurance if Landlord failed to maintain the insurance which Landlord is required to maintain under this Lease;

(v) The cost of containing, removing, or otherwise remediating any contamination of the Project (including the underlying land and ground water) by Hazardous Materials where such contamination was not caused by or contributed to by Tenant and/or any Tenant Party;

(w) wages, salaries, or other compensation paid to any executive employees above the grade of building manager;

(x) until such time as Landlord has completed the initial landscaping for all of the real property described on **Exhibit B**, Landlord shall only be entitled to include as part of Operating Expenses landscaping costs (including, without limitation, the costs of water, utilities, materials and labor) attributable to 25% of the real property described on **Exhibit B**; and

(y) during any period during which Tenant has contracted with a third party to provide security services to the Building, the costs and expenses, if any, incurred by Landlord in connection with providing overlapping security services; provided, however, that such security services including, without limitation, the scope thereof which are being obtained by Tenant have been reasonably coordinated with any services which Landlord may elect to provide.

Within 90 days after the end of each calendar year (or such longer period as may be reasonably required), Landlord shall furnish to Tenant a statement (an "**Annual Statement**") showing in reasonable detail: (a) the total and Tenant's Share of the Building with respect to actual Operating Expenses for the previous calendar year, and (b) the total of Tenant's payments in respect of Operating Expenses for such year. If Tenant's Share of the Building with respect to actual Operating Expenses for such year exceeds Tenant's payments of Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within 30 days after delivery of such Annual Statement to Tenant. If Tenant's payments of Operating Expenses for such year exceed Tenant's Share of the Building with respect to actual Operating

Expenses for such year Landlord shall pay the excess to Tenant within 30 days after delivery of such Annual Statement, except that after the expiration, or earlier termination of the Term or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord.

The Annual Statement shall be final and binding upon Tenant unless Tenant, within 90 days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefor. If, during such 90 day period, Tenant reasonably and in good faith questions or contests the accuracy of the Annual Statement, Landlord will provide Tenant with access to Landlord's books and records relating to the operation of the Project and such information as Landlord reasonably determines to be responsive to Tenant's questions (the "**Expense Information**"). If after Tenant's review of such Expense Information, Landlord and Tenant cannot agree upon the amount payable by Tenant, then Tenant shall have the right to have an independent regionally recognized public accounting firm selected by Tenant, working pursuant to a fee arrangement other than a contingent fee (at Tenant's sole cost and expense) and approved by Landlord (which approval shall not be unreasonably withheld or delayed), audit and/or review the Expense Information for the year in question (the "**Independent Review**"). The results of any such Independent Review shall be binding on Landlord and Tenant. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the calendar year in question exceeded the amount owed by Tenant for such calendar year, Landlord shall at Landlord's option either (i) credit the excess amount to the next succeeding installments of estimated Operating Expenses or (ii) pay the excess to Tenant within 30 days after delivery of such statement, except that after the expiration or earlier termination of this Lease or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such calendar year were less than the amount owed by Tenant for the calendar year, Tenant shall pay the deficiency to Landlord within 30 days after delivery of such statement. If the Independent Review shows that Tenant has overpaid with respect to Operating Expenses by more than 5% then Landlord shall reimburse Tenant for all costs incurred by Tenant for the Independent Review.

Operating Expenses for the calendar years in which Tenant's obligation to share therein begins and ends shall be prorated. Notwithstanding anything set forth herein to the contrary, if the Building is not at least 95% occupied on average during any year of the Term, Landlord may adjust Tenant's Share of the Building with respect to Operating Expenses for such year to be computed as though the Building had been 95% occupied on average during such year.

Landlord may equitably increase Tenant's Share of the Building for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or that varies with Tenant's occupancy or use. Base Rent, Tenant's Share of the Building with respect to Operating Expenses and all other amounts payable by Tenant to Landlord hereunder are collectively referred to herein as "Rent."

6. **Adjustments of Rentable Area; Share of Operating Expenses and Definitions.**

The rentable square footage of the Premises and the Building shall be subject to adjustment by Landlord based upon the Constructions Drawings approved by both parties, using the 1996 Standard Method of Measuring Floor Area in Office Buildings as adopted by the Building Owners and Managers Association (ANSI/BOMA Z65.1-1996) (the "**Measurement Standard**"). A copy of the letter or report from Landlord's architect or engineer setting forth the actual Rentable Area of the Premises and the Building based upon the Construction Drawings approved by both parties (and using the Measurement Standard), together with all documentary support therefor, shall be furnished to Tenant (the "**Notice of Re-determination of RSF**"). If the actual rentable square footage of the Premises and Building as set forth in the Notice of Re-determination of RSF deviates from the amount specified in the definitions of "**Premises**", "**Rentable Area of Premises**", "**Rentable Area of Building**" and "**Rentable Area of Project**" on page 1 of this Lease, then, this Lease shall be amended so as to (i) reflect the actual rentable square footage as set forth in the Notice of Re-determination of RSF in the definitions of "**Premises**", "**Rentable Area of Premises**", "**Rentable Area of Building**" and "**Rentable Area of Project**", and (ii)

appropriately adjust the amount set forth in the definition of "**Tenant's Share of the Building**" which was calculated based on the actual rentable square footage of the Premises and the Building as set forth in the Notice of Re-determination of RSF. Tenant's Share of the Building and the Building's Share of the Project shall be subject to further adjustment for changes in the physical size of the Premises or the Project.

Landlord and Tenant acknowledge that Landlord intends to develop other buildings at the Project. Upon completion of each new building at the Project, (x) the definition of "**Rentable Area of Project**" on page 1 of this Lease shall be amended so as to reflect the actual rentable square footage of all of the buildings which have been completed at the Project, and (y) the definitions of "**Building's Share of Project**" "**Building's Share of Project Taxes"** and on page 1 of this Lease shall also be amended because the same were calculated based on the actual rentable square footage of the Building and the then Rentable Area of Project. Landlord shall provide Tenant with written notice of each such adjustment and the resulting changes to the defined terms "**Rentable Area of Project**", "**Building's Share of Project**" and "Building's along with documentary support therefor.

7. **Use.** The Premises shall be used solely for the Permitted Use set forth in the basic lease provisions on page 1 of this Lease, and in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises, and to the use and occupancy thereof, including, without limitation, the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with the regulations promulgated pursuant thereto, "**ADA**") (collectively, "**Legal Requirements**" and each, a "**Legal Requirement**"). Tenant shall, upon 5 days' written notice from Landlord, discontinue any use of the Premises which is declared by any Governmental Authority (as defined in Section 9) having jurisdiction to be a violation of a Legal Requirement. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler or other credits. Tenant shall not permit any part of the Premises to be used as a "place of public accommodation", as defined in the ADA or any similar legal requirement. Tenant shall reimburse Landlord promptly upon demand for any additional premium charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Section or otherwise caused by Tenant's use and/or occupancy of the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit or permit waste, overload the floor or structure of the Premises, subject the Premises to use that would damage the Premises or obstruct or interfere with the rights of Landlord or other tenants or occupants of the Project, including conducting or giving notice of any auction, liquidation, or going out of business sale on the Premises, or using or allowing the Premises to be used for any unlawful purpose. Tenant shall cause any equipment or machinery to be installed in the Premises so as to reasonably prevent sounds or vibrations from the Premises from extending into Common Areas, or other space in the Project. Tenant shall not place any machinery or equipment in or upon the Premises or transport or move such items through the Common Areas of the Project or in the Project elevators which exceeds the structural capacity of the Building. Except as may be provided under the Work Letter, Tenant shall not, without the prior written consent of Landlord, use the Premises in any manner which will require ventilation, air exchange, heating, gas, steam, electricity or water beyond the existing capacity of the Project as proportionately allocated to the Premises based upon Tenant's Share of the Building as usually furnished for the Permitted Use.

Tenant and Landlord acknowledge that structural reinforcements may be required in connection with Tenant's server room and fire proof high density storage rooms. All of the costs related to such structural reinforcements shall be borne by Landlord as part of cost of the Building Shell.

Following Landlord's Delivery of the Premises to Tenant, Tenant, at its sole expense, shall make any alterations or modifications to the interior or the exterior of the Premises or the Project that are required by Legal Requirements (including, without limitation, compliance of the Premises with the ADA related to Tenant's use or occupancy of the Premises. Except as otherwise expressly set forth in this Lease, Tenant shall be responsible for any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and

disbursements and costs of suit) (collectively, "**Claims**") arising out of or in connection with Legal Requirements, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with any Legal Requirement.

8. **Holding Over.** If, with Landlord's express written consent, Tenant retains possession of the Premises after the termination of the Term, (i) unless otherwise agreed in such written consent, such possession shall be subject to immediate termination by Landlord at any time, (ii) all of the other terms and provisions of this Lease (including, without limitation, the adjustment of Base Rent pursuant to Section 4 hereof) shall remain in full force and effect (excluding any expansion or renewal option or other similar right or option) during such holdover period, (iii) Tenant shall continue to pay Base Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as Landlord may indicate, in Landlord's sole and absolute discretion, in such written consent, and (iv) all other payments shall continue under the terms of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, (A) Tenant shall become a tenant at sufferance upon the terms of this Lease except that the monthly rental shall be equal to 150% of Rent in effect during the last 30 days of the Term, and (B) Tenant shall be responsible for all damages suffered by Landlord resulting from or occasioned by Tenant's holding over, including consequential damages. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 8 shall not be construed as consent for Tenant to retain possession of the Premises. Acceptance by Landlord of Rent after the expiration of the Term or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

9. **Taxes.** As of the Commencement Date, the term "**Building Share of Project's Taxes**" shall mean 25%. Upon completion by Landlord of construction of three additional buildings in the Project, the "Building Share of Project's Taxes" shall be calculated by dividing the Rentable Area of the Building by the total Rentable Area of all completed buildings in the Project. Landlord shall pay, as part of Operating Expenses, all taxes, levies, assessments and governmental charges of any kind (collectively referred to as "**Taxes**") imposed by any federal, state, regional, municipal, local or other governmental authority or agency, including, without limitation, quasi-public agencies (collectively, "**Governmental Authority**") during the Term, including, without limitation, all Taxes: (i) imposed on or measured by or based, in whole or in part, on rent payable to Landlord under this Lease and/or from the rental by Landlord of the Project or any portion thereof, or (ii) based on the square footage, assessed value or other measure or evaluation of any kind of the Premises or the Project, or (iii) assessed or imposed by or on the operation or maintenance of any portion of the Premises or the Project, including parking, or (iv) assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by, any Governmental Authority, or (v) imposed as a license or other fee on Landlord's business of leasing space in the Project. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens securing Taxes. Taxes shall not include any net income taxes imposed on Landlord unless such net income taxes are in substitution for any Taxes payable hereunder. If any such Tax is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall pay, prior to delinquency, any and all Taxes levied or assessed against any personal property or trade fixtures placed by Tenant in the Premises, whether levied or assessed against Landlord or Tenant. If any Taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Project is increased by a value attributable to improvements in or alterations to the Premises, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, higher than the base valuation on which Landlord from time-to-time allocates Taxes to all tenants in the Project, Landlord shall have the right, but not the obligation, to pay such Taxes. Landlord's reasonable determination of any excess assessed valuation shall be binding and conclusive, absent error. The amount of any such payment by Landlord shall constitute Additional Rent due from Tenant to Landlord immediately upon demand.

10. **Parking.** Subject to all matters of record, Force Majeure, a Taking (as defined in Section 19 below) and the exercise by Landlord of its rights hereunder, Tenant shall have the right, in common with other tenants of the Project pro rata in accordance with the rentable area of the Premises and the rentable areas of the Project occupied by such other tenants, to park in those areas designated for non-reserved parking, subject in each case to Landlord's rules and regulations. Landlord may dictate specific parking locations for spaces allocated to tenants of the Project, provided that Tenant is treated no less favorably with respect to such designation than any other tenant of the Project. With respect to the parking allocated to Tenant pursuant to this Section 10, if Landlord constructs a parking structure which serves the Project, Landlord shall make the determination of how many of the parking spaces allocated to Tenant shall be surface parking spaces and how many shall be structured parking spaces (after such structure has been constructed, if at all), provided that Tenant is treated no less favorably with respect to such allocation than any other tenant of the Project. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, including other tenants of the Project. As part of Tenant's share of parking spaces, Tenant be entitled to the use of 2 spaces immediately adjacent to the Building in location designated by Landlord for Tenant's exclusive use; provided, however, that if Tenant leases the entire Building, then, upon written request to Landlord, Tenant shall be entitled to the use of another 3 spaces immediately adjacent to the Building in location designated by Landlord for Tenant's exclusive use.

11. **Utilities, Services.** The hours of operation of the Premises are 6:00 a.m. to 8:00 p.m., Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday, legal holidays excepted. During such periods, Landlord shall provide, subject to the terms of this Section 11, water, electricity, heating and cooling ("**HVAC**"), light, power, telephone, sewer, and other utilities (including gas and fire sprinklers to the extent the Project is plumbed for such services), refuse and trash collection and janitorial services (collectively, "**Utilities**"). Upon request, Landlord shall make available at Tenant's sole cost and expense after hours Utilities. During any period that Tenant is the sole tenant of the Building, Landlord shall provide Tenant with access to the environmental management system so that Tenant may directly control its own after hours Utilities. During any periods that Tenant is not the sole tenant of the Building, Landlord shall use reasonable efforts to attempt to find a solution, reasonably acceptable to both parties, to provide Tenant with the ability to control its own after hours Utilities; provided, however, that Tenant shall pay for all costs incurred by Landlord in connection with implementing such solution. In no event shall Landlord be required to implement any solution which may result in Tenant having the ability to affect in any way any other tenant's premises in the Building. Landlord shall pay, as Operating Expenses or subject to Tenant's reimbursement obligation herein, for all Utilities used on the Premises, all maintenance charges for Utilities, and any storm sewer charges or other similar charges for Utilities imposed by any Governmental Authority or Utility provider, and any taxes, penalties, surcharges or similar charges thereon. Upon Tenant's request, Landlord shall cause, at Tenant's expense, any Utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay directly to the Utility provider, prior to delinquency, any separately metered Utilities and services which may be furnished to Tenant or the Premises during the Term. Tenant shall pay, as part of Operating Expenses, its share of all charges for jointly metered Utilities based upon consumption, as reasonably determined by Landlord. No interruption or failure of Utilities, from any cause whatsoever other than Landlord's willful misconduct, shall result in eviction or constructive eviction of Tenant, termination of this Lease or the abatement of Rent; provided, however, that, if any Essential Services are interrupted as a result of the negligence or willful misconduct of Landlord and Tenant's use or occupancy of the Premises is substantially impaired thereby for a period of more than 3 consecutive business days after notice from Tenant to Landlord of such impairment, Base Rent and Operating Expenses for the affected portion of the Premises shall be abated during the period of such interruption or failure. As used herein, the term "**Essential Services**" shall mean the following services: access to the Premises, HVAC service, data transmission systems including, without limitation, the conduit connecting the Premises with Tenant's other facilities, water, electricity and any other material service without which service Tenant would not be able to conduct its normal operations at the Project, but in each case only to the extent that Landlord has an obligation to provide same to Tenant under this Lease or caused the interruption.

12. **Alterations and Tenant's Property.**

(a) **Alterations.** This Section 12(a) shall govern Alterations (as defined below) that may occur after the Substantial Completion of the Landlord's Work in accordance with the Work Letter, and shall not be applicable to the Building Shell or Tenant Improvements, the performance of which shall be governed by the Work Letter. Landlord shall, when requested by Tenant in connection with any planned Alterations, provide a set of the "as-built" plans of the Building then in Landlord's possession to Tenant, in the format reasonably requested by Tenant. Any alterations, additions, or improvements made to the Premises by or on behalf of Tenant, including additional locks or bolts of any kind or nature upon any doors or windows in the Premises, but excluding installation, removal or realignment of furniture systems (other than removal of furniture systems owned or paid for by Landlord) not involving any modifications to the structure or connections (other then by ordinary plugs or jacks) to Building Systems (as defined in Section 13) ("**Alterations**") shall be subject to Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion if any such Alteration affects the structure or Building Systems. If Landlord approves any Alterations, Landlord may impose such conditions on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem appropriate in Landlord's reasonable discretion. Any request for approval shall be in writing, delivered not less than 15 business days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord, including the identities and mailing addresses of all general contractors performing work or supplying materials. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to ensure that such plans and specifications or construction comply with applicable Legal Requirements. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Legal Requirements and shall implement at its sole cost and expense any alteration or modification required by Legal Requirements as a result of any Alterations. Tenant shall pay to Landlord, as Additional Rent, on demand an amount equal to 2% of all charges incurred by Tenant or its contractors or agents in connection with any Alteration to cover Landlord's overhead and expenses for plan review, coordination, scheduling and supervision; provided, however, that no fee shall charged by Landlord if Landlord is not involved in supervision of the applicable Alteration. Before Tenant begins any Alteration, Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall reimburse Landlord for, and indemnify and hold Landlord harmless from, any expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, delays caused by such work, or inadequate cleanup.

Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure payment for the completion of all Alterations work free and clear of liens, and shall provide (and cause each contractor or subcontractor to provide) certificates of insurance for workers' compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Alterations, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (ii) "as built" plans for any such Alteration, if the nature of such Alteration requires such plans.

(b) **Removable Installations.** Except for Removable Installations (as hereinafter defined), all Installations (as hereinafter defined) shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, shall not be removed by Tenant at any time during the Term, and shall remain upon and be surrendered with the Premises as a part thereof. Notwithstanding the foregoing, Landlord may, at the time its approval of any such Installation is requested, notify Tenant that Landlord requires that Tenant remove such Installation upon the expiration or earlier termination of the Term, in which event Tenant shall remove such Installation in accordance with the immediately succeeding sentence. Upon the expiration or earlier termination of the Term, Tenant shall remove (i) all wires, cables or similar equipment which Tenant has installed in the Premises or in the risers or plenums of the Building, (ii) any Installations for which Landlord has given Tenant notice of removal in accordance with the immediately preceding sentence, and (iii) all of Tenant's Property (as hereinafter defined), and Tenant shall restore and repair any damage caused by or occasioned as a result of such removal, including, without limitation, capping off all such connections behind the walls of the Premises and repairing any holes. If Landlord is requested by Tenant or any lender, lessor or other person or entity claiming an interest in any of Tenant' Property to waive any lien Landlord may have

against any of Tenant's Property, Landlord shall consent to such waiver utilizing a form approved by Landlord, and Landlord shall be entitled to be paid as administrative rent a fee of $1,000 per occurrence for its time and effort in preparing and negotiating such a waiver of lien.

For purposes of this Lease, (w) "**Removable Installations**" means any items listed on Exhibit F attached hereto and any items agreed by Landlord in writing to be included on Exhibit F in the future, (x) "**Tenant's Property**" means Removable Installations and, other than Installations, any personal property or equipment of Tenant that may be removed without material damage to the Premises, and (z) "**Installations**" means all property of any kind paid for with the TI Fund and/or by Landlord, all Alterations, all fixtures, and all partitions, hardware, built-in machinery, built-in casework and cabinets and other similar additions, equipment, property and improvements built into the Premises so as to become an integral part of the Premises, including, without limitation, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch.

13. **Landlord's Repairs.** Landlord shall, as an Operating Expense subject to the limitations set forth in Section 5, maintain all of the structural, exterior, parking and other Common Areas of the Project, including HVAC, plumbing, fire sprinklers, elevators and all other building systems serving the Premises and other portions of the Project ("**Building Systems**"), in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, or by any of Tenant's agents, servants, employees, invitees and contractors (collectively, "**Tenant Parties**") excluded. Losses and damages caused by Tenant or any Tenant Party shall be repaired by Landlord, to the extent not covered by insurance, at Tenant's sole cost and expense. Landlord reserves the right to stop Building Systems services when necessary (i) by reason of accident or emergency, or (ii) for planned repairs, alterations or improvements, which are, in the reasonable judgment of Landlord, desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed. Landlord shall have no responsibility or liability for failure to supply Building Systems services during any such period of interruption; provided, however, that Landlord shall, except in case of emergency, make a commercially reasonable effort to give Tenant 24 hours advance notice of any planned stoppage of Building Systems services for routine maintenance, repairs, alterations or improvements. If the stoppage of any Essential Service is as a result of the negligence or willful misconduct of Landlord and Tenant's use or occupancy of the Premises is substantially impaired thereby for a period of more than 3 consecutive business days after notice from Tenant to Landlord of such impairment, Base Rent and Operating Expenses for the affected portion of the Premises shall be abated during the period of such stoppage. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Section of which Tenant becomes aware, after which Landlord shall use commercially reasonable efforts to effect such repair. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after Tenant's written notice of the need for such repairs or maintenance. Tenant waives its rights under any state or local law to terminate this Lease or to make such repairs at Landlord's expense and agrees that the parties' respective rights with respect to such matters shall be solely as set forth herein. Repairs required as the result of fire, earthquake, flood, vandalism, war, or similar cause of damage or destruction shall be controlled by Section 18.

14. **Tenant's Repairs.** Except for those portions of the Premises for which Landlord is expressly responsible pursuant to Section 13 hereof, during the Term, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises, including, without limitation, entries, doors, ceilings, interior windows, interior walls, and the interior side of demising walls. Should Tenant fail to make any such repair or replacement or fail to maintain the Premises, Landlord shall give Tenant notice of such failure. If Tenant fails to commence cure of such failure within 10 days of Landlord's notice, and thereafter diligently prosecute such cure to completion, Landlord may perform such work and shall be reimbursed by Tenant within 10 days after demand therefor; provided, however, that if such failure by Tenant creates or could create an emergency, Landlord may immediately commence cure of such failure and shall thereafter be entitled to recover the costs of such cure from Tenant. Subject to Sections 17 and 18, Tenant shall bear the full uninsured cost of any repair or replacement to any part of the Project that results from damage caused by Tenant or any Tenant Party and any repair that benefits only the Premises.

15. **Mechanic's Liens.** During the Term, Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises or against the Project for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within 10 days after the filing thereof, at Tenant's sole cost and shall otherwise keep the Premises and the Project free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Should Tenant fail to discharge any lien described herein, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the Project and the cost thereof shall be immediately due from Tenant as Additional Rent. If Tenant shall lease or finance the acquisition of office equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code Financing Statement filed as a matter of public record by any lessor or creditor of Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Project be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

16. **Indemnification.** During the Term, Tenant agrees to indemnify and defend, save and hold Landlord harmless from and against any and all Claims for injury or death to persons or damage to property occurring within or about the Premises, arising directly or indirectly out of use or occupancy of the Premises or a breach or default by Tenant in the performance of any of its obligations hereunder, unless caused by the willful misconduct or gross negligence of Landlord. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records kept within the Premises). Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records). Landlord shall not be liable for any damages arising from any act, omission or neglect of any tenant in the Project or of any other third party.

17. **Insurance.** Landlord shall maintain all risk property and, if applicable, sprinkler damage insurance covering the full replacement cost of the Project or such lesser coverage amount as Landlord may elect provided such coverage amount is not less than 90% of such full replacement cost. Landlord shall further procure and maintain commercial general liability insurance with a single loss limit of not less than $2,000,000 for bodily injury and property damage with respect to the Project. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building equipment, errors and omissions, rental loss during the period of repair or rebuilding, workers' compensation insurance and fidelity bonds for employees employed to perform services and insurance for any improvements installed by Tenant or which are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such are made a part of the Project. All such insurance shall be included as part of the Operating Expenses. The Project may be included in a blanket policy (in which case the cost of such insurance allocable to the Project will be determined by Landlord based upon the insurer's cost calculations).

Tenant, at its sole cost and expense, shall maintain during the Term: all risk property insurance with business interruption and extra expense coverage, covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial general liability insurance, with a minimum limit of not less than $2,000,000 per occurrence for bodily injury and property damage with respect to the Premises. The commercial general liability insurance policy shall name Alexandria Real Estate Equities, Inc., and Landlord, its officers, directors, employees, managers, agents, and contractors (collectively, "**Landlord Parties**"), as additional insureds; insure on an occurrence and not a claims-made basis; be issued by insurance companies which have a rating of not less than policyholder rating of A and financial category rating of at least Class X in "Best's Insurance Guide"; shall not be cancelable for nonpayment of premium unless 10 days prior written notice shall have been given to Landlord from the insurer; contain a hostile fire endorsement and a contractual liability endorsement; and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess

over Tenant's policies). Copies of such policies (if requested by Landlord), or certificates of insurance showing the limits of coverage required hereunder and showing Landlord as an additional insured, along with reasonable evidence of the payment of premiums for the applicable period, shall be delivered to Landlord by Tenant upon commencement of the Term and upon each renewal of said insurance. Tenant's policy may be a "blanket policy" with an aggregate per location endorsement which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall, prior to the expiration of such policies, furnish Landlord with renewal certificates.

In each instance where insurance is to name Landlord as an additional insured, Tenant shall upon written request of Landlord also designate and furnish certificates so evidencing Landlord as additional insured to: (i) any lender of Landlord holding a security interest in the Project or any portion thereof, (ii) the landlord under any lease wherein Landlord is tenant of the real property on which the Project is located, if the interest of Landlord is or shall become that of a tenant under a ground or other underlying lease rather than that of a fee owner, and/or (iii) any management company retained by Landlord to manage the Project.

The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, and their respective officers, directors, employees, managers, agents, invitees and contractors ("**Related Parties**"), in connection with any loss or damage thereby insured against. Neither party nor its respective Related Parties shall be liable to the other for loss or damage caused by any risk insured against under property insurance required to be maintained hereunder, and each party waives any claims against the other party, and its respective Related Parties, for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its respective Related Parties shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever. If the foregoing waivers shall contravene any law with respect to exculpatory agreements, the liability of Landlord or Tenant shall be deemed not released but shall be secondary to the other's insurer.

Landlord may require insurance policy limits to be raised to conform with requirements of Landlord's lender.

18. **Restoration.** If, at any time during the Term, the Project or the Premises are damaged or destroyed by a fire or other insured casualty, Landlord shall notify Tenant within 60 days after discovery of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Project or the Premises, as applicable (the "**Restoration Period**"). If the Restoration Period is estimated to exceed 12 months (the "**Maximum Restoration Period**"), Landlord may, in such notice, elect to terminate this Lease as of the date that is 75 days after the date of discovery of such damage or destruction; provided, however, that notwithstanding Landlord's election to restore, Tenant may elect to terminate this Lease by written notice to Landlord delivered within 5 business days of receipt of a notice from Landlord estimating a Restoration Period for the Premises longer than the Maximum Restoration Period. Unless Landlord or Tenant so elect to terminate this Lease, Landlord shall, subject to receipt of sufficient insurance proceeds (with any deductible to be treated as a current Operating Expense), promptly restore the Premises (excluding the improvements installed by Tenant or by Landlord and paid for by Tenant, subject to delays arising from the collection of insurance proceeds, from Force Majeure events; provided, however, that if repair or restoration of the Premises is not substantially complete as of the end of the Maximum Restoration Period or, if longer, the Restoration Period, Landlord may, in its sole and absolute discretion, elect not to proceed with such repair and restoration, or Tenant may by written notice to Landlord delivered within 5 business days of the expiration of the Maximum Restoration Period or, if longer, the Restoration Period, elect to terminate this Lease in which event Landlord shall be relieved of its obligation to make such repairs or restoration and this Lease shall terminate as of the date that is 75 days after the discovery of such damage or destruction, but Landlord shall retain any Rent paid and the right to any Rent payable by Tenant prior to such election by Landlord or Tenant.

Tenant, at its expense, shall promptly perform, subject to delays arising from the collection of insurance proceeds, from Force Majeure (as defined in Section 34) events, all repairs or restoration not required to be done by Landlord.

Notwithstanding the foregoing, either Landlord or Tenant may terminate this Lease upon written notice to the other if the Premises are damaged during the last year of the Term and Landlord reasonably estimates that it will take more than 2 months to repair such damage; provided, however, that such notice is delivered within 10 business days after the date that Landlord provides Tenant with written notice of the estimated Restoration Period. Landlord shall also have the right to terminate this Lease if insurance proceeds are not available for such restoration

Rent shall be abated from the date that the Premises are not usable by Tenant following the damage or destruction until the Premises are repaired and restored, in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided in this Section 18, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

The provisions of this Lease, including this Section 18, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, or any other portion of the Project, and any statute or regulation which is now or may hereafter be in effect shall have no application to this Lease or any damage or destruction to all or any part of the Premises or any other portion of the Project, the parties hereto expressly agreeing that this Section 18 sets forth their entire understanding and agreement with respect to such matters.

19. **Condemnation.** If at any time during the Term the whole or any material part of the Premises or the Project is taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would in Landlord's reasonable judgment either prevent or materially interfere with Tenant's use of the Premises or materially interfere with or impair Landlord's ownership or operation of the Project, then upon written notice by Landlord this Lease shall terminate and Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, Landlord shall promptly restore the Premises and the Project as nearly as is commercially reasonable under the circumstances to their condition prior to such partial Taking and the rentable square footage of the Building, the rentable square footage of the Premises, Tenant's Share of the Building and the Rent payable hereunder during the unexpired Term shall be reduced to such extent as may be fair and reasonable under the circumstances. Upon any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's trade fixtures, if a separate award for such items is made to Tenant. Tenant hereby waives any and all rights it might otherwise have pursuant to any provision of state law to terminate this Lease upon a partial Taking of the Premises or the Project.

20. **Events of Default.** Each of the following events shall be a default ("**Default**") by Tenant under this Lease:

(a) **Payment Defaults.** Tenant shall fail to pay any installment of Rent or any other payment hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay Rent within 3 days of any such notice.

(b) **Insurance.** Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, or Landlord shall receive a notice of nonrenewal of any such insurance and Tenant shall fail to obtain replacement insurance at least 20 days before the expiration of the current coverage.

(c) **Abandonment.** Tenant shall abandon the Premises.

(d) **Improper Transfer.** Tenant shall assign, sublease or otherwise transfer or attempt to transfer all or any portion of Tenant's interest in this Lease or the Premises except as expressly permitted herein, or Tenant's interest in this Lease shall be attached, executed upon, or otherwise judicially seized and such action is not released within 90 days of the action.

(e) **Liens.** Tenant shall fail to discharge or otherwise obtain the release of any lien placed upon the Premises in violation of this Lease within 20 days after any such lien is filed against the Premises.

(f) **Insolvency Events.** Tenant or any guarantor or surety of Tenant's obligations hereunder shall: (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**Proceeding for Relief**"); (C) become the subject of any Proceeding for Relief which is not dismissed within 90 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(g) **Estoppel Certificate or Subordination Agreement.** Tenant fails to execute any document required from Tenant under Sections 23 or 27 within 5 days after a second notice requesting such document.

(h) **Other Defaults.** Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 20, and, except as otherwise expressly provided herein, such failure shall continue for a period of 30 days after written notice thereof from Landlord to Tenant; provided that if the nature of Tenant's default pursuant to this Section 20(h) is such that it cannot be cured by the payment of money and reasonably requires more than 30 days to cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes the same to completion.

Any notice given under Section 20(h) hereof shall: (i) specify the alleged default, (ii) demand that Tenant cure such default, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of applicable law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice.

21. **Landlord's Remedies.**

(a) **Payment By Landlord; Interest; EITF 97-10.** Upon a Default by Tenant hereunder, Landlord may, without waiving or releasing any obligation of Tenant hereunder, make such payment or perform such act. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to 12% per annum or the highest rate permitted by law (the "**Default Rate**"), whichever is less, shall be payable to Landlord on demand as Additional Rent. Nothing herein shall be construed to create or impose a duty on Landlord to mitigate any damages resulting from Tenant's Default hereunder. Notwithstanding anything to the contrary contained in this Lease, in connection with any Default that may occur prior to Substantial Completion of the Landlord's Work, under no circumstances shall Tenant be responsible for any amount in excess of eighty nine percent (89%) of the "total project costs" as such phrase is used in Emerging Issues Task Force Issue No. 97-10.

(b) **Late Payment Rent.** Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord under any Mortgage covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within 5 days after the date such payment is due, Tenant shall pay to Landlord an additional sum equal to 6% of the overdue Rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest at the Default Rate from the first business day after the date of Landlord's notice to Tenant until paid.

(c) **Remedies.** Upon the occurrence of a Default, Landlord, at its option, without further notice or demand to Tenant, shall have in addition to all other rights and remedies provided in this Lease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(i) Terminate this Lease, or at Landlord's option, Tenant's right to possession only, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor;

(ii) Upon any termination of this Lease, whether pursuant to the foregoing Section 21(c)(i) or otherwise, Landlord may recover from Tenant the following:

(A) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(B) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(C) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 21 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 21(c)(ii) (A) and (B), above, the "**worth at the time of award**" shall be computed by allowing interest at the Default Rate. As used in Section 21(c)(ii)(C) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(iii) Landlord may continue this Lease in effect after Tenant's Default and recover rent as it becomes due (Landlord and Tenant hereby agreeing that Tenant has the right to sublet

or assign hereunder, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease following a Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

(iv) Whether or not Landlord elects to terminate this Lease following a Default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. Upon Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

(v) Independent of the exercise of any other remedy of Landlord hereunder or under applicable law, during the Term of the Lease, Landlord may conduct an environmental test of the Premises as generally described in Section 30(c) hereof, at Tenant's expense; provided, however, that the provisions of this clause (v) shall not apply if the Permitted Use at that time is purely office use.

(vi) Notwithstanding anything to the contrary contained in this Lease, in connection with any Default that may occur prior to Substantial Completion of the Landlord's Work, under no circumstances shall Tenant be responsible for any amount in excess of eighty nine percent (89%) of the "total project costs" as such phrase is used in Emerging Issues Task Force Issue No. 97-10.

(d) **Effect of Exercise.** Exercise by Landlord of any remedies hereunder or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, it being understood that such surrender and/or termination can be effected only by the express written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same and shall not be deemed a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of Rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter, re-take or otherwise obtain possession of the Premises as provided in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. Any reletting of the Premises or any portion thereof shall be on such terms and conditions as Landlord in its sole discretion may determine. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting or otherwise to mitigate any damages arising by reason of Tenant's Default; provided, however, that the provisions of this sentence shall not apply if the Permitted Use is purely office use.

22. **Assignment and Subletting.**

(a) **General Prohibition.** Without Landlord's prior written consent subject to and on the conditions described in this Section 22, other than pursuant to a Permitted Assignment or Permitted Sublease (as defined below), Tenant shall not, directly or indirectly, voluntarily or by operation of law, assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises, and any attempt to do any of the foregoing shall be void and of no effect. If Tenant is a corporation, partnership or limited liability

company, the shares or other ownership interests thereof which are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby 25% or more of the issued and outstanding shares or other ownership interests of such corporation are, or voting control is, transferred (but excepting transfers upon deaths of individual owners) from a person or persons or entity or entities which were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares or other ownership interests of the corporation, partnership or limited liability company at time of execution of this Lease, shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in this Section 22.

(b) **Permitted Transfers.** If Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises, other than pursuant to a Permitted Assignment or Permitted Sublease, then at least 15 business days, but not more than 60 business days, before the date Tenant desires the assignment or sublease to be effective (the "**Assignment Date**"), Tenant shall give Landlord a notice (the "**Assignment Notice**") containing such information about the proposed assignee or sublessee, including the proposed use of the Premises and any Hazardous Materials proposed to be used, stored handled, treated, generated in or released or disposed of from the Premises, the Assignment Date, any relationship between Tenant and the proposed assignee or sublessee, and all material terms and conditions of the proposed assignment or sublease, including a copy of any proposed assignment or sublease in its final form, and such other information as Landlord may deem reasonably necessary or appropriate to its consideration whether to grant its consent. Landlord may, by giving written notice to Tenant within 15 business days after receipt of the Assignment Notice: (i) grant such consent, (ii) refuse such consent, in its reasonable discretion; or (iii) terminate this Lease with respect to the space described in the Assignment Notice as of the Assignment Date (an "**Assignment Termination**"), unless Tenant withdraws its request for consent within 5 business days following its receipt of Landlord's notice of its intent to so terminate. Among other reasons, it shall be reasonable for Landlord to withhold its consent in any of these instances: (1) the proposed assignee or subtenant is a governmental agency; (2) in Landlord's reasonable judgment, the use of the Premises by the proposed assignee or subtenant would entail any alterations that would lessen the value of the leasehold improvements in the Premises, or would require materially increased services by Landlord; (3) in Landlord's reasonable judgment, the proposed assignee or subtenant lacks the creditworthiness to support the financial obligations it will incur under the proposed assignment or sublease; (4) in Landlord's reasonable judgment, the character, reputation, or business of the proposed assignee or subtenant is inconsistent with the desired tenant-mix or the quality of other tenancies in the Project or is inconsistent with the type and quality of the nature of the Building; (5) Landlord has received from any prior landlord to the proposed assignee or subtenant a materially negative report concerning such prior landlord's experience with the proposed assignee or subtenant; (6) Landlord has experienced previous defaults by or is in litigation with the proposed assignee or subtenant; (7) the use of the Premises by the proposed assignee or subtenant will violate any applicable Legal Requirement; or (8) the assignment or sublease is prohibited by Landlord's lender. If Landlord delivers notice of its election to exercise an Assignment Termination, Tenant shall have the right to withdraw such Assignment Notice by written notice to Landlord of such election within 5 business days after Landlord's notice electing to exercise the Assignment Termination. If Tenant withdraws such Assignment Notice, this Lease shall continue in full force and effect. If Tenant does not withdraw such Assignment Notice, this Lease, and the term and estate herein granted, shall terminate as of the Assignment Date with respect to the space described in such Assignment Notice. No failure of Landlord to exercise any such option to terminate this Lease, or to deliver a timely notice in response to the Assignment Notice, shall be deemed to be Landlord's consent to the proposed assignment, sublease or other transfer. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with its consideration of any Assignment Notice.

Notwithstanding the foregoing, Landlord's consent to an assignment of this Lease or a subletting of any portion of the Premises to any entity controlling, controlled by or under common control with Tenant (a "**Control Permitted Assignment**") shall not be required. In addition, Tenant shall have the right to assign this Lease to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of all or substantially all of the assets or the ownership interests of Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a good business purpose and not principally for the

purpose of transferring the Lease, and (ii) the net worth (as determined in accordance with US GAAP) of the assignee is not less than the net worth (as determined in accordance with US GAAP) of Tenant as of the date of Tenant's most current quarterly or annual financial statements, (iii) such assignee shall agree in writing to assume all of the terms, covenants and conditions of this Lease arising after the effective date of the assignment, and (iv) Tenant gives written notice to Landlord within thirty (30) days following such assignment (a "**Corporate Permitted Assignment**"). In addition, Tenant shall have the right, without Landlord's consent, to sublease, license or otherwise grant the right to occupy a portion of the Premises to any entity with which Tenant is engaged in a joint venture in the ordinary course of Tenant's business (a "**Permitted Sublease**"). Any Control Permitted Assignment and Corporate Permitted Assignment are hereinafter collectively referred to as "**Permitted Assignments**."

(c) **Additional Conditions.** As a condition to any such assignment or subletting, whether or not Landlord's consent is required, Landlord may require:

(i) that any assignee or subtenant agree, in writing at the time of such assignment or subletting, that if Landlord gives such party notice that Tenant is in default under this Lease, such party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability except to credit such payment against those due under the Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, in no event shall Landlord or its successors or assigns be obligated to accept such attornment; and

(ii) A list of Hazardous Materials, certified by the proposed assignee or sublessee to be true and correct, which the proposed assignee or sublessee intends to use, store, handle, treat, generate in or release or dispose of from the Premises, together with copies of all documents relating to such use, storage, handling, treatment, generation, release or disposal of Hazardous Materials by the proposed assignee or subtenant in the Premises or on the Project, prior to the proposed assignment or subletting, including, without limitation: permits; approvals; reports and correspondence; storage and management plans; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); and all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks. Neither Tenant nor any such proposed assignee or subtenant is required, however, to provide Landlord with any portion(s) of the such documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities. The provisions of the clause (ii) shall not apply if the Permitted Use is purely an office use at the time of the proposed assignment or sublease.

(d) **No Release of Tenant, Sharing of Excess Rents.** Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully and primarily responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. If the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto in any form) exceeds the sum of the rental payable under this Lease, (excluding however, any Rent payable under this Section) and actual and reasonable brokerage fees and legal costs ("**Excess Rent**"), then Tenant shall be bound and obligated to pay Landlord as Additional Rent hereunder 50% of such Excess Rent within 30 days following receipt thereof by Tenant. If Tenant shall sublet the Premises or any part thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any such subletting, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of a Default, Tenant shall have the right to collect such rent.

(e) **No Waiver.** The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignees of this Lease or any sublessees of the Premises from obtaining the consent of Landlord to any further assignment or subletting nor shall it release Tenant or any assignee or sublessee of Tenant from full and primary liability under the Lease. The acceptance of Rent hereunder, or the acceptance of performance of any other term, covenant, or condition thereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting, assignment or other transfer of the Premises.

23. **Estoppel Certificate.** Tenant shall, within 10 business days of written notice from Landlord, execute, acknowledge and deliver a statement in writing in any form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant's failure to deliver such statement within such time shall, at the option of Landlord, constitute a Default under this Lease, and, in any event, shall be conclusive upon Tenant that the Lease is in full force and effect and without modification except as may be represented by Landlord in any certificate prepared by Landlord and delivered to Tenant for execution. Upon request by Tenant, Landlord will similarly execute an estoppel certificate: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advanced, if any, (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if any are claimed and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be reasonably requested thereon.

24. **Quiet Enjoyment.** So long as Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

25. **Prorations.** All prorations required or permitted to be made hereunder shall be made on the basis of a 360 day year and 30 day months.

26. **Rules and Regulations.** Tenant shall, at all times during the Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto as **Exhibit E**. If there is any conflict between said rules and regulations and other provisions of this Lease, the terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project and shall not enforce such rules and regulations in a discriminatory manner.

27. **Subordination.** This Lease and Tenant's interest and rights hereunder are hereby made and shall be subject and subordinate at all times to the lien of any Mortgage now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however, that so long as there is no Default hereunder, Tenant's right to possession of the Premises shall not be disturbed by the Holder of any such Mortgage. Tenant agrees, at the election of the Holder of any such Mortgage, to attorn to any such Holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination, and such instruments of attornment as shall be requested by any such Holder, provided any such instruments contain appropriate non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises as set forth in Section 24 hereof. Notwithstanding the foregoing, any such

Holder may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery or recording and in that event such Holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such Mortgage and had been assigned to such Holder. The term "**Mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "**Holder**" of a Mortgage shall be deemed to include the beneficiary under a deed of trust.

As of the date of this Lease, there is no existing Mortgage encumbering the Project.

28. **Surrender.** Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by any person other than a Landlord Party; provided, however, Tenant shall not be responsible for (a) any Hazardous Materials which existed in, on or under the Premises as of the Commencement Date or (b) any Hazardous Materials which migrated from outside of the Premises into the Premises unless the presence of such Hazardous Materials (i) is the result of a breach by Tenant of any of its obligations under this Lease, or (ii) was caused, contributed to or exacerbated by Tenant or any Tenant Party. If the Permitted Use is hereafter amended to include research and development laboratory and there is contamination in the Premises, the burden shall be on Tenant to prove the matters described in clause (a) and/or (b), as the case may be, to Landlord's reasonable satisfaction. Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, subject to any Alterations or Installations permitted by Landlord to remain in the Premises, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 18 and 19 excepted.

If the Permitted Use is hereafter amended to include research and development laboratory, then the provisions of this paragraph shall apply. At least 3 months prior to the surrender of the Premises, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any Governmental Authority) to be taken by Tenant in order to surrender the Premises (including any Installations permitted by Landlord to remain in the Premises) at the expiration or earlier termination of the Term, free from any residual impact from Hazardous Materials for which Tenant is responsible under this Lease and otherwise released for unrestricted use and occupancy (the "**Surrender Plan**"). Such Surrender Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Tenant Party with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Premises, and shall be subject to the review and approval of Landlord's environmental consultant. In connection with the review and approval of the Surrender Plan, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such additional non-proprietary information concerning Hazardous Materials as Landlord shall request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Surrender Plan shall have been satisfactorily completed and Landlord shall have the right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of the Lease, free from any residual impact from Hazardous Materials for which Tenant is responsible under this Lease. Tenant shall reimburse Landlord, as Additional Rent, for the actual out-of pocket expense incurred by Landlord for Landlord's environmental consultant to review and approve the Surrender Plan and to visit the Premises and verify satisfactory completion of the same, which cost shall not exceed $5,000. Landlord shall have the unrestricted right to deliver such Surrender Plan and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties; provided, however, that Landlord instructs such parties to treat the same as confidential.

Tenant shall immediately return to Landlord all keys and/or access cards to parking, the Project, restrooms or all or any portion of the Premises furnished to or otherwise procured by Tenant. If any such access card or key is lost, Tenant shall pay to Landlord, at Landlord's election, either the cost of replacing

such lost access card or key or the cost of reprogramming the access security system in which such access card was used or changing the lock or locks opened by such lost key. Any Tenant's Property, Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and/or disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Term, including the obligations of Tenant under Section 30 hereof, shall survive the expiration or earlier termination of the Term, including, without limitation, indemnity obligations, payment obligations with respect to Rent and obligations concerning the condition and repair of the Premises.

29. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

30. **Environmental Requirements.**

(a) **Prohibition/Compliance.** Except for Hazardous Materials contained in products customarily used by tenants in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Materials upon the Premises or the Project or use, store, handle, treat, generate, manufacture, transport, release or dispose of any Hazardous Materials in, on or from the Premises or the Project without Landlord's prior written consent which may be withheld in Landlord's sole discretion. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remove or remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Project by Tenant or any Tenant Party. Tenant shall complete and certify disclosure statements as requested by Landlord from time to time relating to Tenant's use, storage, handling, treatment, generation, manufacture, transportation, release or disposal of Hazardous Materials on or from the Premises, except for Hazardous Materials contained in products customarily used by tenants in de minimis quantities for ordinary cleaning and office purposes. The term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any Governmental Authority regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the Project, or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "**operator**" of Tenant's "**facility**" and the "**owner**" of all Hazardous Materials brought on the Premises by Tenant or any Tenant Party, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

(b) **Indemnity.** During the Term, Tenant agrees to indemnify and defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and damages based upon diminution in value of the Premises or the Project, or the loss of, or restriction on, use of the Premises or any portion of the Project), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (collectively,

"**Environmental Claims**") which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local Governmental Authority because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises, the Project or any adjacent property caused or permitted by Tenant or any Tenant Party results in any contamination of the Premises, the Project or any adjacent property, Tenant shall promptly take all actions at its sole expense and in accordance with applicable law as are necessary to return the Premises, the Project or any adjacent property to the condition required by applicable law, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or the Project.

(c) **Landlord's Tests.** Notwithstanding anything to the contrary contained in this Section 30(c), Tenant shall not be required to pay for the costs of any testing undertaken by Landlord pursuant to this Section 30(c) so long as the Permitted Use is purely office use. Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Section 30, or the environmental condition of the Premises or the Project. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any Tenant Party. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any environmental conditions identified by such testing in accordance with all Environmental Requirements. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord may have against Tenant.

(d) **Tenant's Obligations.** Tenant's obligations under this Section 30 shall survive the expiration or earlier termination of the Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Premises of any Hazardous Materials (including, without limitation, the release and termination of any licenses or permits restricting the use of the Premises and the completion of the approved Surrender Plan), Tenant shall continue to pay the full Rent in accordance with this Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

31. **Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). Upon any default by Landlord, Tenant shall give notice by registered or certified mail to any Holder of a Mortgage covering the Premises and to any landlord of any lease of property in or on which the Premises are located and Tenant shall offer such Holder and/or landlord a reasonable opportunity to cure the default, including time to obtain possession of the Project by power of sale or a judicial action if such should prove necessary to effect a cure; provided Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "**Landlord**" in this Lease shall mean only the owner for the time being of the Premises. Upon the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Term upon each new owner for the duration of such owner's ownership.

32. **Inspection and Access.** Landlord and Landlord's representatives may enter the Premises during business hours on not less than 48 hours advance written notice (except in the case of emergencies in which case no such notice shall be required and such entry may be at any time) for the purpose of effecting any such repairs, inspecting the Premises, showing the Premises to prospective purchasers and, during the last year of the Term, to prospective tenants or for any other business purpose. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate Common Areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially, adversely affects Tenant's use or occupancy of the Premises for the Permitted Use. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions, provided that such items do not impose any financial or other material burden on Tenant. Tenant shall at all times, except in the case of emergencies, have the right to escort Landlord or its agents, representatives, contractors or guests while the same are in the Premises, provided such escort does not materially and adversely affect Landlord's access rights hereunder.

33. **Security.** Tenant shall have the right, but not the obligation, to contract with a third party to provide security services to the Building. Tenant acknowledges and agrees that security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and that Landlord is not obligated to provide any security services with respect to the Premises. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises, except to the extent caused by the willful misconduct of Landlord, its officers, employees, agents or contractors. Tenant shall be solely responsible for the personal safety of Tenant's officers, employees, agents, contractors, guests and invitees while any such person is in, on or about the Premises and/or the Project. Tenant shall at Tenant's cost obtain insurance coverage to the extent Tenant desires protection against such criminal acts.

34. **Force Majeure.** Landlord shall not responsible or liable for delays in the performance of its obligations hereunder when caused by, related to, or arising out of acts of God, strikes, lockouts, or other labor disputes, embargoes, quarantines, unusual weather, national, regional, or local disasters, calamities, or catastrophes, inability to obtain labor or materials (or reasonable substitutes therefor) at reasonable costs or failure of, or inability to obtain, utilities necessary for performance, governmental restrictions, orders, limitations, regulations, or controls, national emergencies, delay in issuance or revocation of permits, enemy or hostile governmental action, terrorism, insurrection, riots, civil disturbance or commotion, fire or other casualty, and other causes or events beyond the reasonable control of Landlord ("**Force Majeure**").

35. **Brokers.** Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker**") in connection with this transaction and that no Broker brought about this transaction, other than Cornish & Carey, Inc. Landlord and Tenant each hereby agrees to indemnify and hold the other harmless from and against any claims by any Broker, other than the broker, if any named in this Section 35, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction. Landlord shall pay commission to Cornish & Carey, Inc. pursuant to a separate written agreement between Cornish & Carey, Inc. and Landlord.

36. **Limitation on Landlord's Liability.** NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT TO THE CONTRARY: (A) LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY OTHER PERSON FOR (AND TENANT AND EACH SUCH OTHER PERSON ASSUME ALL RISK OF) LOSS, DAMAGE OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL TO: TENANT'S PERSONAL PROPERTY OF

EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION TRADE FIXTURES, EQUIPMENT, INVENTORY, SCIENTIFIC RESEARCH, SCIENTIFIC EXPERIMENTS, LABORATORY ANIMALS, PRODUCT, SPECIMENS, SAMPLES, AND/OR SCIENTIFIC, BUSINESS, ACCOUNTING AND OTHER RECORDS OF EVERY KIND AND DESCRIPTION KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM; (B) THERE SHALL BE NO PERSONAL RECOURSE TO LANDLORD FOR ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE PREMISES OR ARISING IN ANY WAY UNDER THIS LEASE OR ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ANY LIABILITY OF LANDLORD HEREUNDER SHALL BE STRICTLY LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PROJECT OR ANY PROCEEDS FROM SALE OR CONDEMNATION THEREOF AND ANY INSURANCE PROCEEDS PAYABLE IN RESPECT OF LANDLORD'S INTEREST IN THE PROJECT OR IN CONNECTION WITH ANY SUCH LOSS; AND (C) IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. UNDER NO CIRCUMSTANCES SHALL LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR INJURY TO TENANT'S BUSINESS OR FOR ANY LOSS OF INCOME OR PROFIT THEREFROM.

37. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in effect to such illegal, invalid or unenforceable clause or provision as shall be legal, valid and enforceable.

38. **Signs; Exterior Appearance.** Tenant shall not, without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole discretion: (i) attach any awnings, exterior lights, decorations, balloons, flags, pennants, banners, painting or other projection to any outside wall of the Project, (ii) use any curtains, blinds, shades or screens other than Landlord's standard window coverings, (iii) coat or otherwise sunscreen the interior or exterior of any windows, (iv) place any bottles, parcels, or other articles on the window sills, (v) place any equipment, furniture or other items of personal property on any exterior balcony, or (vi) paint, affix or exhibit on any part of the Premises or the Project any signs, notices, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises. Interior signs on doors and the directory tablet shall be inscribed, painted or affixed for Tenant by Landlord at the sole cost and expense of Tenant, and shall be of a size, color and type acceptable to Landlord. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering. The directory tablet shall be provided exclusively for the display of the name and location of tenants.

Landlord shall, at Landlord's sole cost and expense, include Tenant's name on a non-exclusive basis on a building monument sign ("**Monument Sign**") at the Project. Tenant shall be entitled, at Tenant's sole cost and expense, to install a building sign with Tenant's name (the "**Building Sign**") on the exterior of the Building on either the south or west façade on the fascia of the Building above the highest windows of the Building, in a location approved in writing by Landlord. The Monument Sign and the Building Sign (collectively, "**Tenant's Signs**") including, without limitation, the size, color and type, shall be subject to Landlord's prior written approval which shall not be unreasonably withheld provided the same comply with Landlord's signage program at the Project and applicable Legal Requirements. Tenant shall be solely responsible for all costs, fees, charges, expenses or other sums related to the Building Sign, including without limitation, costs related to manufacture and installation of the Building Sign and compliance with applicable Legal Requirements and Landlord's signage program at the Project. Tenant shall be solely responsible for the maintenance of all of Building Sign and the removal of the Building Sign at the expiration or earlier termination of this Lease and repair all damage resulting from such removal. The signage rights granted to Tenant pursuant to this Section 38 are personal to Tenant any may not be assigned to any other party without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in

the Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease. In the event that Tenant does not exercise its Expansion Right, Landlord shall have the right to allow one additional tenant to install a sign on the fascia of the Building with such tenant's name, provided that such tenant leases all of the Expansion Space and, provided further, that such tenant's building sign is not located on the same facade of the Building as the Tenant's Building Sign. Tenant acknowledges that it may be necessary, pursuant to applicable Legal Requirements, for Tenant to reduce the size of Tenant's Building Sign in order for the other tenant to be permitted in accordance with applicable Legal Requirements, to install its sign on the fascia of the Building.

39. **Right to Expand.**

(a) **Expansion in the Project.** Tenant shall have the one-time right, exercisable on or before December 31, 2008, to elect to expand the original Premises (the "**Expansion Right**") to include all of the remaining approximately 62,393 rentable square feet (as the same may be adjusted based on the results of measurement provided for in Section 6) in the Building ("**Expansion Space**") upon the terms and conditions in this Section. If Tenant elects to exercise the Expansion Right, Tenant shall, on or before December 31, 2008, deliver written notice to Landlord of its election to exercise the Expansion Right ("**Expansion Exercise Notice**"). Tenant acknowledges and agrees that all of the terms and conditions of this Lease shall apply to the leasing of the Expansion Space, except that: (a) the term of the lease with respect to the Expansion Space shall commence upon the Substantial Completion (as defined in the Work Letter) by Landlord of the Tenant Improvements (as defined in the Work Letter) within the Expansion Space ("**Expansion Space Tenant Improvements**"); (b) Tenant shall continue to pay Base Rent for the original Premises as provided for in this Lease and, in addition thereto, beginning on the date of Substantial Completion of the Expansion Space Tenant Improvements, Tenant shall pay Base Rent for the Expansion Space at the then current monthly Base Rent per rentable square foot payable for the original Premises (as the same is adjusted from time to time pursuant to Section 4(b) and (c) of this Lease), but specifically excluding any applicable reductions applicable to the original Premises provided for in Section 4(a) of this Lease; (c) subject to adjustment based on the results of the measurement provided for in Section 6), Tenant's Share of the Building with respect to the Expansion Space shall be 49.%; (d) the Expansion Space Tenant Improvements shall be constructed in accordance with the Work Letter except that (i) all references to "Premises" contained in the Work Letter shall be deemed to refer to the Expansion Space, (ii) the parties shall cause the Design Drawings for the Expansion Space shall be finalized no later than 30 days after Tenant's delivery of the Expansion Exercise Notice to Landlord, (iii) the parties shall cause the Construction Drawings shall be completed and approved by the parties and the City of South San Francisco no later then 90 days after Tenant's delivery of the Expansion Exercise Notice to Landlord, (iv) Landlord shall, subject to the terms of the Work Letter, provide a tenant improvement allowance ("**Expansion Space TI Allowance**") for the construction of the Expansion Space Tenant Improvements of up to $70.00 per rentable square foot of the Expansion Space which amount shall be reduced by the Lobby Cost (as defined in Section 5(a) of the Work Letter), (v) all references to "TI Allowance" contained in the Work Letter shall be deemed to mean the Expansion Space TI Allowance, and (vi) all references to "Landlord's Work" and Tenant Improvements contained in the Work Letter shall be deemed to refer to only the Expansion Space Tenant Improvements; (e) Tenant shall commence paying Base Rent and Tenant's Share of the Building with respect to Operating Expenses upon delivery of the Expansion Space to Tenant with the Expansion Space Tenant Improvements Substantially Completed ; and (f) Base Rent for the Expansion Space shall decrease by $0.012 for every $1.00 of Expansion Space TI Allowance that is not disbursed by Landlord for the Expansion Space Tenant Improvements in the same way that Base Rent is to be reduced for the original Premises in accordance with the terms of Section 4(a) up to a maximum reduction of $0.12 per month. Notwithstanding anything to the contrary contained in this Lease, in the event that Substantial Completion of the Expansion Space Tenant Improvements has been delayed as a result of a Tenant Delay, Tenant shall pay to Landlord, within thirty (30) days of demand therefor, an amount equal to the Base Rent that would have accrued in connection with the Expansion Space if the Expansion Space Tenant Improvements had been Substantially Completed on the day they would have been Substantially Completed but for the Tenant Delay.

(b) **Amended Lease.** If: (i) Tenant fails to deliver to Landlord an Expansion Exercise Notice on or before December 31, 2008, or (ii) after the expiration of a period of 10 days from the date Landlord delivers to Tenant for execution (in the event that Tenant timely exercised the Expansion Right) an amendment setting forth the terms for the rental of the Expansion Space consistent with the terms of Section 39(a) and including no other additional terms, Tenant fails to execute and deliver to Landlord the amendment, Tenant shall be deemed to have waived its right to lease such Expansion Space.

(c) **Exceptions.** Notwithstanding the above, the Expansion Right shall not be in effect and may not be exercised by Tenant:

(i) during any period of time that Tenant is in Default under any provision of the Lease; or

(ii) if Tenant has been in Default under any provision of the Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period prior to the date on which Tenant seeks to exercise the Expansion Right.

(d) **Termination.** The Expansion Right shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the Expansion Right, if, after such exercise, but prior to the commencement date of the lease of such Expansion Space, (i) Tenant fails to timely cure any default by Tenant under the Lease; or (ii) Tenant has Defaulted 3 or more times during the period from the date of the exercise of the Expansion Right to the date of the commencement of the lease of the Expansion Space, whether or not such Defaults are cured.

(e) **Rights Personal.** Expansion Rights are personal to Tenant and are not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

(f) **No Extensions.** The period of time within which any Expansion Rights may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Expansion Rights.

40. **Right to Extend Term.** Tenant shall have the right to extend the Term of the Lease upon the following terms and conditions:

(a) **Extension Rights.** Tenant shall, subject to the provisions of this Section 40, have 2 rights (each, an "**Extension Right**") to extend the Term of this Lease (each, an "**Extension Term**"), on the same terms and conditions as this Lease (other than Base Rent). The first Extension Right shall be for 3 years and, if at the end of the first Extension Term Tenant is then leasing the entire Building, Tenant shall have the right to further extend the Term for 10 years. If Tenant is not leasing the entire Building at the end of the first Extension Term, Tenant shall have no right to elect to extend the Term for the Second Extension Term. Tenant shall exercise each Extension Right by giving Landlord written notice of its election to exercise each Extension Right at least 9 months prior, and no earlier than 12 months prior, to the expiration of the Base Term of the Lease or the expiration of the first Extension Term.

Upon the commencement of any Extension Term, Base Rent shall be payable at the Market Rate (as defined below). Base Rent shall thereafter be adjusted on each annual anniversary of the commencement of such Extension Term by a percentage as determined at the time the Market Rate is determined. As used herein, "**Market Rate**" shall mean the then market rental rate as of the commencement date of the relevant Extension Term, for comparable space in comparable locations, in projects of comparable quality, in the South San Francisco area, offered for lease upon terms substantially similar to those set forth in this Lease, as agreed upon by Landlord and Tenant or as determined in accordance with the provisions below, but shall in no event be less than the Base Rent payable as of the date immediately preceding the commencement of such Extension Term.

If, on or before the date which is 180 days prior to the expiration of the Base Term of this Lease, or the expiration of the first Extension Term, as applicable (the "**Negotiation Period**"), Tenant and Landlord have not agreed upon the Market Rate and the appropriate rent escalations during the applicable Extension Term after negotiating in good faith, Tenant shall be deemed to have elected arbitration as described in Section 40(b), unless prior to expiration of the Negotiation Period Tenant gives written notice to Landlord that Tenant is withdrawing its election to exercise its Extension Right.

(b) **Arbitration.**

(i) Within 10 days of Tenant's deemed election to arbitrate Market Rate and escalations, each party shall deliver to the other a proposal containing the Market Rate and escalations that the submitting party believes to be correct ("**Extension Proposal**"). If either party fails to timely submit an Extension Proposal, the other party's submitted proposal shall determine the Base Rent and escalations for the Extension Term. If both parties submit Extension Proposals, then Landlord and Tenant shall meet within 7 days after delivery of the last Extension Proposal and make a good faith attempt to mutually appoint a single Arbitrator (and defined below) to determine the Market Rate and escalations. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within 10 days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's submitted proposal shall determine the Base Rent for the Extension Term. The 2 Arbitrators so appointed shall, within 30 days after their appointment attempt to agree upon which of the submitted proposals is the closest to the Arbitrator's opinion of Market Rate. If they agree, then the submitted proposal they agree upon shall be the Market Rate for the Extension Term. If they are unable to do so agree, within 35 days after their appointment the two Arbitrators shall appoint a third Arbitrator. If the 2 Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon 10 days prior written notice to the other party of such intent. A majority decision of a panel of three Arbitrators upon which of the submitted proposals is the closest to the arbitrator's opinion of Market Rate shall determine the Market Rate.

(ii) The decision of the 3 Arbitrator(s) shall be made within 30 days after the appointment of the third Arbitrator. The decision of the single Arbitrator shall be final and binding upon the parties. The joint decision of the two Arbitrators shall be final and binding upon the parties. The majority decision of a three Arbitrator panel shall be final and binding upon the parties. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate and escalations are not determined by the first day of the Extension Term, then Tenant shall pay Landlord Base Rent in an amount equal to the Base Rent in effect immediately prior to the Extension Term until such determination is made. After the determination of the Market Rate and escalations, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Market Rate and escalations for the Extension Term.

(iii) An "**Arbitrator**" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than 10 years of experience in the appraisal of improved office and high tech industrial real estate in the South San Francisco area, or (B) a licensed commercial real estate broker with not less than 15 years experience representing landlords and/or tenants in the leasing of high tech or life sciences space in the South San Francisco area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.

(c) **Rights Personal.** Extension Rights are personal to Tenant and the transfer of any Permitted Assignment and are not assignable to any other party without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

(d) **Exceptions.** Notwithstanding anything set forth above to the contrary, Extension Rights shall not be in effect and Tenant may not exercise any of the Extension Rights:

(i) during any period of time that Tenant is in Default under any provision of this Lease; or

(ii) if Tenant has been in Default under any provision of this Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period immediately prior to the date that Tenant intends to exercise an Extension Right, whether or not the Defaults are cured.

(e) **No Extensions.** The period of time within which any Extension Rights may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Extension Rights.

(f) **Termination.** The Extension Rights shall terminate and be of no further force or effect even after Tenant's due and timely exercise of an Extension Right, if, after such exercise, but prior to the commencement date of an Extension Term, (i) Tenant fails to timely cure any default by Tenant under this Lease; or (ii) Tenant has Defaulted 3 or more times during the period from the date of the exercise of an Extension Right to the date of the commencement of the Extension Term, whether or not such Defaults are cured.

41. **Roof Equipment.** Subject to the provisions of this Lease, during the Term, Tenant may, at its sole cost, install, maintain, and from time to time replace antennae on the roof of the Building (collectively, "**Roof Equipment**"), at no additional rental expense to Tenant (other than reimbursing Landlord for any costs reasonably incurred by Landlord in connection with the exercise by Tenant of any rights granted to Tenant under this Section 41); provided, however, that (i) Tenant shall obtain Landlord's prior written approval of the proposed size, weight and location of the Roof Equipment and method for fastening the same to the roof, (ii) Tenant shall, at its sole cost, comply with reasonable requirements imposed by Landlord and all Legal Requirements and the conditions of any bond or warranty maintained by Landlord on the roof, (iii) Tenant shall be responsible for paying for any structural upgrades that may be reasonably required by Landlord in connection with the Roof Equipment, and (iv) Tenant shall remove, at its expense, at the expiration or earlier termination of this Lease, any Roof Equipment which Landlord requires to be removed. Landlord shall have the right supervise any roof penetration. Tenant shall repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the Roof Equipment. The Roof Equipment shall remain the property of Tenant. Landlord shall give Tenant written notice and 30 days to cure such interference before requiring Tenant to remove any Roof Equipment. Tenant shall install, use, maintain and repair the Roof Equipment, and use the access areas, so as not to damage or interfere with the operation of the Building or with the occupancy or activities of any other tenant of the Building. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Roof Equipment. Tenant's right to use the roof as contemplated in this Section 41 shall be non-exclusive until such time as Tenant leases the entire Building.

42. **Generator.** Subject to the provisions of this Lease, Tenant may request Landlord to install an emergency generator (a "**Generator**") as part of the Tenant Improvements, in a location agreed upon by Landlord and Tenant, and if such Generator is installed as part of the Tenant Improvements and paid for out of the TI Allowance and/or the Additional TI Allowance, the Generator shall be the property of Landlord. As an alternative, during the Term, Tenant may install in a location agreed upon by Landlord and Tenant, maintain, and from time to time replace, a Generator at no additional rental expense to Tenant (other than reimbursing Landlord for any costs reasonably incurred by Landlord in connection with

the exercise by Tenant of any rights granted to Tenant under this Section 42); provided, however, that (i) Tenant shall, at its sole cost, comply with reasonable requirements imposed by Landlord and all Legal Requirements, (ii) the Generator shall be the property of Tenant and Tenant may remove, and shall remove if Landlord requires the same to be removed, at Tenant's expense, the Generator at the expiration or earlier termination of this Lease, (iii) Landlord shall have the right supervise the installation of the Generator, and (iv) Tenant shall repair any damage caused by Tenant's installation, maintenance, replacement, use or removal of the Generator. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Generator.

43. **Tenant's Other Campus.**

(a) **IT Connection.** Tenant has advised Landlord that Tenant desires IT connectivity between the Premises and Tenant's other premises located on East Grand Avenue ("**Campus Premises**") and Landlord has agreed to be responsible, at Landlord's sole cost and expense, for the initial trenching and backfilling (and any related permits) reasonably required to be performed on the Project and, if the City of South San Francisco ("**City**") permits such work, across East Grand Avenue. Tenant shall be responsible, at Tenant's sole cost and expense, for the conduit required on the Project to achieve Tenant's IT connectivity, across East Grand Avenue and on the property where the Campus Premises is located. Tenant shall also be responsible, at Tenant' sole cost and expense, for the trenching and backfilling required to be performed on the property where the Campus Premises is located and any and all other costs in connection with Tenant's IT connectivity between the Premises and the Campus Premises including, without limitation, the costs of installing, maintaining, repairing, replacing and removing the cabling and any related trenching and backfilling. The obligations of Landlord described in this Section 43(a) are obligations to be performed on or before the Commencement Date and are not continuing obligations of Landlord during the Term; provided that nothing in this Section 43 shall be construed to alter the meaning of the provisions set forth in Section 11 with respect to interruption of Essential Services.

(b) **Street Crossing.** Landlord has agreed, at Landlord's sole cost and expense, to pay for or reimburse the City if the City requires reimbursement, as applicable, for reasonable street crossing safety enhancements, reasonably acceptable to Landlord and Tenant, such as bright paints, crossing signage or a flashing monument on East Grand Avenue at the crossing between the Building and the property where the Campus Premises is located. The obligations of Landlord described in this Section 43(b) are obligations to be performed, on or before the Commencement Date and are not continuing obligations of Landlord during the Term.

44. **Dog Visitation.** Subject to compliance with the Dog Visitation Policy described on **Exhibit G** attached hereto, Tenant's employees may bring dogs into the Premises. Tenant shall protect, defend, indemnify and hold harmless Landlord from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising in connection with the rights granted to Tenant's employees pursuant to this Section 44.

45. **Intentionally Deleted.**

46. **Intentionally Deleted.**

47. **Miscellaneous.**

(a) **Notices.** All notices or other communications between the parties shall be in writing and shall be deemed duly given upon delivery or refusal to accept delivery by the addressee thereof if delivered in person, or upon actual receipt if delivered by reputable overnight guaranty courier, addressed and sent to the parties at their addresses set forth above. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

(b) **Joint and Several Liability.** If and when included within the term "**Tenant**," as used in this instrument, there is more than one person or entity, each shall be jointly and severally liable for the obligations of Tenant.

(c) **Financial Information.** This Section shall only be applicable during any period in which Tenant is not publicly traded. Tenant shall furnish Landlord with true and complete copies of (i) Tenant's most recent audited annual financial statements, prepared in accordance with US GAAP, within 90 days of the end of each of Tenant's fiscal years during the Term, (ii) Tenant's most recent unaudited quarterly financial statements within 45 days of the end of each of Tenant's first three fiscal quarters of each of Tenant's fiscal years during the Term, prepared in accordance with US GAAP, (iii) at Landlord's request from time to time, updated business plans, including cash flow projections and/or pro forma balance sheets and income statements, all of which shall be treated by Landlord as confidential information belonging to Tenant, (iv) corporate brochures and/or profiles prepared by Tenant for prospective investors, and (v) any other financial information or summaries that Tenant typically provides to its lenders or shareholders.

(d) **Recordation.** Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

(e) **Interpretation.** The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(f) **Not Binding Until Executed.** The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) **Limitations on Interest.** It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(h) **Choice of Law.** Construction and interpretation of this Lease shall be governed by the internal laws of the state in which the Premises are located, excluding any principles of conflicts of laws.

(i) **Time.** Time is of the essence as to the performance of Tenant's obligations under this Lease.

(j) **Incorporation by Reference.** All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control, except that this Lease shall control over the Rules and Regulations.

(k) **Entire Agreement.** This Lease, including the exhibits attached hereto, constitutes the entire agreement between Landlord and Tenant pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein.

[Signatures on next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

EXELIXIS, INC.,
a Delaware corporation

By: /s/ George Scangos
Its: President & Chief Executive Officer

LANDLORD:

ARE-SAN FRANCISCO NO. 12, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P., a Delaware limited partnership,
its managing member

By: ARE-QRS CORP.,
a Maryland corporation,
its general partner

By: /s/ Jennifer Pappas
Its: SVP- ARE General Counsel

EXHIBIT A TO LEASE

DESCRIPTION OF PREMISES

EXHIBIT B TO LEASE

DESCRIPTION OF PROJECT

EXHIBIT C TO LEASE

WORK LETTER

THIS WORK LETTER dated September 14, 2007 (this “**Work Letter**”) is made and entered into by and between **ARE-SAN FRANCISCO NO. 12, LLC**, a Delaware limited liability company (“**Landlord**”), and **EXELIXIS, INC.**, a Delaware corporation (“**Tenant**”), and is attached to and made a part of the Lease dated September 14, 2007 (the “**Lease**”), by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease.

1. **General Requirements.**

(a) **Tenant’s Authorized Representative.** Tenant designates Frank Karbe, Eric Meuser and Lupe Rivera (any of such individuals acting alone, “**Tenant’s Representative**”) as the only persons authorized to act for Tenant pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry or other communication (“**Communication**”) from or on behalf of Tenant in connection with this Work Letter unless such Communication is in writing from Tenant’s Representative. Tenant may change either Tenant’s Representative at any time upon not less than 5 business days advance written notice to Landlord. Neither Tenant nor Tenant’s Representative shall be authorized to direct Landlord’s contractors in the performance of Landlord’s Work (as hereinafter defined), but Landlord shall include in its contracts with Landlord’s contractors a provision requiring them to keep Tenant’s Representatives informed on the progress of the Landlord’s Work and to invite Tenant’s Representatives to all project meetings.

(b) **Landlord’s Authorized Representative.** Landlord designates Dan Tsang and Greg Gehlen (either such individual acting alone, “**Landlord’s Representative**”) as the only persons authorized to act for Landlord pursuant to this Work Letter. Tenant shall not be obligated to respond to or act upon any request, approval, inquiry or other Communication from or on behalf of Landlord in connection with this Work Letter unless such Communication is in writing from Landlord’s Representative. Landlord may change either Landlord’s Representative at any time upon not less than 5 business days advance written notice to Tenant. Landlord’s Representative shall be the sole persons authorized to direct Landlord’s contractors in the performance of Landlord’s Work.

(c) **Architects, Consultants and Contractors.** Landlord and Tenant hereby acknowledge and agree that: (i) the general contractor for the Building Shell shall be Whiting Turner and any subcontractors for the Tenant Improvements shall be selected by Landlord, subject to Tenant’s approval, which approval shall not be unreasonably withheld, conditioned or delayed; (ii) Dowler Gruman Associates shall be the architect (the “**TI Architect**”) for the Tenant Improvements, which shall include the lobby of the Building; and (iii) the general contractor for the Tenant Improvements shall be DPR.

(d) **Information on Building Shell.** Upon the request of Tenant, Landlord shall from time to time provide information about the projected date of completion of the Building Shell.

2. **Definitions.**

(a) **Definition of Building Shell, Tenant Improvements and Landlord’s Work.** The term, “**Building Shell**” shall mean a warm shell including, without limitation, the following: the systems for the foundation, structural steel including any special reinforcement required in connection with Tenant’s server room and/or fire proof condensed storage rooms, curtain wall, roof, roof screen, any structural or system upgrades that Landlord in its sole and absolute discretion elects to make in order to make the Building more readily convertible to use as laboratory space (including without limitation plumbing upgrades), restrooms, elevators and elevator shafts, penthouse structures, mechanical yards, equipment pads, HVAC, mechanical, electrical, plumbing and life safety systems, and related parking and landscaping, and expressly excluding all hard and soft costs for finishes and any other improvement shown on the Construction Drawings that is not required for the issuance of a certificate of occupancy.

The term "**Tenant Improvements**" shall mean all improvements to the Project of a fixed and permanent nature as shown on the Construction Drawings approved by both parties (including the lobby of the Building) other than those improvements included within the definition of Building Shell. As used herein, "**Landlord's Work**" shall mean collectively the work of construction of (i) a Building Shell and (ii) the Tenant Improvements, including without limitation, the lobby of the Building. Other than its obligation to perform Landlord's Work, Landlord shall not have any obligation whatsoever with respect to the finishing of the Premises for Tenant's use and occupancy.

(b) **Tenant's Space Plans.** If the schematic drawings and outline specifications (the "**Design Drawings**") detailing Tenant's requirements for the Tenant Improvements, including, without limitation, the lobby of the Building, have not been agreed upon by the parties by the date of execution of this Lease, Landlord and Tenant shall respond to one another and the TI Architect with any written objections, questions or comments with regard to the Design Drawings within 2 business days of receipt of any written objections, questions or comments until both parties have approved the Design Drawings.

(c) **Working Drawings.** Not later than 45 days following the approval of the Design Drawings, Landlord shall cause the TI Architect to prepare and deliver to Tenant for review and comment construction plans, specifications and drawings for the Tenant Improvements, including, without limitation, the lobby of the Building ("**Construction Drawings**"), which Construction Drawings shall be prepared substantially in accordance with the Design Drawings. Tenant shall be solely responsible for ensuring that the Construction Drawings reflect Tenant's requirements for the Tenant Improvements, including, without limitation, the lobby of the Building. Tenant shall deliver its written comments on the Construction Drawings to Landlord not later than 10 business days after Tenant's receipt of the same; provided, however, that Tenant may not disapprove any matter that is consistent with the Design Drawings without submitting a Change Request. Landlord and the TI Architect shall consider all such comments in good faith and shall, within 10 business days after receipt, notify Tenant how Landlord proposes to respond to such comments. Any disputes in connection with such comments shall be resolved in accordance with Section 2(d) hereof. Provided that the design reflected in the Construction Drawings is consistent with the Design Drawings, Tenant shall approve the Construction Drawings submitted by Landlord, unless Tenant submits a Change Request. Once approved by Tenant, subject to the provisions of Section 4 below, Landlord shall not materially modify the Construction Drawings except as may be reasonably required in connection with the issuance of the TI Permit (as defined in Section 3(a) below).

(d) **Approval and Completion.** It is hereby acknowledged by Landlord and Tenant that the Construction Drawings must be completed and approved not later than October 15, 2007, in order for the Landlord's Work to be Substantially Complete by the Target Completion Date (as defined in the Lease). Upon any dispute regarding the design of the Tenant Improvements, which is not settled within 10 business days after notice of such dispute is delivered by one party to the other, Tenant may make the final decision regarding the design of the Tenant Improvements, provided (i) Tenant acts reasonably and such final decision is either consistent with or a compromise between Landlord's and Tenant's positions with respect to such dispute, and (ii) Tenant's decision will not adversely affect the base Building, structural components of the Building or any Building systems. Any changes to the Construction Drawings following Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

3. **Performance of Landlord's Work.**

(a) **Commencement and Permitting.** Landlord shall commence and complete the Building Shell in a diligent manner and shall commence construction of the Tenant Improvements, including without limitation, the lobby of the Building upon obtaining a building permit (the "**TI Permit**") authorizing the construction of the Tenant Improvements consistent with the Construction Drawings approved by Tenant. If any Governmental Authority having jurisdiction over the construction of Landlord's Work or any portion thereof shall impose terms or conditions upon the construction thereof that: (i) are inconsistent with Landlord's obligations hereunder, (ii) increase the cost of constructing Landlord's Work, or (iii) will materially delay the construction of Landlord's Work, Landlord and Tenant shall reasonably and in good faith seek means by which to mitigate or eliminate any such adverse terms and conditions, at no additional out of pocket cost to Tenant if it relates to the Building Shell and Excess Rent if it relates to the Tenant Improvements and exceeds the TI Allowance and Additional TI Allowance.

(b) **Substantial Completion of Landlord's Work.** On or before the Target Completion Date (subject to Tenant Delays and Force-Majeure Delays), Landlord shall substantially complete, or cause to be substantially completed, Landlord's Work. The terms "**Substantial Completion**" or "**Substantially Complete**" shall mean that Landlord's Work has been completed in compliance with the Construction Drawings approved by Tenant in accordance with this Work Letter, in compliance with applicable Legal Requirements, in a good and workmanlike manner, in accordance with the TI Permit subject to Minor Variations and normal "punch list" items of a non-material nature that do not interfere with the use of the Premises, and a temporary certificate of occupancy has been issued. Upon Substantial Completion of Landlord's Work, Landlord shall require the TI Architect and the general contractor to execute and deliver, for the benefit of Tenant and Landlord, a Certificate of Substantial Completion in the form of the American Institute of Architects ("**AIA**") document G704. For purposes of this Work Letter, "**Minor Variations**" shall mean any modifications reasonably required: (i) to comply with all applicable Legal Requirements and/or to obtain or to comply with any required permit (including the TI Permit); (ii) to comply with any request by Tenant for modifications to Landlord's Work; (iii) to comport with good design, engineering, and construction practices that are not material; or (iv) to make reasonable adjustments for field deviations or conditions encountered during the construction of Landlord's Work.

(c) **Selection of Materials.** Where more than one type of material or structure is indicated on the Construction Drawings approved by Landlord and Tenant, the option will be selected at Landlord's reasonable discretion; provided that they shall be of good quality and new, unless otherwise expressly instructed by the Construction Drawings. As to all building materials and equipment that Landlord is obligated to supply under this Work Letter, Landlord shall select the manufacturer thereof in its sole and absolute subjective discretion, unless otherwise specified in the Construction Drawings.

(d) **Delivery of the Premises.** When Landlord's Work is Substantially Complete, subject to the remaining terms and provisions of this Section 3(d), Tenant shall accept the Premises, subject to Landlord's obligation to complete the punch list items. Tenant's taking possession and acceptance of the Premises shall not constitute a waiver of: (i) any warranty with respect to workmanship (including installation of equipment) or material (exclusive of equipment provided directly by manufacturers), (ii) any non-compliance of Landlord's Work with applicable Legal Requirements, or (iii) any claim that Landlord's Work was not completed substantially in accordance with the Construction Drawings (subject to Minor Variations and such other changes as are permitted hereunder) (collectively, a "**Construction Defect**"). Tenant shall have one year after Substantial Completion within which to notify Landlord of any such Construction Defect discovered by Tenant, and Landlord shall use reasonable efforts to remedy or cause the responsible contractor to remedy any such Construction Defect within 30 days after receipt of written notice from Tenant.

Tenant shall be entitled to receive the benefit of all construction warranties and manufacturer's equipment warranties relating to equipment installed in the Premises and Landlord shall cooperate with Tenant in the enforcement of any such warranties. If requested by Tenant, Landlord shall attempt to obtain extended warranties from manufacturers and suppliers of such equipment, but the cost of any such extended warranties shall be borne solely out of the TI Fund. Landlord shall promptly undertake and complete, or cause to be completed, all punch list items in good and workmanlike manner in compliance with applicable Legal Requirements promptly after the Commencement Date.

(e) **Delay.** Except as otherwise provided in the Lease, Delivery of the Premises shall occur, and the Term shall commence, when Landlord's Work has been Substantially Completed. To the extent that Substantial Completion of Landlord's Work shall have been actually delayed by any one or more of the following causes ("**Tenant Delay**"), upon Substantial Completion of the Landlord's Work, Tenant shall pay to Landlord the Tenant Delay Rent in accordance with the provisions of Section 4 of the Lease:

(i) Tenant's Representative was not available during normal business hours to give or receive any Communication or to take any other action required to be taken by Tenant hereunder;

(ii) Tenant's request for Change Requests (as defined in Section 4(a) below) whether or not any such Change Requests are actually performed;

(iii) Construction of any Change Requests;

(iv) Tenant's request for materials, finishes or installations requiring unusually long lead times; provided that Landlord informed Tenant in writing at the time of Tenant's request that the requested items would require unusually long lead times;

(v) Tenant's delay in reviewing, revising or approving plans and specifications beyond the periods set forth herein;

(vi) Tenant's delay in providing information critical to the normal progression of the Project. Tenant shall provide such information as soon as reasonably possible, but in no event longer than one week after receipt of any request for such information from Landlord;

(vii) Any other act or omission by Tenant; or

(ix) The Construction Drawings have not been approved by both parties and the City of South San Francisco on or before October 17, 2007, provided that Landlord has used reasonable diligence in submitting them to Tenant for approval in accordance with its obligations under this Work Letter.

If Delivery is delayed for any of the foregoing reasons, then Landlord shall cause the TI Architect to certify the date on which the Tenant Improvements would have been Substantially Completed but for such Tenant Delay.

4. **Changes.** Any changes requested by Tenant to the Tenant Improvements, including without limitation, the lobby of the Building after the delivery and approval by Landlord of the Design Drawings shall be requested and instituted in accordance with the provisions of this Section 4 and shall be subject to the written approval of Landlord and the TI Architect, such approval not to be unreasonably withheld, conditioned or delayed.

(a) **Tenant's Request For Changes.** If Tenant shall request changes to the Tenant Improvements ("**Changes**"), Tenant shall request such Changes by notifying Landlord in writing in substantially the same form as the AIA standard change order form (a "**Change Request**"), which Change Request shall detail the nature and extent of any such Change. Such Change Request must be signed by Tenant's Representative. Landlord shall, before proceeding with any Change, use commercially reasonable efforts to respond to Tenant as soon as is reasonably possible with an estimate of: (i) the time it will take, and (ii) the architectural and engineering fees and costs that will be incurred, to analyze such Change Request. Landlord shall thereafter submit to Tenant in writing, within 5 business days of receipt of the Change Request (or such longer period of time as is reasonably required depending on the extent of the Change Request), an analysis of the additional cost or savings involved, including, without limitation, architectural and engineering costs and the period of time, if any, that the Change will extend the date on which Landlord's Work will be Substantially Complete. Any such delay in the completion of Landlord's Work caused by a Change, including any suspension of Landlord's Work while any such Change is being evaluated and/or designed, shall be Tenant Delay.

(b) **Implementation of Changes.** If Tenant: (i) approves in writing the cost or savings and the estimated extension in the time for completion of Landlord's Work, if any, Landlord shall cause the approved Change to be instituted. Notwithstanding any approval or disapproval by Tenant of any estimate of the delay caused by such proposed Change, the TI Architect's determination of the amount of Tenant Delay in connection with such Change shall be final and binding on Landlord and Tenant.

5. **Costs.**

(a) **Budget For Tenant Improvements; Allocation of Lobby Cost.** Before the commencement of construction of the Tenant Improvements including, without limitation, the lobby of the Building, Landlord shall obtain a detailed breakdown by trade of the costs incurred or that will be incurred in connection with the design and construction of the Tenant Improvements including, without limitation, the lobby of the Building and deliver the breakdown to Tenant for approval, which approval shall not be unreasonably withheld, conditioned or delayed (once approved by Tenant, the "**Budget**"). The Budget shall be based upon the Construction Drawings approved by Tenant. Notwithstanding anything to the contrary contained herein, 1/2 of the all of the costs in connection with the design and construction of the lobby of the Building ("**Lobby Cost**") shall be charged against the TI Allowance and/or Additional TI Allowance and the other 1/2 shall be borne by Landlord; provided, however, that if (i) Tenant elects to lease the Expansion Space, then the remaining half of the Lobby Cost borne by Landlord shall be charged against the Expansion Space TI Allowance, and (ii) if the Lobby Cost, including, without limitation, the costs of the standard of finishes selected by Tenant for the lobby exceeds the cost, on a per square foot basis, that would be incurred in constructing a lobby of the quality and finish comparable to the lobbies located in the buildings at the following addresses: 681 Gateway Boulevard, 901 Gateway Boulevard and 210 East Grand Avenue, South San Francisco (the "**Comparable Lobby Cost**"), the entire difference in cost between the Lobby Cost and the Comparable Lobby Cost shall be added to the cost of the Landlord's Work and subject to the Base Rent adjustment provisions of Section 4(b)(ii) of the Lease.

(b) **TI Allowance.** Landlord shall provide a tenant improvement allowance (the "**TI Allowance**") of $70 per rentable square foot of the Premises. The TI Allowance shall be disbursed in accordance with this Work Letter. In addition, Landlord shall provide an additional tenant improvement allowance (the "**Additional TI Allowance**") of $10 per rentable square foot of the Premises and the same shall be disbursed in accordance with this Work Letter in the same manner that the TI Allowance is disbursed and, to the extent that any portion of the same is expended, Base Rent shall be adjusted as provided for in Section 4(b) of the Lease.

Except as otherwise provided in Section 4(a) of the Lease, Tenant shall have no right to the use or benefit of any portion of the TI Allowance not required for the construction of (i) the Tenant Improvements including the lobby of the Building described in the Construction Drawings approved pursuant to Section 2(d) or (ii) any Changes pursuant to Section 4.

Tenant shall have no right to the use or benefit of any portion of the Additional TI Allowance not required for the construction of (i) the Tenant Improvements including the lobby of the Building described in the Construction Drawings approved pursuant to Section 2(d) or (ii) any Changes pursuant to Section 4.

(c) **Costs Includable in TI Fund.** The TI Fund shall be used solely for the payment of design, permits and construction costs in connection with the construction of the Tenant Improvements including the lobby of the Building, and further including, without limitation, the cost of electrical power and other utilities used in connection with the construction of the Tenant Improvements, the cost of preparing the Design Drawings and the Construction Drawings, all costs set forth in the Budget, including Landlord's out-of-pocket expenses, costs resulting from Tenant Delays and the cost of Changes (collectively, "**TI Costs**"). Notwithstanding anything to the contrary contained herein, the TI Fund shall not be used to purchase any furniture, personal property or other non-Building system materials or equipment, including, but not limited to, Tenant's voice or data cabling, non-ducted biological safety cabinets and other scientific equipment not incorporated into the Tenant Improvements.

(d) **Excess TI Costs.** If the TI Costs incurred by Landlord exceed the TI Allowance and Additional TI Allowance ("**Excess TI Costs**"), then, following the Substantial Completion of the Landlord's Work and commencement of the Term, Rent shall be adjusted in accordance with Section 4 of the Lease. During any period in which Excess TI Costs are being incurred by Landlord, Landlord shall present to

Tenant monthly invoices, together with documentation supporting such invoices, describing in detail the amount of the Excess TI Costs incurred. The TI Allowance, Additional TI Allowance and Excess TI Costs are herein referred to as the "**TI Fund**." Notwithstanding anything to the contrary contained in this Lease, the term Excess TI Costs shall not include costs or expenses incurred as a result of Landlord's breach of its obligations under this Lease or under Landlord's contracts with contractors or architects retained to perform Landlord's Work.

6. **Tenant Access.**

(a) **Tenant's Access Rights.** Landlord hereby agrees to permit Tenant access, at Tenant's sole risk and expense, to the Premises (i) 30 days prior to the Commencement Date to perform any work ("**Tenant's Work**") required by Tenant other than Landlord's Work, provided that such Tenant's Work is coordinated with the TI Architect and the general contractor, and complies with the Lease and all other reasonable restrictions and conditions Landlord may impose, and (ii) prior to the completion of Landlord's Work, to inspect and observe work in process; all such access shall be during normal business hours or at such other times as are reasonably designated by Landlord. Notwithstanding the foregoing, Tenant shall have no right to enter onto the Premises or the Project unless and until Tenant shall deliver to Landlord evidence reasonably satisfactory to Landlord demonstrating that any insurance reasonably required by Landlord in connection with such pre-commencement access is in full force and effect. Any entry by Tenant shall comply with all established safety practices of Landlord's contractor and Landlord until completion of Landlord's Work and acceptance thereof by Tenant.

(b) **No Interference.** Neither Tenant nor any Tenant Party (as defined in the Lease) shall interfere with the performance of Landlord's Work, nor with any inspections or issuance of final approvals by applicable Governmental Authorities, and upon any such interference, Landlord shall have the right to exclude Tenant and any Tenant Party from the Premises and the Project until Substantial Completion of Landlord's Work.

(c) **No Acceptance of Premises.** The fact that Tenant may, with Landlord's consent, enter into the Project prior to the date Landlord's Work is Substantially Complete for the purpose of performing Tenant's Work shall not be deemed an acceptance by Tenant of possession of the Premises, but in such event Tenant shall defend with counsel reasonably acceptable by Landlord, indemnify and hold Landlord harmless from and against any loss of or damage to Tenant's property, completed work, fixtures, equipment, materials or merchandise, and from liability for death of, or injury to, any person, caused by the act or omission of Tenant or any Tenant Party.

7. **Miscellaneous.**

(a) **Consents.** Whenever consent or approval of either party is required under this Work Letter, that party shall not unreasonably withhold, condition or delay such consent or approval, unless expressly set forth herein to the contrary.

(b) **Modification.** No modification, waiver or amendment of this Work Letter or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Work Letter to be effective on the date first above written.

TENANT:

EXELIXIS, INC.,
a Delaware corporation

By:______________________________
Its: ______________________________

LANDLORD:

ARE-SAN FRANCISCO NO. 12, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
its managing member

By: ARE-QRS CORP.,
a Maryland corporation,
its general partner

By: ______________________________
Its: ______________________________

EXHIBIT D TO LEASE

ACKNOWLEDGMENT OF COMMENCEMENT DATE

This **ACKNOWLEDGMENT OF COMMENCEMENT DATE** is made this ______ day of ______, ________, between **ARE-SAN FRANCISCO NO. 12, LLC**, a Delaware limited liability company ("**Landlord**"), and **EXELIXIS, INC.**, a Delaware corporation ("**Tenant**"), and is attached to and made a part of the Lease dated ________, ________(the "**Lease**"), by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease.

Landlord and Tenant hereby acknowledge and agree, for all purposes of the Lease, that the Commencement Date of the Base Term of the Lease is ________, ______ and the termination date of the Base Term of the Lease shall be midnight on ______, ______. In case of a conflict between the terms of the Lease and the terms of this Acknowledgment of Commencement Date, this Acknowledgment of Commencement Date shall control for all purposes.

IN WITNESS WHEREOF, Landlord and Tenant have executed this ACKNOWLEDGMENT OF COMMENCEMENT DATE to be effective on the date first above written.

TENANT:

EXELIXIS, INC.,
a Delaware corporation

By: ______________________________
Its: ______________________________

LANDLORD:

ARE-SAN FRANCISCO NO. 12, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
its managing member

By: ARE-QRS CORP.,
a Maryland corporation,
its general partner

By: ______________________________
Its: ______________________________

EXHIBIT E TO LEASE

Rules and Regulations

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or any Tenant Party, or used by them for any purpose other than ingress and egress to and from the Premises. Tenant may unpack boxes and crates on the loading dock.

2. Other than as expressly permitted by the Lease, or consented to in writing by Landlord, Tenant shall not place any objects, in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project; provided that Tenant may host an outdoor event not more than once per month in locations reasonably acceptable to Landlord and, on the day of the applicable outdoor event, place such objects as are reasonably necessary to permit Tenant to host such event. In no event shall such outdoor events interfere with the use and operation of the Project including, without limitation access and parking for other parties.

3. Except for animals assisting the disabled, or present in compliance with Dog Visitation Policy attached as Exhibit G, no animals shall be allowed in the offices, halls, or corridors in the Project.

4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.

5. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.

6. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Except for the overnight or more extended parking of operative vehicles by Tenant's employees traveling on business, no vehicle of any type shall be stored in the parking areas at any time. In the event that a vehicle is disabled, it shall be removed within 48 hours. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord.

7. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.

8. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any damage done to the effects of Tenant by the janitors or any other employee or person.

9. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises of which Tenant becomes aware.

10. Tenant shall not permit storage outside the Premises, dumping of waste or refuse, or the placement of any harmful materials in any drainage system or sanitary system in or about the Premises.

11. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.

12. No auction, public or private, will be permitted on the Premises or the Project.

13. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.

14. The Premises shall not be used for lodging, sleeping or cooking or for any immoral or illegal purposes or for any purpose other than that specified in the Lease; provided that Tenant may host an outdoor event not more than once per month in a location reasonably acceptable to Landlord which involve cooking, and Tenant may use microwave ovens, coffee makers and similar devices typically used in office kitchens. No gaming devices shall be operated in the Premises.

15. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants, if any, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.

16. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.

EXHIBIT F TO LEASE

TENANT’S PERSONAL PROPERTY

None.

EXHIBIT G TO LEASE

DOG VISITATION POLICY

Purpose

On occasion, an employee of Tenant may need a temporary solution to ensure their dog is appropriately cared for during working hours. This policy does not apply to the use of service animals at work, and appropriate arrangements will be determined in such cases.

Dog Visit Policy

Bringing a dog to work is a privilege and requires complete responsibility on the part of the person bringing the do to work (each, an "**Owner**"). Owners must recognize that (1) not all employees and/or visitors and/or other occupants of the Project appreciate dogs in the office, and (2) certain employees and/or visitors and/or other occupants of the Project may have intolerance to dogs, such as allergy, fear of, or phobia. Owners are required to follow these rules when bringing a dog to the Project and such other rules as may be implemented by Landlord and/or Tenant from time to time:

Prerequisites for a Dog to be at the Project

- Properly licensed and vaccinated with proof of such license and vaccination available upon request.
- Free from contagious illness and internal and external parasites including fleas.
- Exhibits appropriate office behavior: Walks beside you on a leash; reliably housebroken; remains calm when left alone; well socialized to people, places, sounds, and objects; enjoys being around people.
- Does not exhibit inappropriate office behavior (including but not limited to): aggression, growling, barking, chasing, biting, nipping, over-exuberance, dominance, territorialism, running away, having accidents (i.e., urinating indoors), chewing or damaging office furniture or equipment, whining, howling, or otherwise interfering with an employee's ability to do their work.

Dog Boundaries at Work

- Dogs must be on a leash or confined to a crate while entering and leaving the Building.
- Dogs must not be in or near the laboratories, employee cafeteria, break rooms, bathrooms, or conference rooms.
- Dogs must not be taken to relieve themselves near entrances to buildings, and dog owners are responsible for removing any waste generated at the Project. Owners must take dogs to grassy, dirt or gravel areas behind buildings, followed by the immediate clean-up and disposal of the waste.

Expectations of Dog Owners

- Owners must supervise their dogs at all times, or appoint a willing and able watcher.
- Owners must clean up after their dogs and bring supplies such as pet waste bags.
- Owners should maintain adequate liability insurance coverage against dog mishaps and take full responsibility.

Exhibit 31.1

CERTIFICATION

I, George A. Scangos, Ph.D., Chief Executive Officer of Exelixis, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 5, 2007

/s/ George A. Scangos

George A. Scangos
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: November 5, 2007

/s/ Frank Karbe

Frank Karbe
Executive Vice President, Chief Financial Officer

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), George A. Scangos, Ph.D., 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 September 28, 2007, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), 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 5th day of November 2007.

/s/ George A. Scangos
George A. Scangos, Ph.D.
Chief Executive Officer
(Principal Executive Officer)

/s/ Frank Karbe
Frank Karbe
Chief Financial Officer
(Principal Financial Officer