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

FORM 10-K

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

For the fiscal year ended: December 31, 2005

OR

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

For the transition period from to

Commission File Number: **0-30235**

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

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

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

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

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

Securities Registered Pursuant to Section 12(g) of the Act:
Common Stock $.001 Par Value per Share
(Title of Class)

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

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

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

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

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

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

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter: $599,666,195

As of February 28, 2006, there were 83,767,584 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A, not later than April 30, 2006, in connection with the registrant's 2006 Annual Meeting of Stockholders are incorporated herein by reference into Part III of this Annual Report on Form 10-K.

EXELIXIS, INC.

FORM 10-K

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PART I

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

ITEM 1. BUSINESS

Overview

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

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

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

Our current pipeline includes the following compounds:

Compound	Targets	Indication	Stage of Development
XL119*	Topoisomerase 2	Biliary tract cancer	Phase 3
XL999**	VEGFR, PDGFR, FGFR	Renal cell carcinoma, colon, ovarian, non-small cell lung cancers	Phase 2
XL784**	ADAM 10	Diabetic nephropathy	Phase 1
XL647**	EGFR, HER2, VEGFR	Cancer	Phase 1
XL880	c-MET, VEGFR2	Cancer	Phase 1
XL820	c-KIT, VEGFR2 and PDGFR	Cancer	Phase 1
XL844	CHK 1 and 2	Cancer	Phase 1
XL184	c-MET, VEGFR2	Cancer	Phase 1
XL281	RAF	Cancer	Preclinical
XL418	AKT/S6K	Cancer	Preclinical
XL228	ABL, SRC	Cancer	Preclinical
XL550	MR	Hypertension	Preclinical
XL335*	FXR	Atherosclerosis	Preclinical
EXEL2255*	LXR	Atherosclerosis	Preclinical

* XL119, XL335 and EXEL2255 are out-licensed to Helsinn, Wyeth and Bristol-Myers Squibb (BMS), respectively, as described in this report.
** Out-licensed to Symphony Evolution, Inc. and subject to exclusive repurchase options as described in this report.

Pursuant to a product development and commercialization agreement between Exelixis and GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by Exelixis, to elect to develop up to three compounds in Exelixis' product pipeline, which may include XL784 and the cancer compounds identified in the table above (other than XL119).

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, and the opportunity to receive milestone payments and royalties from research results and subsequent product development activities. We have ongoing commercial collaborations with several leading pharmaceutical and biotechnology companies, including GlaxoSmithKline, Bristol-Myers Squibb Company and Genentech. We expect to continue to use corporate partnering as a strategic tool to cultivate our assets, fund our operations and expand the therapeutic and commercial potential of our pipeline.

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

Areas of Expertise

Integrated Drug Research, Discovery and Development Capabilities

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

We have industrialized the discovery process and utilize a variety of high-throughput technologies to discover and characterize compounds rapidly and extensively and to select compounds with the best potential for further evaluation and development. We have combined our ability to identify and understand the interaction and synergistic biological activity of various biological targets with a state-of-the-art drug discovery platform to work at the interface of chemical and biological sciences. In addition, we have built critical mass in all key operational areas. We believe that these human and technological resources enable us to: (i) identify and validate novel targets effectively and rapidly; (ii) identify and optimize proprietary lead compounds; (iii) discover advanced compounds with a spectrum of activity that demonstrate potent activity in preclinical disease models and may confer unique clinical benefit; and (iv) perform the broad range of preclinical testing required to fuel our pipeline and advance promising compounds through all stages of development. We believe that our integrated drug discovery and development process is a key competitive advantage, which enables us to effectively collaborate internally and to streamline our decision-making processes and advance our discovery and development programs expeditiously.

Drug Discovery

Our integrated platform combines advanced capabilities in target identification and drug discovery. It is designed to operate in a fully integrated, high-throughput manner across the complete drug discovery and

development continuum. This integrated approach enables us to: (i) identify disease-related targets; (ii) discover potent and biologically active compounds; (iii) optimize lead compounds to enhance drug properties, such as safety and potency; (iv) fully characterize the interactions between compounds and targets; (v) analyze *in vitro* and *in vivo* pharmacology; and (vi) perform the full range of pharmacodynamic, pharmacokinetic and safety analyses required to advance compounds into and through preclinical development and subsequently, into clinical development. This industrialized approach allows us to move from high-throughput screening to development candidate selection in as little as 12 months. Key capabilities include:

Target Identification and Validation

- Model System Genetics and Comparative Genomics – our unique skill-set and know-how in the area of model system genetics and comparative genomics enable us to understand the fundamental biology of complex genetic pathways. Our goal is to identify and validate genes that play a causative role in diseases and that are "druggable", that is, can be targeted for inhibition through the intervention of small molecule or antibody-based therapeutics.
- Target Validation – we possess the capability to develop assays and produce adequate supplies of purified proteins and reagents to conduct high-throughput and high-content experiments to validate the therapeutic relevance of our targets. This process also provides high-quality reagents and information to our internal discovery group for use in high-throughput drug screening, pharmacology and structural biology.

Discovery

- Biochemical assays – validate the target and assess selectivity of the compound. This helps to select compounds that bind specifically to the desired target, with little to no interaction with other proteins, a key factor in limiting unwanted side effects.
- Cellular assays – provide insight into the mechanism by which compounds modulate the activity of the target and the effects of this modulation. These assays show what happens to gene expression and cellular activity profiles after exposure to the compound.
- Drug metabolism and pharmacokinetic (DMPK) assays – evaluate the absorption, distribution, metabolism and excretion (ADME) of a compound *in vitro* and assess pharmacokinetic properties *in vivo*. These assays are used to identify and optimize compounds for high-potency, long duration of action and favorable safety and tolerability profiles.
- Pharmacodynamic assays – provide additional insight into the mechanism of action and the effects of target modulation using *in vivo* models.
- Efficacy models – evaluate the safety, tolerability and therapeutic effect of a compound in relevant animal models of human disease.
- Non-GLP toxicity assays – a series of *in vitro* and *in vivo* tests that identify potential side-effects or toxicities.

Development

Our development group has the expertise to move our development candidate compounds from preclinical testing through all phases of clinical development. Our integrated development strategy supports advancement of candidate compounds from development candidate status to IND in as little as 12 months. In particular, the development group possesses expertise in the following areas:

- Pharmaceutical Development (PD) – provides drugs in adequate quantity with appropriate purity and in a suitable dosage form to allow the program to proceed without delay. While PD initially relied

exclusively on external resources to accomplish its mission, the growth in our pipeline has allowed us to develop significant internal capabilities at our South San Francisco facilities. Our PD scientists can develop and refine methods for synthesizing compounds, as well as the testing methods required to establish their purity and stability. By building these internal capabilities, we have significantly enhanced our ability to meet tight timelines.

- Non-Clinical Development – is responsible for the safety testing of our development compounds, as well as characterizing the absorption, distribution, metabolism and excretion of those compounds. With extensive experience and expertise in these disciplines, the group has the capabilities to provide all the non-clinical support required for our development programs from IND-enabling studies through all phases of clinical development and registration.
- Clinical Development – is a multidisciplinary team with depth and experience in all critical areas required for effective clinical development. In addition to core expertise in medicine and clinical science, the group includes drug development professionals with specialized skills including clinical trial design and direction, study implementation and oversight, biostatistics and data management, drug safety evaluation and adverse event reporting. With broad experience from IND preparation and submission to successful implementation of Phase 1, 2 and 3 clinical trials, the group has the capabilities to expeditiously advance our clinical pipeline from development to registration.
- Regulatory Affairs – is responsible for assuring that our development programs are conducted in compliance with all regulatory requirements. These professionals combine the ability to continuously monitor and assess the ever-changing regulatory requirements with the ability to translate those regulations into pragmatic advice for our development projects.

Agriculture

Our unique expertise in model systems biology also has applications in the agricultural arena. In the area of *crop protection*, we are leveraging our expertise in target identification, high-throughput screening and chemistry to work with corporate partners in the discovery of more specifically targeted chemical products. In the area of *plant trait discovery*, we are working with corporate partners to develop crops with superior yield and improved nutritional profiles in oil content and protein composition. In the area of *metabolic engineering*, we are developing cells that produce high levels of valuable biochemical compounds. We believe that we have been a leader in utilizing “plants as factories” to produce high-value compounds that are naturally produced in plant cells.

Artemis Pharmaceuticals

Artemis Pharmaceuticals, based in Cologne, Germany is a wholly owned subsidiary of Exelixis. Its activities are directed towards providing transgenic mouse generation services, tools and related licenses to the industrial and academic community. In addition, it has two internal research programs, one dedicated to the development of transgenic approaches to produce animal-wide RNAi knock down in mice *in vivo*, and the second dedicated to the provision of humanized mouse models for drug testing purposes. To date, we have derived all of our revenues from external customers through Artemis. For the year ended December 31, 2005, Artemis had total revenues of $5.8 million and a net loss of $0.6 million. Artemis had total assets of $2.7 million as of December 31, 2005.

Our Strategy

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

Because our continued success and growth as a company depend in part on our ability to advance current and future compounds successfully in clinical development, we intend to commit substantial resources to building a premier clinical development organization to accommodate our expanding pipeline of compounds. We continue to build critical mass of key internal expertise and capabilities to facilitate conducting multiple clinical trial programs with speed and rigor. Specifically, our business strategy includes the following key elements:

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

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

Target Multiple Pathways

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

Leverage Strategic Collaborations

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

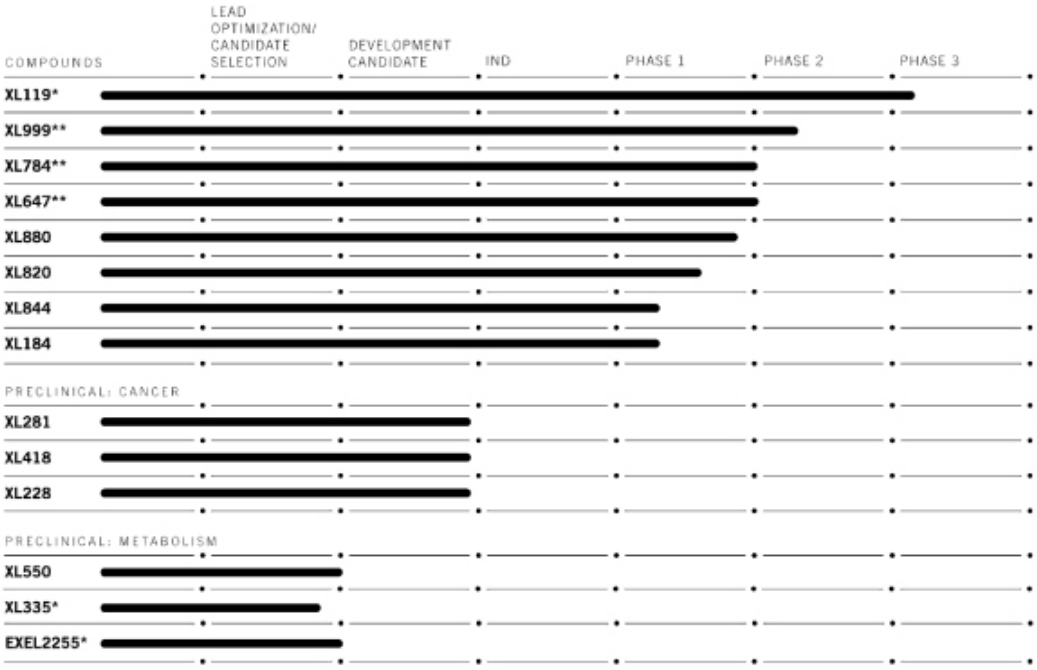
Management of Our Financial Resources

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

Clinical and Preclinical Pipeline

Clinical Pipeline

We have an extensive pipeline of compounds in various stages of development that will potentially treat cancer, renal disease and various metabolic and cardiovascular disorders. The following table summarizes the status of our clinical and preclinical development pipeline.



* XL119, XL335 and EXEL2255 are out-licensed to Helsinn, Wyeth and BMS, respectively as described in this report.

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

Pursuant to a product development and commercialization agreement between Exelixis and GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by Exelixis, to elect to develop up to three compounds in Exelixis' product pipeline, which may include XL784 and the cancer compounds identified in the table above (other than XL119).

We currently have eight compounds in clinical development. XL119, which has been exclusively licensed to Helsinn Healthcare S.A. of Switzerland, is in a multi-national Phase 3 clinical trial for the treatment of bile duct tumors that continues to recruit patients as anticipated. XL999 is being evaluated in Phase 2 clinical trials in patients with renal cell carcinoma, colon, ovarian, non-small cell lung cancer, acute myelogenous leukemia (AML) and multiple myeloma. A repeat-dose Phase 1 clinical trial for XL784 has been completed in healthy volunteers in preparation for a Phase 2 program to test its efficacy in patients with renal failure which is expected to start in the first half of 2006. We have completed a Phase 1 clinical trial of XL647 and the Phase 2 clinical program for XL647 in patients with tumors where kinases inhibited by XL647 are known to play a role is expected to start in the middle of 2006. Additionally, in oncology, we have Phase 1 clinical trials ongoing for XL880, XL820, XL844 and XL184. All of these compounds are being tested in Phase 1 clinical trials in patients with various solid tumors for which there is no other treatment option with the exception of XL844 which is being tested in patients with chronic lymphocytic leukemia (CLL).

All of our compounds, with the exception of XL119 (which was in-licensed from Bristol-Myers Squibb), were generated through our internal cancer drug discovery efforts. The oncology program currently is comprised of ten compounds – seven in clinical development and three in preclinical development. We plan to continue preclinical work on XL281, XL418 and XL228 with the goal of filing INDs in 2006.

- **XL119 (becatecarin)** is an anticancer compound for which we have initiated a Phase 3 clinical trial as a potential treatment for bile duct tumors. XL119 has been exclusively licensed to Helsinn. The Phase 3 trial began in June 2004 and includes several centers in North America and Europe. The trial was designed under a Special Protocol Assessment (SPA) with the U.S. Food and Drug Administration (FDA) under which it was mutually agreed that the trial would include up to 600 patients with a primary endpoint of an increase in survival of at least two months. The trial is designed to have two interim analyses at a specified number of patient events (deaths) at which the data from the trial will be independently reviewed. At these interim analyses a decision to halt or continue the trial will be made. In March 2004, the drug was granted orphan drug status in bile duct cancer. In January 2006, the IND and management of the Phase 3 clinical trial was transferred to Helsinn, which going forward is responsible for the management of the trial.
- **XL999** is a potent inhibitor of key RTKs implicated in the development and maintenance of tumor vasculature and in the proliferation of some tumor cells. It inhibits the fibroblast growth factor receptor (FGFR), VEGFR and platelet-derived growth factor receptor (PDGFR) RTKs and is also a potent inhibitor of FMS-like tyrosine kinase type 3 (FLT3), an important driver of leukemia cell proliferation in some patients with AML. XL999 exhibited excellent activity in target-specific cellular functional assays.

  Data from the Phase 1 trial of XL999 in patients with advanced solid tumors were presented in November 2005 at the AACR-NCI-EORTC International Conference on Molecular Targets and Cancer Therapeutics. At that time, of 22 patients who had been followed for eight weeks, there were two partial responses (liver and thyroid), one minor response (28% reduction; renal cell), and four patients with durable stable disease for 3-7 months (thyroid [n=2], renal cell [n=2]).

  A multi-trial Phase 2 clinical development program for XL999 was initiated in December 2005. The Phase 2 program is composed of six trials that will evaluate XL999 in a variety of cancer indications: renal cell carcinoma, colon, ovarian, non-small cell lung cancer, AML and multiple myeloma. The Phase 2 trials of XL999 will evaluate the compound as a single agent, looking for responses in patients who have failed prior therapies. Some of the studies are also designed to evaluate single-agent activity of XL999 in previously untreated patients for whom conventional therapy is not appropriate. The trials will be conducted at multiple centers throughout the United States. Additionally, we are considering combination trials of XL999 either in combination with other anti-angiogenic compounds or with cytotoxic chemotherapy.
- **XL784** is the first small molecule compound developed from our proprietary drug discovery engine and is being developed for diabetic nephropathy. The compound is a potent inhibitor of the metalloproteases (MMP) ADAM-10 (a disintegrin and metalloprotease domain 10) and MMP2. XL784 was specifically

optimized to be MMP1-sparing, thus potentially significantly enhancing its safety profile and allowing higher dosing compared with other previously studied MMP inhibitors. Results of a single dose Phase 1 clinical trial of XL784 administered orally to 70 healthy volunteers demonstrated that XL784 has attractive safety and pharmacokinetic profiles. A repeat-dose Phase 1 clinical trial of a new capsule formulation of XL784 was completed in October 2005 in healthy volunteers in preparation for a Phase 2 program to investigate the utility of the compound in patients with diabetic nephropathy. The trial, which will employ a double-blind, placebo-controlled design, is expected to begin in the first-half of 2006.

- **XL647** is a potent inhibitor of RTKs that are implicated in driving tumor proliferation and vascularization (blood vessel formation). XL647 inhibits the epidermal growth factor receptor (EGFR), human epidermal growth factor receptor 2 (HER2), and vascular endothelial growth factor receptor (VEGFR) RTKs simultaneously in preclinical studies. The compound has been optimized for high potency and oral bioavailability, demonstrates excellent activity in target-specific cellular functional assays, and has shown sustained inhibition of target RTKs *in vivo* following a single oral dose.

  Interim results from the Phase 1 clinical trial were presented in November 2005 at the AACR-NCI-EORTC International Conference on Molecular Targets and Cancer Therapeutics in Philadelphia. At that time, one patient with non-small-cell lung cancer (NSCLC) treated at the lowest dose had a partial response and seven others (NSCLC [n=2], chordoma [n=2], adenoid cystic carcinoma, adrenocortical carcinoma, colorectal) had prolonged stable disease (>3 months). Those data also showed that XL647 was generally well tolerated. We expect to begin Phase 2 clinical trials of XL647 in the middle of 2006 in patients with tumors where kinases inhibited by XL647 are known to play a role.

- **XL880** is a potent inhibitor of the hepatocyte growth factor receptor (Met) and VEGFR2 (KDR), which play synergistic roles in promoting tumor growth and angiogenesis. Activation or overexpression of Met has been documented as a negative prognostic indicator in patients with various carcinomas, and in patients with multiple myeloma, glioma, and other solid tumors. Interim data from an ongoing Phase 1 study of XL880 were presented in November 2005. In the 13 patients who were able to be evaluated at the time of the presentation, XL880 demonstrated favorable safety and pharmacokinetic profiles. One patient with papillary renal cell carcinoma (PRC), a tumor often driven by over-expression of c-Met, experienced a 15 percent reduction in tumor volume after failing multiple other therapies. Additional data from this trial are anticipated in 2006.

- **XL820** demonstrated potent preclinical inhibitory activity against wild-type and mutant variance of the stem cell factor receptor (KIT) as well as VEGFR and PDGFR, clinically validated targets implicated in a variety of human cancers. In tumor models of breast carcinomas, gliomas and leukemia, the compound exhibited dose-dependent growth inhibition and has been shown to cause tumor regression. XL820 demonstrated excellent activity in target-specific cellular functional assays. In biochemical and cellular assays, XL820 also potently inhibits the mutationally activated forms of KIT that are found in human disease. XL820 has good oral bioavailability and has shown sustained inhibition of target RTKs *in vivo* following a single oral dose. A Phase 1 clinical trial of XL820, which is ongoing, was initiated in July 2005 in patients with solid tumors for whom there are no other available therapies known to prolong survival.

- **XL844** potently inhibits the Csk homologous kinases (CHK) CHK1 and CHK2, kinases that induce cell cycle arrest in response to a variety of DNA damaging agents. We believe that XL844 is the first selective small molecule CHK inhibitor to advance into the clinic. In preclinical studies, XL844 has been shown to enhance the efficacy of chemotherapeutic agents in tumor models without increasing systemic toxicity and has demonstrated significant potency in biochemical and cellular assays, oral bioavailability and an attractive pharmacokinetic profile. We intend to evaluate the synergistic effects of XL844 in combination with different DNA damaging agents in different cell lines both *in vitro* and *in vivo* and to explore the compound's potential as a radiation sensitizer. A Phase 1 clinical trial of XL844 in patients with CLL was initiated in September 2005 and is ongoing.

- **XL184** inhibits VEGFR2 and Met, key drivers for tumor formation and growth. The compelling preclinical efficacy of XL880, our first VEGFR2/Met inhibitor, increased our interest in inhibitors of these RTKs and resulted in the discovery and development of XL184 as an additional compound with potent Met/VEGFR2 inhibitory activity. This SSKI has demonstrated dose-dependent growth inhibition and tumor regression in a variety of tumor models including breast, colon and small cell lung cancer and glioblastoma. A Phase 1 clinical trial in patients with solid tumors for whom there are no other available therapies was initiated in September 2005 and is ongoing.

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

Preclinical Pipeline

Currently, we have six compounds in preclinical development that target cancer and metabolic and cardiovascular diseases. We hope to move these compounds into clinical development within the next year. Our programs in metabolic and cardiovascular diseases originated from our acquisition of X-Ceptor Therapeutics, Inc. in October 2004.

Cancer Compounds

- **XL281** specifically targets mitogen activated protein kinases (MAPK or RAF), which are cytoplasmic serine/threonine kinases that lie immediately downstream of RAS, and are key components of the RAS/RAF/MAPK kinase (MEK)/extracellular signal-related kinase (ERK) pathway that is frequently activated in human tumors. Inappropriate activation of this pathway promotes cell growth in the absence of exogenous growth factors. Activating mutations in B-RAF occur in approximately 60% of melanoma patients indicating a potentially pivotal role for deregulation of this kinase in the progression of melanoma. We have identified potent and highly selective inhibitors of RAF kinases that are orally bioavailable and show efficacy in tumor xenograft models. We are currently characterizing a set of advanced lead compounds and have advanced XL281 to development candidate status. We anticipate filing an IND for XL281 in the second half of 2006.
- **XL418** targets protein kinase B (PKB or AKT) and S6 kinase (S6K), which are kinases downstream of the lipid phosphatase phosphoinosotide-3 kinase (PI3K). Their activation is a frequent event in human tumors and promotes cell growth, survival and resistance to chemotherapy and radiotherapy. Regulation of the pathway is complex, and inhibition at a single point (e.g., mammalian target of rapamycin [mTOR]) can result in upregulation in the activity of other pathway components. AKT inhibitors that effectively inactivate the pathway are expected to induce apoptosis (programmed cell death) in tumor cells and sensitize them to a wide range of chemotherapy. We have identified potent inhibitors that simultaneously target the kinases AKT and S6K with good oral bioavailability and efficacy in tumor xenograft models. XL418 was advanced to development candidate status in 2005 and we anticipate filing an IND in the second half of 2006.
- **XL228** targets the insulin-like growth factor 1 receptor (IGF1R), which is an RTK that promotes cell growth and survival in response to the binding of its ligand, insulin-like growth factor. IGF1R is highly expressed and activated in a broad range of human tumors and is thought to promote tumor growth, survival and resistance to chemotherapeutic agents. We have identified potent inhibitors of IGF1R that show potential efficacy in a variety of tumor xenograft models. In addition, XL228 also potently inhibits the T315I mutant form of the Abelson tyrosine kinase (ABL), a kinase that is resistant to other

breakpoint cluster region (BCR)/ABL inhibitors when expressed in CML. We anticipate filing an IND for XL228 in the second half of 2006.

Under the terms of our research and development collaboration with SmithKline Beecham Corporation (which does business as GlaxoSmithKline), which was established in October 2002 and amended in January 2005, GlaxoSmithKline has the right to select, after successful completion of proof-of-concept clinical trials, two (or possibly three if the collaboration is extended) of the compounds in our pipeline (other than XL119) for further development. Compounds subject to selection include XL784, XL647, XL999, XL880, XL844, XL184, XL820, XL281, XL418, XL228 and two earlier stage oncology programs. Selection of any of these compounds would trigger significant milestone payments and royalties from GlaxoSmithKline and would provide us with co-promotion rights should a compound be successfully commercialized.

Metabolic Disorders and Cardiovascular Compounds

- **XL550** targets the Mineralocortiocoid Receptor (MR), which is an antagonist used in the treatment of hypertension and congestive heart failure. We have developed proprietary, potent and selective non-steroidal MR antagonists that are highly effective in animal models of hypertension and congestive heart failure. They also provide protection for the vasculature. Our lead compounds, including XL550, have shown excellent oral bioavailability and drug metabolism and pharmacokinetics properties. The compounds have exhibited a significantly better pharmacokinetic and pharmacodynamic profile than existing steroid drugs. We believe that these novel proprietary non-steroidal MR antagonists have the potential to offer highly effective and safe therapeutic approaches for the treatment of hypertension. In addition, we believe that these drug candidates should be effective in the treatment of congestive heart failure and for protecting the vasculature during chronic inflammatory insult.
- **XL335** targets the Farnesoid X Receptor (FXR) and has been shown to function as a bile acid receptor regulating genes involved in lipid, cholesterol and bile acid homeostasis. We have identified proprietary, potent and selective FXR ligands (a compound that binds to a receptor) that have good oral bioavailability and drug metabolism and pharmacokinetic properties. In rodent models of dyslipidemia, these compounds lowered triglycerides by decreasing triglyceride synthesis and secretion. In addition, they improved the high-density lipoprotein (HDL)/low-density lipoprotein (LDL) ratio and are anti-atherogenic (preventing the formation of lipid deposits in the arteries) in animal models of atherosclerosis. XL335 is also effective in models of cholestasis (a condition in which bile excretion from the liver is blocked), cholesterol gallstones and liver fibrosis. These data suggest that small molecule ligands targeting FXR should function as novel therapeutic agents for treating symptoms and disease states associated with metabolic syndrome as well as certain liver disorders. In December 2005, we licensed the FXR program to Wyeth Pharmaceuticals, a division of Wyeth. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds.
- **EXEL2255** targets the Liver X Receptor (LXR), which is a protein that regulates cellular cholesterol outflow from the macrophage (an immune cell) to the blood and ultimately to the liver where cholesterol is removed from the body. This process is known as reverse cholesterol transport. Using our drug discovery platform, we have identified potent, proprietary and highly selective LXR ligands that have shown excellent drug metabolism and pharmacokinetic properties including good oral bioavailability. The lead compounds that are part of this program, including EXEL2255, have been highly efficacious in rodent models of atherosclerosis (a condition that involves the thickening and hardening of artery walls which leads to interference with blood flow). These data suggest that LXR is a novel molecular target that provides the opportunity for discovering first-in-class small molecule therapeutics that prevent and induce regression of atherosclerosis. In December 2005, we entered into a collaboration with Bristol-Myers Squibb to discover, develop and commercialize compounds targeting LXR. Exelixis and Bristol-Myers Squibb will jointly identify drug candidates that are ready for IND-enabling studies. Bristol-Myers Squibb will undertake further preclinical development and will be

responsible for clinical development, regulatory, manufacturing and sales/marketing activities for such compounds.

Corporate Collaborations

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

Pharmaceutical Collaborations

GlaxoSmithKline

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

In January 2005, we amended the terms of our collaboration with GlaxoSmithKline. Under the amended PDA, GlaxoSmithKline selected a modified program election which shifted the focus of the collaboration to 12 internal programs at various stages of development (XL784, XL647, XL999, XL880, XL184, XL820, XL844, XL281, XL418, XL228 and two earlier stage oncology programs). Each program centers on compounds that are directed against one or more targets identified in the collaboration. GlaxoSmithKline has the right to select from these programs up to two compounds at proof-of-concept (completion of Phase 2a clinical trial) or three compounds if GlaxoSmithKline extends the collaboration. If GlaxoSmithKline selects three compounds, we could receive in excess of $200.0 million in acceptance milestones. Prior to the end of a specified development term, GlaxoSmithKline retains exclusivity rights to the 32 specified targets that are encompassed by the 12 programs.

In May 2005, we filed the third of three INDs required by the amended PDA to achieve a $30.0 million milestone, which we received from GlaxoSmithKline in May 2005. In May 2005, we also submitted two new development candidates to GlaxoSmithKline, thereby triggering an additional $5.0 million milestone payment, which we received in May 2005. Under the original PDA, GlaxoSmithKline would have paid the first milestone upon its selection of a compound that had completed proof-of-concept for further development. We may also receive additional development related milestones and royalties on product sales and have certain co-promotion rights to products in North America. In addition, under the amended PDA, GlaxoSmithKline agreed to provide research funding of $47.5 million over the remaining three-year term of the collaboration, of which we received $12.5 million in 2005.

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

Bristol-Myers Squibb

In July 2001, we entered into a collaboration with Bristol-Myers Squibb involving three agreements: (a) a Stock Purchase Agreement; (b) a Cancer Collaboration Agreement; and (c) a License Agreement. Under the terms of the collaboration, Bristol-Myers Squibb: (i) purchased 600,600 shares of Exelixis common stock in a private placement at a purchase price of $33.30 per share, for cash proceeds to Exelixis of $20.0 million; (ii) agreed to pay Exelixis a $5.0 million upfront license fee and provide Exelixis with $3.0 million per year in research funding for a minimum of three years; and (iii) granted to Exelixis a worldwide, fully-paid, exclusive license to becatecarin (XL119) developed by Bristol-Myers Squibb, which is currently in a Phase 3 clinical trial as a potential treatment for bile duct tumors. In January 2005, we granted Helsinn Healthcare an exclusive worldwide royalty-bearing license to XL119.

In December 2003, the cancer collaboration was extended until January 2007, with the right for Bristol-Myers Squibb to continue the collaboration until July 2009. The goal of the extension is to increase the total number and degree of validation of cancer targets that we will deliver to Bristol-Myers Squibb. Each company will maintain the option to obtain exclusive worldwide rights to equal numbers of validated targets arising from the collaboration. Under the terms of the extended collaboration, Bristol-Myers Squibb provided us with an upfront payment and will provide increased annual research funding and milestones on certain cancer targets arising from the collaboration that progress through specified stages of validation. We will also be entitled to receive milestones on compounds in the event of successful clinical and regulatory events and royalties on commercialized products.

In December 2005, we entered into a collaboration agreement with Bristol-Myers Squibb for the discovery, development and commercialization of novel therapies targeted against LXR. 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 has agreed to be solely responsible for further preclinical development as well as clinical development, regulatory, manufacturing and sales/marketing activities for the selected drug candidate.

Under the LXR collaboration agreement, Bristol-Myers Squibb paid us a nonrefundable upfront payment in the amount of $17.5 million and is obligated to provide research and development funding of $10.0 million per year for an initial research period of two years. Bristol-Myers Squibb has the option to extend the research period for an additional one-year term. Under the agreement, Bristol-Myers Squibb is required to pay us development and regulatory milestones of up to $140.0 million per product for up to two products from the collaboration. In addition, we are also entitled to receive sales milestones and royalties on sales of any products commercialized under the collaboration. Subject to certain terms and conditions, Bristol-Myers Squibb has the option to terminate the collaboration agreement starting in January 2008.

Genentech

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

Under the agreement, Genentech will have primary responsibility in the field of cancer for research and development activities as well as rights for commercialization of any products. In the fields of inflammatory disease and tissue growth and repair, we will initially have primary responsibility for research activities and after the expiration of the research term, we will have the option to elect to share a portion of the costs and profits associated with the development, manufacturing and commercialization of products. The research term under the

agreement is three years and may be extended upon mutual consent for one-year terms. For all products under the agreement that are not elected as cost/profit share products, we may receive milestone and royalty payments.

Wyeth Pharmaceuticals

In December 2005, Exelixis and Wyeth entered into a license agreement related to compounds targeting FXR. Under the terms of the agreement, we granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. Wyeth paid us a nonrefundable upfront payment of $10.0 million and is obligated to pay additional development and commercialization milestones of up to $147.5 million, as well as royalties on sales of any products commercialized by Wyeth under the agreement. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds. Subject to certain terms and conditions, Wyeth has the option to terminate the license agreement starting in December 2006.

Helsinn Healthcare

In June 2005, Exelixis and Helsinn entered into a license agreement for the development and commercialization of XL119 (becatecarin). Under the terms of the agreement, we granted to Helsinn an exclusive worldwide, royalty bearing license to XL119. We have retained an option to reacquire the commercial rights to XL119 for North America. If we decide to exercise the option, we have the right to negotiate with Helsinn to reach an agreement on commercially reasonable terms and conditions to reacquire the commercial rights to XL119 for North America for use in the indications of gall bladder cancer and bile duct tumors. Helsinn paid us a nonrefundable upfront payment in the amount of $4.0 million and is obligated to pay additional development and commercialization milestones of up to $21.0 million, as well as royalties on worldwide sales. Helsinn also assumed all future costs incurred for the ongoing multi-national Phase 3 clinical trial for XL119. In January 2006, the IND and management of the Phase 3 clinical trial was transferred to Helsinn, which going forward is responsible for the costs and management of the trial.

Beginning in June 2006, if Helsinn determines, based on reasonable business judgment from scientific or economic evidence, that it is unable to carry out further development or marketing of XL119, it may terminate the license agreement upon six months' prior written notice. In addition, if we fail to supply Helsinn with certain clinical trial materials by the end of April 2006 and such failure prevents Helsinn from enrolling additional patients or from maintaining the then-current enrollment in the ongoing Phase 3 clinical trial, then Helsinn may terminate the license agreement or elect to continue the agreement at a reduced royalty rate.

Symphony Evolution

On June 9, 2005 we closed a transaction involving a series of related agreements providing for the financing of the clinical development of XL784, XL647 and XL999. Pursuant to the agreements, SEI and its investors have agreed to invest up to $80.0 million to fund the clinical development of our product candidates XL784, XL647 and XL999 and we have licensed to SEI our intellectual property rights related to these product candidates. SEI is a wholly owned subsidiary of Symphony Evolution Holdings LLC (Holdings), which provided $40.0 million in funding to SEI at closing, and which is obligated to further fund, upon a capital call by SEI, at least an additional $20.0 million and not more than $40.0 million within one year of the closing date. We continue to be primarily responsible for the development of XL784, XL647 and XL999 in accordance with a specified development plan and related development budget.

Pursuant to the agreements, we have received an exclusive purchase option that gives us the right to acquire all of the equity of SEI, thereby allowing us to reacquire all of the product candidates. This purchase option is exercisable at any time, beginning on the one-year anniversary of the closing date and ending on the four-year anniversary of the closing date (subject to an earlier exercise right in limited circumstances), at a price equal to

the sum of: (i) the total amount of capital invested in SEI by Holdings and (ii) an amount equal to 25% per year on such funded capital (with respect to the initial funded capital, compounded from the closing date and, with respect to the second draw amount, compounded from the second draw date) subject to adjustment based on the cash and liabilities of SEI as of the closing of the purchase option. The purchase price will be subject to a premium if we exercise the purchase option between 12 and 18 months after the closing date. The purchase option exercise price may be paid for in cash or in a combination of cash and our common stock, in our sole discretion, provided that the common stock portion may not exceed 33% of the purchase option exercise price. If we pay a portion of the purchase option exercise price in shares, then we will be required to register such shares for resale under a resale registration statement pursuant to the terms of a registration rights agreement.

We have also received an exclusive program option from SEI that allows us under certain conditions to separately reacquire from SEI one of the three programs during a period beginning on the closing date and ending 18 months after the closing date. The program option is exercisable in our sole discretion at a premium exercise price, which is payable in cash only and will be fully creditable against the exercise price for any subsequent exercise of the purchase option.

Pursuant to the agreements, we issued to Holdings a five-year warrant to purchase 750,000 shares of our common stock at $8.90 per share. Contingent upon the second capital draw by SEI, we are obligated to issue to Holdings an additional five-year warrant to purchase between 375,000 shares (if $20.0 million of additional funds are drawn) and 750,000 shares (if $40.0 million of additional funds are drawn) of our common stock at $8.90 per share. In addition, if the purchase option expires unexercised at the four-year anniversary of the closing date, we are obligated to issue to Holdings an additional five-year warrant to purchase 500,000 shares (if a maximum of $80.0 million in funds are drawn) of our common stock at a price per share equal to 125% of the market price of our common stock at the time of expiration of the purchase option.

The product candidates licensed to SEI are subject to our collaboration with GlaxoSmithKline, and GlaxoSmithKline may continue to select at proof-of-concept for further development one or more of program candidates in which case we would need to repurchase the selected candidate or candidates through the exercise of our purchase option or program option. Under the terms of the amended PDA, GlaxoSmithKline has agreed to increase the acceptance milestones for the program candidates that are funded through SEI to compensate us for the cost of capital associated with these funding arrangements.

Manufacturing and Raw Materials

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

Government Regulation

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

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the clinical development, manufacture and marketing of pharmaceutical

products. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacture, quality control, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our products.

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

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

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

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

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

- Phase 1– Studies are initially conducted in a limited patient population to test the product candidate for safety, dosage tolerance, absorption, metabolism, distribution and excretion in healthy humans or patients.
- Phase 2 – Studies are conducted with groups of patients afflicted with a specified disease in order to provide enough data to evaluate the preliminary efficacy, optimal dosages and expanded evidence of safety. Multiple Phase 2 clinical trials may be conducted by the sponsor to obtain information prior to beginning larger and more expensive Phase 3 clinical trials. In some cases, a sponsor may decide to run what is referred to as a “Phase 2b” evaluation, which is a second, confirmatory Phase 2 trial that could, if positive, serve as a pivotal trial in the approval of a product candidate.
- Phase 3 – When Phase 2 evaluations demonstrate that a dosage range of the product is effective and has an acceptable safety profile, Phase 3 trials are undertaken in large patient populations to further evaluate dosage, to provide statistically significant evidence of clinical efficacy and to further test for safety in an expanded patient population at multiple clinical trial sites.

The FDA may require, or companies may pursue, additional clinical trials after a product is approved. These so-called Phase 4 studies may be made a condition to be satisfied after a drug receives approval. The results of Phase 4 studies can confirm the effectiveness of a product candidate and can provide important safety information to augment the FDA’s voluntary adverse drug reaction reporting system.

The results of product development, preclinical studies and clinical trials are submitted to the FDA as part of an NDA, or as part of an NDA supplement. The FDA may deny approval of an NDA or NDA supplement if the applicable regulatory criteria are not satisfied, or it may require additional clinical data and/or an additional pivotal Phase 3 clinical trial. Even if such data are submitted, the FDA may ultimately decide that the NDA or NDA supplement does not satisfy the criteria for approval. Once issued, the FDA may withdraw product approval if ongoing regulatory standards are not met or if safety problems occur after the product reaches the market. In addition, the FDA may require testing and surveillance programs to monitor the effect of approved products which have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs.

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

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

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

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

Competition

There are many companies focused on the development of small molecules and antibodies for diseases including cancer and metabolic and cardiovascular disorders. Our potential competitors include major pharmaceutical and biotechnology companies as well as agricultural companies. Many of our potential

competitors have significantly more financial, technical and other resources than we do, which may allow them to have a competitive advantage. Any products that we may develop or discover are likely to be in highly competitive markets. Many of our competitors may succeed in developing products that may render our products and those of our collaborators obsolete or noncompetitive.

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

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

Research and Development Expenses

Research and development expenses consist primarily of personnel expenses, laboratory supplies, consulting and facilities costs. Research and development expenses were $141.1 million for the year ended December 31, 2005, compared to $137.7 million for 2004 and $127.6 million for 2003.

Revenues from Significant Collaborators

In 2005, we derived 37% and 32% of our revenues from GlaxoSmithKline and Genoptera, respectively. While we expect to continue to derive the largest portion of our revenues from GlaxoSmithKline in future periods, we will not receive any further revenues from Genoptera after 2005 due to the termination of this collaboration in 2005.

Proprietary Rights

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

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

While trade secret protection is an essential element of our business and we have taken security measures to protect our proprietary information and trade secrets, we cannot give assurance that our unpatented proprietary

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

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

Employees

As of December 31, 2005, we had 550 full-time employees worldwide, 191 of whom hold Ph.D. and/or M.D. degrees, most of whom were engaged in full-time research and development activities. We plan to hire additional staff and to expand our internal development efforts. Our success will depend upon our ability to attract and retain qualified employees. We face competition in this regard from other companies in the biotechnology, pharmaceutical and high technology industries, as well as research and academic institutions. None of our employees are represented by a labor union, and we consider our employee relations to be good.

Available Information

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

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

ITEM 1A. RISK FACTORS

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

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

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

We will need to raise additional capital to:

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

As of December 31, 2005, we had $210.5 million in cash and cash equivalents and marketable securities, which includes restricted cash and investments of $12.7 million and investments held by SEI of $34.0 million. We currently anticipate that our current cash and cash equivalents, marketable securities, investments held by SEI, additional committed financing from SEI and other funding that we expect to receive from collaborators, which includes a moderate level of business development activity, will enable us to maintain our operations for at least the next 12 months. This estimate includes the scheduled repayment of a $30.0 million convertible promissory note to Protein Design Labs, Inc. due in May 2006.

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

- the level of payments received under collaborative agreements, licensing agreements and other arrangements;
- the progress and scope of our collaborative and independent clinical trials and other research and development projects;
- the timing and progress of the clinical development of our outlicensed product candidates XL647, XL999 and XL784, which will determine if and when we exercise our options to reacquire these product candidates;
- 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 establishing clinical and research supplies of our product candidates;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- 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, although we currently have no commitments relating to any such transactions; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

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

In addition, we will have to obtain additional funding in order to stay in compliance with financial covenants contained in agreements with third parties. For example, as part of our collaboration with GlaxoSmithKline, we entered into a loan and security agreement, dated October 28, 2002, which, as amended, contains financial covenants pursuant to which our working capital (the amount by which our current assets exceed our current liabilities as defined by the agreement) must not be less than $25.0 million and our cash and investments (total cash, cash equivalents and investments as defined by the agreement, which excludes restricted cash and investments) must not be less than $50.0 million. As of December 31, 2005, our working capital was $101.6 million and our cash and investments were $210.5 million, which included restricted cash and investments of $12.7 million and investments held by SEI of $34.0 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 obligations under the loan and security agreement. Outstanding borrowings and accrued interest under the loan and security agreement totaled $91.8 million at December 31, 2005.

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

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

We have incurred net losses each year since our inception, including a net loss of $84.4 million for the year ended December 31, 2005. As of that date, we had an accumulated deficit of $603.8 million. We expect these losses to continue and anticipate negative operating cash flow for the foreseeable future. We have not yet completed the development, including obtaining regulatory approval, of any of our pharmaceutical product candidates and, consequently, have not generated revenues from the sale of pharmaceutical products. Except for revenues associated with the transgenic mouse business of our German subsidiary, Artemis, our only revenues to date are license revenues and revenues under contracts with our partners. The size of our net losses will depend, in part, on the rate of growth, if any, in our license and contract revenues and on the level of our expenses. These losses have had and will continue to have an adverse effect on our stockholders' equity and working capital. Our research and development expenditures and general and administrative expenses have exceeded our revenues to date, and we expect to spend significant additional amounts to fund research and development in order to enhance our technologies and undertake product development. We currently have numerous product candidates in various stages of clinical development and we anticipate filing 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 options to acquire one or all of these product candidates in the future. We may not have the financial resources to exercise these options or sufficient clinical data in order to determine whether we should exercise these options.

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 up to $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 XL647, XL999 and XL784. We may, at our sole discretion, exercise this purchase option at any time beginning on June 9, 2006 and ending on the earlier of June 9, 2009 or the 90th day after the date that SEI provides us with financial statements showing cash and cash equivalents of less than $5.0 million. The purchase option exercise price is equal to the sum of: (i) the total amount of capital invested in SEI by its investors and (ii) an amount equal to 25% per year on such funded capital, subject to specified adjustments. The exercise price will also be subject to a premium if we exercise the purchase option between June 9, 2006 and December 11, 2006. The option exercise price may be paid in cash or a combination of cash and our common stock, at our sole discretion, provided that the common stock portion may not exceed 33% of the purchase option exercise price.

We have also received an exclusive program option from SEI allowing us under certain conditions to separately reacquire from SEI one of the three product candidates licensed to SEI. The program option is exercisable at any time, at our sole discretion, during a period beginning on June 9, 2005 and ending on December 9, 2006 at an exercise price equal to that portion of the funded capital expended on the development of the applicable product candidate being repurchased, plus a specified premium. The program option exercise price may be paid in cash only.

If we elect to exercise either one of the options, 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 options prior to their expiration, our rights in and to SEI with respect to XL647, XL999 and XL784 will terminate. We may not have the financial resources to exercise the options, 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 options.

In addition, under our collaboration with GlaxoSmithKline, GlaxoSmithKline may continue to select at proof-of-concept for further development one or more of the product candidates licensed to SEI, in which case we would have to repurchase the selected candidate or candidates through the exercise of our purchase option or program option. If, after receiving any selection milestones from GlaxoSmithKline, we do not have sufficient resources to exercise the purchase option or program option following a product candidate selection by GlaxoSmithKline, we could be in breach of our collaboration agreement with GlaxoSmithKline. In the event of such breach, GlaxoSmithKline could terminate the collaboration and, among other remedies, declare all amounts under our loan facility with GlaxoSmithKline immediately due and payable, which would harm our business.

Risks Related to Development of Product Candidates

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

Clinical trials are inherently risky and may reveal that our product candidates are ineffective or have unacceptable toxicity or other side effects that may significantly decrease the likelihood of regulatory approval.

The results of preliminary studies do not necessarily predict clinical or commercial success, and later-stage clinical trials may fail to confirm the results observed in earlier-stage trials or preliminary studies. Although we have established timelines for manufacturing and clinical development based on existing knowledge of our compounds in development and industry metrics, we may not be able to meet those timelines.

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

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

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

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

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

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

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

Risks Related to Our Relationships with Third Parties

We depend on our exclusive licensee, Helsinn, for the completion of the XL119 clinical program and the commercialization of XL119.

Under our exclusive license agreement with Helsinn, Helsinn is responsible for all aspects of clinical development of XL119. If XL119 receives regulatory approval, Helsinn will be responsible for the marketing and sale of the commercial product worldwide, unless we reaquire the commercialization rights for North America.

Because Helsinn is responsible for these functions, we have no control over the development schedule or, if XL119 receives regulatory approval, the marketing plan for XL119. If the clinical trials for XL119 are not successful, XL119 will not be commercialized. Moreover, beginning June 10, 2006, Helsinn may relinquish all rights and the license granted to it under the license agreement and thereby terminate the license agreement on at least six months' prior written notice, if in Helsinn's reasonable business judgment based on scientific or economic evidence, it is impossible for Helsinn to carry out further development or marketing of XL119. If the rights to develop and market XL119 revert to us, we will have to fund the clinical programs for XL119 on our own, seek a strategic partner to fund the further development, which may not be available on favorable terms, or at all, or outlicense or abandon XL119.

Our reliance on Helsinn poses a number of risks, including the following:

- if Helsinn fails to successfully advance XL119 in clinical development or fails to obtain regulatory approvals for XL119, we will not be able to generate revenue from milestones or the commercialization of XL119;
- we cannot control whether Helsinn will devote sufficient resources to the clinical program and, if XL119 is approved by the FDA or other regulatory agencies, the marketing plan for the commercialization of the drug product in countries where we do not hold commercialization rights;
- although we have no history of royalty payment disputes, even if XL119 is approved and commercialized, disputes may arise in the future with respect to the calculation of royalty payments based on net sales related to XL119; and
- if Helsinn perceives that the market opportunity for XL119 or its profit margin from the sale of XL119 is too small to justify commercialization, the interests and motivations of Helsinn may not be, or may not remain, aligned with ours.

If we are unable to deliver certain clinical trial materials to Helsinn for the ongoing Phase 3 clinical trial of XL119, milestone payments under our license agreement with Helsinn would be reduced and Helsinn could under certain conditions terminate the license agreement or continue the agreement at reduced royalty rates.

Under our license agreement with Helsinn, we are required to supply to Helsinn certain clinical trial materials (at Helsinn's expense) by April 30, 2006 for the ongoing Phase 3 clinical trials of XL119. While we expect that we will be able to obtain clinical trial materials when necessary to satisfy our obligation to deliver the required materials to Helsinn, we cannot be certain that we will be able to supply the materials in a timely manner. Our inability to obtain clinical trial materials would result in reduced milestone payments under the license agreement. Furthermore, if we fail to supply these materials and such failure prevents Helsinn from enrolling additional patients or from maintaining the then-current enrollment in the Phase 3 trials, then Helsinn may terminate the license agreement or elect to continue the agreement at a reduced royalty rate. If the license agreement is terminated, the rights to develop and market XL119 would revert to us and we would have to fund the clinical development of XL119 on our own. If Helsinn chooses to continue the agreement at a reduced royalty rate, potential future royalty payments by Helsinn would be reduced.

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 up to $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 will be 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 our research. If we are unable to successfully achieve milestones or our collaborators fail to develop successful products, we will not earn the revenues contemplated under such collaborative agreements. In addition, some of our collaborations are exclusive and preclude us from entering into additional collaborative arrangements with other parties in the area or field of exclusivity. 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 collaborative agreements on commercially acceptable terms, our revenues and product development efforts could suffer. For example, our agreement with Pharmacia Corporation terminated by mutual agreement in February 2002, which eliminated the opportunity for us to earn approximately $9.0 million in research revenue in 2002 and 2003. Similarly, our collaboration with GlaxoSmithKline is scheduled to expire in October 2008 but is subject to earlier termination at the discretion of GlaxoSmithKline starting in 2005 if we fail to meet certain diligence requirements. 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 collaborative 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 collaborative 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 collaborative 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 collaborative 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 collaborative agreements, and we should be precluded from such internal activities. Moreover, disagreements with our collaborators could develop over rights to our intellectual property. In addition, our collaborative agreements may have provisions that give rise to disputes regarding the 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 collaborative 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 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 have a remaining obligation under our license agreement with Helsinn to deliver certain clinical trial materials to Helsinn for the ongoing Phase 3 clinical trials of XL119 by April 30, 2006. We rely on collaborators and third-party contractors to produce our compounds for preclinical and clinical testing. These suppliers must comply with applicable regulatory requirements, including the FDA's current Good Manufacturing Practices, or GMP. Our current and anticipated future dependence upon these third-party manufacturers may adversely affect our future profit margins and our ability to develop and commercialize product candidates on a timely and competitive basis. These manufacturers may not be able to produce material on a timely basis or manufacture material at the quality level or in the quantity required to meet our development timelines and applicable regulatory requirements. We may not be able to maintain or renew our existing third-party manufacturing arrangements, or enter into new arrangements, on acceptable terms, or at all. Our third-party manufacturers could terminate or decline to renew our manufacturing arrangements based on their own business priorities, at a time that is costly or inconvenient for us. If we are unable to contract for the production of materials in sufficient quantity and of sufficient quality on acceptable terms, our clinical trials may be delayed. Delays in preclinical or clinical testing could delay the filing of our INDs and the initiation of clinical trials.

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

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

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

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 for the conduct of our clinical trials, product testing and potential regulatory approval could be delayed, adversely impacting our ability to develop the product candidates. Similarly, if we are unable to obtain critical materials after regulatory approval has been obtained for a product candidate, the commercial launch of that product could be delayed or there would be a shortage in supply, which could materially affect our ability to generate revenues from that product. If suppliers increase the price of these materials, the price for one or more of our products may increase, which may make our product 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 in the facilities used to produce these materials, due to technical, regulatory or other problems, 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, often takes many years, if approval is obtained at all, and can vary substantially based upon the type, complexity and novelty of the product candidates involved. Before a new drug application can be filed with the FDA, the product candidate must undergo extensive clinical trials, which can take many years and may require substantial expenditures. Any clinical trial may fail to produce results satisfactory to the FDA. For example, the FDA could determine that the design of a clinical trial is inadequate to produce reliable results. The regulatory process also requires preclinical testing, and data obtained from preclinical and clinical activities are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review. Changes in regulatory approval policy, regulations or statutes or the process for regulatory review during the development or approval periods of our product candidates may cause delays in the approval or rejection of an application. Even if the FDA or a comparable authority in another country approves a product candidate, the approval may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and/or production of such product and may impose ongoing requirements for post-approval studies, including additional research and

development and clinical trials. These agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

Risks Related to Commercialization of Products

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

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

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

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

We have no experience as a company in the sales, marketing and distribution of pharmaceutical products and do not currently have a sales and marketing organization. Developing a sales and marketing force would be expensive and time-consuming, could delay any product launch, and we may never be able to develop this capacity. To the extent that we enter into arrangements to perform sales, marketing and distribution services with third parties, 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 their medical needs. If third-party payors do not provide coverage or reimbursement for any products that we may develop, our revenues and prospects for profitability will suffer. In addition, even if third-party payors provide some coverage or reimbursement for our products, the availability of such coverage or reimbursement for prescription drugs under private health insurance and managed care plans often varies based on the type of contract or plan purchased.

A primary trend in the United States health care industry is toward cost containment. In December 2003, the President signed into law legislation creating a prescription drug benefit program for Medicare recipients. The prescription drug program established by the legislation may have the effect of reducing the prices that we are able to charge for products we develop and sell through these plans. This prescription drug legislation 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 amount that they will pay.

Another development that may affect the pricing of drugs is the proposed Congressional action regarding drug reimportation into the United States. The Medicare Prescription Drug Plan legislation gives additional discretion to the Secretary of Health and Human Services to allow drug reimportation from foreign countries into the United States under some circumstances, including countries where the drugs are sold at a lower price than in the United States. Proponents of drug reimportation may attempt to pass legislation, which would directly allow reimportation under certain circumstances. If legislation or regulations were passed allowing the reimportation of drugs, they 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 or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost effectiveness of our product candidates or products to other available therapies. The conduct of such a clinical trial could be expensive and result in delays in the commercialization of our product candidates. Third-party payors are challenging the prices charged for medical products and services, and many third-party payors limit reimbursement for newly approved health care products. In particular, third-party payors may limit the indications for which they will reimburse patients who use any products that we may develop. Cost-control initiatives could decrease the price we might establish for products that we may develop, which would result in lower product revenues to us.

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

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

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

To date, our product candidates have been manufactured in small quantities for preclinical and clinical trials. If any of these product candidates are approved by the FDA or other regulatory agencies for commercial

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

Risks Related to Our Intellectual Property

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

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

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

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

Our commercial success depends in part upon our ability to avoid infringing patents and proprietary rights of third parties and not breaching any licenses that we have entered into with regard to our technologies. Other parties have filed, and in the future are likely to file, patent applications covering genes and gene fragments, techniques and methodologies relating to model systems and products and technologies that we have developed or intend to develop. If patents covering technologies required by our operations are issued to others, we may have to 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 these patents. Regardless of their merit, such claims could require us to incur substantial costs, including the diversion of management and technical personnel, in defending ourselves against any such claims or enforcing our patents. In the event that a successful claim of infringement is brought against us, we may be required to pay damages and obtain one or more licenses from third parties. We may not be able to obtain these licenses at a reasonable cost, or at all. Defense of any lawsuit or failure to obtain any of these licenses could adversely affect our ability to develop and commercialize products.

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 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 technical personnel to fully execute our business plan. Recruiting and retaining qualified scientific and clinical 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 technical personnel, and we may be unable to retain or recruit scientists with the expertise or experience necessary to allow us to pursue collaborations, develop our products and core technologies or expand our operations to the extent otherwise possible. Further, all of our employees are employed “at will” and, therefore, may leave our employment at any time.

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

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

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

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

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

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

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

Risks Related to Environmental and Product Liability

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

Our research and development processes involve the controlled use of hazardous materials, including chemicals and radioactive and biological materials. Our operations produce hazardous waste products. We cannot

eliminate the risk of accidental contamination or discharge and any resultant injury from these materials. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. We may be sued for any injury or contamination that results from our use or the use by third parties of these materials, and our liability may exceed our insurance coverage and our total assets. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research, development and production efforts.

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

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

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

Risks Related to Genetic Engineering of Agricultural Products

Social issues may limit the public acceptance of genetically engineered products, which could reduce demand for our products.

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

The subject of genetically modified organisms has received negative publicity, which has aroused public debate. For example, certain countries in Europe require labeling of products that contain genetic modifications or are “genetically modified”. In addition, the European Union has implemented rules that regulate the placing on the market of food and feed products containing or consisting of genetically modified organisms. These rules also provide for the labeling of such products to the final consumer. Adverse publicity has resulted in greater regulation internationally and trade restrictions on imports of genetically altered products. If similar action is taken in the United States or other countries, genetic research and genetically engineered products could be

subject to greater domestic regulation, including stricter labeling requirements. To date, our business has not been hampered by these activities. However, such publicity in the future may prevent any products resulting from our research from gaining market acceptance and reduce demand for our products, which are developed using genetic engineering.

Laws and regulations may reduce our ability to sell genetically engineered products that we or our collaborators develop in the future.

We or our collaborators may develop genetically engineered agricultural and animal products. The field-testing, production and marketing of genetically engineered products are subject to regulation by federal, state, local and foreign governments. Regulatory agencies administering existing or future regulations or legislation may prevent us from producing and marketing genetically engineered products in a timely manner or under technically or commercially feasible conditions. In addition, regulatory action or private litigation could result in expenses, delays or other impediments to our product development programs and the commercialization of products. The FDA has released a policy statement stating that it will apply the same regulatory standards to foods developed through genetic engineering as it applies to foods developed through traditional plant breeding. Genetically engineered food products will be subject to premarket review, however, if these products raise safety questions or are deemed to be food additives. Our product candidates may be subject to lengthy FDA reviews and unfavorable FDA determinations if they raise questions regarding safety or if our products are deemed to be food additives.

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

Risks Related to Our Common Stock

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

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

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

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

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

Our stock price may be extremely volatile.

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

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

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

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

We are exposed to risks associated with acquisitions.

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

- difficulties and increased costs in connection with integration of the personnel, operations, technologies and products of acquired companies;
- diversion of management's attention from other operational matters;
- the potential loss of key employees;
- 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 deemed appropriate. For example, following an acquisition, a significant number of shares of our common stock held by new stockholders may become freely tradable or holders of registration rights could cause us to register their shares for resale. Sales of these shares of common stock held by existing stockholders could cause the market price of our common stock to decline.

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

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

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

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

- a classified Board of Directors;

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

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

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

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

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

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

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

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

ITEM 3. LEGAL PROCEEDINGS

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

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

None.

PART II

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

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

	Common Stock Price	
	High	Low
Quarter ended December 31, 2005	$ 9.96	$ 6.53
Quarter ended September 30, 2005	$ 9.37	$ 7.10
Quarter ended June 30, 2005	$ 8.57	$ 6.51
Quarter ended March 31, 2005	$ 9.69	$ 6.02
Quarter ended December 31, 2004	$ 9.79	$ 7.97
Quarter ended September 30, 2004	$ 10.10	$ 6.11
Quarter ended June 30, 2004	$ 10.64	$ 8.04
Quarter ended March 31, 2004	$ 9.50	$ 6.81

On February 28, 2006, the last reported sale price on the Nasdaq National Market for our common stock was $10.86 per share.

Holders

As of February 28, 2006, there were approximately 719 stockholders of record of Exelixis common stock.

Dividends

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

Equity Compensation Plan Information

The following table provides certain information as of December 31, 2005 with respect to all of Exelixis' equity compensation plans in effect as of December 31, 2005:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by stockholders:			
2000 Equity Incentive Plan[1]	12,209,780	$ 10.69	9,590,306
2000 Non-Employee Directors' Stock Option Plan[2]	535,000	12.35	1,299,695
2000 Employee Stock Purchase Plan[3]	—	—	1,622,096
1994 & 1997 Equity Incentive Plan[4]	290,314	7.64	23,462
1997 Agritope Stock Award Plan[5]	122,337	14.91	458,106
Equity compensation plans not approved by stockholders:			
None	—	—	—
Total	13,157,431	$ 10.73	12,993,665

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

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

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

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

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

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

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

ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial information has been derived from our audited consolidated financial statements. The financial information as of December 31, 2005 and 2004 and for each of the three years in the period ended December 31, 2005 are derived from audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The following Selected Financial Data should be read in conjunction with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Item 8. Financial Statements and Supplementary Data" included elsewhere in this Annual Report on Form 10-K. The historical results are not necessarily indicative of the results of operations to be expected in the future.

	Year Ended December 31,				
	2005	2004	2003	2002	2001
	(In thousands, except per share data)				
Consolidated Statement of Operations Data:					
Total revenues	$ 75,961	$ 52,857	$ 51,540	$ 44,322	$ 41,006
Operating expenses:					
Research and development	141,135	137,724	127,622	112,014	82,700
General and administrative	27,731	20,905	18,586	18,758	19,166
Amortization of goodwill and intangibles	1,086	779	666	666	5,092
Restructuring charge	—	2,275	925	708	—
Acquired in-process research and development	—	26,376	—	—	6,673
Impairment of goodwill	—	—	—	—	2,689
Total operating expenses	169,952	188,059	147,799	132,146	116,320
Loss from operations	(93,991)	(135,202)	(96,259)	(87,824)	(75,314)
Total other income (expense)	(819)	(2,043)	1,140	3,290	4,128
Loss from continuing operations before income taxes and noncontrolling interest in Symphony Evolution, Inc.	(94,810)	(137,245)	(95,119)	(84,534)	(71,186)
Provision (benefit) for income taxes	—	—	(345)	345	—
Loss from continuing operations before noncontrolling interest in Symphony Evolution, Inc.	(94,810)	(137,245)	(94,774)	(84,879)	(71,186)
Loss attributed to noncontrolling interest in Symphony Evolution, Inc.	10,406	—	—	—	—
Loss from continuing operations	(84,404)	(137,245)	(94,774)	(84,879)	(71,186)
Loss from operations of discontinued segment	—	—	—	(1,251)	—
Net loss	$ (84,404)	$(137,245)	$ (94,774)	$ (86,130)	$ (71,186)
Loss per share from continuing operations	$ (1.07)	$ (1.89)	$ (1.45)	$ (1.50)	$ (1.53)
Loss per share from discontinued operations	—	—	—	(0.02)	—
Net loss per share, basic and diluted	$ (1.07)	$ (1.89)	$ (1.45)	$ (1.52)	$ (1.53)
Shares used in computing basic and diluted net loss per share	78,810	72,504	65,387	56,615	46,485

	December 31,				
	2005	2004	2003	2002	2001
	(In thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents, marketable securities, investments held by Symphony Evolution, Inc. and restricted cash and investments	$ 210,499	$ 171,223	$ 241,930	$ 221,987	$ 227,700
Working capital	101,606	100,161	189,968	178,914	194,242
Total assets	332,712	291,340	357,794	339,113	346,614
Long-term obligations, less current portion	121,333	144,491	102,411	65,372	48,667
Deferred stock compensation, net	—	—	(33)	(977)	(4,137)
Accumulated deficit	(603,777)	(519,373)	(382,128)	(287,354)	(201,224)
Total stockholders' equity	33,543	50,671	161,482	175,920	237,220

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

You should read the following discussion and analysis in conjunction with the "Selected Financial Data" and the financial statements and notes thereto included in this Annual Report on Form 10-K. Historical operating results are not necessarily indicative of results that may occur in future periods.

Overview

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

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

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

Our current pipeline includes the following compounds:

Compound	Targets	Indication	Stage of Development
XL119*	Topoisomerase 2	Biliary tract cancer	Phase 3
XL999**	VEGFR, PDGFR, FGFR	Renal cell carcinoma, colon, ovarian, non-small cell lung cancers	Phase 2
XL784**	ADAM 10	Diabetic nephropathy	Phase 1
XL647**	EGFR, HER2, VEGFR	Cancer	Phase 1
XL880	c-MET, VEGFR2	Cancer	Phase 1
XL820	c-KIT, VEGFR2 and PDGFR	Cancer	Phase 1
XL844	CHK 1 and 2	Cancer	Phase 1
XL184	c-MET, VEGFR2	Cancer	Phase 1
XL281	RAF	Cancer	Preclinical
XL418	AKT/S6K	Cancer	Preclinical
XL228	ABL, SRC	Cancer	Preclinical
XL550	MR	Hypertension	Preclinical
XL335*	FXR	Atherosclerosis	Preclinical
EXEL2255*	LXR	Atherosclerosis	Preclinical

* XL119, XL335 and EXEL2255 are out-licensed to Helsinn, Wyeth and BMS, respectively as described in this report.

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

Pursuant to a product development and commercialization agreement between Exelixis and GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by

Exelixis, to elect to develop up to three compounds in Exelixis' product pipeline, which may include XL784 and the cancer compounds identified in the table above (other than XL119).

We have established collaborations with major pharmaceutical and biotechnology companies based on the strength of our technologies and 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, and the opportunity to receive milestone payments and royalties from research results and subsequent product development activities. We have ongoing commercial collaborations with several leading pharmaceutical and biotechnology companies, including GlaxoSmithKline, Bristol-Myers Squibb and Genentech. We expect to continue to use corporate partnering as a strategic tool to cultivate our assets, fund our operations and expand the therapeutic and commercial potential of our pipeline.

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

Certain Factors That May Affect Our Business

Industry-wide Factors

Successful development of drugs is highly 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.

Company-specific Factors

Our financial performance will be driven by many factors, including:

- *Clinical Trials*. We currently have multiple compounds in clinical testing and expect to continue to advance more compounds into clinical development. Our compounds may fail to show safety or efficacy in clinical testing. Furthermore, predicting the timing of the completion or initiation of clinical trials is exceedingly difficult and our trials may be delayed due to many factors, including factors outside of our control. The future development path of each of our compounds depends upon the results of each stage of clinical development. In general, we will incur increased operating expenses for compounds that advance to the next stage of clinical development, whereas expenses will end for compounds that do not warrant further clinical development.
- *Liquidity*. As of December 31, 2005, we had $210.5 million in cash and cash equivalents and marketable securities, which included restricted cash and investments of $12.7 million and investments held by Symphony Evolution, Inc. (SEI) of $34.0 million. We currently anticipate that our current cash and cash equivalents, marketable securities, investments held by SEI, additional committed financing from SEI and other funding that we expect to receive from collaborators, which includes a moderate level of business development activity, will enable us to maintain our operations for at least the next 12 months. This estimate includes the scheduled repayment of a $30.0 million convertible promissory note to Protein Design Labs due in May 2006. We will have to obtain additional funding in order to support the aggressive development of our broad clinical and preclinical pipelines. Our minimum liquidity needs are also determined by certain financial covenants contained in our loan and security agreement with GlaxoSmithKline, which require us to maintain working capital of at least $25.0 million and cash and investments of at least $50.0 million. Our ability to raise additional funds may be severely impaired if any of our product candidates fails to show safety or efficacy in clinical testing.

- *Reliance on Partners*. We currently have no pharmaceutical products that have received marketing approval, and we have generated no revenues from the sale of such products. We do not expect to generate product revenues from the sale of pharmaceutical products in the near term and expect that all of our revenues, such as milestone and royalty revenues, will be generated from collaboration agreements with our partners. Milestones under these agreements may be tied to factors that are outside of our control, such as significant clinical or regulatory events with respect to compounds that have been licensed to our partners.
- *GlaxoSmithKline Compound Selection*. Pursuant to our product development and commercialization agreement with GlaxoSmithKline, GlaxoSmithKline has the option, after completion of clinical proof-of-concept by us, to elect to develop up to three compounds in our product pipeline, which may include XL784, XL647, XL999, XL880, XL184, XL820, XL844, XL281, XL418, XL228 and two earlier stage oncology programs. A compound selection by GlaxoSmithKline could potentially trigger significant milestone payments. The size of these milestone payments depends largely on how quickly we can advance compounds to proof-of-concept. Delays in obtaining clinical proof-of-concept for compounds subject to GlaxoSmithKline's election rights may decrease the size of any GlaxoSmithKline milestones and negatively impact our financial position.
- *Symphony Evolution*. In 2005, we licensed three of our lead compounds (XL784, XL647 and XL999) to SEI in return for up to $80.0 million in investment for the clinical development of these compounds. We continue to be primarily responsible for the development of these compounds in accordance with a specified development plan and related development budget. We have retained exclusive options to reacquire the compounds from SEI at specified purchase prices. If GlaxoSmithKline elects any of the compounds licensed to SEI for further development, we would have to repurchase such compound or compounds from SEI. If selection milestones received under our GlaxoSmithKline collaboration are insufficient to cover the repurchase price, we may have to raise additional funds to cover the repurchase price. In addition, the repurchase prices for the compounds licensed to SEI increase over the length of the option period.

Critical Accounting Estimates

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

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

Revenue Recognition

Most of our revenues are generated from complex research and licensing arrangements. These research and licensing arrangements may include up-front non-refundable payments. Although these up-front payments are

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

Goodwill and Intangible Impairment

As of December 31, 2005, our consolidated balance sheet included $70.8 million of goodwill and other intangible assets. Under GAAP, we evaluate goodwill for impairment on an annual basis and on an interim basis if events or changes in circumstances between annual impairment tests indicate that the asset might be impaired. We will also evaluate other intangible assets for impairment when impairment indicators are identified.

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

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

Clinical Trial Accruals

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

Stock Option Valuation

The preparation of the financial statement footnotes requires us to estimate the fair value of stock options granted to employees. While fair value may be readily determinable for awards of stock, market quotes are not available for long-term, nontransferable stock options because these instruments are not traded. We currently use the Black-Scholes option pricing model to estimate the fair value of employee stock options. However, the Black-Scholes model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. Option valuation models require the input of highly subjective assumptions, including the stock price volatility. The methods we have used to determine the input assumptions are similar to the methodology outlined under the new standard as discussed below. Because our stock options have characteristics significantly different from those of traded options, changes to the input assumptions can materially affect the fair value of our employee stock options.

We have evaluated our option valuation methodologies and assumptions in light of evolving accounting standards related to employee stock options. We will adopt FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), “Share-Based Payment” (SFAS 123R), using the modified prospective transition method and the Black-Scholes option pricing model, as outlined by this standard, beginning January 1, 2006. Under the new standard, our estimate of compensation expense will require a number of complex and subjective assumptions including our stock price volatility, employee exercise patterns, future forfeitures and related tax effects. The most significant assumptions are our estimates of the expected volatility and the expected term of the award. We have limited historical information available to support the underlying estimates of certain assumptions required to value stock options. The value of a stock option is derived from its potential for appreciation. The more volatile the stock, the more valuable the option becomes because of the greater possibility of significant changes in stock price. Because there is a market for options on our common stock, we have considered implied volatilities as well as our historical realized volatilities when developing an estimate of expected volatility. The expected option term also has a significant effect on the value of the option. The longer the term, the more time the option holder has to allow the stock price to increase without a cash investment and thus, the more valuable the option. Further, lengthier option terms provide more opportunity to exploit market highs. However, empirical data shows that employees, for a variety of reasons, typically do not wait until the end of the contractual term of a nontransferable option to exercise. Accordingly, companies are required to estimate the expected term of the option for input to an option-pricing model. Because our historical exercise data is limited, we expect to use the “simplified” method to estimate the expected term as outlined in Staff Accounting Bulletin No. 107. The simplified method establishes an estimate of the expected term as the mid-point between the vesting term and the maximum contractual term. As required under the accounting rules, we review our valuation assumptions at each grant date and, as a result, from time to time we will likely change the valuation assumptions we use to value stock based awards granted in future periods.

Results of Operations – Comparison of Years Ended December 31, 2005, 2004 and 2003

Revenues

Total revenues by category for the years ended December 31, 2005, 2004 and 2003 (in millions):

	Year Ended December 31,		
	2005	2004	2003
Contract revenues:			
Research and development funding	$46.7	$32.2	$ 31.5
Milestones	9.0	4.5	2.3
Delivery of compounds under chemistry collaborations	—	5.6	4.8
Other	—	0.1	0.4
License revenues:			
Amortization of upfront payments, including premiums paid on equity purchases	20.3	10.5	12.5
Total revenues	$76.0	$52.9	$ 51.5

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

	Year Ended December 31,		
	2005	2004	2003
Total revenues	$76.0	$52.9	$51.5
Dollar increase	$23.1	$ 1.3	
Percentage increase	44%	3%	

The increase in research and development funding from 2004 to 2005 was driven primarily by increases in funding of $6.3 million from GlaxoSmithKline, $3.4 million in funding from the recognition of an early termination fee associated with the termination of our Genoptera collaboration and $1.8 million in funding from Genentech. The increase from 2003 to 2004 was driven primarily by increases in funding of $1.3 million from GlaxoSmithKline and $1.0 million in funding from Sankyo, partially offset by a decrease of $1.7 million in funding related to the conclusion of our collaboration with Protein Design Labs.

The increase in milestone revenues from 2004 to 2005 was driven primarily by $5.1 million in revenues associated with achieving two milestones under our collaboration with GlaxoSmithKline and a $0.9 million acceleration of milestone revenues associated with the termination of our Genoptera collaboration. These increases were partially offset by a decrease of $2.1 million in milestone revenues related to the termination of one of our Bristol-Myers Squibb collaborations. The increase from 2003 to 2004 was driven primarily by $1.6 million associated with our Bristol-Myers Squibb collaboration.

The decrease in revenues from the delivery of compounds under chemistry collaborations was due to the termination of most of these collaborations effective December 31, 2004. These collaborations included agreements with Cytokintetics, Elan, Schering-Plough, Scios and Merck. The increase from 2003 to 2004 was driven primarily by an increase in the delivery of compounds.

The increase in the amortization of upfront payments, including premiums paid on equity purchases, from 2004 to 2005 was driven primarily by an additional $5.2 million in revenues from the acceleration of upfront payments associated with the termination of our Genoptera collaboration and upfront payments of $4.0 million from Helsinn and $1.4 million from Genentech. These increases were partially offset by a decrease of $2.1 million related to the termination of one of our Bristol-Myers Squibb collaborations. The decrease from 2003 to 2004 was driven primarily by decreases of $2.3 million associated with the termination of one of our Bristol-Myers Squibb collaborations in July 2004.

The following table sets forth the percentage total revenues recognized under our collaboration agreements that exceeded 10% or more of total revenues during the years ending December 31, 2005, 2004 and 2003:

Collaborator	2005	2004	2003
GlaxoSmithKline	37%	30%	31%
Genoptera	32%	27%	28%
Bristol-Myers Squibb	7%	19%	21%

The GlaxoSmithKline increase in revenues from 2004 to 2005 of $12.3 million is primarily related to milestones achieved during May 2005 and increased research and development funding. The increase in Genoptera revenues from 2004 to 2005 of $9.6 million is due to the acceleration of upfront payments, milestones and a termination payment associated with the termination of our Genoptera collaboration. We will not receive any revenues from Genoptera after 2005 due to the termination of this collaboration. The Bristol-Myers Squibb decrease in revenues from 2004 to 2005 of $4.7 million is primarily related to the termination of one of our Bristol-Myers Squibb collaborations.

The slight decreases from 2003 to 2004 in revenues from GlaxoSmithKline, Genoptera and Bristol-Myers Squibb are primarily related to an overall increase in revenues from sources other than these collaborators.

Research and Development Expenses

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

	Year Ended December 31,		
	2005	2004	2003
Research and development expenses	$ 141.1	$ 137.7	$ 127.6
Dollar increase	$ 3.4	$ 10.1	
Percentage increase	2%	8%	

Research and development expenses consist primarily of personnel expenses, laboratory supplies, consulting and facilities costs. The change in 2005 compared to 2004 resulted primarily from the following:

- Consulting and Professional – Consulting and professional expense, which includes services performed by CROs and other vendors, increased by $5.4 million, or 27%, primarily due to an increase in activities associated with advancing our clinical and preclinical development programs. These activities included Phase 3 clinical trial activity for XL119, Phase 2 clinical trial activity for XL999 and Phase 1 clinical trial activity for XL647, XL999, XL880, XL784, XL844, XL820 and XL184.
- Personnel – Personnel expense, which includes salaries, bonuses, related fringe benefits, recruiting and relocation costs, increased by $2.9 million, or 6%, primarily due to the expansion of our drug development operations.
- Facilities – Facilities expense increased by $1.3 million, or 9%, primarily due to our expansion into two additional buildings in South San Francisco, California largely as a result of our expanding development operations. We occupied the first building in July 2004 and the second in July 2005. The increase was also attributable to an additional building lease in San Diego, California, which we assumed in connection with our acquisition of X-Ceptor in October 2004.
- Lab Supplies – Lab supplies expense decreased by $6.4 million, or 29%, primarily due to the termination of most of our combinatorial chemistry collaborations.

Changes in research and development expenses in 2004 compared to 2003 resulted primarily from the following costs:

- Consulting and Professional – Consulting and professional expense increased by $7.5 million, or 62%, primarily due to activities related to advancing our clinical and preclinical development programs. These activities included Phase 3 clinical trial activity for XL119, Phase 1 clinical trial activity for XL647 and XL999, filing INDs for XL999 and XL880, and moving XL844, XL820, XL880 and XL184 through preclinical testing in anticipation of filing INDs in 2005.
- Facilities – Facilities expense increased by $5.6 million, or 41%, primarily due to our expansion into an additional building in South San Francisco, California as a result of our expanding development operations and activities associated with advancing our preclinical and clinical development programs. The increase is also attributable to an additional building lease in San Diego, California, which we assumed in connection with our acquisition of X-Ceptor in October 2004.
- Personnel – Personnel expense decreased by $0.7 million, or 2%, primarily due to our June 2004 restructuring that consolidated our research and discovery organizations and included a reduction in force of 62 employees.
- Lab Supplies – Lab supplies expense decreased by $1.1 million, or 5%, primarily due to our June 2004 restructuring.

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 specific clinical trial, such as the type and intended use of the product candidate, the clinical trial design and ability to enroll suitable patients. We expect that research and development expenses will continue to increase as we advance our compounds through development.

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

General and Administrative Expenses

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

	Year Ended December 31,		
	2005	2004	2003
General and administrative expenses	$27.7	$20.9	$18.6
Dollar increase	$ 6.8	$ 2.3	
Percentage increase	33%	12%	

General and administrative expenses consist primarily of personnel expenses to support our general operating activities, facility costs and professional expenses, such as legal and accounting fees. The increase in 2005 from 2004 resulted primarily from increases in personnel expenses of $1.8 million to support development activities, legal and accounting expenses of $1.7 million, consulting expenses of $1.3 million as well as facility expenses of $0.5 million. The increase from 2003 to 2004 was primarily due to increases in personnel expenses of $1.8 million, legal and accounting expenses of $0.6 million and facility expenses of $0.4 million.

Amortization of Intangible Assets

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

	Year Ended December 31,		
	2005	2004	2003
Amortization of intangible assets	$ 1.1	$ 0.8	$0.7
Dollar increase	$ 0.3	$ 0.1	
Percentage increase	39%	17%	

Intangible assets result from our acquisitions of X-Ceptor, Genomica, Artemis and Agritope (renamed Exelixis Plant Sciences). These assets are amortized over specified time periods. The increase in amortization expense in 2005 compared to 2004 was due to the partial year amortization in 2004 of the assembled workforce that we acquired as a part of X-Ceptor. The increase in 2004 as compared to 2003 was due to approximately two months of workforce amortization related to the X-Ceptor acquisition.

Restructuring Charges

During the second quarter of 2004, we implemented a restructuring and consolidation of our research and discovery organizations designed to optimize our ability to generate multiple new, high-quality investigational new drug applications per year and rapidly advance these new drug candidates through clinical development. The restructuring included a reduction in force of 62 employees, the majority of whom were research personnel located in South San Francisco, California. We recorded a restructuring charge of $1.7 million during the year ended December 31, 2004, comprised of involuntary termination benefits.

During the third quarter of 2003, we implemented a restructuring of our research and development organization designed to reallocate resources and enhance the efficiency of our operations. The restructuring included a reduction in force of 61 research personnel located in South San Francisco, California and Tübingen, Germany, closure of our Tübingen location and relocation of certain research activities and employees from Tübingen to South San Francisco. The restructuring plan was substantially complete as of March 31, 2004. In connection with this restructuring plan, we recorded a cumulative charge of $1.5 million in accordance with Statement of Financial Accounting Standards No. 146, “Accounting for Costs Associated with Exit or Disposal Activities”, of which $0.5 million was recorded during the year ended December 31, 2004. This charge consisted primarily of severance payments, retention bonuses, relocation costs, lease buyout costs and legal and outplacement services fees. The restructuring charge also included non-cash activity, including an impairment of assets of $0.1 million and a gain on closure of our Tübingen location of $0.2 million related to the removal from equity of the cumulative currency translation adjustment.

Acquired In-Process Research and Development

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

In October 2004, we completed the acquisition of X-Ceptor, a company focused on the discovery and development of therapies targeting metabolic and cardiovascular disorders. The transaction was accounted for as

a purchase of assets. The total consideration for the acquisition was $25.7 million, which consisted of 2.6 million shares of our common stock, $2.9 million in cash and $2.3 million in transaction costs. The transaction costs included financial advisory, legal, accounting and other fees. As a result, we recorded tangible assets of $2.6 million, liabilities of $3.9 million, assembled workforce of $1.1 million and expense associated with the purchase of in-process research and development of $26.0 million, representing the fair value of three primary research projects that had not yet reached technological feasibility and had no alternative future use due to the early stage of the programs and the significant regulatory requirements remaining. Independent valuation experts assisted us during the valuation of the intangible assets acquired. The valuation of the acquired in-process research and development of $26.0 million was determined using the income approach for each of the three projects in process. The in-process projects relate to the development of programs that are focused on LXR, valued at $9.7 million, FXR, valued at $8.8 million, and MR, valued at $7.5 million, which at the time of the acquisition were expected to be completed over approximately the next seven to ten years. At the time of the acquisition, these programs did not have a development candidate.

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

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

In December 2005, we entered into a license agreement with Wyeth Pharmaceuticals Division (Wyeth). We granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. In addition, 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.

Total Other Income (Expense)

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

	Year Ended December 31,		
	2005	2004	2003
Total other income (expense)	$ (0.8)	$ (2.0)	$ 1.1
Dollar increase (decrease)	$ 1.2	$ (3.2)	
Percentage increase (decrease)	60%	(279)%	

Total other income (expense) consists primarily of interest income earned on cash and cash equivalents and marketable securities, offset by interest expense incurred on our notes payable, bank obligations, capital lease obligations and convertible notes and loans. The decrease in other expense for 2005 compared to 2004 was primarily due to increases in interest expense as a result of an increase in the principal balance of our convertible loan with GlaxoSmithKline. The increased expenses were partially offset by increases in interest income as a result of an increase in our investment balances and higher average interest rates. The decrease in 2004 compared

to 2003 was the result of increases in our notes payable, bank obligations and convertible loans. Our convertible loans increased by $30.0 million in December 2004 and December 2003. In addition, our interest income decreased due to an overall decline in our investment balances during 2004.

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. For the years ended December 31, 2005 and 2004, the losses attributed to the noncontrolling interest holders were $10.4 million and none, respectively.

Income Taxes

We have incurred net losses since inception and, consequently, have not recorded any U.S. federal or state income taxes. As of December 31, 2005, we had federal and California net operating loss carryforwards of $557.0 million and $272.0 million, respectively. As of December 31, 2005, we had federal and California research and development credit carryforwards of $19.8 million and $18.1 million, respectively. If not utilized, the net operating loss and credit carryforwards expire at various dates, which began in 2005.

We recorded a tax provision of $0.3 million during the year ended December 31, 2002 related to income earned in our foreign operations. Due to a favorable outcome on a position we took with the German tax authorities, we reversed the tax provision in 2003. We do not expect to pay income taxes on our foreign operations for the years ended December 31, 2005, 2004 or 2003.

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

Liquidity and Capital Resources

Sources and Uses of Cash

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

	Year Ended December 31,		
	2005	2004	2003
Net loss	$ (84,404)	$(137,245)	$ (94,774)
Adjustments to reconcile net loss to net cash used in operating activities	8,121	44,356	19,278
Changes in operating assets and liabilities	29,922	(947)	(3,741)
Net cash used in operating activities	(46,361)	(93,836)	(79,237)
Net cash provided by (used in) investing activities	(36,069)	20,464	(14,600)
Net cash provided by financing activities	100,933	39,653	114,666
Effect of foreign exchange rates on cash and cash equivalents	(137)	(4)	716
Net increase (decrease) in cash and cash equivalents	18,366	(33,723)	21,545
Cash and cash equivalents, at beginning of year	78,105	111,828	90,283
Cash and cash equivalents, at end of year	$ 96,471	$ 78,105	$111,828

To date, we have financed our operations primarily through the sale of equity, payments and loans from collaborators, equipment financing facilities and interest income. We have also financed certain of our research and development activities under our agreements with SEI. In August 2005, we received net proceeds, after underwriting fees and offering expenses, of $49.6 million from the sale of 6.5 million shares of our common stock under a shelf registration statement. As of December 31, 2005, we had $210.5 million in cash and cash equivalents and marketable securities, which includes restricted cash and investments of $12.7 million and investments held by SEI of $34.0 million.

Operating Activities

Our operating activities used cash of $46.4 million for the year ended December 31, 2005, compared to $93.8 million for 2004 and $79.2 million for 2003. Cash used in operating activities during 2005 related primarily to funding net losses and losses attributed to the noncontrolling interest, partially offset by changes in deferred revenues from collaborators and non-cash charges related to depreciation and amortization. Cash used in operating activities during 2004 related primarily to funding net losses and changes in deferred revenues from collaborators and accrued merger and acquisition costs, partially offset by non-cash charges related to acquired in-process research and development, depreciation and amortization of intangibles. Cash used in operating activities during 2003 related primarily to funding net losses and changes in deferred revenues from collaborators, partially offset by non-cash charges related to depreciation and amortization of deferred stock compensation and intangibles.

The decrease of $47.5 million in cash used in our operating activities for 2005 as compared to 2004 was primarily driven by a $52.8 million decrease in our net loss. While cash used in operating activities is primarily driven by our net loss, operating cash flows differ from our net loss as a result of differences in the timing of cash receipts and earnings recognition, expenses related to the noncontrolling interest and non-cash charges. For example, we recorded a net increase in deferred revenues of $28.0 million during 2005. This increase in deferred revenues represented the excess of cash received in 2005 over the revenues which were recognized and included in the calculation of net loss. In addition, net loss in 2005 excluded losses which are attributed to the noncontrolling interest in SEI. However, our cash used in operating activities in 2005 included expenses related to $10.4 million in losses attributed to the noncontrolling interest. The increase of $14.6 million in cash used in our operating activities for 2004 as compared to 2003 was primarily driven by a $42.5 million increase in our net loss, partially offset by a $26.4 million non-cash charge from acquired in-process research and development expenses. We expect to use cash for operating activities for at least the next several years as we continue to incur net losses associated with our research and development activities, including manufacturing and development expenses for compounds in preclinical and clinical studies.

Investing Activities

Our investing activities used cash of $36.1 million for the year ended December 31, 2005 compared to cash provided by investing activities of $20.5 million for 2004 and cash used in investing activities of $14.6 million for 2003. Cash used in investing activities for 2005 was primarily due to purchases and proceeds from maturities of marketable securities, purchases of investments held by SEI and purchases of property and equipment. Cash used and provided by investing activities for 2004 and 2003 were primarily due to purchases and proceeds from maturities of marketable securities, purchases of property and equipment and changes in restricted cash.

The increase of $56.5 million in cash used in investing activities for 2005 as compared to 2004 was primarily driven by increases of $40.7 million from purchases of investments held by SEI and $11.3 million from purchases of marketable securities, along with a decrease of $24.6 million in proceeds from maturities of marketable securities. This increase was partially offset by decreases of $14.6 million in restricted cash and investments and $6.6 million from proceeds from the sale of investments held by SEI. The increase of $35.1 million in cash provided by investment activities in 2004 as compared to 2003 was primarily driven by a

decrease of $124.7 million from purchases of marketable securities offset by decreases of $80.5 million in proceeds from maturities of marketable securities and $3.1 million from the sale of marketable securities. During 2005, 2004 and 2003, we made investments in property and equipment of $14.4 million, $12.3 million and $14.2 million, respectively, and we expect to continue to make purchases of property and equipment to build research and development and administrative infrastructure to support our expanding preclinical and clinical development operations.

Financing Activities

Our financing activities provided cash of $100.9 million for the year ended December 31, 2005, compared to $39.7 million for 2004 and $114.7 million for 2003. Cash provided by our financing activities for 2005 was primarily driven by net proceeds of $37.0 million from the purchase of the noncontrolling interest by preferred shareholders in SEI and net proceeds of $49.6 million received through the sale of our common stock. In addition, we received $11.1 million in cash from the purchase of 1.0 million shares of our common stock by GlaxoSmithKline, which included a $2.2 million premium. Cash provided by our financing activities in 2004 included a draw under our GlaxoSmithKline loan facility of $30.0 million. Cash provided by our financing activities in 2003 was primarily driven by the follow-on public offering of 11.3 million shares of registered common stock, resulting in net proceeds of $74.7 million.

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, merger and acquisition expenses and other general corporate purposes. During 2006, we have the ability to draw up to an additional $40.0 million from SEI. Over the next several years, we are required to make certain payments on capital leases, notes, bank obligations and loans from collaborators.

Cash Requirements

We have incurred net losses since inception, including a net loss of $84.4 million for the year ended December 31, 2005, and expect to incur substantial losses for at least the next several years as we continue our research and development activities, including manufacturing and development expenses for compounds in preclinical and clinical studies. We currently anticipate that our current cash and cash equivalents, marketable securities, investments held by SEI, additional committed financing from SEI and other funding that we expect to receive from collaborators, which includes a moderate level of business development activity, will enable us to maintain our operations for at least the next 12 months. This estimate includes the scheduled repayment of a $30.0 million convertible promissory note to Protein Design Labs due in May 2006. We may seek additional funding within this timeframe through collaborative relationships, private or public financing or other arrangements. Changes to our current operating plan may require us to consume available capital resources significantly sooner than we expect.

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

- the level of payments received under collaborative agreements, licensing agreements and other arrangements;
- the progress and scope of our collaborative and independent clinical trials and other research and development projects;
- the timing and progress of the clinical development of our outlicensed product candidates XL647, XL999 and XL784, which will determine if and when we exercise our options to reacquire these product candidates;
- 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 establishing clinical and research supplies of our product candidates;
- our ability to remain in compliance with, or amend or cause to be waived, financial covenants contained in agreements with third parties;
- 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, although we currently have no commitments relating to any such transactions; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

In addition, we will have to obtain additional funding in order to stay in compliance with financial covenants contained in our collaboration with GlaxoSmithKline. Under a loan and security agreement, 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 obligations due thereunder.

If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We currently have a universal shelf registration statement on file with the SEC that allows 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 and capital leases, notes payable and licensing agreements. The following chart details our contractual obligations (in thousands):

	Payments Due by Period				
Contractual Obligations	Total	Less than 1 year	1-3 years	4-5 years	After 5 years
Notes payable and bank obligations	$ 33,751	$ 11,893	$ 17,098	$ 4,760	$ —
Licensing agreements	2,723	1,240	1,339	144	—
Capital lease obligations	98	98	—	—	—
Convertible promissory note and loan	121,783	30,000	30,289	61,494	—
Operating leases	165,921	16,144	28,237	27,804	93,736
Total contractual cash obligations	$ 324,276	$ 59,375	$ 76,963	$ 94,202	$ 93,736

Recent Accounting Pronouncements

We are required to adopt SFAS 123R on January 1, 2006. SFAS 123R will require the recognition of stock-based compensation at fair value in our statement of operations. We expect to adopt SFAS 123R under the

modified prospective method. Under the modified prospective method, we will record compensation expense for all unvested stock options and restricted stock starting on January 1, 2006. We will also continue to apply the Black-Scholes option pricing model in determining the fair value of share based payments to employees, which will then be amortized on a straight line basis over the requisite service period. Under SFAS 123R, option grants are generally valued at the grant date and those valuations do not change once they have been established. As a result, the stock-based compensation expense we expect to record in 2006 will be based largely upon the amortization of costs for awards granted in 2005 and prior periods. This portion of our stock-based compensation expense will be fairly predictable and is expected to be similar to our historical pro forma disclosures. However, because of the variability in the assumptions to be used in the valuation of stock options we may grant in 2006 and the variability in the quantity and other terms of stock-based awards we may issue in 2006, our ability to predict the 2006 stock-based compensation expense is limited. We are continuing to evaluate the impact of SFAS 123R on our results of operations and financial condition and we currently estimate that our stock-based compensation expense will be in the range of $15.0 million to $20.0 million for 2006.

Off-Balance Sheet Arrangements

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

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and our long-term debt. At December 31, 2005 and 2004, we had cash and cash equivalents, marketable securities, investments held by SEI and restricted cash and investments of $210.5 million and $171.2 million, respectively. Our marketable securities and investments are subject to interest rate risk, and our interest income may fluctuate due to changes in U.S. interest rates. By policy, we limit our investments to money market instruments, debt securities of U.S. government agencies and debt obligations of U.S. corporations. These securities are generally classified as available-for-sale and consequently are recorded on the balance sheet at fair value with unrealized gains or losses reported as a separate component of accumulated other comprehensive income (loss), net of estimated income taxes. We manage market risk through diversification requirements mandated by our investment policy, which limits the amount of our portfolio that can be invested in a single issuer. We manage credit risk by limiting our purchases to high-quality issuers. Through our money managers, we maintain risk management control systems to monitor interest rate risk. The risk management control systems use analytical techniques, including sensitivity analysis. At December 31, 2005 and 2004, we had long-term debt and capital leases outstanding of $148.8 million and $147.4 million, respectively. Our payment commitments associated with these debt instruments are fixed during the corresponding terms and are comprised of interest payments, principal payments or a combination thereof. The fair value of our long-term debt will fluctuate with movements of interest rates, increasing in periods of declining rates of interest, and declining in periods of increasing rates of interest.

We have estimated the effects on our interest rate sensitive assets and liabilities based on a one-percentage point hypothetical adverse change in interest rates as of December 31, 2005 and 2004. As of December 31, 2005 and 2004, 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 $3.3 million and $4.3 million, respectively. We have assumed that the changes occur immediately and uniformly to each category of instrument containing interest rate risks. Significant variations in market interest rates could produce changes in the timing of repayments due to available prepayment options. The fair value of such instruments could be affected and, therefore, actual results might differ from our estimate.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

EXELIXIS, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Management's Report on Internal Control over Financial Reporting

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

As of the end of the company's 2005 fiscal year, management conducted an assessment of the effectiveness of the company's internal control over financial reporting based on the framework established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, management has determined that the company's internal control over financial reporting as of December 31, 2005 was effective.

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

Management's assessment of the effectiveness of the company's internal control over financial reporting as of December 31, 2005 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report, an attestation report on management's assessment of the Company's internal control over financial reporting as of December 31, 2005.

Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting

The Board of Directors and Stockholders of Exelixis, Inc.

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, that Exelixis, Inc. maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Exelixis, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of Exelixis, Inc.'s internal control over financial reporting based on our audit.

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

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

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

In our opinion, management's assessment that Exelixis, Inc. maintained effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Exelixis, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Exelixis, Inc. as of December 31, 2005 and 2004, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2005 of Exelixis, Inc. and our report dated March 7**,** 2006 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Palo Alto, California
March 7, 2006

Report of Independent Registered Public Accounting Firm on Consolidated Financial Statements

The Board of Directors and Stockholders of Exelixis, Inc.

We have audited the accompanying consolidated balance sheets of Exelixis, Inc. as of December 31, 2005 and 2004, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2005. These financial statements are the responsibility of Exelixis, Inc.'s management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Exelixis, Inc. at December 31, 2005 and 2004, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2005, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Exelixis, Inc.'s internal control over financial reporting as of December 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 7, 2006 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Palo Alto, California
March 7, 2006

EXELIXIS, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2005	December 31, 2004
ASSETS		
Current assets:		
Cash and cash equivalents	$ 96,471	$ 78,105
Marketable securities	67,307	77,078
Investments held by Symphony Evolution, Inc.	34,039	—
Other receivables	7,102	4,424
Prepaid expenses and other current assets	5,442	4,350
Total current assets	210,361	163,957
Restricted cash and investments	12,682	16,040
Property and equipment, net	35,577	35,463
Goodwill	67,364	67,364
Other intangibles, net	3,425	4,512
Other assets	3,303	4,004
Total assets	$ 332,712	$ 291,340
LIABILITIES, NONCONTROLLING INTEREST AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,689	$ 5,931
Other accrued expenses	13,774	12,012
Accrued compensation and benefits	7,817	6,297
Current portion of capital lease obligations	98	1,931
Current portion of notes payable and bank obligations	11,893	8,928
Convertible promissory note	30,000	—
Deferred revenue	43,484	28,697
Total current liabilities	108,755	63,796
Capital lease obligations	—	98
Notes payable and bank obligations	21,858	21,398
Convertible promissory note and loans	85,000	115,000
Other long-term liabilities	14,475	7,995
Deferred revenue	45,329	32,382
Total liabilities	275,417	240,669
Noncontrolling interest in Symphony Evolution, Inc.	23,752	—
Commitments (Note 13)		
Stockholders' equity:		
Preferred stock, $0.001 par value, 10,000,000 shares authorized and no shares issued	—	—
Common stock, $0.001 par value; 200,000,000 shares authorized; issued and outstanding: 83,404,722 and 74,995,484 shares at December 31, 2005 and 2004, respectively	84	75
Additional paid-in-capital	636,263	569,345
Accumulated other comprehensive income	973	624
Accumulated deficit	(603,777)	(519,373)
Total stockholders' equity	33,543	50,671
Total liabilities, noncontrolling interest and stockholders' equity	$ 332,712	$ 291,340

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

EXELIXIS, INC.

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

	Year Ended December 31,		
	2005	2004	2003
Revenues:			
Contract	$ 55,715	$ 42,340	$ 39,027
License	20,246	10,517	12,513
Total revenues	75,961	52,857	51,540
Operating expenses:			
Research and development(1)	141,135	137,724	127,622
General and administrative(2)	27,731	20,905	18,586
Amortization of intangible assets	1,086	779	666
Restructuring charge	—	2,275	925
Acquired in-process research and development	—	26,376	—
Total operating expenses	169,952	188,059	147,799
Loss from operations	(93,991)	(135,202)	(96,259)
Other income (expense):			
Interest income	5,376	3,232	4,266
Interest expense	(6,190)	(5,378)	(3,722)
Other income (expense), net	(5)	103	596
Total other income (expense)	(819)	(2,043)	1,140
Loss before income taxes and noncontrolling interest in Symphony Evolution, Inc.	(94,810)	(137,245)	(95,119)
Benefit from income taxes	—	—	(345)
Loss before noncontrolling interest in Symphony Evolution, Inc.	(94,810)	(137,245)	(94,774)
Loss attributed to noncontrolling interest in Symphony Evolution, Inc.	10,406	—	—
Net loss	$ (84,404)	$(137,245)	$ (94,774)
Net loss per share, basic and diluted	$ (1.07)	$ (1.89)	$ (1.45)
Shares used in computing basic and diluted loss per share amounts	78,810	72,504	65,387

(1) Includes stock compensation expense of $110, $39 and $712 in 2005, 2004 and 2003, respectively (in thousands).
(2) Includes stock compensation expense of $0, $17 and $200 in 2005, 2004 and 2003, respectively (in thousands).

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

EXELIXIS, INC.

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

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Notes Receivable From Stockholders	Deferred Stock Compensation	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
Balance at December 31, 2002	59,386,500	$ 59	$ 463,764	$ (1,210)	$ (977)	$ 1,638	$ (287,354)	$ 175,920
Net loss	—	—	—	—	—	—	(94,774)	(94,774)
Change in unrealized gain (loss) on available-for-sale securities	—	—	—	—	—	(681)	—	(681)
Change in unrealized gain (loss) on derivative instruments	—	—	—	—	—	(119)	—	(119)
Change in accumulated translation adjustment	—	—	—	—	—	870	—	870
Comprehensive loss								(94,704)
Issuance of common stock under company stock plans, net of repurchases	732,677	1	4,132	—	—	—	—	4,133
Repayment of notes from stockholders for the exercise of stock options	(77,120)	—	(601)	1,157	—	—	—	556
Issuance of common stock, net of offering costs	11,253,048	11	74,654	—	—	—	—	74,665
Amortization of deferred stock compensation, net of cancellations	—	—	(32)	—	944	—	—	912
Balance at December 31, 2003	71,295,105	71	541,917	(53)	(33)	1,708	(382,128)	161,482
Net loss	—	—	—	—	—	—	(137,245)	(137,245)
Change in unrealized gain (loss) on available-for-sale securities	—	—	—	—	—	(737)	—	(737)
Change in accumulated translation adjustment	—	—	—	—	—	(347)	—	(347)
Comprehensive loss								(138,329)
Issuance of common stock under company stock plans, net of repurchases	1,139,205	1	6,815	—	—	—	—	6,816
Issuance of common stock for acquisition	2,561,174	3	20,590	—	—	—	—	20,593
Repayment of notes from stockholders for the exercise of stock options	—	—	—	53	—	—	—	53
Amortization of deferred stock compensation, net of cancellations	—	—	23	—	33	—	—	56
Balance at December 31, 2004	74,995,484	75	569,345	—	—	624	(519,373)	50,671
Net loss	—	—	—	—	—	—	(84,404)	(84,404)
Change in unrealized gain (loss) on available-for-sale securities	—	—	—	—	—	63	—	63
Change in accumulated translation adjustment	—	—	—	—	—	286	—	286
Comprehensive loss								(84,055)
Issuance of common stock under company stock plans, net of repurchases	909,238	—	5,505	—	—	—	—	5,505
Issuance of common stock, net of offering costs	6,500,000	8	49,608	—	—	—	—	49,616
Issuance of common stock under the GlaxoSmithKline collaboration	1,000,000	1	8,853	—	—	—	—	8,854
Issuance of warrants to Symphony Evolution Holdings, Inc.	—	—	2,842	—	—	—	—	2,842
Stock-based compensation expense	—	—	110	—	—	—	—	110
Balance at December 31, 2005	83,404,722	$ 84	$ 636,263	$ —	$ —	$ 973	$ (603,777)	$ 33,543

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

EXELIXIS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2005	2004	2003
Cash flows from operating activities:			
Net loss	$ (84,404)	$(137,245)	$ (94,774)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	16,669	16,715	17,079
Loss attributed to noncontrolling interest	(10,406)	—	—
Stock-based compensation expense	110	56	912
Acquired in-process research and development	—	26,376	—
Amortization of intangibles	1,086	779	666
Loss on the sale of equipment	60	—	—
Other	602	430	621
Changes in assets and liabilities:			
Other receivables	(2,801)	16	(1,090)
Prepaid expenses and other current assets	(1,148)	(231)	1,019
Related-party receivables	45	170	510
Other assets	(1,022)	(1,403)	(93)
Accounts payable and other accrued expenses	355	764	4,961
Other long-term liabilities	6,479	2,875	1,065
Deferred revenue	28,014	(3,138)	(10,113)
Net cash used in operating activities	(46,361)	(93,836)	(79,237)
Cash flows from investing activities:			
Cash paid for acquisitions, net of cash acquired	—	(1,600)	—
Purchases of investments held by Symphony Evolution, Inc.	(40,681)	—	—
Proceeds on sale of investments held by Symphony Evolution, Inc.	6,642	—	—
Purchases of property and equipment	(14,357)	(12,338)	(14,248)
Proceeds from sale of equipment	186	—	—
Change in restricted cash and investments	3,358	(11,201)	(4,838)
Proceeds from maturities of marketable securities	113,598	138,158	218,707
Proceeds from sale of marketable securities	—	917	4,000
Purchases of marketable securities	(104,815)	(93,472)	(218,221)
Net cash provided by (used in) investing activities	(36,069)	20,464	(14,600)
Cash flows from financing activities:			
Proceeds from the issuance of common stock, net of offering costs	58,468	—	74,665
Proceeds from exercise of stock options and warrants, net of repurchases	1,773	2,915	224
Proceeds from convertible notes	—	30,000	30,000
Proceeds from employee stock purchase plan	2,199	2,144	1,946
Repayment of notes from stockholders	—	53	733
Payments on capital lease obligations	(1,931)	(4,476)	(6,841)
Proceeds from notes payable and bank obligations	12,725	14,215	17,038
Principal payments on notes payable and bank obligations	(9,301)	(5,198)	(3,099)
Proceeds from purchase of noncontrolling interest by preferred shareholders in Symphony Evolution, Inc., net of fees	37,000	—	—
Net cash provided by financing activities	100,933	39,653	114,666
Effect of foreign exchange rates on cash and cash equivalents	(137)	(4)	716
Net increase (decrease) in cash and cash equivalents	18,366	(33,723)	21,545
Cash and cash equivalents, at beginning of year	78,105	111,828	90,283
Cash and cash equivalents, at end of year	$ 96,471	$ 78,105	$ 111,828
Supplemental cash flow disclosure:			
Cash paid for interest	$ 2,747	$ 2,886	$ 849
Warrants issued in conjunction with the Symphony Evolution, Inc. transaction	2,842	—	—

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

EXELIXIS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

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

Basis of Consolidation

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

Use of Estimates

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

Cash and Investments

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

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

All marketable securities are classified as available-for-sale and are carried at fair value. We view our available-for-sale portfolio as available for use in current operations. Accordingly, we have classified all investments as short-term marketable securities, even though the stated maturity date may be one year or more beyond the current balance sheet date. Available-for-sale securities are stated at fair value based upon quoted market prices of the securities. Unrealized gains and losses on such securities, when material, are reported as a separate component of stockholders’ equity. Realized gains and losses, net, on available-for-sale securities are included in interest income. The cost of securities sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in interest income.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The following summarizes available-for-sale securities included in cash and cash equivalents, marketable securities and restricted cash and investments as of December 31, 2005 and 2004 (in thousands):

December 31, 2005

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$ 67,384	$ —	$ —	$ 67,384
Commercial paper	34,232	7	—	34,239
U.S. corporate bonds	25,964	—	(206)	25,758
Government debt	28,165	—	(249)	27,916
Market auction securities	25,200	—	—	25,200
Total	$180,945	$ 7	$ (455)	$180,497

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
As reported:				
Cash equivalents	$100,500	$ 7	$ —	$100,507
Marketable securities	67,698	—	(391)	67,307
Restricted cash and investments	12,747	—	(64)	12,683
Total	$180,945	$ 7	$ (455)	$180,497

December 31, 2004

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Money market funds	$ 58,263	$ —	$ —	$ 58,263
Commercial paper	17,681	—	(1)	17,680
U.S. corporate bonds	46,021	2	(321)	45,702
Government debt	38,239	—	(192)	38,047
Market auction securities	10,650	—	—	10,650
Total	$170,854	$ 2	$ (514)	$170,342

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
As reported:				
Cash equivalents	$ 77,240	$ —	$ (16)	$ 77,224
Marketable securities	77,524	2	(448)	77,078
Restricted cash and investments	16,090	—	(50)	16,040
Total	$170,854	$ 2	$ (514)	$170,342

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The following is a summary of the amortized cost and estimated fair value of marketable securities at December 31, 2005 by contractual maturity (in thousands):

	2005	
	Amortized Cost	Fair Value
Mature in less than one year	$ 175,210	$ 174,819
Mature in one to three years	5,735	5,678
Total	$ 180,945	$ 180,497

The following is a summary of the estimated fair value and aggregate unrealized losses of marketable securities at December 31, 2005 and 2004 by continuous unrealized loss position (in thousands):

December 31, 2005

	Less than 12 months		12 months or longer	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
U.S. corporate bonds	$ 6,753	$ (46)	$19,005	$ (159)
Government debt	10,315	(104)	14,800	(146)
Total	$17,068	$ (150)	$33,805	$ (305)

December 31, 2004

	Less than 12 months		12 months or longer	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Commercial paper	$17,681	$ (1)	$ —	$ —
U.S. corporate bonds	25,543	(112)	16,119	(209)
Government debt	29,850	(115)	5,416	(77)
Total	$73,074	$ (228)	$21,535	$ (286)

As of December 31, 2005, unrealized losses were primarily due to increases in interest rates. Based on the scheduled maturities of our marketable securities we have concluded that the unrealized losses in our investment securities are not other-than-temporary as we have the intent and ability to hold the impaired securities to maturity, call date or until the fair value recovers above cost. We had no realized gains or losses in 2005, 2004 and 2003.

Property and Equipment

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

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

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

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

Intangible Assets

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

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

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

Long-lived Assets

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

Fair Value of Financial Instruments

The carrying amounts of certain of our financial instruments, including cash and cash equivalents and marketable securities, approximate fair value due to their short maturities. We have estimated the fair value of our long term-debt instruments using the net present value of the payments discounted at an interest rate that is consistent with our current borrowing rate for similar long-term debt. Based on borrowing rates currently available to us for loans and capital lease obligations with similar terms, the carrying value of our debt obligations approximates fair value, with the exception of our $85.0 million convertible loan with GlaxoSmithKline and our equipment line of credit that has an outstanding balance of $17.6 million as of December 31, 2005. These items are described in further detail in Note 9 of the Notes to the Consolidated Financial Statements. We estimated the fair value of our convertible loan with GlaxoSmithKline to be $72.7 million and $73.3 million as of December 31, 2005 and 2004, respectively and we estimated the fair value of our equipment line of credit to be $16.5 million as of December 31, 2005.

Concentration of Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk are primarily cash and cash equivalents, accounts receivable and investments in marketable securities. Cash equivalents and marketable

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

The following table sets forth revenues recognized under our collaboration agreements that exceed 10% of total revenues during the years ending December 31, 2005, 2004 and 2003:

Collaborator	2005	2004	2003
GlaxoSmithKline	37%	30%	31%
Genoptera	32%	27%	28%
Bristol-Myers Squibb	7%	19%	21%

Revenue Recognition

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

We enter into corporate collaborations under which we may obtain up-front license fees, research funding, and contingent milestone payments and royalties. We evaluate whether the delivered elements under these arrangements have value to our collaboration partner on a stand-alone basis and whether objective and reliable evidence of fair value of the undelivered item exists. Deliverables that do not meet these criteria are not evaluated separately for the purpose of revenue recognition.

Milestone payments are non-refundable and recognized as revenues over the period of the research arrangement. This typically results in a portion of the milestone being recognized at the date the milestone is achieved, which portion is equal to the applicable percentage of the research term that has elapsed at the date the milestone is achieved, and the balance being recognized over the remaining research term of the agreement.

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

Research and Development Expenses

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

Substantial portions of our preclinical studies and all of our clinical trials have been performed by third-party contract research organizations (CROs) and other vendors. We accrue expenses for preclinical studies performed by our vendors on a straight-line basis over the term of the service period and adjust our estimates as

required. We accrue costs for clinical trial activities performed by CROs based upon the estimated amount of work completed on each study. For clinical trial expenses, the significant factors used in estimating accruals include the number of patients enrolled and the duration for which they will be enrolled in the study. We monitor patient enrollment levels and related activities to the extent possible through internal reviews, correspondence with CROs and review of contractual terms.

Net Loss Per Share

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

The following table sets forth potential shares of common stock that are not included in the computation of diluted net loss per share because to do so would be antidilutive for the year ended December 31, 2005:

Options to purchase common stock	13,157,431
Conversion of note and loans	13,920,556
Warrants	821,148
	27,899,135

Foreign Currency Translation

Exelixis' subsidiaries located in Germany operate using local currency as the functional currency. Accordingly, all assets and liabilities of these subsidiaries are translated using exchange rates in effect at the end of the period, and revenues and expenses are translated using average exchange rates for the period. The resulting translation adjustments are presented as a separate component of accumulated other comprehensive income.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Stock-Based Compensation

We have employee and director stock option plans that are more fully described in Note 10 of the Notes to Consolidated Financial Statements. We recognize employee stock-based compensation under the intrinsic value method of accounting as prescribed by Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations. Accordingly, no compensation expense is recognized in our financial statements for the stock options granted to employees, which had an exercise price equal to the fair value of the underlying common stock on the date of grant. The following table illustrates the effect on net loss and loss per share if we had applied the fair value recognition provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), as amended by SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – an amendment of FASB Statement No. 123" ("SFAS 148") (in thousands, except per share amounts):

	Year Ended December 31,		
	2005	2004	2003
Net loss:			
As reported	$(84,404)	$(137,245)	$ (94,774)
Add: Stock-based employee compensation expense (reversal) included in reported net loss	(5)	56	908
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards	(11,912)	(16,028)	(19,050)
Pro forma	$(96,321)	$(153,217)	$(112,916)
Net loss per share (basic and diluted):			
As reported	$ (1.07)	$ (1.89)	$ (1.45)
Pro forma	$ (1.22)	$ (2.11)	$ (1.73)

The fair value of stock options and shares purchased pursuant to the Employee Stock Purchase Plan ("ESPP") were determined using the Black-Scholes option pricing model with the following assumptions for the years ended December 31, 2005, 2004 and 2003:

	Stock Options			ESPP		
	2005	2004	2003	2005	2004	2003
Risk-free interest rate	4.25%	3.11%	2.60%	2.74%	1.11%	1.33%
Dividend yield	0%	0%	0%	0%	0%	0%
Volatility	66%	72%	81%	56%	63%	63%
Expected life	6.25 years	4 years	4 years	6 months	6 months	6 months

We used the Black-Scholes option pricing model in determining the fair value of share based payments to employees, which we amortized on a straight line basis over the requisite service period. We calculated volatility by using a combination of historical and implied volatility.

We account for stock options issued to non-employees in accordance with the provisions of SFAS 123 and Emerging Issues Task Force 96-18, "Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with, Selling Goods or Services" ("EITF 96-18"). Compensation expense for stock options granted to non-employees has been determined as the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measured and is periodically re-measured as the underlying options vest.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Comprehensive Income (Loss)

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

Comprehensive income (loss) for the years ended December 31, 2005, 2004 and 2003 are as follows (in thousands):

	Year Ended December 31,		
	2005	2004	2003
Net loss	$(84,404)	$(137,245)	$(94,774)
Increase (decrease) in unrealized gains on available-for-sale securities	63	(737)	(681)
Decrease in unrealized gains on cash flow hedges	—	—	(119)
Increase (decrease) in cumulative translation adjustment	286	(575)	870
Reclassification adjustment for gains from cumulative currency translation	—	228	—
Comprehensive loss	$(84,055)	$(138,329)	$(94,704)

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

	Year Ended December 31,		
	2005	2004	2003
Unrealized gains (losses) on available-for-sale securities	$ (449)	$ (512)	$ 225
Cumulative translation adjustment	1,422	1,136	1,483
Accumulated other comprehensive income	$ 973	$ 624	$1,708

Reclassification

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

Recent Accounting Pronouncements

We are required to adopt Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, ("SFAS 123R") effective January 1, 2006. SFAS 123R will require the recognition of stock-based compensation at fair value in our statement of operations. We expect to adopt SFAS 123R under the modified prospective method. Under the modified prospective method, we will record compensation expense for all unvested stock options and restricted stock starting on January 1, 2006. We also expect to continue to apply the Black-Scholes option pricing model in determining the fair value of share based payments to employees, which will then be amortized on a straight-line basis over the requisite service period. Under SFAS 123R, option grants are generally valued at the grant date and those valuations do not change once they have been established. As a result, the stock-based compensation expense we expect to record in 2006 will be based largely upon the amortization of costs for awards granted in 2005 and prior periods. This portion of our stock-based compensation expense will be fairly predictable and is expected to be similar to our historical pro forma disclosures. However, because of the variability in the assumptions to be used in the valuation of stock options we may grant in 2006 and the variability in the quantity and other terms of stock based awards we may issue in 2006, our ability to predict the 2006 stock-based compensation expense is limited.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 2 ACQUISITIONS

X-Ceptor Therapeutics

In October 2004, we completed the acquisition of X-Ceptor Therapeutics, Inc. ("X-Ceptor"). X-Ceptor, a privately held company located in San Diego, California, which was focused on the discovery and development of small molecules that modulate nuclear hormone receptors.

The transaction was accounted for as an acquisition of assets. The total consideration for the acquisition was $25.7 million, which consisted of 2.6 million shares of our common stock, $2.9 million in cash, and $2.3 million in transaction costs. The transaction costs included financial advisory, legal, accounting and other fees.

The purchase price allocation is as follows (in thousands):

Tangible assets acquired	$ 2,591
In-process research and development	25,982
Assembled workforce	1,100
Liabilities assumed	(3,933)
	$25,740

We allocated the purchase price to X-Ceptor's tangible assets, liabilities and intangible assets such as assembled workforce and acquired in-process research and development. Independent valuation experts assisted us during the valuation of the intangible assets acquired. The $2.6 million of tangible assets acquired are comprised of $1.2 million of property and equipment, net of accumulated depreciation, $1.0 million of prepaid expenses and other assets and $0.4 million in cash and cash equivalents. The $3.9 million in liabilities assumed as part of the acquisition are comprised of $1.1 million in accounts payable and accrued expenses, $1.8 million in bank obligations, and $1.0 million in deferred revenues.

The acquired assembled workforce includes the estimated cost to replace existing employees, including recruiting and training costs. We are amortizing the value assigned to the assembled workforce of $1.1 million on a straight-line basis over an estimated useful life of two years.

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

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

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

In December 2005, we entered into a license agreement with Wyeth Pharmaceuticals Division ("Wyeth"). We granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. In addition, 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. These agreements are described in further detail in Notes 3 and 14 of the Notes to Consolidated Financial Statements.

Agrinomics

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

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

NOTE 3 RESEARCH AND COLLABORATION AGREEMENTS

Wyeth Pharmaceuticals

In December 2005, Exelixis and Wyeth entered into a license agreement related to compounds targeting FXR, a nuclear hormone receptor implicated in a variety of metabolic and liver disorders. Under the terms of the agreement, we have granted to Wyeth an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate FXR. Wyeth paid us a nonrefundable upfront payment in the amount of $10.0 million and is obligated to pay additional development and commercialization milestones of up to $147.5 million, as well as royalties on sales of any products commercialized by Wyeth under the agreement. The upfront payment is being recognized as revenue over a one year period commencing with the execution of the agreement. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Bristol-Myers Squibb

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

In July 2001, we entered into a second collaboration with BMS involving three agreements: (a) a Stock Purchase Agreement; (b) a Cancer Collaboration Agreement; and (c) a License Agreement. Under the terms of the collaboration, BMS (i) purchased 600,600 shares of Exelixis common stock in a private placement at a purchase price of $33.30 per share, for cash proceeds to Exelixis of $20.0 million; (ii) agreed to pay Exelixis a $5.0 million upfront license fee and provide Exelixis with $3.0 million per year in research funding for a minimum of three years; and (iii) granted to Exelixis a worldwide, fully-paid, exclusive license to becatecarin (XL119) developed by BMS, which is currently in a Phase 3 clinical trial as a potential treatment for bile duct tumors. Due to risk and uncertainties with becatecarin, and because becatecarin had not reached technological feasibility and has no alternative use, becatecarin was assigned no value for financial reporting purposes. The premium in excess of fair market value of $10.0 million paid for the common stock purchased by BMS was accounted for similar to an upfront license fee and was recognized ratably over the life of the initial research term.

In December 2003, this second collaboration was extended until January 2007, with the right for BMS to continue the collaboration until July 2009. The goal of the extension is to increase the total number and degree of validation of cancer targets that we will deliver to BMS. Each company will maintain the option to obtain exclusive worldwide rights to equal numbers of validated targets arising from the collaboration. Under the terms of the extended collaboration, BMS provided us with an upfront payment and will provide increased annual research funding and milestones on certain cancer targets arising from the collaboration that progress through specified stages of validation. We will also be entitled to receive milestones on compounds in the event of successful clinical and regulatory events and royalties on commercialized products.

In December 2005, we entered into a third collaboration agreement with BMS, which became effective in January 2006. This new collaboration agreement is described in further detail in Note 14 of the Notes to Consolidated Financial Statements.

Genentech

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

Under the agreement, Genentech will have primary responsibility in the field of cancer for research and development activities as well as rights for commercialization of any products. In the fields of inflammatory

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

Helsinn Healthcare

In June 2005, Exelixis and Helsinn Healthcare S.A. (“Helsinn”) entered into a license agreement for the development and commercialization of XL119 (becatecarin). Under the terms of the agreement, we granted to Helsinn an exclusive worldwide, royalty bearing license to XL119. We have retained an option to reacquire the commercial rights to XL119 for North America. If we decide to exercise the option, we have the right to negotiate with Helsinn to reach an agreement on commercially reasonable terms and conditions to reacquire the commercial rights to XL119 for North America for use in the indications of gall bladder cancer and bile duct tumors. Helsinn paid us a nonrefundable upfront payment in the amount of $4.0 million and is obligated to pay additional development and commercialization milestones of up to $21.0 million, as well as royalties on worldwide sales. The upfront payment and was recognized as revenue during 2005. Helsinn assumed all costs incurred for the ongoing multi-national Phase 3 clinical trial for XL119 after the execution of the license agreement.

Beginning in June 2006, if Helsinn determines, based on reasonable business judgment from scientific or economic evidence, that it is unable to carry out further development or marketing of XL119, it may terminate the license agreement upon six months’ prior written notice. In addition, if we fail to supply Helsinn with certain clinical trial materials by the end of April 2006 and such failure prevents Helsinn from enrolling additional patients or from maintaining the then-current enrollment in the ongoing Phase 3 clinical trial, then Helsinn may terminate the license agreement or elect to continue the agreement at a reduced royalty rate.

Bayer

In May 1998, Exelixis entered into a six-year research collaboration agreement with Bayer Corporation (“Bayer”) to identify novel screening targets for the development of new pesticides for use in crop protection. We provided research services directed towards identifying and investigating molecular targets in insects and nematodes that may be useful in developing and commercializing pesticide products. We received a $1.2 million license fee upon execution of the agreement that was recognized as revenue over the term of the agreement.

In December 1999, we expanded our relationship with Bayer by forming a joint venture in the form of a new limited liability company, Genoptera LLC (“Genoptera”). Under the terms of the Genoptera operating agreement, Bayer provided 100% of the capital necessary to fund the operations of Genoptera and had the ability to control the entity with a 60% ownership interest. We owned the other 40% interest in Genoptera without making any capital contribution and reported our investment in Genoptera using the equity method of accounting. Bayer’s initial capital contributions to Genoptera were $10.0 million in January 2000 and another $10.0 million in January 2001. Bayer also contributed cash to Genoptera in amounts necessary to fund its ongoing operating expenses. Genoptera incurred losses since inception. Since the carrying value of the investment remained at zero and we had no obligation to fund future losses, we did not record any equity method losses for Genoptera.

In January 2000, we, Bayer and Genoptera entered into an exclusive eight-year research collaboration agreement, which superseded the 1998 agreement discussed above. We were required to provide Genoptera with

expanded research services focused on developing insecticides and nematicides for crop protection. Under the terms of the collaboration agreement, Genoptera paid us a $10.0 million license fee and a $10.0 million research commitment fee, which we received in January 2000 and January 2001, respectively. Additionally, Genoptera was required to pay us $10.0 million in annual research funding.

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

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

GlaxoSmithKline

In October 2002, Exelixis and SmithKlineBeecham Corporation, which does business as GlaxoSmithKline, established a collaboration to discover and develop novel therapeutics in the areas of vascular biology, inflammatory disease and oncology. The collaboration involved three agreements: (i) a Product Development and Commercialization Agreement (“PDA”); (ii) a Stock Purchase and Stock Issuance Agreement (“SPA”); and (iii) a Loan and Security Agreement (“LSA”). Under the original PDA, GlaxoSmithKline paid us $30.0 million in an upfront fee and $10.0 million in annual research funding, and agreed to pay a minimum of an additional $80.0 million in research and development funding over the first six years of the collaboration.

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

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

In January 2005, we amended the terms of our collaboration with GlaxoSmithKline. Under the original PDA, an option period commenced in October 2004 during which GlaxoSmithKline was required to elect a pre-defined limited or expanded program option. The terms of the amended PDA reflect GlaxoSmithKline’s

decision to select a modified program election that is neither the limited nor the expanded option envisioned in the original PDA. If GlaxoSmithKline had elected the limited program option, then GlaxoSmithKline would have been able to select up to 12 targets, along with the respective compounds directed against those targets, which would have narrowed the focus of further work under the collaboration. If GlaxoSmithKline had elected the expanded program option, there would not be a narrowing of focus, and all of the collaboration targets, and their respective compounds, would have remained in the collaboration. Under the amended PDA, GlaxoSmithKline selected a modified program election through which the focus of the collaboration is shifted to 12 internal programs at various stages of development (XL784, XL647, XL999, XL880, XL184, XL820, XL844, XL281, XL418, XL228 and two earlier stage oncology programs). Each program centers on compounds that are directed against one or more targets identified in the collaboration. Under the modified program, GlaxoSmithKline has the right to select from these programs up to two compounds at proof-of-concept (completion of Phase 2a clinical trial) or three compounds if GlaxoSmithKline extends the collaboration. If GlaxoSmithKline selects three compounds, we could receive in excess of $200.0 million in acceptance milestones. Prior to the end of a specified development term, GlaxoSmithKline retains exclusivity rights to the 32 specified targets that are encompassed by the 12 programs. However, we retain rights to all compounds not encompassed by the 12 programs selected by GlaxoSmithKline and may work on any targets with the exception of the 32 targets subject to GlaxoSmithKline's exclusivity rights.

Under the amended PDA, GlaxoSmithKline was required to pay us a new $30.0 million milestone upon (i) the filing of investigational new drug applications ("INDs") for three out of four compounds (XL880, XL184, XL820 and XL844) prior to the end of 2005 or (ii) the successful completion in 2005 of a Phase 1 clinical trial for one of these four compounds. In May 2005, we filed the third of three INDs required by the amended PDA to achieve the $30.0 million milestone, which we received from GlaxoSmithKline in May 2005. The revenue from this milestone is being recognized over the term of the amended PDA on a straight-line basis from January 2005 to November 2009. In return for the new $30.0 million milestone, GlaxoSmithKline will receive a $30.0 million credit and a specified reduction against the first acceptance milestone as well as a temporary reduction in the royalty rate it owes us on net sales of products developed under the collaboration. If the acceptance milestone was less than the $30.0 million credit and the specified reduction, then the remaining balance would reduce any future product commercialization milestones that GlaxoSmithKline owes to us. Under the amended PDA, GlaxoSmithKline also was obligated to pay us a new $5.0 million milestone upon achieving specified progress with respect to certain other candidates. In May 2005, we submitted two new development candidates to GlaxoSmithKline, thereby triggering the additional $5.0 million milestone, which we received in May 2005. We may also receive additional development related milestones and royalties on product sales and have certain co-promotion rights to products in North America. In addition, under the amended PDA, GlaxoSmithKline agreed to provide research funding of $47.5 million over the remaining three-year term of the collaboration, of which we have received $12.5 million in 2005.

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

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

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Compound Collaborations

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

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

Protein Design Labs

In May 2001, we entered into a two-year collaboration to discover and develop humanized antibodies for the diagnosis, prevention and treatment of cancer with Protein Design Labs, Inc. (“PDL”). The collaboration used Exelixis’ model organism genetics technology for the identification of new cancer drug targets and PDL’s antibody and clinical development expertise to create and develop new antibody drug candidates. This collaboration was successfully completed on schedule in May 2003. Under the terms of the collaboration, PDL provided Exelixis with $4.0 million in annual research funding until May 2003 and purchased a $30.0 million convertible note. The note bears interest at 5.75%, and the interest thereon is payable annually. The note is convertible at PDL’s option any time after the first anniversary of the note’s issuance. The note, which matures in May 2006, is convertible into Exelixis common stock at a conversion price per share equal to the lower of (i) $28.175 or (ii) 110% of the Fair Market Value (as defined in the note) of a share of Exelixis common stock at the time of conversion.

NOTE 4 SYMPHONY EVOLUTION

On June 9, 2005 (the “Closing Date”), we entered into a series of related agreements providing for the financing of the clinical development of XL784, XL647 and XL999 (the “Programs”). Pursuant to the agreements, Symphony Evolution, Inc. (“SEI”) has agreed to invest up to $80.0 million to fund the clinical development of these Programs and we have licensed to SEI our intellectual property rights related to these Programs. SEI is a wholly owned subsidiary of Symphony Evolution Holdings LLC (“Holdings”), which provided $40.0 million in funding to SEI at closing, and which is obligated to fund, upon a capital call by SEI, at least an additional $20.0 million and not more than $40.0 million within one year of the Closing Date. We continue to be primarily responsible for the development of these Programs.

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

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We also reduced the noncontrolling interest holders' ownership interest in SEI in the consolidated balance sheet by: (i) a $3.0 million structuring fee that we incurred in connection with the closing of the SEI transaction, and (ii) a $2.8 million value assigned to the warrants that were issued to Holdings upon closing.

Pursuant to the agreements, we have received an exclusive purchase option (the "Purchase Option") that gives us the right to acquire all of the equity of SEI, thereby allowing us to reacquire all of the Programs. This Purchase Option is exercisable at any time, beginning on the one-year anniversary of the Closing Date and ending on the four-year anniversary of the Closing Date (subject to an earlier exercise right in limited circumstances), at an exercise price equal to the sum of: (i) the total amount of capital invested in SEI by Holdings and (ii) an amount equal to 25% per year on such funded capital (with respect to the initial funded capital, compounded from the Closing Date and, with respect to the second draw amount, compounded from the second draw date). The exercise price will be subject to a premium if we exercise the Purchase Option between 12 and 18 months after the Closing Date. The Purchase Option exercise price may be paid for in cash or in a combination of cash and our common stock, at our sole discretion, provided that the common stock portion may not exceed 33% of the Purchase Option exercise price.

In addition, we have also received an exclusive purchase option (the "Program Option") from SEI, allowing us under certain conditions to separately reacquire from SEI one of the three Programs during a period beginning on the Closing Date and ending 18 months after the Closing Date. The Program Option is exercisable in our sole discretion at a premium exercise price, which is payable in cash only and will be fully creditable against the exercise price for any subsequent exercise of the Purchase Option.

Pursuant to the agreements, we issued to Holdings a five-year warrant to purchase 750,000 shares of our common stock at $8.90 per share. Contingent upon the second capital draw by SEI, we are obligated to issue to Holdings an additional five-year warrant to purchase between 375,000 shares (if $20.0 million of additional funds are drawn) and 750,000 shares (if $40.0 million of additional funds are drawn) of our common stock at $8.90 per share. In addition, if the Purchase Option expires unexercised at the four-year anniversary of the Closing Date, we are obligated to issue to Holdings an additional warrant to purchase 500,000 shares (if a total of $80.0 million of funds are drawn) of our common stock at a price per share equal to 125% of the market price of our common stock at the time of expiration of the Purchase Option, with a five-year term. The warrants issued upon closing were assigned a value of $2.8 million in accordance with the Black-Scholes option valuation methodology, which has been recorded as a reduction to the noncontrolling interest in SEI. Pursuant to the agreements, we have no further obligation beyond the items described above and we have no obligation to the creditors of SEI as a result of our involvement with SEI.

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

NOTE 5 RELATED PARTY TRANSACTIONS

For the years ended, December 31, 2005, 2004 and 2003, we recognized revenues of $24.0 million, $14.4 million and $13.8 million, respectively, under a collaboration agreement with Bayer through our joint venture with Genoptera. The $24.0 million recognized in 2005 was primarily related to the recognition of $21.1 million in revenues from the acceleration of upfront payments, milestones and a termination payment associated with the termination of our Genoptera collaboration.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We also recognized revenues of $0.9 million and $2.4 million under the Agrinomics joint venture for the years ended, December 31, 2004 and 2003, respectively. In May 2004, we acquired the remaining 50% interest in Agrinomics from Bayer.

NOTE 6 PROPERTY AND EQUIPMENT

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

	December 31,	
	2005	2004
Laboratory equipment	$ 56,572	$ 49,020
Computer equipment and software	14,916	18,464
Furniture and fixtures	4,915	6,746
Leasehold improvements	18,591	16,283
Construction-in-progress	2,617	4,516
	97,611	95,029
Less accumulated depreciation and amortization	(62,034)	(59,566)
	$ 35,577	$ 35,463

The equipment under our capital leases collateralizes the related lease obligations. For the years ended December 31, 2005 and 2004, we had equipment under our capital leases and corresponding accumulated amortization of the following (in thousands):

	December 31,	
	2005	2004
Equipment under capital leases	$ 1,545	$ 9,041
Less accumulated depreciation and amortization	(1,189)	(7,103)
	$ 356	$ 1,938

Amortization expense related to the capital leases is included with depreciation expense. For the years ended, December 31, 2005, 2004 and 2003, we recorded depreciation expense of $13.9 million, $13.6 million and $14.9 million, respectively.

NOTE 7 GOODWILL AND OTHER ACQUIRED INTANGIBLES

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

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

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

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

	December 31, 2004		
	Gross Carrying Amount	Accumulated Amortization	Net
Developed technology	$ 1,640	$ (1,299)	$ 341
Patents and core technology	4,323	(1,141)	3,182
Assembled workforce	1,100	(111)	989
Total	$ 7,063	$ (2,551)	$4,512

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

Year Ending December 31,	Amortization Expense
2006	$ 820
2007	288
2008	288
2009	288
2010	288
Thereafter	1,453
Total expected future amortization	$ 3,425

NOTE 8 RESTRUCTURING CHARGES

2004 Restructuring Charges

During the second quarter of 2004, we implemented a restructuring and consolidation of our research and discovery organizations designed to optimize our ability to generate multiple new, high-quality investigational new drug applications per year and rapidly advance these new drug candidates through clinical development. We accounted for the restructuring activity in accordance with Statement of Financial Accounting Standards No. 146, *Accounting for Costs Associated with Exit or Disposal Activities* (“SFAS 146”). The restructuring included a reduction in force of 62 employees, the majority of which were research personnel located in South San Francisco, California. We recorded a restructuring charge of $1.7 million during the second quarter of 2004 comprised primarily of involuntary termination benefits. As of December 31, 2005, all amounts under this restructuring liability had been fully paid and the restructuring liabilities as of December 31, 2004 were included

under the caption “Other Accrued Expenses” on the balance sheet and are summarized in the following table (in thousands):

	Restructuring Expense Incurred During 2004	2004 Cash Payments	Restructuring Liability at December 31, 2004	2005 Cash Payments	Restructuring Liability at December 31, 2005
Severance and benefits	$ 1,537	$ (1,478)	$ 59	$ (59)	$ —
Legal and other fees	201	(153)	48	(48)	—
	$ 1,738	$ (1,631)	$ 107	$ (107)	$ —

2003 Restructuring Charges

During the third quarter of 2003, we implemented a worldwide restructuring of our research and development organization designed to reallocate resources and enhance the efficiency of our operations. The restructuring included a reduction in force of 61 research personnel located in South San Francisco, California and Tübingen, Germany, closure of our Tübingen location, and relocation of certain research activities and employees from Tübingen to South San Francisco and a non-cash impairment of assets of $0.1 million. We recorded a cumulative charge of $1.5 million in accordance with SFAS 146, of which $0.5 million and $1.0 million was recorded during the years ended December 31, 2004 and 2003, respectively. The restructuring plan was substantially complete as of March 31, 2004. This charge primarily consists of severance payments, retention bonuses, relocation costs, lease buyout costs and legal and outplacement services fees. As of December 31, 2005, all amounts under this restructuring liability had been fully paid and the restructuring liabilities as of December 31, 2004 were included under the caption “Other Accrued Expenses” on the balance sheet and are summarized in the following table (in thousands):

	Restructuring Expenses Incurred During 2005	Cash Payments	Exchange Rate Impact on Liability	Restructuring Liability at December 31, 2005
Severance and benefits	$ —	$ (31)	$ —	$ —
Legal and other fees	—	(45)	—	—
Lease buyout costs	—	(66)	—	—
	$ —	$ (142)	$ —	$ —

	Restructuring Expenses Incurred During 2004	Cash Payments	Exchange Rate Impact on Liability	Restructuring Liability at December 31, 2004
Severance and benefits	$ 81	$ (439)	$ —	$ 31
Legal and other fees	128	(100)	(1)	45
Lease buyout costs	307	(241)	—	66
Relocation	171	(177)	—	—
	$ 687	$ (957)	$ (1)	$ 142

	Restructuring Expense Incurred During 2003	Cash Payments	Exchange Rate Impact on Liability	Restructuring Liability at December 31, 2003
Severance and benefits	$ 740	$ (367)	$ 16	$ 389
Legal and other fees	179	(161)	—	18
Relocation	6	—	—	6
	$ 925	$ (528)	$ 16	$ 413

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 9 DEBT

Our debt consists of the following (in thousands):

	December 31,	
	2005	2004
GlaxoSmithKline convertible promissory loan	$ 85,000	$ 85,000
PDL convertible promissory note	30,000	30,000
Bank equipment lines of credit	33,751	30,326
	148,751	145,326
Less: current portion	(41,893)	(8,928)
Long-term debt	$106,858	$136,398

Under the LSA executed in connection with the GlaxoSmithKline collaboration, GlaxoSmithKline provided a loan facility of up to $85.0 million for use in our efforts under the collaboration. We borrowed $25.0 million under that agreement in December 2002, an additional $30.0 million in December 2003 and the remaining $30.0 million in 2004. All loan amounts bear interest at a rate of 4.0% per annum and are secured by the intellectual property, technology and equipment created or utilized pursuant to the collaboration. Principal and accrued interest becomes due in installments, beginning on or about the sixth anniversary of the collaboration, unless the collaboration is earlier terminated by GlaxoSmithKline. Repayment of all or any of the amounts advanced to us under this agreement may, at our election, be in the form of Exelixis' common stock at fair market value, subject to certain conditions. This loan facility also contains financial covenants pursuant to which our working capital (the amount by which our current assets exceed our current liabilities as defined by the agreement) must not be less than $25.0 million and our cash and investments (total cash and cash equivalents and investments as defined by the agreement, which excludes restricted cash and investments) must not be less than $50.0 million. As of December 31, 2005, we were in compliance with these covenants.

In May 2001, we issued a $30.0 million convertible promissory note to PDL in connection with a collaboration agreement (see Note 3 of the Notes to the Consolidated Financial Statements). The note bears interest at 5.75%, payable annually. The note, which matures in May 2006, is convertible at PDL's option any time after the first anniversary of the note. The note is convertible into Exelixis common stock at a conversion price per share equal to the lower of (i) $28.175 or (ii) 110% of the Fair Market Value (as defined in the note) of a share of Exelixis common stock at the time of conversion. The full amount of the note remained outstanding as of December 31, 2005 and 2004. At December 31, 2005, the promissory note to PDL was classified as a current liability.

In May 2002, we entered into a loan and security agreement with a bank for an equipment line of credit of up to $16.0 million with a draw down period of one year. Each draw on the line of credit has a payment term of 48 months and bears interest at the bank's published prime rate (6.8% at December 31, 2005). We extended the draw down period on the line-of-credit for an additional year in June 2003 and increased the principal amount of the line of credit from $16.0 million to $19.0 million in September 2003. Pursuant to the terms of this line of credit, we are required to maintain a first priority security interest in the form of a deposit or securities account at the bank equal to 100% of the outstanding obligation under the line of credit. As of December 31, 2005, the collateral balance was $7.4 million, and we recorded this amount in the accompanying consolidated balance sheet as cash and cash equivalents as the securities are not restricted as to withdrawal. This equipment line of credit was fully drawn as of December 31, 2004. The outstanding obligation under the line of credit as of December 31, 2005 and 2004 was $6.1 million and $10.4 million, respectively.

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

In December 2004, we entered into a loan modification agreement to the loan and security agreement originally entered into in May 2002. The terms associated with the original $16.0 million line of credit under the May 2002 agreement were not modified. The loan modification agreement provides for an additional equipment line of credit in the amount of up to $20.0 million with a draw down period of one year. Pursuant to the terms of the modified agreement, we are required to make interest only payments through January 2006 at an annual rate of 0.70% on all outstanding advances. Beginning in February 2006, we are required to make 48 equal monthly installment payments of principal plus accrued interest, at an annual rate of 0.70%. The loan facility is secured by a non-interest bearing certificate of deposit account with the bank, in an amount equal to at least 100% of the outstanding obligations under the line of credit. As of December 31, 2005, the collateral balance was $17.6 million, and we recorded this amount in the accompanying consolidated balance sheet as cash and cash equivalents as the deposit account is not restricted as to withdrawal. As of December 31, 2005 there was $2.4 million outstanding under this line of credit. The outstanding obligation under the line of credit as of December 31, 2005 and 2004 was $17.6 million and $4.8 million, respectively.

In December 2003, we entered into a credit agreement with a bank for an equipment line of credit of up to $15.0 million with a draw down period of one year. During the draw down period, we made interest only payments on outstanding balances. At the end of the draw down period, the outstanding balance converted to a 48-month term loan. The outstanding principal balance bears interest at LIBOR plus 0.625% (4.3% at December 31, 2005). This equipment line of credit had been fully drawn as of December 31, 2004. Of the $15.0 million draw down, $1.6 million was in the form of an irrevocable stand by letter of credit. This letter of credit is in lieu of a security deposit for one of our South San Francisco facilities. Pursuant to the terms of the line of credit, we are required to maintain a securities account at the bank equal to at least 100% of the outstanding principal balance. As of December 31, 2005, the collateral balance was $11.6 million, and we recorded this amount in the balance sheet as restricted cash and investments as the securities are restricted as to withdrawal. The outstanding obligation under the line of credit as of December 31, 2005 and 2004 was $10.1 million and $13.4 million, respectively.

In October 2004, we assumed a $1.8 million bank obligation as part of our acquisition of X-Ceptor. Pursuant to the loan agreement we were required to make monthly installments through October 2006 of principal plus accrued interest, at the bank's published prime rate plus 1.5%. In January 2005, we paid off the remaining outstanding balance of this bank obligation and the outstanding obligation as of December 31, 2005 and 2004 was none and $1.7 million, respectively.

Aggregate future principal payments of our total long-term debt as of December 31, 2005 are as follows (in thousands):

Year Ending December 31,	
2006	$ 41,893
2007	9,347
2008	35,801
2009	32,444
2010	29,266
Thereafter	—
	148,751
Less current portion	(41,893)
	$106,858

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 10 COMMON STOCK AND WARRANTS

Stock Repurchase Agreements

Under the terms of our stock option agreements for options granted to employees before December 9, 2004, options are exercisable when granted, and, if exercised, the related shares are subject to repurchase upon termination of employment. Repurchase rights lapse over the vesting periods, which are generally four years. Should the employment of the holders of common stock subject to repurchase terminate prior to full vesting of the outstanding shares, we may repurchase all unvested shares at a price per share equal to the original exercise price. At December 31, 2005 and 2004, none and 19 shares, respectively, were subject to such repurchase terms. On December 9, 2004, Exelixis' Board of Directors adopted a new stock option agreement under our 2000 Equity Incentive Plan pursuant to which we may grant options that may not be exercised early. Stock option grants after December 9, 2004 under our 2000 Equity Incentive Plan are generally made pursuant to the new option agreement and do not permit early exercise of options.

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

Warrants

We have granted warrants to purchase shares of capital stock to third parties in connection with financing and operating lease arrangements. At December 31, 2005, the following warrants to purchase common stock were outstanding and exercisable:

Date Issued	Exercise Price per Share	Expiration Date	Number of Shares
January 24, 1996	$1.13	January 24, 2006	71,428
June 9, 2005	$8.90	June 9, 2010	750,000
			821,428

Reserved Shares

At December 31, 2005, common stock reserved for future issuance is as follows:

Outstanding common stock options	13,157,431
Common stock available for grant under our stock option plans	11,371,569
Common stock available for grant under the 401(k) plan	217,614
Common stock issuable upon conversion of note and loans	13,920,556
Common stock available for grant under the 2000 Employee Stock Purchase Plan	1,622,096
Warrants	821,428
	41,110,694

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

NOTE 11 EMPLOYEE BENEFIT PLANS

Stock Based Benefit Plans

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

A summary of all option activity is presented below:

	Shares	Weighted Average Exercise Price
Options outstanding at December 31, 2002	10,055,616	$ 14.60
Granted	3,209,085	6.72
Exercised	(124,102)	1.95
Cancelled	(2,233,857)	13.75
Options outstanding at December 31, 2003	10,906,742	12.65
Granted	3,327,405	8.33
Exercised	(614,865)	4.74
Cancelled	(2,085,427)	12.64
Options outstanding at December 31, 2004	11,533,855	11.74
Granted	3,869,375	8.78
Exercised	(302,264)	5.80
Cancelled	(1,943,535)	13.53
Options outstanding at December 31, 2005	13,157,431	$ 10.73

At December 31, 2005, a total of 11,371,569 shares were available for grant under our stock option plans.

The following table summarizes information about stock options outstanding and exercisable at December 31, 2005:

	Options Outstanding			Options Outstanding and Exercisable	
Exercise Price Range	Number	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number of Exercisable	Weighted Average Exercise Price
$0.27 - $0.40	81,730	3.4	$ 0.28	81,730	$ 0.28
$1.33 - $1.34	10,360	4.0	1.33	10,360	1.33
$3.35 - $4.95	116,042	6.5	4.88	116,042	4.88
$5.05 - $7.56	2,800,377	7.8	6.68	2,417,749	6.59
$7.65 - $11.47	7,072,006	8.6	8.92	2,931,726	8.85
$12.19 - $16.99	2,164,215	5.5	15.25	2,164,215	15.25
$18.81 - $24.25	494,957	4.7	19.69	494,957	19.69
$29.75 - $40.50	381,444	4.3	37.47	381,444	37.47
$45.00 - $47.00	36,300	4.6	46.65	36,300	46.65
	13,157,431	7.6	$ 10.73	8,634,523	$ 11.72

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

We had 10.3 million stock options exercisable with a weighted-average exercise price of $12.10 at December 31, 2004 and 10.9 million stock options exercisable with a weighted-average exercise price of $12.58 at December 31, 2003. The weighted-average fair value of options granted during the years ended December 31, 2005, 2004 and 2003 was $5.67, $4.77 and $4.22 per share, respectively.

Stock Compensation. During the period from January 1, 1999 through December 31, 2002, we recorded $29.9 million of deferred stock compensation related to stock options granted to consultants and employees in accordance with APB 25, SFAS 123 and EITF 96-18. Stock compensation expense related to stock options granted to employees was recognized over the vesting periods of the related options of four years. We recognized stock compensation expense related to employees of none, $0.1 million and $0.9 million for the years ended December 31, 2005, 2004 and 2003, respectively. For options granted to consultants, we determined the fair value of the options using the Black-Scholes option-pricing model. We recognized stock compensation expense related to consultants of $0.1 million, none and none for the years ended December 31, 2005, 2004 and 2003, respectively.

Stock Purchase Plan. In January 2000, we adopted the 2000 Employee Stock Purchase Plan (the “ESPP”). The ESPP allows for qualified employees (as defined in the ESPP) to purchase shares of our common stock at a price equal to the lower of 85% of the closing price at the beginning of the offering period or 85% of the closing price at the end of each purchase period. We issued 377,322 shares, 312,552 shares and 388,119 shares of common stock during 2005, 2004 and 2003, respectively, pursuant to the ESPP at an average price per share of $5.83, $6.83 and $5.02, respectively. The weighted average per share fair value for the right to purchase shares pursuant to the ESPP during 2005, 2004 and 2003 was $2.24, $2.46 and $1.89, respectively.

401(k) Plan

We sponsor a 401(k) Retirement Plan whereby eligible employees may elect to contribute up to the lesser of 20% of their annual compensation or the statutorily prescribed annual limit allowable under Internal Revenue Service regulations. The 401(k) Plan permits Exelixis to make matching contributions on behalf of all participants. Beginning in 2002, we matched 50% of the first 4% of participant contributions into the 401(k) Plan in the form of Exelixis stock. We recorded expense of $0.6 million, $0.6 million and $0.5 million related to the stock match for the years ended December 31, 2005, 2004 and 2003, respectively.

NOTE 12 INCOME TAXES

We have incurred net losses since inception and, consequently, we have not recorded any U.S. federal or state income taxes. We recorded a tax provision related to income earned in our foreign operations of $0.3 million during the year ended December 31, 2002. Due to a favorable resolution of certain matters with the German tax authorities, that tax provision was reversed in 2003. We do not expect to pay income taxes on our foreign operations for the years ended December 31, 2005 and 2004.

At December 31, 2005, we had federal net operating loss carryforwards of approximately $557.0 million, which expire in the years 2006 through 2025. We also had net operating loss carryforwards for California of approximately $272.0 million, which expire in the years 2006 through 2015. We also had federal and California research and development tax credits of approximately $19.8 million and $18.1 million, respectively, which expire at various dates beginning in the year 2011.

Under the Internal Revenue Code and similar state provisions, certain substantial changes in our ownership could result in an annual limitation on the amount of net operating loss and credit carryforwards that can be

utilized in future years to offset future taxable income. The annual limitation may result in the expiration of net operating losses and credit carryforwards before utilization.

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

	December 31,		
	2005	2004	2003
U.S. federal taxes (benefit) at statutory rate	$(29,503)	$(46,663)	$(32,340)
Unutilized (utilized) net operating losses	28,655	36,916	31,394
Stock based compensation	37	19	310
Non-deductible purchased intangibles	—	9,198	226
Foreign tax benefit	—	—	(345)
Other	811	530	410
Total	$ —	$ —	$ (345)

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

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

	December 31,	
	2005	2004
Deferred tax assets:		
Net operating loss carryforwards	$ 205,250	$ 163,670
Tax credit carryforwards	31,590	21,980
Capitalized research and development costs	7,970	9,430
Deferred revenue	9,960	12,790
Other	4,610	7,120
Total deferred tax assets	259,380	214,990
Valuation allowance	(258,010)	(213,190)
Net deferred tax assets	1,370	1,800
Deferred tax liabilities:		
Purchased intangibles	(1,370)	(1,800)
Net deferred taxes	$ —	$ —

Realization of deferred tax assets is dependent upon future earnings, if any, the timing and amount of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $44.8 million, $51.1 million and $40.0 million during 2005, 2004 and 2003, respectively.

Included in the valuation allowance balance at December 31, 2005 is $2.7 million related to the exercise of stock options, which are not reflected as an expense for financial reporting purposes. Accordingly, any future obligation in the valuation allowance relating to this amount will be credited directly to equity and not reflected as an income tax benefit in the statement of operations. In addition, approximately, $57.0 million of the valuation

allowance was attributable to acquisition-related items that if and when realized in future periods, will first reduce the carrying value of goodwill, then other long-lived intangible assets of the Company's acquired subsidiaries and then income tax expense.

NOTE 13 COMMITMENTS

Leases

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

Year Ending December 31,	Operating Leases	Capital Leases
2006	$ 16,144	$ 99
2007	14,078	—
2008	14,159	—
2009	13,991	—
2010	13,814	—
Thereafter	93,735	—
	$165,921	99
Less amount representing interest		(1)
Present value of minimum lease payments		98
Less current portion		(98)
Long-term portion		$ —

The following is a summary of aggregate future minimum lease payments under operating leases at December 31, 2005 by material operating lease agreements (in thousands):

	Original Term (Expiration)	Renewal Option	Future Minimum Lease Payment
Building Lease #1	May 2017	2 additional periods of 5 years	$ 116,207
Building Lease #2	July 2018	1 additional period of 5 years	45,979
Other Building Leases			3,735
Total			$ 165,921

Building Lease #1 covers three buildings in South San Francisco, for an aggregate of 180,967 square feet of office and laboratory facilities. Building Lease #2 covers two buildings in South San Francisco, California for an aggregate of 115,238 square feet. Pursuant to the terms of the lease agreement for Building Lease #2, we have the right to terminate the lease of one of the buildings effective December 31, 2006, upon three months' written notice in exchange for a termination payment of $0.5 million. The future minimum lease payments specified in the table above for Building Lease #2 assumes the lease is not terminated early. Rent expense under operating leases was $14.9 million, $13.4 million and $11.2 million for the years ended December 31, 2005, 2004 and

2003, respectively. Some of our capital leases are subject to certain financial covenants. As of December 31, 2005, we were in compliance with these covenants. We had $1.0 million and $2.1 million in equipment net of accumulated amortization under capital leases at December 31, 2005 and 2004, respectively.

Letter of Credit

In June 2003, we entered into a stand by letter of credit with a bank for $1.0 million related to our workers compensation insurance policy. As of December 31, 2005, the full amount of the letter of credit was still available. As of December 31, 2005, the collateral balance was $1.0 million, and we recorded this amount in the accompanying consolidated balance sheet as restricted cash and investments as the securities are restricted as to withdrawal.

Licensing Agreements

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

Year Ending December 31,	
2006	$ 1,240
2007	757
2008	582
2009	144
2010	—
Thereafter	—
	$ 2,723

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

Indemnification Agreements

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

NOTE 14 SUBSEQUENT EVENTS

Bristol-Myers Squibb

In December 2005, Exelixis and BMS entered into a collaboration agreement for the discovery, development and commercialization of novel therapies targeted against the Liver X Receptor (“LXR”), a nuclear

EXELIXIS, INC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

hormone receptor implicated in a variety of cardiovascular and metabolic disorders. Upon closing of the transaction in January 2006, we granted BMS an exclusive, worldwide license with respect to certain intellectual property primarily relating to compounds that modulate LXR. During the research term, Exelixis and BMS expect to jointly identify drug candidates that are ready for IND-enabling studies. After the selection of a drug candidate for further clinical development by BMS, BMS will be solely responsible for further preclinical development as well as clinical development, regulatory, manufacturing and sales/marketing activities for such drug candidate.

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

NOTE 15 QUARTERLY FINANCIAL DATA (UNAUDITED)

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

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

	2004 Quarter Ended			
	March 31,	June 30,	September 30,	December 31,[2]
Total revenues	$ 11,892	$ 12,559	$ 12,662	$ 15,744
Loss from operations	(28,611)	(28,859)	(26,638)	(51,094)
Net loss	(28,843)	(29,291)	(27,189)	(51,922)
Basic and diluted net loss per share	$ (0.40)	$ (0.41)	$ (0.38)	$ (0.70)

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

(2) The quarter ended December 31, 2004 included an acquired in-process research and development charge of $26.0 million related to the acquisition of X-Ceptor.

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

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

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

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

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

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

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information required by this item, other than with respect to our Code of Ethics, will be contained under the captions “Election of Class I Directors,” “Section 16(a) Beneficial Ownership Reporting Compliance” and “Executive Officers of the Company” in the Company’s definitive proxy statement with respect to our 2006 Annual Meeting of Stockholders to be filed with the SEC (the “Proxy Statement”), and is hereby incorporated by reference thereto.

Code of Ethics

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

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

ITEM 11. EXECUTIVE COMPENSATION

Information required by this item will be contained in the Proxy Statement under the caption “Compensation of Directors and Executive Officers” and “Compensation Committee Interlocks and Insider Participation,” and is hereby incorporated by reference thereto.

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

Information required by this Item will be contained in the Proxy Statement under the caption “Security Ownership of Certain Beneficial Owners and Management” and is hereby incorporated by reference thereto.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information required by this item will be contained in the Proxy Statement under the caption “Certain Transactions,” and is hereby incorporated by reference thereto.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item will be contained in the Proxy Statement under the caption “Ratification of Selection of Independent Registered Public Accounting Firm,” and is hereby incorporated by reference thereto.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

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

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

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

(3) The items listed on the Index to Exhibits on pages 98 through 102 are incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California, on March 9, 2006.

EXELIXIS, INC.

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

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

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

Signatures	Title	Date
/S/ GEORGE A. SCANGOS **George A. Scangos, Ph.D.**	Director, President and Chief Executive Officer (Principal Executive Officer)	March 9, 2006
/S/ FRANK KARBE **Frank Karbe**	Chief Financial Officer (Principal Financial and Accounting Officer)	March 9, 2006
/S/ STELIOS PAPADOPOULOS **Stelios Papadopoulos, Ph.D.**	Chairman of the Board	March 9, 2006
/S/ CHARLES COHEN **Charles Cohen, Ph.D.**	Director	March 9, 2006
/S/ ALAN M. GARBER **Alan M. Garber, M.D., Ph.D.**	Director	March 9, 2006
/S/ VINCENT MARCHESI **Vincent Marchesi, M.D., Ph.D.**	Director	March 9, 2006
/S/ FRANK MCCORMICK **Frank McCormick, Ph.D.**	Director	March 9, 2006

Signatures	Title	Date
/S/ GEORGE POSTE **George Poste, D.V.M., Ph.D.**	Director	March 9, 2006
/S/ LANCE WILLSEY **Lance Willsey, M.D.**	Director	March 9, 2006
/S/ JACK L. WYSZOMIERSKI **Jack L. Wyszomierski**	Director	March 9, 2006

INDEX TO EXHIBITS

Exhibit Number	Description
2.1	Share Exchange and Assignment Agreement, dated April 23, 2001, by and among Exelixis, Inc. and the Artemis stockholders named therein. (1)
2.2	Agreement and Plan of Merger and Reorganization, dated as of November 19, 2001, by and among Exelixis, Inc., Bluegreen Acquisition Sub, Inc. and Genomica Corporation. (2)
2.3	Agreement of Merger, dated as of June 28, 2002, between Exelixis, Inc. and Genomica Corporation. (3)
2.4	Agreement and Plan of Merger, dated September 27, 2004, by and among Exelixis, Inc., XBO Acquisition Corp., and X-Ceptor Therapeutics, Inc. (4)
3.1	Amended and Restated Certificate of Incorporation of Exelixis, Inc. (5)
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc. (6)
3.3	Amended and Restated Bylaws of Exelixis, Inc. (7)
4.1	Specimen Common Stock Certificate. (5)
4.2±	Warrant, dated January 24, 1996, to purchase 267,857 post-split shares of Exelixis, Inc. Series B convertible stock in favor of MMC/GATX Partnership No. 1. (5)
4.3	Form of Warrant, dated June 9, 2005, to purchase 750,000 shares of Exelixis, Inc. common stock in favor of Symphony Evolution Holdings LLC (8)
4.4	Form of Convertible Promissory Note, dated May 22, 2001, by and between Exelixis, Inc. and Protein Design Labs, Inc. (9)
4.5	Form of Note Purchase Agreement, dated May 22, 2001, by and between Exelixis, Inc. and Protein Design Labs, Inc. (9)
4.6**	Warrant Purchase Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC (8)
4.7	Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999, among Exelixis, Inc. and certain Stockholders of Exelixis, Inc. (5)
4.8	Registration Rights Agreement, dated October 18, 2004, by and among Exelixis, Inc., X-Ceptor Therapeutics, Inc., and certain holders of capital stock of X-Ceptor Therapeutics, Inc. listed in Annex I thereto. (10)
4.9	Registration Rights Agreement, dated October 18, 2004, by and among Exelixis, Inc., X-Ceptor Therapeutics, Inc., and certain holders of capital stock of X-Ceptor Therapeutics, Inc. listed in Annex I thereto. (10)
4.10**	Registration Rights Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution Holdings LLC. (8)
10.1	Form of Indemnity Agreement. (5)
10.2†	1994 Employee, Director and Consultant Stock Plan. (5)
10.3†	1997 Equity Incentive Plan. (5)
10.4†	2000 Equity Incentive Plan. (5)
10.5†	2000 Non-Employee Directors' Stock Option Plan. (11)

Exhibit Number	Description
10.6†	2000 Employee Stock Purchase Plan. (12)
10.7†	Agritope, Inc. 1997 Stock Award Plan. (13)
10.8†	Form of Stock Option Agreement under the 2000 Non-Employee Directors' Stock Option Plan. (14)
10.9†	Form of Stock Option Agreement under the 2000 Equity Incentive Plan (early exercise permissible). (14)
10.10†	Form of Stock Option Agreement under the 2000 Equity Incentive Plan (early exercise may be restricted). (7)
10.11†	Employment Agreement, dated September 13, 1996, between George Scangos, Ph.D. and Exelixis, Inc. (5)
10.12†	Employment Agreement, dated June 18, 2001, between Jeffrey R. Latts, M.D. and Exelixis, Inc. (6)
10.13†	Employment Agreement, dated February 3, 2000, between Michael Morrissey, Ph.D. and Exelixis, Inc. (6)
10.14†	Employment Agreement, dated November 20, 2003, between Frank Karbe and Exelixis, Inc. (6)
10.15†	Employment Agreement, dated March 27, 2000, between Pamela Simonton, J.D., L.L.M. and Exelixis, Inc. (15)
10.16†	Exelixis, Inc. Change in Control and Severance Plan. (16)
10.17*	Collaboration Agreement, dated December 16, 1999, between Exelixis, Inc., Bayer Corporation and Genoptera LLC. (5)
10.18*	Operating Agreement, dated December 15, 1999, between Exelixis, Inc., Bayer Corporation and Genoptera LLC. (5)
10.19	Amendment No. 1, effective January 1, 2005, to Collaboration Agreement, among Exelixis, Inc., Bayer CropScience LP and Genoptera LLC. (17)
10.20*	Collaboration Agreement, dated May 22, 2001, by and between Exelixis, Inc. and Protein Design Labs, Inc. (9)
10.21*	License Agreement, dated July 17, 2001, by and between Exelixis, Inc. and Bristol-Myers Squibb Company. (18)
10.22*	Amended and Restated Cancer Collaboration Agreement, dated as of December 15, 2003, by and between Exelixis, Inc. and Bristol-Myers Squibb Company. (19)
10.23*	Product Development and Commercialization Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (20)
10.24*	First Amendment to the Product Development and Commercialization Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (15)
10.25*	Stock Purchase and Stock Issuance Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (20)
10.26	First Amendment to the Stock Purchase and Stock Issuance Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (15)
10.27*	Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (20)

Exhibit Number	Description
10.28	Second Amendment to the Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (21)
10.29*	Third Amendment to the Loan and Security Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and Exelixis, Inc. (15)
10.30**	Collaboration Agreement, dated May 31, 2005, between Exelixis, Inc. and Genentech, Inc. (8)
10.31**	License Agreement, dated June 10, 2005, between Exelixis, Inc. and Helsinn Healthcare S.A. (8)
10.32**	Novated and Restated Technology License Agreement, dated June 9, 2005, between Exelixis, Inc. and Symphony Evolution, Inc. (8)
10.33**	Amended and Restated Research and Development Agreement, dated June 9, 2005, among Exelixis, Inc., Symphony Evolution, Inc. and Symphony Evolution Holdings LLC. (8)
10.34**	Purchase Option Agreement, dated June 9, 2005, among Exelixis, Inc., Symphony Evolution Holdings LLC and Symphony Evolution, Inc. (8)
10.35**	Collaboration Agreement, December 5, 2005, between Exelixis, Inc. and Bristol-Myers Squibb Company.
10.36**	License Agreement, December 21, 2005, between Exelixis, Inc. and Wyeth Pharmaceuticals Division.
10.37	Lease, dated May 12, 1999, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (5)
10.38	First Amendment to Lease, dated March 29, 2000, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (22)
10.39	Lease Agreement, dated May 24, 2001, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (6)
10.40	Second Amendment to Lease, dated July 20, 2004, between Britannia Pointe Grand Limited Partnership and Exelixis, Inc. (6)
10.41	Lease agreement, dated May 27, 2005, between Exelixis, Inc. and Britannia Pointe Grand Limited Partnership. (23)
10.42	Master Lease Agreement, dated April 9, 2001, between GE Capital Corporation and Exelixis, Inc. (24)
10.43	Loan and Security Agreement, dated May 22, 2002, by and between Silicon Valley Bank and Exelixis, Inc. (3)
10.44	Loan Modification Agreement, dated December 21, 2004, between Silicon Valley Bank and Exelixis, Inc. (25)
10.45†	Compensation Information for Named Executive Officers.
10.46†	Compensation Information for Non-Employee Directors.
21.1	Subsidiaries of Exelixis, Inc.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (contained on signature page).

Exhibit Number	Description
31.1	Certification required by Rule 13a-14(a) or Rule 15d-14(a)
31.2	Certification required by Rule 13a-14(a) or Rule 15d-14(a).
32.1‡	Certification by the Chief Executive Officer and the Chief Financial Officer of Exelixis, Inc., as required by Rule 13a-14(b) or 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

† Management contract or compensatory plan.

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

* Confidential treatment granted for certain portions of this exhibit.

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

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

1. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on May 15, 2001 and incorporated herein by reference.

2. Filed as Annex A to Exelixis, Inc.'s Registration Statement on Form S-4 (File No. 333-74120), as filed with the Securities and Exchange Commission on November 29, 2001 and incorporated herein by reference.

3. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2002, filed with the Securities and Exchange Commission on August 6, 2002 and incorporated herein by reference.

4. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 28, 2004 and incorporated herein by reference.

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

6. Filed as an Exhibit to Exelixis' 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.

7. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 15, 2004 and incorporated herein by reference.

8. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2005, filed with the Securities and Exchange Commission on August 9, 2005 and incorporated herein by reference.

9. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, as filed with the Securities and Exchange Commission on August 14, 2001 and incorporated herein by reference.

10. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on October 21, 2004 and incorporated herein by reference.

11. Filed as an Appendix to Exelixis, Inc.'s Definitive Proxy Statement on Schedule 14A, as filed with the Securities and Exchange Commission on February 27, 2004 and incorporated herein by reference.

12. Filed as an Appendix to Exelixis, Inc.'s Definitive Proxy Statement on Schedule 14A, as filed with the Securities and Exchange Commission on March 18, 2005 and incorporated herein by reference.

13. Filed as an Exhibit to Exelixis, Inc.'s Registration Statement on Form S-8 (File No. 333-52434), as filed with the Securities Exchange Commission on December 21, 2000 and incorporated herein by reference.
14. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2004, filed with the Securities and Exchange Commission on November 8, 2004 and incorporated herein by reference.
15. Filed as an Exhibit to Exelixis, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 30, 2004, filed with the Securities and Exchange Commission on March 15, 2005 and incorporated herein by reference.
16. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 15, 2005 and incorporated herein by reference.
17. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2005, filed with the Securities and Exchange Commission on May 9, 2005 and incorporated herein by reference.
18. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2001, filed with the Securities and Exchange Commission on November 14, 2001 and incorporated herein by reference.
19. Filed as an Exhibit to Exelixis, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 30, 2003, filed with the Securities and Exchange Commission on February 20, 2004, as amended, and incorporated herein by reference.
20. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, filed with the Securities and Exchange Commission on November 8, 2002 and incorporated herein by reference.
21. Filed as on Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 23, 2004 and incorporated herein by reference.
22. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2000, filed with the Securities Exchange Commission on May 15, 2000 and incorporated herein by reference.
23. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on May 27, 2005 and incorporated herein by reference.
24. Filed as an Exhibit to Exelixis, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2001, filed with the Securities and Exchange Commission on May 15, 2001 and incorporated herein by reference.
25. Filed as an Exhibit to Exelixis, Inc.'s Current Report on Form 8-K, as filed with the Securities and Exchange Commission on December 23, 2004 and incorporated herein by reference.

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

COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (the "**Agreement**") is made and entered into as of December 5, 2005 (the "**Execution Date**") by and between **EXELIXIS, INC.,** a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("**Exelixis**"), and **BRISTOL-MYERS SQUIBB COMPANY,** a Delaware corporation headquartered at 345 Park Avenue, New York, New York, 10154 ("**BMS**"). Exelixis and BMS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. BMS is a multinational health care company that has expertise and capability in developing and marketing human pharmaceuticals and has research and development programs, including expertise and proprietary technology relating to compounds that modulate the Liver X Receptor.

B. Exelixis is a drug discovery company that has expertise and proprietary technology relating to compounds that modulate the Liver X Receptor.

C. BMS and Exelixis desire to establish a collaboration to apply such Exelixis technology and expertise to the discovery, lead optimization and characterization of small molecule compounds, and to provide for the development and commercialization of novel therapeutic and prophylactic products based on such compounds.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

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

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

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

1.2 "Alliance Manager" has the meaning set forth in Section 2.4(a).

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

1.4 "BMS Compound" means: (a) those LXR Modulators or Dual LXR/FXR Modulators that are set forth in the Disclosure Letter and that are being contributed to the Collaboration by BMS as of **[*]**; (b) any LXR Modulators or Dual LXR/FXR Modulators that are contributed to the Collaboration by BMS **[*]** at **[*]** and subject to **[*]**; and (c) **[*]**.

1.5 "BMS Decision Point 4.5" or **"BMS DP 4.5"** means the point at which BMS determines that **[*]**.

1.6 "BMS Independent Activity Period" means the period, if any, commencing on the date **[*]** and ending on the first to occur of: (a) the date that **[*]**; or (b) **[*]**.

1.7 "BMS Know-How" means all Information Controlled by BMS (other than BMS Patents) and its Affiliates **[*]** that is: (a) **[*]** for Exelixis to exercise the rights licensed or granted to it under Sections 10.4(d)(i) and 10.4(d)(ii); and/or (b) **[*]**: (i) to perform its obligations to the Collaboration under this Agreement; and (ii) for Exelixis to exercise the rights licensed or granted to it under Sections 5.3, 10.4(d)(iii) and 10.4(d)(iv).

1.8 "BMS Patents" means all Patents Controlled by BMS and its Affiliates, including Patents Controlled jointly with Exelixis, **[*]** that are: (a) **[*]** for Exelixis to exercise the rights licensed or granted to it under Sections 10.4(d)(i) and 10.4(d)(ii); and/or (b) **[*]**: (i) to perform its obligations to the Collaboration under this Agreement; and (ii) for Exelixis to exercise the rights licensed or granted to it under Sections 5.3, 10.4(d)(iii) and 10.4(d)(iv).

1.9 "Collaboration" means all the activities performed by or on behalf of either Exelixis or BMS in the course of performing work contemplated in Article 2.

1.10 "Collaboration Compound" means any: (a) Exelixis Compound; (b) BMS Compound; (c) Derivative that is identified or created by **[*]**; (d) Derivative that is identified or developed by **[*]**; or (e) Derivative that is identified or developed by **[*]**. For clarity, Collaboration Compounds exclude **[*]**.

1.11 "Collaborative Research Period" has the meaning set forth in Section 2.5.

1.12 "Committee" means either of the Joint Research Committee or the Discovery Working Group, as the case may be.

1.13 "Competitive Compound" means any Small Molecule Compound, **[*]** that directly binds and modulates LXR **[*]** based on displaying **[*]**.

1.14 "Controlled" means, with respect to any compound, material, Information or intellectual property right, that the Party owns or has a license to such compound, material, Information or intellectual property right and has the ability to grant to the other Party access, a

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

1.15 "Derivatives" means all: (a) LXR Modulators or Dual LXR/FXR Modulators that are made **[*]**; and (b) **[*]**.

1.16 "Diligent Efforts" means the carrying out of obligations or tasks in a sustained manner consistent with the efforts a Party devotes to a product or a research, development or marketing project of similar market potential, profit potential or strategic value resulting from its own research efforts, based on conditions then prevailing. Diligent Efforts requires that the Party: (a) promptly assign responsibility for such obligations to specific employee(s) who are held accountable for progress and monitor such progress on an on-going basis, (b) set and consistently seek to achieve specific and meaningful objectives for carrying out such obligations, and (c) consistently make and implement decisions and allocate resources designed to advance progress with respect to such objectives.

1.17 "Disclosure Letter" means one or more mutually agreed written letters or memoranda that are delivered by each of Exelixis and BMS to the other contemporaneously with the execution of this Agreement and are identified therein as a Disclosure Letter contemplated by this Agreement and any amendments or replacement thereof approved in writing by both Parties.

1.18 "Discovery Working Group" or **"DWG"** means the committee described in Section 2.2(d).

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

1.20 "Dual LXR/FXR Modulator" means any Small Molecule Compound that: (a) directly binds and modulates LXR and FXR [*]; and (b) [*] based on displaying [*].

1.21 "ECN" or **"Early Candidate Nomination"** means a compound or other substance that has been approved by BMS **[*]**. This decision point is known within BMS as "**Decision Point 3.0**" or "**DP3.0**". This decision point is typically made **[*]** prior to **[*]**. For such a transition to be considered, the relevant scientific submissions for such compound shall generally need to include: **[*]**. For clarity, not all **[*]** shall be necessarily completed at DP3.0; however, all such **[*]** must be completed before a decision to **[*]** can be reached. Typically, the **[*]** shall also be **[*]**.

1.22 "Effective Date" has the meaning set forth in Section 11.6.

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

1.24 "Exelixis Compounds" mean: (a) those LXR Modulators or Dual LXR/FXR Modulators that are set forth in the Disclosure Letter and that are being contributed to the Collaboration by Exelixis as of **[*]**; (b) any LXR Modulators or Dual LXR/FXR Modulators that are contributed to the Collaboration by Exelixis **[*]** at **[*]** and subject to **[*]**; and (c) **[*]**.

1.25 "Exelixis Know-How" means all Information Controlled by Exelixis (other than Exelixis Patents) and its Affiliates **[*]** that is **[*]** for BMS to exercise the rights licensed or granted to it under Sections 5.1 and 10.4 hereof and/or to perform its obligations to the Collaboration under this Agreement.

1.26 "Exelixis Patents" means all Patents Controlled by Exelixis and its Affiliates, including Patents Controlled jointly with BMS, as of **[*]** that are **[*]** for BMS to exercise the rights licensed or granted to it under Sections 5.1 and 10.4 hereof and/or to perform its obligations to the Collaboration under this Agreement. It is understood and agreed that "Exelixis Patents" include, without limitation, those issued and published Patents listed on Schedule 1.26.

1.27 "Exelixis Prosecuted Patents" has the meaning set forth in Section 8.3(a)(i).

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

1.29 "FTE" means the equivalent of a full-time scientist's work time over a twelve (12) month period (including normal vacations, sick days and holidays). The portion of an FTE year devoted by a scientist to a particular activity or program shall be determined by dividing the number of full working days during any twelve (12) month period devoted by such scientist to such activity or program by the total number of working days during such twelve (12) month period.

1.30 "FXR" means: (a) the gene for the Farnesoid X Receptor (for any species); (b) the protein encoded by such gene; and (c) all subtypes, mutants, variants and fragments thereof.

1.31 "Generic Product" means, with respect to a particular Product in a country, a pharmaceutical product that: (a) contains the same Collaboration Compound(s) as such Product (or equivalent as determined by the relevant regulatory authority); and (b) is approved for use in such country (pursuant to 21 U.S.C. 355(b)(2), an ANDA, a separate NDA, compendia listing, other drug approval application or otherwise), whether for use as monotherapy or for use in combination with any other vaccine, biologic or compound.

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

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

1.34 "Information" means information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including, databases, practices, methods, techniques,

specifications, formulations, formulae, knowledge, know-how, skill, experience, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures.

1.35 "Invention" means any and all inventions and improvements thereto, invented or discovered by a Party in the performance of its obligations under this Agreement.

1.36 "Joint Invention" means any Invention invented or discovered jointly by employee(s) or agent(s) of both Parties.

1.37 "Joint Research Committee" or **"JRC"** means the committee described in Section 2.2(a).

1.38 "Knowledge" means, with respect of a Party, the good faith understanding of the facts and information in the possession of an officer of such Party, or any in-house legal counsel of, or in-house Patent agents employed by, such Party or its Affiliates, without any duty to conduct any additional investigation with respect to such facts and information by reason of the execution of this Agreement. For purposes of this definition, an **"officer"** means any person in the position of vice president, senior vice president, president or chief executive officer of a Party.

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

1.40 "Lead Compound" means the Exelixis Compound set forth in the Disclosure Letter.

1.41 "Listed NHR" means: (a) the genes (for any species) for any nuclear hormone receptors listed in Schedule 1.41 as of the Effective Date; (b) the genes (for any species) for any nuclear hormone receptors added to Schedule 1.41 after the Effective Date pursuant to Section 2.6(c); (c) the proteins encoded by such genes described in subsections (a) and (b); and (d) all subtypes, mutants, variants and fragments thereof. Notwithstanding anything to the contrary, Listed NHRs do not include FXR in conjunction with LXR as contemplated by this Agreement.

1.42 "LXR" means: (a) the gene for the Liver X Receptor (for any species); (b) the protein encoded by such gene; and (c) all subtypes (including the alpha and beta subtypes), mutants, variants and fragments thereof.

1.43 "LXR Modulator" means any Small Molecule Compound that: (a) directly binds and modulates LXR **[*]** but not FXR; and (b) **[*]** based on displaying **[*]**.

1.44 "Major Market Countries" means [*].

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

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

1.46 "NDA" means a New Drug Application filed with the FDA in conformance with applicable laws and regulations, or the foreign equivalent of any such application in any other country.

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

Notwithstanding the foregoing, if any Product is sold under a bundled or capitated arrangement with other BMS products, then, solely for the purpose of calculating Net Sales for royalty purposes hereunder, any discount on such Products sold under such an arrangement shall be no greater, on a percentage basis based on the gross selling price prior to discount, than the largest percentage discount applied on any other ethical pharmaceutical product sold within such bundled arrangement for the applicable accounting period. In case of any dispute as to the applicable discount numbers under the preceding sentence, the determination of same shall be calculated and certified by BMS' independent public accountants, whose decision shall be binding.

A sale of a Product is deemed to occur upon invoicing In the event that BMS, after reasonable efforts, cannot calculate accurately the Net Sales of a sublicensee in a particular country, the Parties shall meet and negotiate in good faith an appropriate means for calculating Net Sales in such a situation.

For sake of clarity and avoidance of doubt, sales by BMS, its Affiliates or sublicensees of a Product to a Third Party distributor of such Product in a given country shall be considered a sale to a Third Party customer. Any Products used (but not sold for consideration) for promotional or advertising purposes or used for clinical or other research purposes shall not be considered in determining Net Sales hereunder.

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

1.48 "Non-LXR Modulator" means any: (a) Small Molecule Compound that is identified or created by **[*]** by **[*]** and that is not an LXR Modulator or a Dual LXR/FXR Modulator; (b) Small Molecule Compound that: (i) is identified or developed by **[*]**, through **[*]**; and (ii) is not an LXR Modulator or a Dual LXR/FXR Modulator; and **[*]**.

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

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

1.51 "Phase IIa Clinical Trial" means a trial on sufficient numbers of patients that is designed to provide a preliminary determination of safety and efficacy in the target patient population over a range of doses. For sake of clarity, **[*]**.

1.52 "Phase IIb Clinical Trial" means a controlled clinical trial which utilizes the pharmacokinetic and pharmacodynamic information obtained from one (1) or more previously conducted Phase I Clinical Trial(s) and/or Phase IIa Clinical Trial(s) in order to confirm the optimal manner of use of a pharmaceutical product (dose and dose regimen) prior to initiation of the pivotal Phase III Clinical Trials of such pharmaceutical product. **[*]**.

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

1.54 "Post-Termination Compound" means: (a) any Competitive Compound for which BMS, its Affiliate or sublicensee **[*]** subsequent to expiration of the Collaborative Research Period; or (b) any LXR Modulator or a Dual LXR/FXR Modulator for which BMS **[*]**. For clarity, Post-Termination Compounds shall not include: **[*]**; and **[*]**.

1.55 "Product" means any therapeutic or prophylactic product (for use in animals or humans) that comprises or incorporates any: (a) Collaboration Compound; or (b) Post-Termination Compound.

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

1.57 "Research Plan" has the meaning set forth in Section 2.6(a).

1.58 "Reverted Compounds" means any Collaboration Compounds licensed to Exelixis under Sections 10.4(d)(i) and (ii).

1.59 "Reverted Compounds License Agreement" has the meaning set forth in Section 10.4(d)(v).

1.60 "Royalty Term" has the meaning set forth in Section 7.7.

1.61 "Safety Reasons" has the meaning set forth in Section 10.5.

1.62 "Scaffold" means any: (a) scaffold of **[*]**; (b) new scaffold added in accordance with Section 2.13; and (c) **[*]**. For clarity, a scaffold is **[*]** to another scaffold described in the foregoing subsections (a) and (b) only if **[*]**.

1.63 "Small Molecule Compound" means a molecule with a molecular weight less than or equal to **[*]**.

1.64 "Sole Invention" means any Invention invented or discovered solely by a Party and its employees or agents.

1.65 "Success Criteria" has the meaning set forth in Section 2.6(b).

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

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

2. COLLABORATION

2.1 Overview. The general goals and intent of the Collaboration are to apply each Party's technology to discover, optimize and characterize Collaboration Compounds that are LXR Modulators or Dual LXR/FXR Modulators that may be developed into Products by BMS. Each Party shall have responsibilities under the Collaboration in accordance with the allocation of duties set forth in the Research Plan, including responsibilities for discovery, lead optimization and *in vitro* and *in vivo* characterization of Collaboration Compounds up to receipt of approval as an ECN for such Collaboration Compounds.

2.2 Joint Research Committee and Discovery Working Group.

(a) Membership of JRC. The JRC shall be composed of **[*]** members. Within **[*]** after the Effective Date, each Party shall appoint **[*]** representatives to the JRC. Each Party may replace its appointed JRC representatives at any time upon written notice to the other Party. Each Party shall designate one (1) of its representatives as co-chairperson of the JRC. Each of the co-chairpersons shall be responsible, on an alternating basis with the BMS co-chairperson having responsibility with respect to the initial meeting, for working with the Alliance Managers to schedule meetings, prepare and circulate an agenda in advance of each meeting, and to prepare and issue minutes of each meeting within **[*]** days thereafter. Any JRC member may add topics to the draft agenda. Each Party may invite, with the approval of the other Party (which shall not be unreasonably withheld, delayed or conditioned), additional employees or consultants (provided such employees and consultants: (i) have contractual confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement; and (ii) are under intellectual property assignment obligations to such party in accordance with Section 8.1(c)) to attend one (1) or more meetings of the JRC as ad hoc, non-voting guests.

(b) Decision-making. The **[*]** JRC representatives of each Party shall collectively have one (1) vote, and the JRC shall operate by unanimous consent of all JRC members present and in accordance with the principles set forth in this Article 2. In the event of a dispute between the Parties with regard to the performance of the Collaboration, the matter shall be first referred to the **[*]** for resolution. If these two (2) individuals are unable to resolve the dispute, then the matter shall be elevated to **[*]**. If these two (2) individuals are unable to resolve the dispute, then the matter shall be elevated to **[*]**. If these two (2) individuals are unable to resolve the dispute, then, subject to the last sentence of this Section 2.2(b) and to Section 2.2(c), **[*]** shall have the final decision so long as such decision does not conflict with the terms of the Agreement. Notwithstanding anything to the contrary, no decision by a Party shall require the other Party to: (i) breach any obligation or agreement that such other Party may have with or to a Third Party; (ii) perform any activities that are materially different or greater in scope than those provided for in the then-current Research Plan; or (iii) incur any material financial costs in addition to those expressly described in Article 7 of this Agreement.

(c) Exceptions to Decision-making. Notwithstanding anything to the contrary, **[*]** shall not have the final decision with respect to any dispute involving any of the following: (i) moving the performance of the Collaboration away from the identification, development and commercialization of LXR Modulators and Dual LXR/FXR Modulators to the identification, development and commercialization of other compounds; (ii) reducing the number of **[*]** required by the Research Plan below **[*]** FTEs during each of the first **[*]** years of the Research Term; (iii) unilaterally changing the **[*]** in a manner that produces **[*]** that are not reasonably consistent with **[*]**; (iv) unilaterally changing the **[*]** of an LXR Modulator or Dual LXR/FXR Modulator; (v) unilaterally changing the **[*]** for a Competitive Compound; (vi) requiring **[*]**; (vii) changing the performance of the Research Plan to include new technology (e.g., assays, targets, or animal models) for which **[*]** would bear the sole cost pursuant to **[*]**; (viii) unilaterally adding new receptors to the list of Listed NHRs under Section 2.6(c); or (ix) unilaterally contributing new compounds or scaffolds (as applicable) to the Agreement in contravention of the process described in Section 2.13.

(d) Responsibilities of the JRC and DWG. The JRC shall be responsible for the overall planning and execution of the Collaboration and the approval and oversight of the Research Plan. The DWG shall report to the JRC and shall manage the day-to-day activities and decisions required under the Collaboration. Membership of the DWG shall be determined by the JRC and shall not be limited with respect to number of appointees (in total or from either Party). Each Party shall designate one (1) of its representatives as co-chairperson of the DWG. At its meetings, the DWG shall evaluate the data generated by the Parties in the course of carrying out the Research Plan, shall recommend project prioritization within the Research Plan (subject to approval by the JRC), shall perform those activities specifically described in this Agreement, and may recommend revisions to the Research Plan to the JRC. At each DWG meeting, the DWG shall summarize the progress in carrying out the Research Plan since the last DWG meeting, bring to attention of the JRC any overarching issues or significant changes in the Research Plan, and address any issues raised at its previous meeting. To the extent necessary to carry out its responsibilities, a Party's DWG and/or JRC members shall be granted access to the other Party's Confidential Information relevant to any decision required to be made by the DWG or the JRC.

2.3 Meetings of JRC and DWG. During the Collaborative Research Period: (a) the JRC shall meet quarterly by audio or video teleconference and, at a minimum, once each **[*]** in person (which in-person meeting shall be held on an alternating basis in New Jersey and in San Francisco); and (b) the DWG shall meet **[*]** by audio or video teleconference and, at a minimum, **[*]** in person (which in-person meeting shall be held on an alternating basis in New Jersey and in San Francisco). With the consent of the representatives of each Party serving on a particular Committee, other representatives of each Party may attend meetings of that Committee as nonvoting observers (provided such representatives: (i) have contractual confidentiality obligations to such Party that are at least as stringent as those set forth in this Agreement; and (ii) are under intellectual property assignment obligations to such party in accordance with Section 8.1(c)). Meetings of a Committee shall be effective only if at least one (1) representative of each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the Committee meetings. The Parties shall endeavor to schedule meetings of the JRC and the DWG at least **[*]** in advance.

2.4 Alliance Managers.

(a) Appointment. Each of the Parties shall appoint an individual (each, an "**Alliance Manager**") who possesses a general understanding of the scientific and business issues relevant to this Agreement. Each Party may change its designated Alliance Manager from time to time upon prior written notice to the other Party. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by prior written notice to the other Party.

(b) Responsibilities. The Alliance Managers shall use good faith efforts to attend all Committee meetings and support the co-chairpersons of each Committee in the discharge of their responsibilities. Alliance Managers shall be nonvoting participants in such Committee meetings. An Alliance Manager may bring any matter to the attention of any Committee if such Alliance Manager reasonably believes that such matter warrants such attention. Each Alliance Manager shall be charged with creating and maintaining a collaborative work environment within and among the Committees. In addition, each Alliance Manager: (a) shall be the point of first referral in all matters of **[*]**; (b) shall identify and bring **[*]** to the attention of the appropriate Committee in a timely manner; (c) shall plan and coordinate cooperative efforts and internal and external communications; and (d) shall take responsibility for ensuring that governance activities, such as the conduct of required Committee meetings and production of meeting minutes, occur as set forth in this Agreement, and that relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

2.5 Collaborative Research Period. Subject to Section 10.2, the Collaborative Research Period shall begin on the Effective Date and continue for two (2) years thereafter. BMS shall have the option to extend the Collaborative Research Period for an additional one (1)-year term by providing written notice to Exelixis no later than **[*]** before the end of the initial two (2)-year Collaborative Research Period. The Collaborative Research Period may be further extended (i.e., beyond such three (3)-year period) upon mutual agreement of the Parties, and the Parties may choose to agree to an alternate level of research funding with respect to such extension.

2.6 Research Plan; Success Criteria; Additional Listed NHRs.

(a) The Parties have agreed in writing upon a detailed plan for the research to be carried out by the Parties during the Collaborative Research Period, which is set forth in the Disclosure Letter and incorporated herein by reference (the "**Research Plan**"). The Research Plan includes each Party's respective obligations in furtherance of the Collaboration and timelines for completion of key stages, and the Research Plan shall provide guidance as to whether the work performed by each Party meets the standards of Diligent Efforts. The ultimate goal of the Research Plan shall be to identify LXR Modulators and Dual LXR/FXR Modulators. The DWG shall review the Research Plan at least **[*]** and may propose to the JRC revised versions of the Research Plan that are consistent with the terms of this Agreement. The revised Research Plan may only be approved by the JRC, subject to Sections 2.2(b) and 2.2(c). Once approved by the JRC, such revised Research Plan shall replace the prior Research Plan. During the Collaborative Research Period, each Party shall use Diligent Efforts to perform the tasks assigned to it in the Research Plan then in effect.

(b) The Research Plan shall also contain success criteria for the submission of a compound for approval as an ECN (the "**Success Criteria**"), which are incorporated by reference herein. The Success Criteria are as set forth in the Disclosure Letter. Any Success Criteria that are not reasonably ascertainable or completely known as of the Effective Date, or requiring adjustment based on results obtained during the conduct of the Collaboration, shall be supplemented and/or modified as recommended by the DWG and reviewed and approved by the JRC from time to time as appropriate.

(c) From **[*]** during the term of the **[*]**, **[*]** may decide to add additional targets to the list of Listed NHRs. The Parties shall discuss in good faith whether to add any such additional targets, and such targets shall only be added with the prior written agreement of **[*]**.

2.7 Obligations of Parties. Exelixis and BMS shall provide the DWG and the JRC and their respective authorized representatives with reasonable access during regular business hours to all records, documents, and Information relating to the performance of its obligations under the Collaboration which such Committee may reasonably require in order to perform its obligations hereunder, provided that if such documents are under a bona fide obligation of confidentiality to a Third Party, then Exelixis or BMS, as the case may be, may withhold access thereto to the extent necessary to satisfy such obligation.

2.8 Collaboration Guidelines. Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between Exelixis and BMS is that of independent contractors, and shall not constitute a partnership, joint venture or agency, and neither Party shall have the power to bind or obligate the other Party in any manner, other than as is expressly set forth in this Agreement.

2.9 Conduct of Research. The Parties shall use Diligent Efforts to conduct their respective tasks throughout the Collaboration and shall conduct the Collaboration in good scientific manner, and in compliance in all material respects with the requirements of applicable laws, rules and regulations and all applicable good laboratory practices to attempt to achieve their objectives as efficiently and expeditiously as reasonably practicable.

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

2.11 Reports. During the Collaborative Research Period, each Party shall report to the JRC no less than **[*]** and shall submit to the other Party and the JRC a **[*]** written progress report summarizing the work performed under the Collaboration, including, with respect to Exelixis, the **[*]** with respect to the activities set forth in the Research Plan, and, with respect to BMS, the status of each Collaboration Compound that reaches **[*]** (as defined in the Research Plan) and each Collaboration Compound that reaches **[*]**. If reasonably necessary for a Party to perform its work under the Collaboration or to exercise its rights under the Agreement, such Party may request that the other Party provide more detailed information and data regarding such results reported by such other Party, and such other Party shall promptly provide the requesting Party with information and data as is reasonably related to such request, including any records created by a Party pursuant to Section 2.10. All such reports shall be considered Confidential Information of the Party providing same.

2.12 Database. The Parties shall work together to evaluate the possibility and practicality of setting up an electronic data-sharing arrangement to allow each Party to access Confidential Information of the other Party consisting of **[*]**, including all **[*]**. In the event that such a data-sharing arrangement is possible and practical: (a) each Party shall restrict access to such data only to its employees, consultants and independent contractors who, in each case, need such access to perform activities, or exercise its rights, under this Agreement, and who, prior to such access, have executed appropriate confidentiality and invention assignment agreements with such Party; and (b) **[*]** shall be responsible for any costs related to the implementation, use and maintenance of such data-sharing arrangement by **[*]**; *provided*, *however*, that if **[*]** does not deem the costs of using a particular data-sharing system to be reasonable, the Parties shall not be obligated to implement such system, and the Parties shall discuss alternative systems with more reasonable costs of implementation, use and maintenance. In any event, access to any such data shall in all cases be password-protected or otherwise similarly restricted.

2.13 Contribution of New Compounds and New Scaffolds. If either Party desires to contribute additional LXR Modulators, Dual LXR/FXR Modulators or scaffolds to the Collaboration, then such Party (the **"Contributing Party"**) shall provide the other Party with a written description of such additional compounds or scaffolds, and the Parties shall meet to discuss such contribution. If such other Party determines in good faith that the contribution of any such compounds or scaffolds by the Contributing Party would not result in the breach of any obligation or agreement that such other Party may have with or to a Third Party, and would not result in the potential infringement of Third Party Patents (it being understood that any such determination **[*]**, then: (a) such additional compounds shall be included in the scope of the Agreement as BMS Compounds (in the case of compounds contributed by BMS); (b) such additional compounds shall be included in the scope of the Agreement as Exelixis Compounds (in the case of compounds contributed by Exelixis); or (c) such additional scaffolds shall be included in the scope of the Agreement as Scaffolds. Notwithstanding anything to the contrary, if such other Party determines in good faith that the contribution of any such compounds or scaffolds by the Contributing Party would result in the breach of any obligation or agreement that such other Party may have with or to a Third Party, or would result in the potential infringement of Third Party Patents, then such additional compounds or scaffolds shall not be included within the scope of this Agreement; **[*]**.

2.14 Review of Collaboration Compounds. As part of the criteria for the submission of a compound [*], Exelixis shall review the results of all [*] conducted by either Party in the normal course of performing research under the Research Plan or by BMS in the normal course of performing research during the BMS Independent Activity Period. In the event review by Exelixis is during the BMS Independent Activity Period, BMS shall provide Exelixis with the results of all [*] for such [*] Collaboration Compound, and sufficient samples of any [*] Collaboration Compound that has completed [*] (as such term is described in the Research Plan), or its equivalent stage of research, to have such assays conducted. Exelixis may use such results and samples for the sole purpose of performing assays to verify that such [*] Collaboration Compound does not display [*] (**"**[*] **Activity"**). [*] shall be responsible for having such assays conducted as well as any costs associated with such assays. If Exelixis notifies BMS in writing within [*] days of receiving a sample of a submitted [*] Collaboration Compound that such Collaboration Compound displays [*] Activity, then BMS shall not [*] such Collaboration Compound, and BMS' licenses [*] such Collaboration Compound shall terminate (solely with respect to such Collaboration Compound); *provided, however*, that BMS may perform research on such Collaboration Compound using its applicable licenses in Section 5.1 to derivatize away the [*] Activity of such Collaboration Compound. For clarity, (i) nothing in this Section 2.14 shall be deemed to preclude BMS from conducting screening activities, at any time, with respect to Collaboration Compounds in order to determine whether Collaboration Compounds display [*] Activity, and (ii) BMS may continue its research and development activities with respect to any such submitted [*] Collaboration Compound during such review period prior to receiving any such written notice from Exelixis. In the event that Exelixis does not provide written notice to BMS with respect to the [*] Activity of a submitted [*] Collaboration Compound within such [*] day period, then BMS shall be free to develop and commercialize such Collaboration Compound on the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, Exelixis shall use commercially reasonable efforts to notify BMS as soon as practicable [*] in the event that Exelixis becomes aware in the course of performing its obligations under the Research Plan during the Collaborative Research Period that a Collaboration Compound displays [*] Activity.

3. BMS INDEPENDENT RESEARCH, DEVELOPMENT, MANUFACTURE AND COMMERCIALIZATION OF PRODUCTS

3.1 BMS Research, Development and Commercialization. As between the Parties, BMS (or its Affiliates or sublicensees) has sole authority to conduct: (a) all preclinical development (including any discovery activities) with respect to Collaboration Compounds from and after the expiration of the Collaborative Research Period and during the BMS Independent Activity Period; and (b) clinical development, pre clinical, clinical and commercial manufacturing and commercialization activities, including all regulatory activities, with respect to any Collaboration Compounds and/or Products during the BMS Independent Activity Period. All regulatory applications with respect to the Products shall be owned by BMS and/or its Affiliates or sublicensee(s), as applicable. Upon **[*]** (and at **[*]**), (i) Exelixis shall **[*]** provide BMS with any Exelixis Know-How that is **[*]** for BMS to conduct the activities set forth in clauses (a) and (b) above, and (ii) Exelixis shall cooperate with BMS in connection with regulatory submissions related to any Product. BMS shall have sole control and responsibility for, and shall bear all of its costs and expenses associated with, the development, manufacture (including formulation) and commercialization of all Products, as applicable.

3.2 Diligence. BMS shall use Diligent Efforts to **[*]** during the term of this Agreement; provided that BMS may satisfy such obligation by **[*]** pursuant to the terms of this Agreement. Exelixis may notify BMS in writing if Exelixis in good faith believes that BMS is not meeting its diligence obligations set forth in this Section 3.2, and the Parties shall meet and discuss the matter in good faith. Exelixis may further request review of BMS' records generated and maintained as required under Section 3.3 below, to the extent those records relate to development and commercialization of a Product.

3.3 Records. BMS shall maintain complete and accurate records of all research, development, manufacturing and commercialization conducted by it or on its behalf related to each Product, and all Information generated by it or on its behalf in connection with development under this Agreement with respect to each such Product. BMS shall maintain such records at least until the later of: (a) **[*]** after such records are created, or (b) **[*]** after the Launch of the Product to which such records pertain; provided that the following records may be maintained for a longer period, in accordance with each Party's internal policies on record retention: (i) **[*]** and (ii) **[*]** records that Exelixis reasonably requests be retained in order to ensure the preservation, prosecution, maintenance or enforcement of **[*]**. Such records shall be at a level of detail appropriate for **[*]** purposes. Exelixis shall have the right to review and copy such records of BMS at reasonable times to the extent necessary or useful for Exelixis to conduct its obligations or enforce its rights under this Agreement.

3.4 Reports. Beginning **[*]** after the end of the Collaborative Research Period, and **[*]** thereafter during the **[*]**, BMS shall submit to Exelixis a written progress report summarizing the research, development and commercialization performed by BMS on Products, including **[*]** since the last report, the **[*]** that reaches **[*]** (as defined in the Research Plan) and each Collaboration Compound that reaches **[*]**. If reasonably necessary or useful for

Exelixis to exercise its rights under this Agreement, Exelixis may request that BMS provide more detailed information and data regarding such results reported by BMS, and BMS shall promptly provide Exelixis with information and data as is reasonably related to such request, at Exelixis' expense. All such reports shall be considered Confidential Information of BMS.

3.5 Technology Transfer. Subject to any applicable agreement with a Third Party and the terms of this Agreement, Exelixis shall transfer technology to BMS as described in this Section 3.5.

(a) BMS Transition of an ECN to Development Activities. Subject to Section 3.5(c) and within **[*]** of receiving a written request from BMS to transfer one or more particular items of Information relating to the manufacture of a Collaboration Compound that has received ECN approval, Exelixis shall use commercially reasonable efforts to transfer to BMS such items that are in Exelixis' possession, including any **[*]** generated by Exelixis under the Research Plan. Further, upon written request from BMS and to the extent that **[*]**, Exelixis shall provide reasonable assistance to BMS with respect to the transfer and implementation of technology required for BMS to manufacture or have manufactured such Collaboration Compound. If BMS requests that Exelixis provide on-site advice or support in connection with the foregoing, BMS shall reimburse Exelixis for reasonable travel costs incurred.

(b) BMS Independent Activity Period. Subject to Section 3.5(c), BMS may request in writing that Exelixis transfer one or more particular items of Information that are in Exelixis' possession and that were used by Exelixis in the performance of its responsibilities under the Research Plan. After receiving such request, Exelixis shall use commercially reasonable efforts to transfer to BMS such items, including any **[*]** generated by Exelixis under the Research Plan. If BMS requests that Exelixis provide on-site advice or support in connection with the foregoing, BMS shall reimburse Exelixis for reasonable travel costs incurred. For a period of **[*]** after the end of the Collaborative Research Period, Exelixis shall not **[*]** that may be transferred to BMS pursuant to this Section 3.5(b). After such **[*]** period, Exelixis shall not have any obligation to **[*]**, provided that Exelixis shall notify BMS of the **[*]** in order to allow BMS the opportunity to **[*]**, subject to **[*]**.

(c) Restrictions on Transfer. Transfer of items as described in Sections 3.5(a) and 3.5(b) shall be subject to the following conditions: (i) Exelixis shall transfer such items to BMS to the extent that items requested by BMS are **[*]** and Exelixis' ability to grant BMS a sublicense to the intellectual property rights covering such items is not **[*]**; (ii) Exelixis shall not be obligated to transfer such items to BMS to the extent that Exelixis' ability to grant BMS a sublicense to the intellectual property rights covering such items is **[*]**; and (iii) in the event that Exelixis may sublicense to BMS the intellectual property rights covering such requested items, BMS must **[*]**; provided that Exelixis **[*]**, and BMS **[*]** that BMS desired to **[*]**. If BMS does not take such sublicense subject to all such **[*]**, then such sublicense of intellectual property rights shall automatically be null and void, and Exelixis shall not be obligated to transfer the items covered by such sublicense.

(d) Discussion Regarding Further Collaboration. With respect to items that cannot be transferred due to Section 3.5(c)(ii), the Parties shall meet and discuss in good faith opportunities for collaboration that the Parties could undertake to achieve similar outcomes

as if such items were transferred. For example, the Parties could **[*]** with respect to such items that cannot be transferred. Any such **[*]** must be consistent with **[*]**. Notwithstanding anything to the contrary, nothing in this Section 3.5(d) shall obligate either Party to **[*]**.

4. MANUFACTURING BY EXELIXIS

4.1 Pre-ECN Collaboration Compounds During the Collaborative Research Period. During the Collaborative Research Period and prior to approval of a Collaboration Compound as an ECN, the JRC shall determine responsibility(ies) among the Parties with respect to the manufacture of such Collaboration Compound in sufficient quantities for the Parties to conduct the Research Plan.

4.2 Post-ECN Collaboration Compounds and Collaboration Compounds During the BMS Independent Activity Period. Notwithstanding BMS' authority to manufacture Collaboration Compounds as set forth in Section 3.1 above, BMS may request in writing that BMS' requirements for: (a) any Collaboration Compounds that receive approval as an ECN; or (b) any Collaboration Compounds being researched or developed by BMS during the BMS Independent Activity Period, be manufactured by Exelixis, or on behalf of Exelixis by a mutually agreed subcontractor, and BMS shall provide Exelixis with the relevant information for Exelixis to make a reasonable determination of manufacturing costs for each such Collaboration Compound. Within **[*]** of receiving BMS' request, Exelixis shall notify BMS in writing of whether Exelixis desires to manufacture such Collaboration Compound, and, with respect to any approved subcontractor, shall provide BMS with information relating to such subcontractor's operations, including information on any regulatory inspections, quality related observations, reliability, security of supply and other relevant commercial considerations. If Exelixis does not desire to manufacture (or subcontract the manufacture of) such Collaboration Compound, then Exelixis shall have no obligation to manufacture (or subcontract the manufacture) of such Collaboration Compound. If Exelixis desires to manufacture (or subcontract the manufacture of) such Collaboration Compound, then: (i) BMS and Exelixis shall promptly meet, over a **[*]** period, to negotiate in good faith the commercially reasonable terms of a manufacturing agreement and a quality agreement for such Collaboration Compound; and (ii) in the event that manufacturing of such Collaboration Compound had been undertaken by BMS prior to ECN approval, then BMS shall provide reasonable assistance to Exelixis with respect to the transfer and implementation of technology required for Exelixis to manufacture or have manufactured such Collaboration Compound. BMS' right to request the manufacture of Collaboration Compounds that receive approval as an ECN shall expire at the earlier of: (1) the **[*]** of the end of the Collaborative Research Period; or (2) the **[*]**.

5. LICENSES AND RELATED RIGHTS

5.1 Licenses to BMS. Subject to the terms of this Agreement:

(a) Collaboration Research. Exelixis hereby grants BMS a co-exclusive, worldwide, royalty-free license (with the right to sublicense to its Affiliates, but without the right to sublicense to Third Parties except with prior written consent of Exelixis), under any Exelixis Know-How and Exelixis Patents solely to perform the research tasks assigned to BMS pursuant to the Research Plan.

(b) BMS Independent Research. During the BMS Independent Activity Period, Exelixis hereby grants BMS an exclusive, worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers) to research, identify, derivatize, pre-clinically develop, make, have made and use: (i) Collaboration Compounds solely for research purposes; and (ii) Non-LXR Modulators solely for the purposes of identifying, developing, making, having made and using Collaboration Compounds, under: (A) any Exelixis Know-How and Exelixis Patents covering one (1) or more Collaboration Compounds or Non-LXR Modulators, and/or any composition containing any of the foregoing, or the manufacture or use thereof; and (B) subject to Section 3.5, any other Exelixis Know-How and/or Exelixis Patents, which is useful or reasonably necessary for the research, identification, derivatization, pre-clinical development, making, having made and use of Collaboration Compounds. Notwithstanding anything to the contrary in this Agreement, the licenses granted in this Section 5.1(b) shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by Exelixis.

(c) Development and Commercialization. Exelixis hereby grants BMS an exclusive, worldwide, royalty-bearing (solely to the extent provided in Section 7.4) license (with the right to sublicense) to clinically develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any Collaboration Compound, under: (i) any Exelixis Know-How and Exelixis Patents covering one (1) or more Collaboration Compounds, and/or any composition containing any of the foregoing, or the manufacture or use thereof; and (ii) subject to Section 3.5, any other Exelixis Know-How and/or Exelixis Patent, which is useful or reasonably necessary to clinically develop, make, have made, use, import, sell, offer to sell and have sold Products incorporating any Collaboration Compound.

5.2 BMS License Limitations, Covenants and Retained Rights.

(a) BMS hereby covenants that:

(i) BMS shall not (and shall ensure that any of its permitted sublicensees shall not) use any Exelixis Know-How or Exelixis Patents for a purpose other than that expressly permitted in Section 5.1 and 10.4(e).

(ii) During the **[*]**, BMS shall not (and shall ensure that any of its permitted sublicensees shall not) **[*]**.

(iii) During the **[*]**, BMS shall not **[*]**. For clarity, BMS retains the right to use BMS Compounds for any and all research purposes.

(b) Each sublicense granted by BMS, pursuant to Section 5.1, to a party who is an Affiliate at the time such license is granted shall terminate immediately upon such party ceasing to be an Affiliate.

(c) BMS retains all rights to use all BMS Know-How and BMS Patents except those expressly granted to Exelixis on an exclusive basis under the terms of this Agreement.

(d) BMS acknowledges and agrees that, the licenses granted in Section 5.1(c) shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by Exelixis and that covers any compounds (other than Collaboration Compounds), and/or any composition containing any of the foregoing, or the manufacture or use thereof.

5.3 License to Exelixis for Collaboration Research. Subject to the terms of this Agreement, BMS hereby grants Exelixis a co-exclusive, worldwide, royalty-free license (with the right to sublicense to Affiliates, but without the right to sublicense to Third Parties except with prior written consent of BMS) under the BMS Know-How and BMS Patents, solely to perform the research tasks assigned to Exelixis pursuant to the Research Plan.

5.4 Exelixis License Limitations, Covenants and Retained Rights.

(a) Exelixis hereby covenants that:

(i) Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) use any BMS Know-How or BMS Patents for a purpose other than that expressly permitted in Sections 5.3 and 10.4(d).

(ii) During the **[*]**, Exelixis shall not (and shall ensure that any of its permitted sublicensees shall not) **[*]**; *provided, however*, that the foregoing restriction shall not apply to **[*]**.

(iii) During the **[*]**, Exelixis shall not **[*]**. For clarity, Exelixis retains the right to use Exelixis Compounds for any and all research purposes; *provided, however*, that in the event that an Exelixis Compound reaches **[*]**, then Exelixis shall not **[*]**. Furthermore, if BMS notifies Exelixis pursuant to BMS' reporting obligations described in Sections 2.11 and 3.4 (as applicable) that an Exelixis Compound has reached **[*]**, then Exelixis shall not **[*]**.

(b) Each sublicense granted by Exelixis, pursuant to Section 5.3, to a party who is an Affiliate at the time such license is granted shall terminate immediately upon such party ceasing to be an Affiliate.

(c) Exelixis retains all rights to use all Exelixis Know-How and Exelixis Patents except those expressly granted to BMS on an exclusive basis under the terms of this Agreement.

5.5 No Additional Licenses. Except as expressly provided in Sections 5.1, 5.3, and 10.4, nothing shall grant either Party any right, title or interest in and to the intellectual property rights of the other Party (either expressly or by implication or estoppel).

5.6 Sublicensing. Each Party shall provide the other Party with the name of each permitted sublicensee of its rights under this Article 5 and a copy of the applicable sublicense agreement; provided that each Party may redact confidential or proprietary terms from such copy, including financial terms. The sublicensing Party shall remain responsible for each permitted sublicensee's compliance with the applicable terms and conditions of this Agreement.

6. EXCLUSIVITY

6.1 Collaborative Research Period. During the Collaborative Research Period, neither Party shall do any of the following with respect to a Competitive Compound: **[*]**. Notwithstanding anything to the contrary: (i) **[*]**; and (ii) **[*]**.

6.2 BMS Independent Activity Period. During the BMS Independent Activity Period, Exelixis shall not do any of the following with respect to a Competitive Compound: **[*]**. Upon termination of the BMS Independent Activity Period, all the exclusivity restrictions with respect to Exelixis in this Section 6.2 shall immediately expire. Notwithstanding anything to the contrary, **[*]**. The restrictions in **[*]**.

6.3 BMS In-license Right. Notwithstanding anything in this Agreement, including Section 6.1, BMS may in-license or acquire a Competitive Compound, on the conditions that BMS must: (a) **[*]**; and (b) **[*]** anywhere in the world with respect to such Competitive Compound, either: (i) **[*]**; (ii) **[*]**; or (iii) elect to pay to Exelixis **[*]**; and in each case ((i) through (iii) above), provide written notice to Exelixis of its decision with respect to subsection (b) above and use Diligent Efforts to effect such decision as soon as practicable but in any case no later than **[*]** subsequent to such written notice. In the event that BMS merges or consolidates with, is otherwise acquired by, or acquires, a Third Party (in each of the foregoing cases, the **"Surviving Entity"**), after the Execution Date and during the term of this Agreement, then the terms of this Section 6.3 **[*]** with respect to any Competitive Compounds being developed and/or commercialized by the Surviving Entity.

7. COMPENSATION

7.1 Upfront Fee. BMS shall pay Exelixis an upfront fee of $17.5 million within five (5) business days subsequent to the Effective Date. The upfront fee payment made by BMS to Exelixis pursuant to this Section 7.1 shall be noncreditable and nonrefundable.

7.2 Research Support. During the first two (2) years of the Collaborative Research Period, BMS shall provide guaranteed research funding by reimbursing Exelixis for one hundred percent (100%) of the FTEs used by Exelixis to conduct the Collaboration in each such year up to the greater of: (a) **[*]** FTEs; or (b) such higher number of FTEs as BMS may have agreed to fund in a given contract year, in each case, at an annual rate of **[*]** per FTE in the first (1st) contract year of the Collaboration (the "**FTE Rate**"). The FTE Rate for the second (and each subsequent) year of the Collaborative Research Period shall automatically increase 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), with the first such increase occurring on January 1, 2007. If the Collaborative Research Period is extended by BMS pursuant to Section 2.5 for a third year of the Collaboration, BMS shall reimburse Exelixis for one hundred percent (100%) of the FTEs used by Exelixis to conduct the Collaboration in such year up to the lesser of: (a) the number of Exelixis FTEs required by the Research Plan; or (b) **[*]** FTEs (or such higher number of FTEs as BMS may have agreed to fund in such contract year), in each case at the FTE Rate. Such funding shall be made quarterly in advance, and all the research funding shall be non-refundable and non-creditable. Except for such contribution from BMS, Exelixis shall bear its own costs,

including costs related to research supplies, consumables and applicable overhead costs, in performing its obligations under the Collaboration. For the fourth (and subsequent) years of the Collaborative Research Period (if any), the level of research support (if any) shall be mutually agreed by the Parties.

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

(a) Development and Launch of Products. For each Product and subject to Section 7.3(c), BMS shall make the milestone payments set forth below to Exelixis within **[*]** after the achievement of each of the following events by BMS or any of its Affiliates or sublicensees:

(i) [*] upon the first acceptance of an IND for the first such Product anywhere in the world, and **[*]** upon acceptance of an IND for the second such Product anywhere in the world;

(ii) [*] upon first administration of such Product in a Phase IIa Clinical Trial anywhere in the world;

(iii) [*] upon first administration of such Product in a Phase IIb Clinical Trial anywhere in the world after receipt of BMS DP 4.5 approval;

(iv) [*] upon first administration of such Product in a Phase III Clinical Trial anywhere in the world;

(v) [*] upon first filing of an NDA for such Product in the EU;

(vi) [*] upon first acceptance of an NDA filing for such Product in the United States;

(vii) [*] upon Launch of such Product in Japan;

(viii) [*] upon Launch of such Product in three (3) of the Major Market Countries; and

(ix) [*] upon Launch of such Product in the United States.

(b) Sales Milestones. For each Product and subject to Section 7.3(c), BMS shall make the milestone payments set forth below to Exelixis after the achievement of each of the following events by BMS or any of its Affiliates or sublicensees. Each milestone payment shall be made by BMS **[*]** beginning **[*]** after the end of the year in which such milestone event is met. BMS shall pay the **[*]** to Exelixis **[*]** if, at the time such **[*]** is due, the annual sales threshold level that initially triggered the payment obligation was **[*]**. Otherwise, the **[*]** shall be **[*]**.

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

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

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

(c) Milestone Payment Restrictions. Each milestone payment set forth in Sections 7.3(a) and (b) shall be paid only once with respect to a given Product, regardless of the number of indications sought or approved for that Product, or the number of presentations, dosages or formulations developed for that Product. Additionally, in no circumstance shall BMS be obligated to pay the milestones set forth in Sections 7.3(a) and 7.3(b) for more than two (2) Products.

(d) Milestone Payments for Second Product. If BMS is diligently developing and paying milestones to Exelixis under Sections 7.3(a) for one (1) Product, the payments otherwise to be made to Exelixis under Sections 7.3(a)(ii) – (ix) for a second Product shall be **[*]**; provided, however, that if **[*]**, then BMS shall **[*]**. If development of the first Product ceases or is suspended, then BMS shall **[*]**; however, if a third Product is developed, then BMS shall **[*]**. For clarity, the Parties agree that a second Product shall not include **[*]**.

7.4 Royalty Payments. BMS shall pay Exelixis royalties on Net Sales of Products at the royalty rates stated below. For clarity, Net Sales shall be **[*]** and not **[*]**. All royalty payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable, except in the event that **[*]**.

(a) [*] of the annual, worldwide, aggregate Net Sales less than **[*]** by BMS (or its Affiliate or sublicensee) of each Product;

(b) [*] of the annual, worldwide, aggregate Net Sales between **[*]** by BMS (or its Affiliate or sublicensee) of each Product; and

(c) [*] of the annual, worldwide, aggregate Net Sales **[*]** by BMS (or its Affiliate or sublicensee) of each Product.

7.5 Royalty Adjustments.

(a) Exelixis shall bear all Third Party milestones and royalties owed on intellectual property that: **[*]**. Subject to Sections 7.5(b), 7.5(d) and 7.5(e), BMS shall bear all other Third Party milestones and royalties owed on intellectual property in connection with **[*]**; provided that each Party shall bear all Third Party royalties arising from **[*]**.

(b) Subject to Sections 7.5(d) and 7.5(e), BMS may deduct from the royalties it would otherwise owe pursuant to Section 7.4 for a particular Product, an amount equal to **[*]** of all amounts paid by BMS to Third Parties with respect to licenses to Patents that claim **[*]**, up to a maximum deduction of **[*]** of the royalties due Exelixis for such Product.

(c) During the applicable Royalty Term (as defined below)**,** if any Third Parties are: (i) selling a Generic Product in any given country in any year; and (ii) such sales of such Generic Product(s) in such country for such year are, in the aggregate (on a unit equivalent basis):

(A) greater than **[*]**, but less than or equal to **[*]**of the sum of the entire market for a Product in such country, then the royalties due to Exelixis for such country in such year shall be reduced by **[*]** from what would otherwise have been due under Section 7.4; or

(B) greater than **[*]** of the sum of the entire market for the Product in such country, then the royalties due to Exelixis for such country in such year shall be reduced by **[*]** from what would otherwise have been due under Section 7.4.

(d) Notwithstanding anything to the contrary in this Agreement, the operation of Sections 7.5(b) and 7.5(c) for a given Product, whether singularly or in combination with each other, shall not reduce the royalties due to Exelixis for such Product below **[*]** of what would otherwise have been due under Section 7.4.

(e) BMS may deduct the Exelixis Equivalent Amount (defined below) from the royalties it would otherwise owe pursuant to Section 7.4 for a particular Product. The **"Exelixis Equivalent Amount"** means, with respect to amounts paid by BMS to Third Parties for licenses to Non-Transferable Patents (defined below), the amounts that **[*]**. **"Non-Transferable Patents"** means Patents: **[*]**. BMS shall not be able to deduct under Section 7.5(b) any amounts that are paid to any Third Party for licenses to Non-Transferable Patents and that are **[*]**.

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

7.7 Term of Royalties. Exelixis' right to receive royalties under Section 7.4 shall expire on a country-by-country basis upon the later of: **[*]** (the "**Royalty Term**").

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

7.9 Payment Method. All payments due under this Agreement to Exelixis shall be made by bank wire transfer in immediately available funds to an account designated by Exelixis. All payments hereunder shall be made in U.S. dollars.

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

7.11 Blocked Currency. In each country where the local currency is blocked and cannot be removed from the country, royalties accrued in that country shall be paid to Exelixis in the country in local currency by deposit in a local bank designated by Exelixis, unless the Parties otherwise agree.

7.12 Sublicenses. In the event BMS grants licenses or sublicenses to others to sell Products which are subject to royalties under Section 7.4, such licenses or sublicenses shall include an obligation for the licensee or sublicensee to account for and report its sales of Products on the same basis as if such sales were Net Sales by BMS, and BMS shall pay, or shall ensure that sublicensee shall pay, to Exelixis, with respect to such sales, royalties as if such sales of the licensee or sublicensee were Net Sales of BMS.

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

7.14 Records; Inspection. BMS shall keep complete, true and accurate books of account and records for the purpose of determining the payments to be made under this Agreement. Such books and records shall be kept for at least **[*]** following the end of the calendar quarter to which they pertain. Such records shall be open for inspection during such **[*]** period by independent accountants, solely for the purpose of verifying payment statements hereunder. Such inspections shall be made no more than once each calendar year, at reasonable time and on reasonable notice. Inspections conducted under this Section 7.14 shall be at the expense of Exelixis, unless a variation or error producing an increase exceeding **[*]** of the royalty amount stated for any period covered by the inspection is established in the course of such inspection, whereupon all costs relating to the inspection for such period and any unpaid amounts (plus interest) that are discovered shall be paid promptly by BMS.

7.15 Interest. If BMS fails to make any payment due to Exelixis under this Agreement, then interest shall accrue on a daily basis at the greater of a rate equal to **[*]** 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.

8. INTELLECTUAL PROPERTY

8.1 Ownership.

(a) The inventorship of all Sole Inventions and Joint Inventions shall be determined under the patent laws of the United States.

(b) Each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents claiming such Sole Inventions (and no Joint Inventions) (**"Sole Invention Patents"**). BMS and Exelixis shall be joint owners in and to any and all Joint Inventions and Patents claiming such Joint Inventions (**"Joint Invention Patents"**). BMS and Exelixis as joint owners each shall have the right to exploit and to grant licenses under such Joint Inventions, and where exercise of such rights require, under the laws of a country, the consent of the other Party, with the consent of the other Party (such consent to not be unreasonably withheld, delayed or conditioned) unless otherwise specified in this Agreement.

(c) All employees, agents and contractors of each Party shall be under written obligation to assign any inventions and related intellectual property to the Party for whom they are employed or are providing services.

(d) The Parties acknowledge and agree that this Agreement shall be deemed to be a Joint Research Agreement under 35 U.S.C. 103(c).

8.2 Disclosure. Each Party shall submit a written report to the JRC no less frequently than within **[*]** of the end of each quarter describing any Sole Invention or Joint Invention arising during the prior quarter in the course of the Collaboration or thereafter in accordance with this Agreement which it believes may be patentable or at such earlier time as may be necessary to preserve patentability of such invention. Each Party shall provide to the other Party such assistance and execute such documents as are reasonably necessary to permit the filing and prosecution of such patent application to be filed on such Sole Invention or Joint Invention, or the issuance, maintenance or extension of any resulting Patent.

8.3 Patent Prosecution and Maintenance; Abandonment.

(a)

(i) Filing, Prosecution and Maintenance of Invention Patents Controlled by Exelixis. Subject to Sections 8.3(a)(ii) and (v) below, Exelixis shall be responsible for the preparation, filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Joint Invention Patents, Sole Invention Patents Controlled by Exelixis, and Exelixis Patents that in each case are exclusively licensed to BMS under Section 5.1 (the **"Exelixis Prosecuted Patents"**), provided that such responsibilities shall be carried out by external patent counsel selected by Exelixis, or by Exelixis' internal patent counsel **[*]**, and provided further that, in each case, **[*]**. Exelixis, or its outside counsel, shall provide BMS with an update of the filing, prosecution and maintenance status for each of the Exelixis Prosecuted Patents on a periodic basis, and shall use commercially reasonable efforts to consult with and cooperate with BMS with respect to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents, including providing BMS with drafts of proposed filings to allow BMS a reasonable opportunity for review and comment before such filings are due. Exelixis, or its outside counsel, shall provide to BMS copies of any papers relating to the filing, prosecution and maintenance of the Exelixis Prosecuted Patents promptly upon their being filed and received.

(ii) Abandonment. In no event shall Exelixis knowingly permit any of the Exelixis Prosecuted Patents to be abandoned in any country, or elect not to file a new patent application claiming priority to a patent application within the Exelixis Prosecuted Patents either before such patent application's issuance or within the time period required for the filing of an international (i.e., Patent Cooperation Treaty), regional (including European Patent Office) or national application, without BMS' written consent (such consent to not be unreasonably withheld, delayed or conditioned) or BMS otherwise first being given an opportunity to assume

full responsibility (at BMS' expense) for the continued prosecution and maintenance of such Exelixis Prosecuted Patents or the filing of such new patent application. Accordingly, Exelixis, or its outside counsel, shall provide BMS with notice of the allowance and expected issuance date of any patent within the Exelixis Prosecuted Patents, or any of the aforementioned filing deadlines, and BMS shall provide Exelixis with prompt notice as to whether BMS desires Exelixis to file such new patent application. In the event that Exelixis decides either: (A) not to continue the prosecution or maintenance of a patent application or patent within the Exelixis Prosecuted Patents in any country; or (B) not to file such new patent application requested to be filed by BMS, Exelixis shall provide BMS with notice of this decision at least **[*]** prior to any pending lapse or abandonment thereof. In the event that BMS assumes such responsibility for such filing, prosecution and maintenance, BMS shall have the right to transfer the responsibility for such filing, prosecution and maintenance of such patent applications and patents to patent counsel (outside or internal) selected by BMS, and Exelixis shall cooperate as reasonably requested by BMS to facilitate control of such filing, prosecution and maintenance by BMS. In the case where BMS takes over the filing, prosecution or maintenance of any patent or patent application as set forth above, BMS shall not be liable to Exelixis in any way with respect to its handling of, or the results obtained from, the filing, prosecution, issuance, extension or maintenance of any such application or any resulting patent or any failure by it to so file, prosecute, extend or maintain. In addition, Exelixis shall, at the expense of BMS, provide such assistance and execute such documents as are reasonably necessary to continue or permit the filing, prosecution or maintenance of such patent or patent application or the issuance, maintenance or extension of any resulting patent or permit enforcement of such patent application or any such patent, including assignment of same to BMS at BMS' sole option in accordance with Section 8.3(e).

(iii) Filing, Prosecution and Maintenance of Sole Invention Patents Controlled by BMS. In accordance with this Section 8.3(a)(iii), BMS shall be responsible for the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Sole Invention Patents Controlled by BMS.

(iv) Patent Term Extension. Exelixis and BMS shall each cooperate with each another and shall use commercially reasonable efforts in obtaining patent term extension (including any pediatric exclusivity extensions as may be available) or supplemental protection certificates or their equivalents in any country with respect to patent rights covering the Products. If elections with respect to obtaining such patent term extensions are to be made, **[*]** shall have the right to make the election to seek patent term extension or supplemental protection, *provided* that such election shall be made so as to **[*]**.

(v) Exelixis Patents Containing Claims that Cover Compounds that are not LXR Modulators or Dual LXR/FXR Modulators. To the extent that any Sole Invention Patent of Exelixis contains claims that cover compounds that are not: (1) LXR Modulators; (2) Dual LXR/FXR Modulators; or (3) **[*]**, Exelixis shall have the right to **[*]**. Exelixis shall notify BMS in writing prior to **[*]**.

(b) [*] shall bear the out-of-pocket expenses (including reasonable fees for **[*]**, but not **[*]**) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of: (1) Patents covering **[*]**; and (2) the **[*]**, provided that:

(i) if **[*]**, and such Invention is covered by a Patent for which **[*]** would otherwise bear the out-of-pocket patent expenses pursuant to (b) above, then, subject to (b)(ii) below, Exelixis shall provide written notice to BMS and the Parties shall mutually agree on the percentage of such expenses that **[*]** shall bear (which, in the absence of any other agreement between the Parties, shall be **[*]**); and

(ii) if **[*]**, then the Parties shall mutually agree upon an appropriate allocation of the expenses so that **[*]** does not bear any portion of the out-of-pocket expenses attributable to such other inventions.

(c) Exelixis and BMS shall mutually agree on the percentage of expenses that **[*]** shall bear with respect to Joint Inventions for which the cost of filing, prosecuting or maintaining such Joint Invention is not the responsibility of **[*]** hereof (which, in the absence of any other agreement between the Parties, shall be **[*]**).

(d) [*] shall bear the expenses (including **[*]**, but not **[*]**) associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of Patents covering **[*]**, (2) the Sole Inventions of **[*]**, and (3) the Joint Inventions **[*]**; provided that:

(i) if **[*]**, and such Invention is covered by a Patent for which **[*]** would otherwise bear the out-of-pocket patent expenses pursuant to (d) above, then, subject to (d)(ii) below, the Parties shall mutually agree on the percentage of such expenses that **[*]** shall bear (which, in the absence of any other agreement between the Parties, shall be **[*]**); and

(ii) if **[*]**, then the Parties shall mutually agree upon an appropriate allocation of the expenses so that **[*]** does not bear any portion of the out-of-pocket expenses attributable to such other inventions.

(e) Non-payment of Expenses.

(i) If a Party elects not to pay its share of any expenses with respect to a Patent covering a Joint Invention in a given country under any of Sections 8.3(b), (c) or (d) (each, a "**Joint Patent**"), such Party shall inform the other Party in writing not less than **[*]** before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable), and, if the other Party assumes the expenses associated with the Joint Patent, then the assuming Party shall thereby become the sole owner of such Joint Patent in such country and the other Party shall assign to the assuming Party its rights, title and interests in such Joint Patent in such country.

(ii) If a Party is the assignee or owner of a Patent (other than a Joint Patent) that is licensed to the other Party under any of Sections 5.1, 5.3 or 10.4, and such owning Party elects not to pay its share of expenses pursuant to Section 8.3(b) or 8.3(d) in a given country, such owning Party shall inform the other Party in writing not less than **[*]** before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable). If the other Party assumes the expenses associated with the Patent in such country, then **[*]**.

(iii) If a Party is the licensee of a Patent (other than a Joint Patent) under any of Sections 5.1, 5.3 or 10.4, and such Party elects not to pay its share of expenses pursuant to Section 8.3(b) or 8.3(d) in a given country, such Party shall inform the other Party in writing not less than **[*]** before any relevant deadline (or, in the event of a shorter period in which to respond to a patent office, as soon as reasonably practicable) (such Patent(s) in such countries, as identified in such notice, being a "Cost-Terminated Patent Right"), and shall no longer have any rights under such Sections 5.1, 5.3 or 10.4, as applicable, with respect to the relevant Patent in such country, provided that all remaining rights and licenses under all other Patent(s) within such licensed Patents would remain in effect. It is also understood that such licensee shall be offered the opportunity to assume its share of the responsibility for the costs of filing, prosecution and maintenance of any Patent(s) claiming priority directly or indirectly from any such Cost-Terminated Patent Right, and that where such expenses are assumed by such licensee, it shall be afforded all the rights and licenses as provided under this Agreement for the licensed Patents (other than the Cost-Terminated Patent Right) with respect to such Patent(s) claiming priority directly or indirectly from any such Cost-Terminated Patent Right.

(f) Each Party shall provide to the other Party, **[*]**, a patent report that includes the serial number, docket number and status of each Patent for which, pursuant to Section 8.3(a), such Party has the right to direct the filing, prosecution and maintenance and which covers a Sole Invention or Joint Invention. The Parties through their patent counsel shall discuss as appropriate **[*]** ways in which to **[*]** consistent with the purposes of this Agreement and Exelixis' obligations to Third Parties.

8.4 Enforcement of Patent Rights.

(a) Enforcement of BMS Sole Patents.

(i) Enforcement by Exelixis. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of any Patent claiming a Sole Invention of BMS that claims **[*]** (for purposes of this Section 8.4(a) only, a "**BMS Sole Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a BMS Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Subject to the rights of any Third Party licensees of such Patent, Exelixis shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control; provided that Exelixis must confer with BMS with respect to any such action or proceeding and obtain the prior written consent of BMS to commence such action or proceeding (such consent to not be unreasonably withheld, delayed or conditioned). BMS shall reasonably assist Exelixis (at Exelixis' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by Exelixis or required by law, and **[*]**. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No

settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a BMS Sole Patent may be entered into by Exelixis without the prior consent of BMS (such consent to not be unreasonably withheld, delayed or conditioned).

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

(b) Enforcement of Exelixis Sole Patents.

(i) Enforcement by BMS. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement, by a Third Party of a Patent claiming **[*]** and which is exclusively licensed to BMS under Section 5.1 (for purposes of this Section 8.4(b) only, an "**Exelixis Sole Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of an Exelixis Sole Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Where such suspected infringement involves such Third Party's development, manufacture, use or sale of a small molecule product directed against LXR, BMS shall have the right, but shall not be obligated, to bring an infringement action against any such Third Party or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Exelixis shall reasonably assist BMS (at BMS' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by BMS or required by law, and **[*]**. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of any such Exelixis Sole Patent may be entered into by BMS without the prior consent of Exelixis (such consent to not be unreasonably withheld, delayed or conditioned).

(ii) Enforcement by Exelixis. If BMS elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(b)(i) and so notifies Exelixis, or where Exelixis (or any other party other than BMS who is licensed under such Exelixis Sole Patent) otherwise desires to bring an action or to defend any proceeding directly involving an Exelixis Sole Patent, then Exelixis may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that [*]; *provided further*, that with respect to any Exelixis Sole Patent that is a Patent listed or listable [*] (a **"Listable Patent"**), if BMS [*] to any such action or proceeding, the [*]. BMS shall reasonably assist Exelixis (at Exelixis' expense) in any action or proceeding being prosecuted or defended by Exelixis, if so requested by Exelixis or required by law, and [*].

BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope, or adversely affects the enforceability, of a Listed Patent with respect to small molecules, may be entered into by Exelixis without the prior consent of BMS (such consent to not be unreasonably withheld, delayed or conditioned).

(c) Enforcement of Joint Patents.

(i) Joint Product Patents.

(1) Enforcement by BMS. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter, manufacture or use of one or more Products that is being developed or commercialized using Diligent Efforts and which is exclusively licensed to BMS under Section 5.1 (for purposes of this Section 8.4(c) only, a "**Joint Product Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a Joint Product Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. BMS shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Exelixis shall reasonably assist BMS (at BMS' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by BMS or required by law, and **[*]**. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by BMS without the prior consent of Exelixis (such consent to not be unreasonably withheld, delayed or conditioned).

(2) Enforcement by Exelixis. If BMS elects not to bring any action for infringement or to defend any proceeding described in Section 8.4(c)(i)(1) and so notifies Exelixis, or for any other enforcement by Exelixis of a Joint Patent which is exclusively licensed to BMS under Section 5.1, then Exelixis may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control; *provided* that **[*]**; *provided further*, that with respect to any Joint Patent that is a Listable Patent, if BMS **[*]** to any such action or proceeding, the **[*]**. BMS shall reasonably assist Exelixis (at Exelixis' expense) in any action or proceeding being prosecuted or defended by Exelixis, if so requested by Exelixis or required by law, and **[*]**. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Product Patent may be entered into by Exelixis without the prior consent of BMS (such consent to not be unreasonably withheld, delayed or conditioned).

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

(ii) Reverted Compound Patents.

(1) Enforcement by Exelixis. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent claiming a Joint Invention that pertains to the composition of matter, manufacture or use of a Reverted Compound and which is exclusively licensed to Exelixis under Section 10.4 (for purposes of this Section 8.4(c) only, a "**Reverted Compound Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of a Reverted Compound Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. Exelixis shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control; provided that **[*]**. BMS shall reasonably assist Exelixis (at Exelixis' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by Exelixis or required by law, and **[*]**. BMS shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Reverted Compound Patent may be entered into by Exelixis without the prior consent of BMS (such consent to not be unreasonably withheld, delayed or conditioned).

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

(iii) Other Joint Patents.

(1) Enforcement by BMS. In the event that management or in-house counsel for either Party becomes aware of a suspected infringement of a Patent that claims a Joint Invention but is not a Joint Product Patent or a Reverted Compound Patent (for purposes of this Section 8.4(c) only, an "**Other Joint Patent**"), such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Each Party shall provide the same level of disclosure to its in-house counsel concerning suspected infringement of an Other Joint Patent as such Party would provide with respect to suspected infringement of its own issued Patent or an exclusively licensed issued Patent claiming a product it is developing or commercializing independent of this Agreement. BMS shall have the right, but shall not be obligated, to prosecute an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Exelixis shall reasonably assist

BMS (at BMS' expense) in such actions or proceedings if so requested, and shall lend its name to such actions or proceedings if requested by BMS or required by law, and **[*]**. Exelixis shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an Other Joint Patent may be entered into by BMS without the prior consent of Exelixis (such consent to not be unreasonably withheld, delayed or conditioned).

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

(d) General Provisions Relating to Enforcement of Patents.

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

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

(e) Data Exclusivity and Orange Book Listings. With respect to data exclusivity periods (such as those periods listed in the FDA's Orange Book (including any available pediatric extensions) or periods under national implementations of Article 10.1(a)(iii) of Directive 2001/EC/83, and all international equivalents), BMS shall use commercially reasonable efforts consistent with its obligations under applicable law (including any applicable consent order) to seek maintain and enforce all such data exclusivity periods available for the Products. With respect to filings in the FDA Orange Book (and foreign equivalents) for issued patents for a Product, upon request by BMS (and at BMS' expense), Exelixis shall provide reasonable cooperation to BMS in filing and maintaining such Orange Book (and foreign equivalent) listings.

(f) No Action in Violation of Law. Neither Party shall be required to take any action pursuant to this Section 8.4 that such Party reasonably determines in its sole judgment and discretion conflicts with or violates any court or government order or decree applicable to such Party.

(g) Notification of Patent Certification. Exelixis shall notify and provide BMS with copies of any allegations of alleged patent invalidity, unenforceability or non-infringement of an Exelixis Patent licensed hereunder pursuant to a Paragraph IV Patent Certification by a third party filing an Abbreviated New Drug Application, an application under §505(b)(2) or other similar patent certification by a third party, and any foreign equivalent thereof. Such notification and copies shall be provided to BMS by Exelixis as soon as practicable and at least within **[*]** after Exelixis receives such certification, and shall be sent by facsimile and overnight courier to the address set forth below:

Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 & Province Line Road
Princeton, New Jersey 08543-4000
Attention: Vice President and Chief Intellectual Property Counsel
Telephone: 609-252-4825
Facsimile: 609-252-7884

8.5 Defense of Third Party Claims. If a claim is brought by a Third Party that any activity related to work performed by a Party under the Collaboration infringes the intellectual property rights of such Third Party, each Party shall give prompt written notice to the other Party of such claim, and following such notification, the Parties shall confer on how to respond.

8.6 Copyright Registrations. Copyrights and copyright registrations on copyrightable subject matter shall be filed, prosecuted, defended, and maintained, and the Parties shall have the right to pursue infringers of any copyrights owned or Controlled by it, in substantially the same manner as the Parties have allocated such responsibilities, and the expenses therefor, for patent rights under this Article 8.

9. CONFIDENTIALITY

9.1 Nondisclosure of Confidential Information. All Information disclosed by one Party to the other Party pursuant to this Agreement, including disclosure by either Party to the other of any results and data resulting from the Collaboration or disclosure by BMS to Exelixis of BMS' activities relating to Collaboration Compounds during the BMS Independent Activity Period, shall be "**Confidential Information**" for all purposes hereunder. The Parties agree that during **[*]**, a Party receiving Confidential Information of the other Party shall: (a) use Diligent Efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party (such consent to not be unreasonably withheld, delayed or conditioned), except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder; and (b) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement (it being understood that this Section 9.1 shall not create or imply any rights or licenses not expressly granted under Article 5 hereof). Notwithstanding anything to the contrary in this Section 9.1, **[*]**.

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

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

(a) Subject to the last sentence in Section 9.1, is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

(b) Was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party; or

(c) Is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without obligation to keep it confidential; or

(d) Is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement; or

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of the disclosing Party's Confidential Information.

9.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances; provided that notice of any such disclosure shall be provided as soon as practicable to the other Party:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products, in each case pursuant to activities under this Agreement;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental laws and regulations; and

(e) Disclosure, in connection with the performance of this Agreement, to Affiliates, potential collaborators, partners, and licensees (including potential co-marketing and co-promotion contractors), research collaborators, potential investment bankers, investors, lenders, and investors, employees, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 9.

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to individuals or entities covered by 9.3(e) above, each of whom prior to disclosure must be bound by similar obligations

of confidentiality and non-use at least equivalent in scope to those set forth in this Article 9. In addition, a copy of this Agreement may be filed by either Party with the Securities and Exchange Commission in connection with any public offering of such Party's securities. In connection with any such filing, such Party shall endeavor to obtain confidential treatment of economic and trade secret information.

In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

9.4 Termination of Prior Agreements. This Agreement supersedes the Confidential Disclosure Agreement between Exelixis and BMS dated March 23, 2005 and the amendments thereto dated June 6, 2005, July 28, 2005, and August 11, 2005 (such confidential disclosure agreement, as amended, the "**Prior CDA**"). All Information exchanged between the Parties under the Prior CDA shall be deemed Confidential Information and shall be subject to the terms of this Article 9.

9.5 Publicity. The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as Exhibit 9.5. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; *provided*, *however*, that any disclosure which is required by law, including disclosures required by the U.S. Securities and Exchange Commission or made pursuant to the requirements of the national securities exchange or other stock market on which such Party's securities are traded, as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

9.6 Publications. Neither Party shall publish or present the results of studies carried out during the Collaborative Research Period and the BMS Independent Activity Period (including results of studies carried out with Non-LXR Modulators) without the opportunity for prior review by the other Party; *provided*, *however*, that BMS may publish or present the results of studies with respect to Collaboration Compounds that have received approval as an ECN without prior review by Exelixis. Subject to Section 9.3, each Party agrees to provide the other Party the opportunity to review any proposed disclosure which contains Confidential Information of the other Party and would or may constitute an oral, written or electronic public disclosure if made (including the full content of proposed abstracts, manuscripts or presentations) which relate to **[*]**, or which otherwise may **[*]**, at least **[*]** prior to its intended submission for publication and agrees, upon request, not to submit any such abstract or manuscript for publication until the other Party is given a reasonable period of time to secure patent protection for any material in such publication which it believes to be patentable. Both Parties understand that a reasonable commercial strategy may require delay of publication of information or filing of patent applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JRC shall review such requests and recommend subsequent action. Neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to Section 9.1. Nothing contained in this Section 9.6 shall prohibit the inclusion of Confidential Information of the non-filing Party

necessary for a patent application, provided the non-filing Party is given a reasonable opportunity to review the extent and necessity for its Confidential Information to be included prior to submission of such patent application. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JRC.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with Section 10.2 or Section 10.3 or by mutual written agreement, or until the expiration of the last royalty payment obligation with respect to any Product, as provided in Section 7.4. For clarity, termination of the Collaborative Research Period shall not constitute termination of this Agreement; termination of this Agreement shall result in termination of the Collaborative Research Period.

10.2 BMS' Right to Terminate. At any time subsequent to **[*]**, BMS shall have the right to terminate this Agreement upon: (a) **[*]** prior written notice to Exelixis, in the event that such termination is prior to the **[*]**; or (b) **[*]** prior written notice to Exelixis, in the event that such termination is subsequent to the **[*]**.

10.3 Termination for Material Breach.

(a) If either Party believes that the other is in material breach of this Agreement (including any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. For all breaches other than a failure to make a payment set forth in Article 7, the allegedly breaching Party shall have **[*]** to cure such breach. For any breach arising from a failure to make a payment set forth in Article 7, the allegedly breaching Party shall have **[*]** to cure such breach. For clarity, so long as BMS is using Diligent Efforts with respect to discovery, pre-clinical or clinical development, regulatory activities and/or commercialization (including seeking price reimbursements) or the sublicensing of rights to a Third Party with respect to any of the foregoing, of a Collaboration Compound and/or Product, BMS shall not be deemed to be in material breach of Section 3.2 of this Agreement.

(b) If the Party receiving notice of breach fails to cure such breach within the **[*]** or **[*]** (as applicable), or the Party providing the notice reasonably determines that the proposed corrective plan or the actions being taken to carry it out is not commercially practicable, the Party originally delivering the notice may terminate this Agreement upon **[*]** advance written notice, provided, that if the breach applies only to a given Product or given Major Territory (provided that with respect to a breach in the EU as a Major Territory, such breach must be in at least **[*]** of the Major Market Countries), or to the license rights granted to a Party under any of Sections 5.1, 5.3 or 10.4, the non-breaching Party may only terminate the breaching Party's rights with respect to such Product or such Major Territory, or the license rights granted to a Party under such subsection.

(c) If a Party gives notice of termination under this Section 10.3 and the other Party disputes whether such notice was proper, then the issue of whether a breach has occurred shall be resolved in accordance with Section 13.1. If as a result of such dispute resolution process it is determined that the notice of breach was proper, then such termination shall be deemed to have been effective if the breaching Party fails thereafter to cure such breach in accordance with the determination made in the resolution process under Section 13.1 within the time period set forth in Section 10.3(a) for the applicable breach following such determination. If as a result of such dispute resolution process it is determined that the notice of breach was improper, then no termination shall have occurred and this Agreement shall have remained in effect.

10.4 Effect of Termination; Survival.

(a) In the event of termination of this Agreement for any reason other than material breach pursuant to Section 10.3 or by mutual agreement, the following provisions of this Agreement shall survive: [*].

(b) Notwithstanding anything to the contrary in this Agreement, in the event of termination of this Agreement pursuant to Section 10.3, all licenses granted under this Agreement in favor of the breaching Party shall terminate. In such case, the non-breaching Party shall continue to hold the licenses granted hereunder, subject to the milestone and royalties set forth herein (which relevant provisions shall survive termination).

(c) In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

(d) Research, Development and Commercialization of Reverted Compounds by Exelixis.

(i) Upon termination of this Agreement, subject to Section 10.5, BMS hereby grants Exelixis a worldwide, royalty-bearing (solely to the extent provided in the Reverted Compounds License Agreement) license (with the right to sublicense) to clinically develop, make, have made, use, import, sell, offer to sell and have sold products incorporating any Collaboration Compounds that have reached ECN approval, under: (A) any BMS Know-How and BMS Patents covering **[*]**; and (B) any **[*]**. The license described in this Section 10.4(d)(i) shall be **[*]**.

(ii) Upon termination of this Agreement, subject to Section 10.4(e) and Section 10.5, BMS hereby grants Exelixis a worldwide, royalty-bearing (solely to the extent provided in the Reverted Compounds License Agreement) license (with the right to sublicense) to clinically develop, make, have made, use, import, sell, offer to sell and have sold products incorporating any Collaboration Compounds (except for Collaboration Compounds that have not reached ECN approval and that are BMS Compounds) or Non-LXR Modulators, under: (A) any BMS Know-How and BMS Patents covering **[*]**; and (B) any **[*]**. The license described in this Section 10.4(d)(ii) shall be **[*]**.

(iii) Upon termination of this Agreement, subject to Section 10.4(e) and Section 10.5, BMS hereby grants Exelixis a worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers) to research, identify, derivatize, pre-clinically develop, make, have made and use Collaboration Compounds or Non-LXR Modulators for research purposes, under any BMS Know-How and BMS Patents covering **[*]**. The license described in this Section 10.4(d)(iii) shall be: (A) **[*]**; (B) **[*]**; and (C) **[*]**. Notwithstanding anything to the contrary in this Agreement, the foregoing license grant shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by BMS.

(iv) Upon termination of this Agreement, subject to Section 10.4(e) and Section 10.5, BMS hereby grants Exelixis a non-exclusive, worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers) to research, identify, derivatize, pre-clinically develop, make, have made and use Collaboration Compounds or Non-LXR Modulators for research purposes, under any BMS Know-How and/or BMS Patent **[*]**. Notwithstanding anything to the contrary in this Agreement, the foregoing license grant shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by BMS.

(v) BMS shall transfer via assignment, license or sublicense to Exelixis: (A) all Information reasonably necessary for the development and commercialization of such Reverted Compounds; (B) all regulatory filings (including any Regulatory Approvals, drug dossiers, and drug master files) in BMS' name; (C) agreements with Third Parties; (D) trademark rights Controlled by BMS; and (E) supplies of Product (including any intermediates, retained samples and reference standards) that in each case ((A) through (E)) are existing and in BMS' Control and that specifically relate to such Reverted Compounds. Any such transfer(s) shall be at the sole expense of Exelixis. BMS and Exelixis shall promptly meet, over a **[*]** period, to negotiate in good faith the commercially reasonable terms of a license agreement to such Reverted Compounds (the "**Reverted Compounds License Agreement**"), including: (1) the licenses described in Sections 10.4(d)(i) – (iv); (2) a royalty to BMS of **[*]** of the net sales of such Reverted Compounds if such transfer is made prior to the commencement of **[*]** with respect to any Reverted Compounds, and **[*]** of the net sales of such Reverted Compounds if such transfer is made subsequent to the commencement of **[*]** with respect to any Reverted Compound); provided that there shall be no royalty due to BMS for net sales of Reverted Compounds that both have not reached ECN approval and that are Exelixis Compounds; (3) a provision **[*]**; and (4) other customary terms and provisions, including terms and provisions relating to diligence, audit rights, and intellectual property maintenance and enforcement, in each case substantially similar to the terms of this Agreement.

(e) BMS Internal Compound Research License. Upon termination of this Agreement, BMS shall have a non-exclusive, worldwide, royalty-free license (without the right to sublicense except to third party contract research providers and manufacturers) under the

Exelixis Patents and Exelixis Know-How to research, identify, derivatize, pre-clinically develop, make, have made and use each of the following: **[*]**, in each case ((i) through (v)) solely for research purposes. Notwithstanding anything to the contrary in this Agreement, the foregoing non-exclusive license grant shall not create (by any means, whether expressly, impliedly or by estoppel) any right or license under any other Patents, Information or other intellectual property right that is Controlled by Exelixis.

(f) Request for Research-Grade Samples of BMS Compounds. Within [*] of the effective date of any termination of this Agreement, BMS may request in writing that Exelixis provide BMS with reasonable quantities of the following compounds (at research-grade quality) that are in Exelixis' possession as of such effective date: [*]. After receipt of such written request, Exelixis shall use commercially reasonable efforts to provide BMS with reasonable quantities of such requested compounds. BMS shall reimburse Exelixis for any out-of-pocket costs incurred by Exelixis in connection with this Section 10.4(f). Notwithstanding anything to the contrary, Exelixis shall not have any obligation to manufacture (or have manufactured) for BMS any quantities of the compounds described in the foregoing subsection (i) – (v).

(g) Determination of Post-Termination Compound. A compound that is an LXR Modulator or Dual LXR/FXR Modulator shall be a Post-Termination Compound **[*]** in any of the following time periods after the termination of the Agreement: (i) within **[*]** thereafter in the event the Agreement terminates prior to the **[*]** anniversary of the Effective Date; (ii) within **[*]** thereafter in the event the Agreement terminates on or after the **[*]** anniversary and prior to the **[*]** anniversary of the Effective Date; (iii) within **[*]** thereafter in the event the Agreement terminates on or after **[*]** anniversary and prior to the **[*]** anniversary of the Effective Date; and (iv) within **[*]** in the event the Agreement terminates on or after the **[*]** anniversary of the Effective Date.

10.5 Exception for Termination for Safety Reasons. The licenses granted to Exelixis under Sections 10.4(d)(i) and (ii) shall be of no force or effect with respect to any given Collaboration Compound(s) where BMS' termination of pre-clinical development, clinical development and/or commercialization of such Collaboration Compound(s) was due to Safety Reasons. For purposes of this Section 10.5, "**Safety Reasons**" means it is **[*]** that there is **[*]** in humans based upon: (a) **[*]**; or (b) **[*]**. Notwithstanding anything to the contrary, this Section 10.5 shall not prevent Exelixis from using its license in Sections 10.4(d)(iii) or 10.4(d)(iv) to identify Collaboration Compounds by derivatizing any such Collaboration Compound that was terminated for Safety Reasons. BMS shall provide Exelixis with all relevant data for such terminated Collaboration Compound but shall not be obligated to assign to Exelixis any regulatory documents/filings relating to such terminated Collaboration Compound.

11. REPRESENTATIONS AND WARRANTIES AND COVENANTS

11.1 Mutual Authority. Exelixis and BMS each represents and warrants to the other as of the Execution Date that: (a) it has the authority and right to enter into and perform this Agreement, (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (c) its execution, delivery and performance of this

Agreement shall not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

11.2 Rights in Technology.

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

(b) Each Party represents and warrants that it: (i) has full legal or beneficial title to the Patents that have been listed on a Schedule to this Agreement; (ii) has no Knowledge as of the Execution Date of **[*]**; (iii) has the ability to grant the licenses contained in or required by this Agreement; and (iv) is not currently subject to any agreement with any Third Party or to any outstanding order, judgment or decree of any court or administrative agency that restricts it in any way from granting to the other Party such licenses or the right to exercise its rights hereunder.

(c) Each Party represents and warrants that, to its Knowledge as of the Execution Date, all fees required to maintain the issued Patent rights of such Party set forth in the Schedules to this Agreement have been paid to date.

(d) Each Party represents and warrants that: (i) it has not granted, and covenants that it shall not grant after the Execution Date and during the term of this Agreement, any right, license or interest in or to, or an option to acquire any of the foregoing with respect to, the intellectual property rights licensed to the other Party hereunder (including the Exelixis Patents and the BMS Patents, as the case may be) that is in conflict with the rights (including the rights set forth in Section 3.5 and Article 8) or licenses granted or to be granted (including any conditional license rights) to the other Party under this Agreement; and (ii) it has not granted any lien, security interest or other encumbrance (excluding any licenses) with respect to any of the intellectual property rights licensed to the other Party hereunder that would prevent it from performing its obligations under this Agreement, or permitted such a lien, security interest or other encumbrance (excluding any permitted licenses) to attach to the intellectual property rights licensed to the other Party hereunder.

(e) To such Party's Knowledge as of the Execution Date, each Party represents and warrants that **[*]**.

11.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates; *provided*, *however*, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such

performance. In particular, if any Affiliate of a Party participates under this Agreement with respect to Collaboration Compounds: (a) the restrictions of this Agreement which apply to the activities of a Party with respect to Collaboration Compounds shall apply equally to the activities of such Affiliate; and (b) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in Article 5) as if such intellectual property had been developed by the Party.

11.4 Third Party Rights.

(a) Each Party represents and warrants to the other Party that, to its Knowledge as of the Execution Date, **[*]** as contemplated by this Agreement shall not **[*]**. Each Party represents and warrants to the other Party that, to its Knowledge as of the Execution Date, it shall not violate a contractual or fiduciary obligation owed to **[*]** to **[*]** as contemplated by this Agreement.

(b) Exelixis represents and warrants to BMS that, (i) to its Knowledge as of the Execution Date, it did not violate any fiduciary obligation owed to any Third Party (including misappropriation of trade secrets) in conducting its research to identify the Collaboration Compounds owned by Exelixis as of the Execution Date, and (ii) to its Knowledge as of the Execution Date, **[*]** does not **[*]** against at least **[*]**.

11.5 Notice of Infringement or Misappropriation. Each Party represents and warrants to the other Party that, as of the Execution Date, it has received no notice of infringement or misappropriation of any alleged rights asserted by any Third Party in relation to any technology to be used in connection with the Collaboration.

11.6 HSR Act Filing; Effective Date. The Parties shall each, prior to or as promptly as practicable after the Execution Date of this Agreement, file or cause to be filed with the U.S. Federal Trade Commission and the U.S. Department of Justice and any relevant foreign governmental authority any notifications required to be filed under the HSR Act and any applicable foreign equivalent thereof with respect to the transactions contemplated hereby; *provided* that the Parties shall each file the notifications required to be filed under the HSR Act no later than five (5) business days after the Execution Date of this Agreement. Each Party shall be responsible for its own costs in connection with such filing, except that BMS shall be solely responsible for the applicable filing fees. The Parties shall use commercially reasonable efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act and any applicable foreign equivalent thereof to terminate or expire at the earliest possible date after the date of filing. Each Party shall use its commercially reasonable efforts to ensure that its representations and warranties set forth in this Agreement remain true and correct at and as of the Effective Date as if such representations and warranties were made at and as of the Effective Date. Notwithstanding anything in this Agreement to the contrary, this Agreement (other than Article 9 and this Section 11.6) shall not become effective until the expiration or earlier termination of the waiting period under the HSR Act in the United States, the expiration or earlier termination of any applicable waiting period under the antitrust or competition laws of any other jurisdiction, and the approval or clearance of the transactions contemplated by this Agreement in any jurisdiction requiring advance approval or clearance (the **"Effective Date"**).

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

12.1 Mutual Indemnification. Subject to Section 12.4, each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, and their respective directors, employees and agents from and against any and all Third Party suits, claims, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and reasonable attorneys' fees ("**Losses**") to the extent such Losses result from any: **[*]**.

12.2 Indemnification by BMS. Subject to Section 12.4, BMS hereby agrees to indemnify, defend and hold harmless Exelixis and its directors, employees and agents from and against any and all Losses to the extent such Losses result from the manufacture, use, handling, storage, sale or other disposition of Collaboration Compounds or Products by BMS or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: **[*]**.

12.3 Indemnification by Exelixis. Subject to Section 12.4, Exelixis hereby agrees to indemnify, defend and hold harmless BMS and its directors, employees and agents from and against any and all Losses to the extent such Losses result from the manufacture, use, handling, storage, sale or other disposition of Collaboration Compounds or Reverted Compounds by Exelixis or its Affiliates, agents or sublicensees, except to the extent such Losses result from any: **[*]**.

12.4 Conditions to Indemnification. As used herein, "**Indemnitee**" shall mean a party entitled to indemnification under the terms of Section 12.1, 12.2 or 12.3. A condition precedent to each Indemnitee's right to seek indemnification under such Section 12.1, 12.2 or 12.3 is that such Indemnitee shall:

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

(b) if the indemnifying Party acknowledges that such Loss falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Loss (including the right to settle the claim solely for monetary consideration); provided, that the indemnifying Party shall seek the prior written consent (such consent to not be unreasonably withheld, delayed or conditioned) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Patents licensed under this Agreement, would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(c) fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Loss.

Provided that an Indemnitee has complied with all of the conditions described in subsections (a) – (c), as applicable, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Loss. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Loss using attorneys of the Indemnitee's choice and at the Indemnitee's expense. In no event may an Indemnitee settle or compromise any Loss for which the Indemnitee intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party (such consent to not be unreasonably withheld, delayed or conditioned), or the indemnification provided under such Section 12.1, 12.2 or 12.3 as to such Loss shall be null and void.

12.5 Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES BY A PARTY FOR WHICH IT SEEKS REIMBURSEMENT OR INDEMNIFICATION PROTECTION FROM THE OTHER PARTY PURSUANT TO SECTIONS 12.1, 12.2 AND 12.3, AND EXCEPT FOR BREACH OF SECTION 9.1 HEREOF, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THE AGREEMENT, UNLESS SUCH DAMAGES ARE DUE TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF THE LIABLE PARTY (INCLUDING GROSS NEGLIGENCE OR WILFUL BREACH WITH RESPECT TO A PARTY'S REPRESENTATIONS AND WARRANTIES IN ARTICLE 11).

12.6 Collaboration Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 11 ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, COLLABORATION COMPOUNDS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY BMS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO EXELIXIS PURSUANT TO THE TERMS OF THE AGREEMENT. EXCEPT AS PROVIDED IN ARTICLE 11 ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, COLLABORATION COMPOUNDS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THE AGREEMENT.

13. MISCELLANEOUS

13.1 Dispute Resolution. In the event of any dispute, controversy or claim arising out of, relating to or in connection with any provision of the Agreement, other than a dispute arising from the terms and provisions of Article 3, Section 2.2 or Section 13.3, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the CEO of Exelixis and the Senior VP for Exploratory Drug Discovery for BMS or their designees. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within **[*]** after such notice, such officers of the Parties shall meet for attempted resolution by good faith negotiations. If such officers are unable to resolve such dispute within **[*]** of their first meeting for such negotiations, either Party may seek to have such dispute resolved in any United States federal or state court of competent jurisdiction and appropriate venue, provided, that if such suit includes a Third Party claimant or defendant, and jurisdiction and venue with respect to such Third Party appropriately resides outside the United States, then in any other jurisdiction or venue permitted by applicable law.

13.2 Governing Law. Resolution of all disputes, controversies or claims arising out of, relating to or in connection with the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of California, as applied to agreements executed and performed entirely in the State of California by residents of the State of California, without regard to conflicts of law rules.

13.3 Patents and Trademarks; Equitable Relief.

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

(b) Any dispute, controversy or claim arising out of, relating to or in connection with the need to seek preliminary or injunctive measures or other equitable relief (e.g., in the event of a potential or actual breach of the confidentiality and non-use provisions in Article 9) need not be resolved through the procedure described in Section 13.1 but may be immediately brought in a court of competent jurisdiction.

13.4 Entire Agreement; Amendments. This Agreement sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto and supersedes and terminates all prior agreements and understandings between the Parties. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

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

13.6 Bankruptcy.

(a) All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("**Title 11**"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "**Bankrupt Party**") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall, at the election of the Bankrupt Party made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party including, where applicable, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 13.6, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in

addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of licensed products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this Section 13.6 shall be subject to the licenses set forth elsewhere in this Agreement and the payment obligations of this Agreement, which shall be deemed to be royalties for purposes of Title 11.

13.7 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

13.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Party confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For Exelixis: Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
Attention: SVP, Patents and Licensing

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

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For BMS: Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Senior Vice President, Corporate and Business Development
Phone: 609-252-3413
Fax: 609-252-6880

With a copy to: Bristol-Myers Squibb Company
P.O. Box 4000
Route 206 and Province Line Road
Princeton, NJ 08543-4000
Attention: Vice President and Senior Counsel, Corporate and Business Development
Phone: 609-252-5328
Fax: 609-252-4232

Furthermore, a copy of any notices required or given under Article 8 of this Agreement shall also be addressed to the Vice President and Chief Intellectual Property Counsel of BMS at the address set forth in Section 8.4(g).

13.9 Maintenance of Records Required by Law or Regulation. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Party upon request.

13.10 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other (such consent to not be unreasonably withheld, delayed or conditioned), except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction; provided that any such permitted successor or assignee of rights and/or obligations hereunder is obligated, by reason of operation of law or pursuant to a written agreement with the other Party, to assume performance of this Agreement or such rights and/or obligations; and provided, further, that if assigned to an Affiliate, the assigning Party shall remain jointly and severally responsible for the performance of this Agreement by such Affiliate. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 13.10 shall be null and void and of no legal effect.

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

13.12 Non-Solicitation of Employees. After the Effective Date and during the term of this Agreement, each Party agrees that neither it nor any of its divisions, operating groups or

Affiliates shall recruit, solicit or induce any employee of the other Party directly involved in the activities conducted pursuant to this Agreement to terminate his or her employment with such other Party and become employed by or consult for such Party, whether or not such employee is a full-time employee of such other Party, and whether or not such employment is pursuant to a written agreement or is at-shall. For purposes of the foregoing, **"recruit"**, **"solicit"** or **"induce"** shall not be deemed to mean: (a) circumstances where an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (b) general solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

13.13 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

13.14 Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

13.15 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

13.16 Construction of this Agreement. Except where the context otherwise requires, wherever used, the use of any gender shall be applicable to all genders, and the word "**or**" are used in the inclusive sense. When used in this Agreement, "**including**" means "**including without limitation**". References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement shall be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit or the Research Plan, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

13.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, each of which shall be binding when sent.

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Signature page follows.

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

BRISTOL-MYERS SQUIBB COMPANY		**EXELIXIS, INC.**	
By:	/s/ Elliott Sigal, M.D., Ph.D.	By:	/s/ George A. Scangos, PhD
Title:	Chief Scientific Officer & President, PRI	Title:	President and Chief Executive Officer
Date:	December 5, 2005	Date:	December 5, 2005

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Schedule 1.26
Exelixis Patents

[*]

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Schedule 1.41
Listed NHRs

[*]

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of December 21, 2005 (the "**Effective Date**") by and between **EXELIXIS, INC.**, a Delaware corporation with offices at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083, X-Ceptor Therapeutics, Inc., a Delaware corporation and wholly owned subsidiary of Exelixis with offices at 4757 Nexus Centre Drive, San Diego, California 92121 and any other existing Affiliates of Exelixis (collectively, "**Exelixis**"), on the one hand, and **WYETH**, acting through its **WYETH PHARMACEUTICALS DIVISION**, a Delaware corporation with offices at 500 Arcola Road, Collegeville, PA 19426 and its Affiliates (collectively, "**Wyeth**") on the other hand. Exelixis and Wyeth are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

BACKGROUND

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

B. Exelixis is a drug discovery company that has expertise and proprietary technology relating to compounds that modulate the Farnesoid X Receptor.

C. Based on the terms and conditions set forth below, Exelixis desires to grant to Wyeth, and Wyeth desires to receive, a license and other tangible assets to research, develop, manufacture and commercialize products incorporating compounds that modulate the Farnesoid X Receptor.

NOW THEREFORE, Exelixis and Wyeth agree as follows:

1. DEFINITIONS

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

1.1 "**Additional Know-How**" means any Information, whether or not patentable, that:

(a) (i) was Controlled by Exelixis or its Affiliates **[*]**, and (ii) is **[*]**; or

(b) (i) was not Controlled by Exelixis or its Affiliates **[*]** but becomes owned and Controlled by Exelixis or its Affiliates **[*]**, and (ii) is **[*]**.

Notwithstanding the foregoing, Additional Know-How does not include Licensed Compound Know-How or any Know-How that becomes Controlled by Exelixis or its Affiliates as a result of [*].

1.2 "**Additional Patent Right**" means any Patent that:

(a) (i) was Controlled by Exelixis or its Affiliates **[*]**, and (ii) claims **[*]**; and

(b) (i) was not Controlled by Exelixis or its Affiliates **[*]** but becomes owned and Controlled by Exelixis or its Affiliates **[*]**, and (ii) is **[*]**.

Notwithstanding the foregoing, Additional Patent Rights do not include any Joint Patent Rights, any Licensed Compound Patent Rights or any Patent that becomes Controlled by Exelixis or its Affiliates as a result of a **[*]**.

1.3 "**Affiliate**" means, with respect to any Person or entity, any other Person or entity which controls, is controlled by or is under common control with such Person or entity. A Person or entity shall be regarded as in control of another entity if it owns or controls at least fifty percent (50%) of the equity securities of the subject entity entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority), *provided*, *however*, that the term **"Affiliate"** shall not include subsidiaries or other entities in which a Party or its Affiliates owns a majority of the ordinary voting power necessary to elect a majority of the board of directors or other governing board, but is restricted from electing such majority by contract or otherwise, until such time as such restrictions are no longer in effect.

1.4 "**Agreement Derivative**" means:

(a) any Derivative: (i) which contains or comprises **[*]**; and (ii) either: (A) **[*]**, or (B) **[*]**; and

(b) any **[*]**.

1.5 "**Agreement Product**" means: (a) any Product which comprises or contains at least one (i) Existing Compound or (ii) Agreement Derivative; or (b) any Product which comprises or contains at least one **[*]** and has **[*]**.

1.6 "**Applicable Net Sales**" means net sales of any Product by Exelixis, its Affiliates and Exelixis Sublicensees pursuant to the license granted by Wyeth in **Section 9.4(a)(iii)** and as determined on the same basis as Net Sales, substituting Exelixis for Wyeth.

1.7 "**[*] Scaffold**" means any scaffold that is: (a) **[*]**; and (b) **[*]**.

1.8 "Change of Control" shall mean a transaction in which Exelixis: (a) sells, conveys or otherwise disposes of all or substantially all of its property or business; or (b)(i) merges or consolidates with any other entity (other than an Affiliate of Exelixis); or (ii) effects any other transaction or series of transactions; in each case of clause (i) or (ii), such that the stockholders of Exelixis immediately prior thereto, in the aggregate, no longer own, directly or

indirectly, beneficially or legally, at least fifty percent (50%) of the outstanding voting securities or capital stock of the surviving entity following the closing of such merger, consolidation, other transaction or series of transactions.

1.9 "**Commercialize**" or "**Commercialization**" means all activities that are undertaken after Regulatory Approval of a Drug Approval Application for a particular product and that relate to the commercial marketing and sale of such product including advertising, marketing, promotion, distribution, and post-approval clinical studies.

1.10 "**Commercially Reasonable Efforts**" means, with respect to the efforts to be expended by any Party with respect to any objective, those reasonable, diligent, good faith efforts to accomplish such objective as such Party would normally use to accomplish a similar objective under similar circumstances. With respect to any objective relating to the Development and/or Commercialization of a product by any Party, **"Commercially Reasonable Efforts"** shall mean those efforts and resources normally used by such Party with respect to a product owned by such Party or to which such Party has similar rights, which is of similar market potential at a similar stage in the development or life of such product, taking into account issues of safety, efficacy, product profile, the competitiveness of the marketplace, the proprietary position of the product, the regulatory structure involved, profitability of the product and other relevant commercial factors. Notwithstanding the foregoing, to the extent that the performance of a Party's obligations hereunder is adversely affected by the other Party's failure to perform its obligations hereunder, such Party shall not be deemed to have failed to use its Commercially Reasonable Efforts in performing such obligations.

1.11 "**Control**" or "**Controlled**" means, with respect to Information or intellectual property rights, that the Party named as having Control owns such Information or intellectual property rights, or otherwise possesses the ability to grant a license, sublicense or other rights under or with respect to such Information or intellectual property rights, without violating the terms of any Control Limitation Agreement to which such Party is a party.

1.12 "Control Limitation Agreement" means any agreement or arrangement between a Party and a Third Party which limits the ownership rights of the Party with respect to, or limits the ability of the Party to grant a license, sublicense or other rights under or with respect to, any intellectual property.

1.13 "**Covered Compounds**" means, on a country-by-country basis, any Licensed Compound whose manufacture, use or sale in such country would, but for the license rights granted by Exelixis to Wyeth under this Agreement, infringe a Valid Claim in **[*]**.

1.14 "Covered Product" means any Agreement Product that contains or comprises one or more Covered Compounds.

1.15 "**Derivative**" means:

(a) any compound which: **[*]**; and

(b) [*] of any such compound;

1.16 "Develop" or **"Development"** means non-clinical and clinical research and development activities, including toxicology, pharmacology and other discovery efforts, test method development and stability testing, process development, formulation development, delivery system development, quality assurance and quality control development, statistical analysis, clinical studies (including pre- and post-approval studies), regulatory affairs, pharmacovigilance and Regulatory Approval and clinical study regulatory activities (including regulatory activities directed to obtaining pricing and reimbursement approvals).

1.17 "**Development Track Baseline Criteria**" means the criteria set forth in ***Exhibit 1.17***, or **[*]**.

1.18 "**Development Track Selection**" means the decision by Wyeth, **[*]**, to advance an Agreement Product to development track status as provided in **Section 3.2** of this Agreement.

1.19 "**Drug Approval Application**" means an application for Regulatory Approval required before commercial sale or use of a product as a drug in a regulatory jurisdiction, including a NDA filed in the United States.

1.20 "EMEA" means the European Medicines Agency, a decentralized body of the European Union, or any successor agency having comparable jurisdiction.

1.21 "Exclusive" means, where used in connection with a grant of rights, exclusive even as to the Party granting such rights.

1.22 "**Exelixis Agreement Scaffold**" means any Exelixis Scaffold that is **[*]** scaffold. For avoidance of doubt, the **[*]** is part of the **[*]** scaffold family, and the **[*]** scaffold is part of the **[*]** scaffold family

1.23 "**Exelixis Scaffold**" means any **[*]** disclosed and/or claimed in any Licensed Compound Patent Right that: (a) is listed on ***Exhibit 1.38***; (b) covers any **[*]**; or (c) issues from or claims priority to any Licensed Compound Patent Right described in (a) or (b).

1.24 "**Exelixis Sublicensee**" means a person, corporation, partnership or other entity, other than an Affiliate, that is granted a sublicense by Exelixis under the rights granted in **Section 9.4(a)(iii)**.

1.25 "**Existing Compounds**" means: (a) all compounds listed on ***Exhibit 1.25***; and (b) **[*]** of such compounds.

1.26 "**FDA**" means the United States Food and Drug Administration or any successor agency.

1.27 "**First Commercial Sale**" means, with respect to any product in any country or region, the first commercial sale to any Third Party of such product for end use consumption in such country or region following Regulatory Approval authorizing the marketing of such product in such country or region and, where applicable, all required Regulatory Approvals regarding pricing and reimbursement for such product in such country or region. A First Commercial Sale shall not include any product sold for use in clinical trials, for research or for other non- commercial uses, or that is supplied as part of a compassionate use or similar program.

1.28 "**Follow-on Compound**" means any Licensed Compound that is not a Covered Compound.

1.29 "**FXR**" means: (a) the protein encoded by the Farnesoid X Receptor gene (for any species); and (b) all subtypes, mutants, variants and fragments thereof.

1.30 "**GAAP**" means the United States generally accepted accounting principles, consistently applied.

1.31 "**Improvement**" means any invention that: (a) **[*]**; (b) is **[*]**; and (c) is **[*].**

1.32 "**IND**" means an Investigational New Drug Application filed with the FDA or its equivalent in any country outside the United States.

1.33 "**Information**" means information, material, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including databases, inventions, practices, methods, techniques, specifications, formulations, formulae, cell lines, cell media, knowledge, know-how, skill, experience, manufacturing materials, financial data, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, quality assurance data, stability data, studies and procedures, and patent and other legal information or descriptions.

1.34 "**Joint Patent Rights**" has the meaning set forth in **Section 6.1**.

1.35 "Knowledge" means, with respect of a Party, the good faith understanding of the facts and information in the possession of an officer of such Party, or any in-house legal counsel of such Party or its Affiliates, without any duty to conduct any additional investigation with respect to such facts and information by reason of the execution of this Agreement. For purposes of this definition, an **"officer"** means any person in the position of vice president, senior vice president, president or chief executive officer of a Party.

1.36 "**Licensed Compound**" means any Existing Compound or any Derivative. Any Licensed Compound shall also include any **[*]**.

1.37 "**Licensed Compound Know-How**" means any confidential, non-public Information, whether or not patentable, Controlled by Exelixis or its Affiliates **[*]** that is **[*]**. Licensed Compound Know-How does not include: (a) any Licensed Compound Patent Right; or (b) any Additional Know-How.

1.38 "**Licensed Compound Patent Right**" means: (a) any Patent that is Controlled by Exelixis or its Affiliates **[*]** that is **[*]**; (b) any Patent that is Controlled by Exelixis or its Affiliates **[*]** covering **[*]**; or (c) any Patent issuing from or claiming priority to any of the foregoing. The Licensed Compound Patent Rights in existence as of the Effective Date are listed on ***Exhibit 1.38***. The Licensed Compound Patent Rights do not include: (i) any Joint Patent Rights; or (ii) any Additional Patent Rights.

1.39 "**Major Country**" means any of the following countries, and their respective territories and possessions: **[*]**.

1.40 "**Material Breach**" by a Party means a substantial default in the performance of such Party's covenants or obligations under this Agreement that materially and adversely affects the other Party's rights under this Agreement. Without limiting the generality of the foregoing, **[*]**.

1.41 "**Modulates FXR**" means, when used with respect to any compound: (a) that the compound **[*]**; or (b) **[*]**.

1.42 "**NDA**" means a New Drug Application (as more fully defined in 21 C.F.R. 314.5 *et seq.*) and all amendments and supplements thereto filed with the FDA in order to obtain Regulatory Approval in the United States.

1.43 "**NDA Acceptance**" means the submission to the FDA of a NDA for an Agreement Product and the acceptance for filing by the FDA of such NDA.

1.44 "Net Sales" means the gross amount invoiced for any sale of any Agreement Product by Wyeth, its Affiliates and Sublicensees, as appropriate (a "Selling Person"), to a Third Party in a bona fide arm's length transaction, less the following deductions (calculated in accordance with GAAP), in each case to the extent specifically related to the Agreement Product and taken by the Selling Person or otherwise paid for or accrued by the Selling Person (**"Permitted Deductions"**): (a) trade, cash, promotional and quantity discounts, and wholesaler fees; (b) taxes on sales (such as excise, sales or use taxes or value added taxes) to the extent imposed upon and paid directly with respect to the sales price (and excluding national, sales or local taxes based on income); (c) freight, insurance, packing costs and other transportation charges to the extent included in the invoice price to the buyer; (d) amounts repaid or credits taken by reason of damaged goods, rejections, defects, expired dating, recalls, returns or because of retroactive price reductions; (e) charge back payments and rebates granted to: (i) managed healthcare organizations, (ii) federal, state and/or provincial and/or local governments or other agencies, (iii) purchasers and reimbursers, or (iv) trade customers, including wholesalers and chain and pharmacy buying groups; and (f) documented custom duties actually paid by the Selling Person.

Agreement Products provided by Wyeth, its Affiliates or Sublicensees, free of charge, for administration to patients enrolled in clinical trials or distributed at nominal prices or at no charge to eligible patients shall not be included in Net Sales, provided that Wyeth, its Affiliates and Sublicensees receive no cash consideration from such not-for-profit foundation or from such clinical trials or such use of Agreement Products.

Notwithstanding the foregoing, if an Agreement Product containing as active ingredients both (a) a Licensed Compound and (b) one or more other pharmaceutically active compounds or substances (for clarity, drug delivery vehicles, adjuvants, and excipients are not considered to be **"pharmaceutically active"**) that are not Licensed Compounds (a **"Combination Product"**) is sold (a **"Combination Sale"**), the Net Sales for such Combination Product shall be the portion of such Combination Sale allocable to the Licensed Compound determined as follows:

Except as provided below, the Net Sales amount for a Combination Sale shall equal the gross amount invoiced for the Combination Sale, reduced by the Permitted Deductions (the **"Net Combination Sale Amount"**), multiplied by the fraction **A/(A+B)**, where:

A is the invoice price, in the country where such Combination Sale occurs, of the Licensed Compound contained in the Combination Product, if sold as a separate Agreement Product in such country by the Selling Person and **B** is the aggregate of the invoice price or prices, in such country, of such other products or active ingredients/components, as the case may be, included in the Combination Product if sold separately in such country by the Wyeth, its Affiliate, or Sublicensee, as applicable.

In the event that the Selling Person sells the Licensed Compound included in a Combination Product as a separate Agreement Product in a country, but does not separately sell all of the other products or active ingredients/components, as the case may be, included in such Combination Product in such country, the calculation of Net Sales resulting from such Combination Sale shall be determined by multiplying the Net Combination Sale Amount by the fraction **A/C** where:

A is the Selling Person's average wholesale price, in such country, of the Licensed Compound contained in such Combination Product when sold as a separate Agreement Product by Wyeth, its Affiliate or Sublicensee, as applicable, and **C** is the average wholesale price, in such country, charged by Wyeth, its Affiliate or Sublicensee, as applicable, for the entire Combination Product.

In the event that the Selling Person does not sell the Licensed Compound included in a Combination Product as a separate Agreement Product in the country where such Combination Sale occurs, but does separately sell all of the other products or active ingredients/components, as the case may be, included in the Combination Product in such country, the calculation of Net Sales resulting from such Combination Sale shall be determined by multiplying the Net Combination Sale Amount by the fraction **(C-D)/C**, where:

C is the average wholesale price, in such country, charged by the Selling Person for the entire Combination Product, and **D** is the average wholesale price charged by the Selling Person for the other products or active ingredients/components, as the case may be, included in the Combination Product.

Where the calculation of Net Sales resulting from a Combination Sale in a country cannot be determined by any of the foregoing methods, the calculation of Net Sales for such Combination Sale shall be that portion of the Net Combination Sale Amount reasonably determined in good faith by Wyeth as properly reflecting the value of the Licensed Compound included in the Combination Product.

1.45 "**Other Derivative**" means:

(a) any compound which: (i) contains or comprises **[*]**; (ii) **[*]**; and (iii) was produced, identified, developed or generated **[*]**; and

(b) [*] of any such compound.

1.46 "**Other Derivative Product**" means an Agreement Product: (a) that comprises or contains at least one Other Derivative, but does not comprise or contain an Existing Compound or an Agreement Derivative; and (b) achieves **[*]**.

1.47 "**Patents**" means any and all: (a) patents; (b) pending patent applications, including all provisional applications, substitutions, continuations, continuations-in-part, divisions, renewals, and all patents granted thereon; (c) patents-of-addition, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms, including supplementary protection certificates or the equivalent thereof; (d) inventor's certificates; and (e) United States and foreign counterparts of any of the foregoing.

1.48 "**Person**" shall mean an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

1.49 "**Phase 1 Trial**" means a clinical trial that generally provides for the first introduction into humans of an Agreement Product with the primary purpose of determining safety, metabolism and pharmacokinetic properties and clinical pharmacology of such Agreement Product, and generally consistent with 21 CFR § 312.21(a).

1.50 "**Phase 2 Trial**" means a human clinical trial of an Agreement Product, the principal purpose of which is to make a preliminary determination that such Agreement Product is safe for its intended use and to obtain sufficient information about such Agreement Product's efficacy to permit the design of further clinical trials, and generally consistent with 21 CFR § 312.21(b), as amended (or its successor regulation).

1.51 "**Phase 3 Trial**" means a pivotal human clinical trial of an Agreement Product, which trial is designed to: (a) establish that such Agreement Product is safe and efficacious for its intended use; (b) define warnings, precautions and adverse reactions that are associated with such Agreement Product in the dosage range to be prescribed; (c) support Regulatory Approval of such Agreement Product; and (d) be generally consistent with 21 CFR § 312.21(c), as amended (or its successor regulation).

1.52 "**Preclinical Study**" means any preclinical pharmacokinetic or toxicology study relating to the Licensed Compounds conducted by or for Exelixis or its Affiliates **[*]**.

1.53 "**Product**" means any human or animal therapeutic or diagnostic product that contains or comprises one or more Licensed Compounds or Other Derivatives.

1.54 "**Regulatory Approval**" means any technical, medical, scientific or other license, registration, authorization or approval of any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, regarding the development, clinical testing, commercial manufacture, distribution, marketing, pricing, reimbursement, promotion, offer for sale, use, import, export or sale of an Agreement Product in any regulatory jurisdiction.

1.55 "**Regulatory Authority**" means any national (*e.g.*, the FDA), supra-national (*e.g.*, the EMEA), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity in each country of the world involved in the granting of Regulatory Approval for Agreement Products.

1.56 "**Sublicensee**" means a person, corporation, partnership or other entity, other than an Affiliate, that is granted a sublicense by Wyeth under the grant in **Section 2.1**.

1.57 "**Term**" means the period beginning on the Effective Date and ending on the expiration or earlier termination of this Agreement.

1.58 "Territory" means the entire world.

1.59 "**Third Party**" means any Person other than Exelixis, Wyeth or an Affiliate of Exelixis or Wyeth.

1.60 "**Uncovered Product**" means any Agreement Product other than a Covered Product or an Other Derivative Product.

1.61 "**Valid Claim**" means any claim in an issued Patent that has not: (a) expired or been abandoned; (b) been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period; or (c) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise.

1.62 "**Valid Pending Claim**" means any claim under a pending application for a Patent that: (a) has been pending for **[*]** since the priority date for such application; and (b) has not been abandoned, canceled, withdrawn from consideration, or finally determined to be unallowable in a decision from which no appeal can be taken.

1.63 "**Wyeth Know-How**" means, with respect to the grant by Wyeth to Exelixis of any license to any Licensed Compound under **Section 9.4(a)(iii)** or **9.4(b)(ii)(3)**, all Information that is Controlled by Wyeth or its Affiliates **[*]** including Wyeth's interest in any Information jointly owned by the Parties that is **[*]**. The Wyeth Know-How does not include any Wyeth Patent Rights.

1.64 "Wyeth Non-Disclosure Agreement" means the Non-Disclosure Agreement between the Parties, dated as of June 6, 2005, as amended September 7, 2005 and September 28, 2005.

1.65 "**Wyeth Patent Rights**" means, with respect to the grant by Wyeth to Exelixis of any license to any Licensed Compound under **Section 9.4(a)(iii)** or **9.4(b)(ii)(3)**, all Patents Controlled by Wyeth or its Affiliates **[*]** including Wyeth's interest in any Joint Patent Rights that are **[*]**.

1.66 "**X-Ceptor Non-Disclosure Agreement**" means the Mutual Non-Disclosure Agreement between Wyeth and X-Ceptor Therapeutics, Inc., dated as of August 6, 2003, as amended October 31, 2003.

2. LICENSES AND OTHER RIGHTS

2.1 Exclusive License. Subject to the terms and conditions of this Agreement, Exelixis and its Affiliates hereby grant to Wyeth and its Affiliates a worldwide, Exclusive, royalty-bearing license (with the right to sublicense), under the Licensed Compound Patent Rights, the Licensed Compound Know-How and Exelixis' interest in the Joint Patent Rights, to make, have made, use, develop, sell, offer for sale, have sold, import and export Products.

2.2 Non-Assertion of Proprietary Rights. Exelixis and its Affiliates will not, and Exelixis and its Affiliates will not grant any Third Party any right to, assert against Wyeth, its Affiliates or Sublicensees any **[*]** which would prevent Wyeth, its Affiliates or Sublicensees from **[*]** (i) to the extent, but only to the extent, that such **[*]** covers **[*]** or (ii) **[*]**.

2.3 Retained Rights. Notwithstanding the Exclusive license granted in **Section 2.1**, Exelixis retains the right under the Licensed Compound Patent Rights, the Licensed Compound Know-How and Exelixis' interest in the Joint Patent Rights to make, have made, use, and test Licensed Compounds for Exelixis' internal, self-funded research purposes in connection with the research and development of compounds **[*]**. For the avoidance of doubt, Exelixis retains no right to sell, offer for sale or have sold or to make, have made or use for non-research purposes any Licensed Compound.

2.4 Sublicenses. Any sublicense grant by Wyeth under this Agreement shall be made subject to the terms of this Agreement and shall impose restrictions and conditions upon Wyeth's Affiliates and Sublicensees that are consistent with those imposed upon Wyeth by this Agreement. Wyeth shall remain fully responsible for the conduct of its Affiliates and Sublicensees under the terms of this Agreement, including any breach of the terms hereof by such Affiliates and Sublicensees. In the event of a material default by an Affiliate or Sublicensee under a sublicense agreement with Wyeth of an obligation imposed by this Agreement, Wyeth will inform Exelixis and take such action as necessary or appropriate to cure such default.

2.5 Wyeth Rights of First Negotiation in Regard to Certain Grants of Rights or Development of Products. During the Term, should Exelixis or any Affiliate of Exelixis decide to seek to assign, license or otherwise grant any right to a Third Party under any Additional Patent Right or any Additional Know How wherein such assignment, license or grant would permit such Third Party to **[*]**, or should Exelixis **[*]**, then, in either case, Exelixis shall promptly notify Wyeth in writing. Wyeth shall have a right of first negotiation to obtain an Exclusive or non-exclusive license, as applicable, under such intellectual property rights to **[*]**. If Wyeth, at its sole discretion, exercises this right by so notifying Exelixis in writing within **[*]** of the receipt of notice from Exelixis, the Parties shall negotiate in good faith for **[*]** from the date Exelixis receives Wyeth's notice to arrive at mutually acceptable terms (including any

applicable royalty rate or other consideration) for adding such right to the rights granted to Wyeth under this Agreement, as evidenced by a mutually acceptable amendment to this Agreement. If mutual agreement is not reached during such **[*]** period, Exelixis may grant the proposed license or other right to any Third Party at any time during the **[*]** months following expiration of such **[*]** period, *provided, however*, that **[*]**. If the right in question is not granted by Exelixis to a Third Party during such **[*]** period, the provisions of this **Section 2.5** shall be again be applicable to such right.

2.6 Option Grant. Exelixis hereby grants to Wyeth an option (the "**License Option**"), exercisable at any time within **[*]** following the Effective Date (the "**Option Period**") on written notice by Wyeth, to acquire a worldwide, non-exclusive, or to the extent available, Exclusive, royalty-bearing license (with the right to sublicense), under some or all of the Additional Patent Rights and the Additional Know-How to **[*]**. If Wyeth, at its sole discretion, exercises the License Option by so notifying Exelixis in writing within the Option Period, the Parties shall negotiate in good faith, for **[*]** from the date Exelixis receives Wyeth's notice, to arrive at mutually acceptable terms (including any **[*]**) for adding such right to the rights granted to Wyeth under this Agreement, as evidenced by a mutually acceptable amendment to this Agreement. If mutual agreement is not reached during such **[*]** period, then Exelixis may grant the proposed license or other right to any Third Party at any time after the expiration of such **[*]** period. If fewer than **[*]** remain in the Option Period at the time Exelixis receives written notice from Wyeth of Wyeth's intention to exercise the License Option, then the Option Period will be extended to the date that is **[*]** from the date Exelixis received Wyeth's notice. During the Option Period, neither Exelixis nor its Affiliates shall **[*]**.

2.7 No Additional Licenses. No right or license under any Patents or other intellectual property rights Controlled by a Party is granted or shall be granted by implication. All such rights or licenses are or shall be granted only as expressly provided in the terms of this Agreement.

3. DEVELOPMENT AND COMMERCIALIZATION OF PRODUCTS

3.1 General. As between the Parties, Wyeth shall be solely responsible, at its own expense, for Developing, obtaining and maintaining Regulatory Approval for, and Commercializing Agreement Products during the Term. Wyeth shall use Commercially Reasonable Efforts to Develop and, when appropriate based on the data obtained during Development, secure Regulatory Approval for and Commercialize at least one Agreement Product in one Major Country. Wyeth shall have no other diligence obligations with respect to the Development or Commercialization of Agreement Products in the Territory.

3.2 Development Track Selection. Wyeth shall be solely responsible for evaluating Agreement Products for promotion to development track status and for conducting such studies as Wyeth may determine are required for Development Track Selection. Wyeth shall determine, **[*]**, which Agreement Products to develop, and which Agreement Products to advance to development track status. Exelixis agrees and understands that Wyeth is under no obligation to grant development track status to any Agreement Product that meets the Development Track Baseline Criteria listed in ***Exhibit 1.17***. Notwithstanding anything to the contrary, nothing in this **Section 3.2** shall be interpreted as diminishing Wyeth's obligations pursuant to **Section 3.1**.

3.3 Regulatory Responsibilities. Subject to the provisions of **Section 3.1**, Wyeth shall use Commercially Reasonable Efforts to prepare and file, in its own name and at its own expense, all Drug Approval Applications and any other regulatory filings necessary or helpful to obtain Regulatory Approval of each Agreement Product in any country or regulatory jurisdiction. All Drug Approval Applications and other regulatory filings made in connection with this Agreement shall be the property of Wyeth and held in the name of Wyeth or its designated Affiliates. Wyeth and/or its agents shall be responsible for all correspondence and communication with regulatory authorities (including the FDA and EMEA), and the physicians and other health care professionals in the United States and abroad, relating to each Agreement Product. Wyeth shall keep such records and make such reports as shall be reasonably necessary to document such communications in compliance with all applicable regulatory requirements. Wyeth shall be responsible for the adverse experience and safety reporting for all Agreement Products in compliance with the requirements of the U.S. Food, Drug and Cosmetic Act, 21 U.S.C. § 321 et seq. and the regulations promulgated thereunder and the equivalent regulations in other countries in the world.

3.4 Commercialization Responsibilities.

(a) General. Wyeth shall have sole and exclusive control over all matters relating to the Commercialization of Agreement Products. Without limiting the generality of the foregoing, Wyeth shall:

(i) be the exclusive distributor for Agreement Products in the Territory for its own account and risk;

(ii) be responsible for invoicing and booking sales for, warehousing, and distributing all Agreement Products in the Territory and shall perform related distribution activities; and

(iii) have the right and responsibility for establishing and modifying the terms and conditions with respect to the sale of Agreement Products in the Territory, including any terms and conditions relating to or affecting the price at which Agreement Products will be sold; discounts available to managed care providers; any discount attributable to payments on receivables; any conditions of local reimbursement; distribution of Agreement Products; and credits, price adjustments, other discounts, and allowances to be granted or refused.

(b) Branding. Wyeth shall select and use its own trademarks and trade dress in connection with the Commercialization of Agreement Products under this Agreement. Wyeth shall own all trademarks and any domain names incorporating such trademarks used by Wyeth in connection with the Commercialization of Agreement Products under this Agreement, and all goodwill associated therewith. Wyeth shall have the right to obtain, prosecute and maintain at its own expense any trademarks for the Agreement Products.

3.5 Manufacturing. Subject to Exelixis' obligations pursuant to **Section 3.6**, as between the Parties, Wyeth, either itself or through Third Parties, shall be responsible for the manufacture and supply of Wyeth's requirements of Licensed Compound and Agreement Products for Development and Commercialization under this Agreement.

3.6 Technology Transfer. Within **[*]** of the Effective Date, Exelixis shall transfer to Wyeth: (a) **[*]**; (b) all Licensed Compound Know-How listed in ***Exhibit 3.6***; and (c) all **[*]**. During the first **[*]** of the Term and upon Wyeth's reasonable written request: (i) Exelixis shall **[*]**; and (ii) Exelixis shall **[*]**. Wyeth shall reimburse Exelixis for any reasonable out-of-pocket costs incurred by Exelixis in connection with this **Section 3.6** and for reasonable travel expenses incurred by Exelixis to attend, at Wyeth's request, any meetings not held at an Exelixis facility.

3.7 Disposition of Preclinical Studies. Exelixis and its Affiliates shall, until the earlier of: (a) **[*]** following the Effective Date; or (b) the completion of the current phase of all Preclinical Studies, **[*]** with the same **[*]** during the **[*]** period preceding the Effective Date. Exelixis shall notify Wyeth in writing of the completion of the current phase of each Preclinical Study promptly after such completion. At any time during such **[*]** period, Wyeth may elect, at its sole option and discretion, to: (i) **[*]**; or (ii) **[*]**. Exelixis and its Affiliates shall execute, acknowledge and deliver such further instruments, and perform all such other acts, as may be necessary or appropriate in order to **[*]** in accordance with this **Section 3.7**.

3.8 Progress Reporting. Wyeth will keep Exelixis reasonably informed about Wyeth's Development and Commercialization efforts with respect to Agreement Products. Without limiting the generality of the foregoing, Wyeth shall provide Exelixis with written notice within **[*]** of the occurrence of any of the development events listed in **Section 4.2**. Wyeth shall also provide Exelixis with **[*]** written reports on the general progress of Wyeth's efforts to Develop and Commercialize Agreement Products. Additionally, Wyeth shall provide Exelixis with an annual written report summarizing Wyeth's progress at Developing and Commercializing Agreement Products in the form set forth in ***Exhibit 3.8***.

4. FINANCIAL TERMS

4.1 Up-front Payment. Within **[*]** business days of the Effective Date, Wyeth shall pay Exelixis an up-front fee of ten million dollars ($10,000,000). Such up-front fee shall be nonrefundable and noncreditable.

4.2 Development Payments.

(a) In partial consideration for Exelixis' development of the Licensed Compound Know-How, prosecution and maintenance of the Licensed Compound Patent Rights and performance of Exelixis' obligations under this Agreement, and subject to the provisions of **Section 4.2(b)** through **Section 4.2(f)**, Wyeth shall pay Exelixis the amounts set forth below within **[*]** days of the first occurrence of each event described below for any Agreement Product (each, a "**Development Payment**"). All Development Payments shall be nonrefundable and noncreditable.

Development Event	Development Payment
(i) First Development Track Selection of an Agreement Product	**[*]**
(ii) Development Track Selection for second Agreement Product	**[*]**
(iii) Development Track Selection for third and each subsequent Agreement Product	**[*]**
(iv) First subject dosed in a Phase 1 Trial	**[*]**
(v) First subject dosed in a Phase 2 Trial	**[*]**
(vi) First subject dosed in a Phase 3 Trial	**[*]**
(vii) NDA Acceptance	**[*]**
(viii) Filing and acceptance for review of a Drug Approval Application in Europe	**[*]**
(ix) Filing and acceptance for review of a Drug Approval Application in Japan	**[*]**
(x) First Commercial Sale of an Agreement Product in U.S.	**[*]**
(xi) First Commercial Sale of an Agreement Product in Europe	**[*]**
(xii) First Commercial Sale of an Agreement Product in Japan	**[*]**
(xiii) The first time worldwide Net Sales for an individual Agreement Product in any calendar year exceeds **[*]**	**[*]**
(xiv) The first time worldwide Net Sales for an individual Agreement Product in any calendar year exceeds **[*]**	**[*]**
(xv) The first time worldwide Net Sales for an individual Agreement Product in any calendar year exceeds **[*]**	**[*]**

[*]

(b) Each of the Development Payments described in this **Section 4.2** shall be payable one (1) time only, regardless of the actual number of times the corresponding development event is achieved.

(c) If a development event set forth in **Section 4.2(a)(i)** through **Section 4.2(a)(vi)** is achieved by an Agreement Product which: (i) does not **[*]**; and (ii) is not **[*]**, the corresponding Development Payment will be **[*]** of the amount set forth in the table above.

(d) If a development event set forth in **Section 4.2(a)(vii)** through **Section 4.2(a)(xii)** is achieved by an Agreement Product which: (i) does not **[*]**; and (ii) is not **[*]**, the corresponding Development Payment will be **[*]** of the amount set forth in the table above.

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

(e) If the development event set forth in **Section 4.2(a)(v)** is achieved prior to the achievement of the development event set forth in **Section 4.2(a)(iv)**, then Wyeth shall pay to Exelixis within **[*]** days of the achievement of the development event set forth in **Section 4.2(a)(v)** the Development Payments for both such development events. If the development event set forth in **Section 4.2(a)(vi)** is achieved prior to the achievement of the development events set forth in **Section 4.2(a)(iv)** and/or **Section 4.2(a)(v)**, then Wyeth shall pay to Exelixis within **[*]** days of the achievement of the development event set forth in **Section 4.2(a)(vi)** the Development Payments listed in **Section 4.2(a)(iv)** through **Section 4.2(a)(vi)** that have not previously been paid by Wyeth.

(f) If a development event set forth in **Section 4.2(a)(i)** through **Section 4.2(a)(xv)** is achieved by an Agreement Product that is an Other Derivative Product, then any corresponding Development Payments for such Other Derivative Product will be **[*]** of the amount set forth for Agreement Products in **Section 4.2(a)**; *provided*, *however,* that if an Agreement Product that comprises or contains at least one Existing Compound or at least one Agreement Derivative (a **"Prior Agreement Product"**) achieves Development Track Selection *prior to* the date Development Track Selection is achieved for any Other Derivative Product (a **"Subsequent Agreement Product"**), then Wyeth shall **[*]**. However, if development of a Prior Agreement Product ceases, and development of a Subsequent Agreement Product occurs, then, with respect to Development Payments for such Subsequent Agreement Product, Wyeth shall **[*]**, but Wyeth shall pay **[*]**.

4.3 Royalties.

(a) Covered Products. Subject to the provisions of **Section 4.3(b)** and **Section 4.3(c)**, Wyeth shall pay Exelixis royalties based on annual Net Sales of any Agreement Product, on a product-by-product basis as set forth below:

(i) for that portion of worldwide, aggregate, annual Net Sales that is less than or equal to **[*]**, **[*]**;

(ii) for that portion of worldwide, aggregate, annual Net Sales that is greater than **[*]**, but less than or equal to **[*]**, **[*]**; and

(iii) for that portion of worldwide, aggregate, annual Net Sales that is greater than **[*]**, **[*]**.

(b) Uncovered Products. Notwithstanding the provisions of **Section 4.3(a)**, in the case of any Net Sales of any Agreement Product in any country where such Agreement Product is an Uncovered Product, the royalty rates payable on such Net Sales shall **[*]** the royalty rates that would otherwise apply pursuant to **Section 4.3(a)**.

(c) Other Derivative Products. Notwithstanding the provisions of **Section 4.3(a)**, in the case of any Net Sales of any Agreement Product in any country where such Agreement Product is an Other Derivative Product, the royalty rates payable on such Net Sales shall **[*]** the royalty rates that would otherwise apply pursuant to **Section 4.3(a)**.

4.4 Royalty Reductions. If Wyeth is required to make any payments to any Third

Party in consideration for a license under, assignment of, or obligation not to assert a Patent Controlled by such Third Party that, **[*]** without infringing the Patent of such Third Party (such payments "**Third Party Payments**"), Wyeth may credit against any royalty payments due to Exelixis under **Section 4.3(a)** up to **[*]** of such Third Party Payments; *provided* that, in no event will royalties payable to Exelixis be reduced by more than **[*]** as a result of such credit.

4.5 Royalty Term.

(a) For any Covered Product, Wyeth's obligation to pay royalties pursuant to **Section 4.3** shall expire, on a Product-by-Product and country-by-country basis, on the later of: **[*]**.

(b) For any Uncovered Product or any Other Derivative Product, Wyeth's obligation to pay royalties pursuant to **Section 4.3** shall expire, on a product-by-product and country-by-country basis, **[*]**.

4.6 Royalty Reports. Within **[*]** after the end of the calendar quarter in which the First Commercial Sale in any country occurs, and each calendar quarter thereafter, Wyeth shall send to Exelixis: (a) a payment of all royalties owed to Exelixis for such quarter; and (b) a report of Net Sales of Agreement Products on a product-by-product and country-by-country basis, including the number of Agreement Products sold, the Net Sales of Agreement Products and the royalties payable (in dollars).

4.7 Payments. All references to **"dollars"** or **"$"** means the legal currency of the United States. All amounts due to Exelixis by Wyeth under this Agreement shall be paid in dollars by wire transfer in immediately available funds to an account designated by Exelixis. If any currency conversion shall be required in connection with any royalty payment under this Agreement, such conversion shall be made based on the exchange rate used by Wyeth for public financial accounting purposes in accordance with GAAP. If Wyeth is prevented from paying Exelixis any royalties in a given country because the local currency is blocked and cannot be removed from the country, then Wyeth shall promptly pay Exelixis in the local currency by deposit in a local bank designated by Exelixis, to the extent permitted by local law.

4.8 Withholding of Taxes. All payments under this Agreement will be made without any deduction or withholding for or on account of any tax unless such deduction or withholding is required by applicable laws or regulations. If Wyeth is so required to deduct or withhold, Wyeth will: (a) promptly notify Exelixis of such requirement; (b) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Exelixis; and (c) promptly forward to Exelixis an official receipt (or certified copy) or other documentation reasonably acceptable to Exelixis evidencing such payment to such authorities.

4.9 Late Payments. Any amounts not paid by Wyeth when due under this Agreement shall be subject to interest from and including the date payment is due through and including the date upon which Exelixis has received payment at a rate equal to the sum of **[*]** plus the prime rate of interest quoted in the Money Rates section of *The Wall Street Journal, Western Edition*, calculated daily on the basis of a 365-day year, or similar reputable data source, or, if lower, the highest rate permitted under applicable law ("**Interest**").

4.10 Records and Audit. During the term of this Agreement and for a period of **[*]** thereafter, Wyeth shall keep complete and accurate records pertaining to the development, manufacture, use, sale or other disposition of the Agreement Products, in sufficient detail to permit Exelixis to confirm the accuracy of all payments due hereunder. Exelixis shall have the right to cause an independent, certified public accountant to audit such records to confirm the accuracy of Wyeth's payments; *provided*, *however*, that such auditor shall not disclose Wyeth's confidential information to Exelixis, except to the extent such disclosure is necessary to verify the payments due under this Agreement; and *provided further* that Wyeth may require such public accountant to sign a standard non-disclosure agreement before providing such public accountant access to Wyeth's records. If such public accountant concludes that additional amounts were due to Exelixis, Wyeth shall pay to Exelixis the additional amounts within **[*]** of the date Wyeth receives such public accountant's written report, plus Interest during the period from the time the applicable payment was due until paid in full. If Wyeth disputes in good faith the accountant's conclusion, it shall notify Exelixis within such **[*]** period, and the Parties shall work diligently and in good faith to resolve such dispute as soon as possible. If such underpayment exceeds **[*]** of the amounts that were paid to Exelixis during the audited period, Wyeth also shall reimburse Exelixis for the out-of-pocket expenses incurred in conducting the audit. Exelixis shall not reveal to such public accountant the conditions under which the audit expenses are to be reimbursed hereunder. If such accounting firm correctly concludes that Wyeth overpaid Exelixis, Wyeth shall credit such overpayment against subsequent payments owed to Exelixis. No interest shall be due Wyeth on such overpayment. The terms of this **Section 4.10** shall survive any termination or expiration of this Agreement for a period of **[*]**.

4.11 No Additional Diligence Obligations. Exelixis acknowledges and agrees that nothing in this Agreement (including any exhibits or attachments hereto) shall be construed as representing an estimate or projection of either: (a) the stage of development to be achieved by any Product, or the number of Products that will or may be successfully developed or Commercialized; or (b) anticipated sales or the actual value of any Product. WYETH MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, THAT IT WILL BE ABLE TO SUCCESSFULLY DEVELOP OR COMMERCIALIZE ANY PRODUCT OR, IF COMMERCIALIZED, THAT ANY SUCH PRODUCT WILL ACHIEVE ANY PARTICULAR SALES LEVEL, OR THAT, EXCEPT AS EXPRESSLY AGREED, WYETH WILL DEVOTE ANY LEVEL OF DILIGENCE OR RESOURCES TO COMMERCIALIZING ANY SUCH PRODUCT. Notwithstanding anything to the contrary, nothing in this **Section 4.11** shall be interpreted as diminishing Wyeth's obligations pursuant to **Section 3.1**.

5. CONFIDENTIALITY

5.1 Nondisclosure of Confidential Information. For all purposes hereunder, "**Confidential Information**" shall mean all Information disclosed by one Party to the other Party pursuant to this Agreement. Without limiting the foregoing, Confidential Information of a Party is hereby deemed to include any and all Information disclosed by such Party to the other Party pursuant to the Wyeth Non-Disclosure Agreement, the Confidential Information of Exelixis is hereby deemed to include all Information disclosed to Wyeth by Exelixis' wholly-owned

subsidiary X-Ceptor Therapeutics, Inc. (**"X-Ceptor"**) pursuant to the X-Ceptor Non-Disclosure Agreement, and (iii) the Confidential Information of Wyeth is hereby deemed to include all Information disclosed to X-Ceptor by Wyeth pursuant to the X-Ceptor Non-Disclosure Agreement. During **[*]** thereafter, a Party receiving such item of Confidential Information of the other Party will: (a) maintain in confidence such Confidential Information to the same extent such Party maintains its own proprietary information of similar kind and value (but at a minimum each Party shall use reasonable efforts); (b) not disclose such item of Confidential Information to any Third Party without prior written consent of the other Party: and (c) not use the other Party's Confidential Information for any purpose except those permitted by this Agreement.

5.2 Exceptions. The obligations in **Section 5.1** shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

(a) Is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder;

(b) Was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party;

(c) Is subsequently disclosed to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without obligation to keep it confidential;

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

(e) Has been independently developed by employees or contractors of the receiving Party or any of its Affiliates without the aid, application or use of Confidential Information of the disclosing Party.

5.3 Authorized Disclosure. Each Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances:

(a) Filing or prosecuting Patents relating to Licensed Compounds or Products;

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Responding to a valid order of a court or other governmental body of the United States or a foreign country, or any political subdivision thereof; provided, however, that the responding Party shall first have given notice to the other Party and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued;

(e) Complying with applicable law and governmental regulations, including

securities law, and the rules and regulations of the U.S. Securities and Exchange Commission, the New York Stock Exchange, the NASDAQ Stock Market, and their respective foreign equivalents, provided that the Party making such disclosure takes all reasonable actions necessary to obtain confidential treatment of economic and trade secret information; and

(f) Disclosure, in connection with the performance of this Agreement, to Affiliates, sublicensees, research collaborators, employees, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 5**.

The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to investment bankers, investors, and potential investors, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this **Article 5**.

Without limiting either Party's obligations pursuant to this **Article 5**, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

5.4 Press Releases. Except for such disclosure as is deemed necessary, in the reasonable judgment of a Party to comply with applicable law and governmental regulations, no announcement, news release, public statement, publication or presentation relating to the existence of this Agreement, or the terms hereof or thereof, will be made without the other Party's prior written approval. If either Party desires to make a public announcement (e.g. press release) concerning the terms of this Agreement or the activities hereunder, such Party shall give reasonable advance notice of the proposed text of such announcement to the other Party for its review and approval prior to announcement. The Parties agree that they will coordinate an initial announcement or press release relating to the existence of this Agreement, which shall be in the form of such press release attached to this Agreement as ***Exhibit 5.4***.

5.5 Scientific Publications. Wyeth shall not publish or present the results of studies carried out under this Agreement which contain the Confidential Information of Exelixis without the opportunity for prior review by Exelixis. Subject to **Section 5.3**, Wyeth agrees to provide Exelixis the opportunity to review any proposed abstracts, manuscripts or presentations (including verbal presentations) which relate to Products and contain the Confidential Information of Exelixis at least thirty (30) days prior to its intended submission for publication and agrees to revise such proposed publication to take into account all reasonable comments provided by Exelixis within such thirty-day period.

6. INTELLECTUAL PROPERTY

6.1 Ownership of Inventions. Each Party shall own any all right, title and interest in and to inventions made solely by its employees, agents or independent contractors in their activities hereunder, and any Patents claiming or disclosing such inventions. Inventions hereunder made jointly by employees, agents or independent contractors of each Party in the course of performing under this Agreement, and any intellectual rights in such joint inventions, including Patents claiming or disclosing such joint inventions ("**Joint Patent Rights**"), shall be owned jointly by the Parties in accordance with the joint ownership interests of co-inventors under U.S. patent laws. Inventorship shall be determined in accordance with U.S. patent laws.

6.2 Patent Prosecution, Maintenance and Enforcement.

(a) Patent Prosecution and Maintenance.

(i) Licensed Compound Patent Rights. Exelixis shall use Commercially Reasonable Efforts to prepare, file, prosecute and maintain (including conducting any interferences, reexaminations, reissues, oppositions, or requests for patent term extension relating thereto), throughout the world, all of the Licensed Compound Patent Rights; *provided, however,* that Exelixis shall give Wyeth before filing a reasonable opportunity to review and comment upon the text of any applications for Licensed Compound Patent Rights Covering Licensed Compounds or any Agreement Product, or any method of making or using any of the foregoing **[*]**.

(ii) Wyeth Patent Rights. Wyeth will prosecute and maintain the Wyeth Patent Rights in its sole discretion. Wyeth shall have no obligation to prosecute or maintain any Patent right.

(b) Joint Patents Rights. The Parties shall mutually determine which Party shall be responsible for obtaining, prosecuting and/or maintaining Joint Patent Rights, in appropriate countries throughout the world. The prosecuting Party shall consult with the other Party as to the preparation, filing, prosecution and maintenance of such Joint Patent Rights reasonably prior to any deadline or action with the U.S. Patent & Trademark Office or any foreign patent office, and shall furnish to the other Party copies of all relevant documents reasonably in advance of such consultation. Exelixis and Wyeth shall share equally the costs for filing, prosecuting and/or maintaining such Joint Patent Rights throughout the world; *provided*, *however*, that either Party may decline to bear its share of the costs and expenses to file, prosecute and/or maintain any particular Joint Patent Right in one or more countries. In that case the other Party may undertake the responsibility for filing, prosecuting and/or maintaining such Joint Patent Right at its own expense, and if it does so, the declining Party shall assign to the other Party all its right, title and interest to any such Joint Patent Right(s), and, upon such assignment, such Joint Patent Right(s) shall become the sole property of other Party.

(c) Enforcement of Patent Rights. If either Party becomes aware of a suspected infringement of Licensed Compound Patent Rights or Joint Patent Rights through the development, manufacture or sale of an Agreement Product by a Third Party, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Wyeth shall have the first right, but shall not be obligated, to bring an infringement action against such Third Party at its own expense and by counsel of its own choice, and Exelixis shall have the right to participate in such action, at its own expense and by counsel of its own choice. If Wyeth fails to bring such an action or proceeding prior to the earlier of (a) **[*]** following Wyeth's receipt of notice of alleged infringement or (b) **[*]** before the time limit, if any, set forth in the appropriate laws and regulations for the filing of such actions (the "**Filing Deadline**"), *provided* that Wyeth has received notice of the alleged infringement at least **[*]** prior to the Filing Deadline, Exelixis shall have the right to bring and control any such action, at its own expense and by counsel of its

own choice, and Wyeth shall have the right to be represented in any such action, at its own expense and by counsel of its own choice. If a Party brings an infringement action pursuant to this **Section 6.2(c)**, the other Party will reasonably assist the enforcing Party (at the enforcing Party's expense) in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if required by law in order for the enforcing Party to bring such action. Neither Party shall have the right to settle any patent infringement litigation under this **Section 6.2(c)** in a manner that diminishes the rights or interests of the other Party without the prior written consent of such other Party, such consent not to be unreasonably withheld or delayed. Except as otherwise agreed to by the Parties as part of a cost sharing arrangement, any recovery realized as a result of such litigation, after reimbursement of any litigation expenses of Wyeth and Exelixis, shall be **[*]**, except that **[*]**, shall be **[*]**.

6.3 Third Party Infringement.

(a) Infringement of Third Party Patents. If the Development, manufacture, use, sale, import, export or Commercialization of any Licensed Compound or Products, or the practice of any Licensed Compound Patent Right or Joint Patent Right (collectively, the "**Licensed Activities**") by Wyeth or any of its Affiliates or Sublicensees is alleged by a Third Party to infringe a Third Party's Patent or other intellectual property right, the Party becoming aware of such allegation shall promptly notify the other Party. Additionally, if either Party determines that, based upon the review of a Third Party's Patent or other intellectual property rights, it may be desirable to obtain a license from such Third Party with respect thereto so as to avoid any potential suit between either Party and such Third Party with regard to Licensed Activities, such Party shall promptly notify the other Party of such determination and initiate discussions with the other Party to determine whether such license is desirable; *provided*, *however*, that neither Party shall be obligated to obtain any such license.

(b) Wyeth Option to Negotiate. Subject to **Section 6.3(c)**, in the event that a Party, pursuant to **Section 6.3(a)**, notifies the other Party that it has determined that, in order for Wyeth, its Affiliates or Sublicensees to **[*]**, it is necessary or desirable to obtain a license under one or more patents or patent applications or other intellectual property rights owned or controlled by a Third Party (collectively, "**Third Party IP Rights**"), Wyeth shall have the first right, but not the obligation, to negotiate and enter into an agreement with such Third Party, whereby Wyeth is granted a license under such Third Party IP Rights permitting Wyeth, its Affiliates and Sublicensees to practice such Third Party IP Rights in connection with the Licensed Activities and the performance of any of its obligations or the exercise of any of its rights under this Agreement. The royalties payable under any such agreement with a Third Party shall **[*]**.

(c) Third Party Infringement Suit. If a Third Party sues Wyeth or any of Wyeth's Affiliates or Sublicensees (each Person so sued referred to herein as a "**Sued Party**") or Exelixis, alleging that the Licensed Activities of Wyeth or any of Wyeth's Affiliates or Sublicensees pursuant to this Agreement infringe or will infringe such Third Party's Patent, then, upon Wyeth's request and in connection with the Sued Party's defense of any such Third Party infringement suit, Exelixis shall provide reasonable assistance to the Sued Party for such defense at the Sued Party's reasonable expense. Subject to Exelixis' indemnification obligations pursuant to **Section 8.1**, Wyeth shall be solely responsible for the defense of any such suit

including payment of any expenses incurred in defending against any such suit and payment of any damages or other awards that may result therefrom. Notwithstanding any provision of this **Section 6.3(c)** to the contrary, Wyeth shall not enter into any settlement of any claim described in this **Section 6.3(c)** that negatively impacts Exelixis' rights or interests without Exelixis' prior written consent, which consent shall not be unreasonably withheld or delayed.

6.4 Patent Certifications. Each Party shall promptly give written notice to the other Party of any certification filed pursuant to 21 U.S.C. § 355(b)(2)(A) or § 355(j)(2)(A)(vii) (or any amendment or successor statute thereto) of which it becomes aware claiming that any Licensed Compound Patent Right or Joint Patent Right Covering the composition of matter or method of use of any Licensed Compound or Product is invalid or that infringement will not arise from a Third Party conducting a Licensed Activity.

7. REPRESENTATIONS AND WARRANTIES

7.1 Mutual Warranties. Each Party represents and warrants to the other Party that: (a) it has the authority and right to enter into and perform this Agreement; (b) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights; and (c) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

7.2 Exelixis Warranties. Exelixis, hereby represents and warrants to Wyeth that:

(a) as of the Effective Date, the Licensed Compound Patent Rights and the Licensed Compound Know-How are existing and, to the best of its Knowledge as of the Effective Date, are not invalid or unenforceable, in whole or in part;

(b) it has the full right, power and authority to grant all of the licenses granted to Wyeth under this Agreement;

(c) as of the Effective Date, no Third Party has any right, title or interest in or to any of the Licensed Compound Patent Rights, Licensed Compound Know-How or any of Exelixis' interest in the Joint Patent Rights to the extent that any of the foregoing in this **Section 7.2(c)** cover any Licensed Compounds or Product, with respect to which Wyeth has been granted a license hereunder;

(d) it is the sole and exclusive owner of the Licensed Compound Patent Rights and the Licensed Compound Know-How existing as of the Effective Date, all of which are free and clear of any liens, charges, encumbrances and rights of any Third Party, contingent or otherwise;

(e) as of the Effective Date, no Licensed Compound Patent Right and, to the best of its Knowledge, no portion of the Licensed Compound Know-How existing as of the Effective Date and relating to any Existing Compound is subject to any funding agreement with any government or government agency;

(f) to the best of its Knowledge as of the Effective Date, the practice of the Licensed Compound Patent Rights and the use of the Licensed Compound Know-How each do not infringe any issued patents owned or possessed by any Third Party;

(g) to the best of its Knowledge as of the Effective Date, the practice of the Licensed Compound Patent Rights and the use of the Licensed Compound Know-How each do not infringe any claims contained in any pending Third Party patent applications that, if issued, would cover the research, Development, manufacture, use, sale, importation or Commercialization of any Existing Compound or Exelixis Scaffold;

(h) to the best of its Knowledge as of the Effective Date, there are no claims, judgments or settlements against or owed by Exelixis or any of its Affiliates (whether existing, pending or threatened), in either case relating to the Licensed Compound Patent Rights or the Licensed Compound Know-How;

(i) during the Term it will **[*]**, and that, to the best of Exelixis' Knowledge as of the Effective Date, **[*]**;

(j) as of the Effective Date, there are no **[*]**, and Exelixis covenants that it shall not **[*]**;

(k) as of the Effective Date, other than (i) the Patents and other intellectual property rights licensed to Wyeth under this Agreement, (ii) the Additional Patent Rights, and (iii) the Additional Know-How, Exelixis and its Affiliates do not Control any Patents or other intellectual property rights that are **[*]**; and

(l) to the best of Exelixis' Knowledge as of the Effective Date, other than the Patents listed in ***Exhibit 1.38***, there are no other Patents that are Controlled by Exelixis or its Affiliates that **[*]**.

(m) to the best of Exelixis' Knowledge as of the Effective Date, there is no **[*]** which indicates that there may be **[*]**.

Notwithstanding anything to the contrary, Exelixis will not be in breach of any representations or warranty made pursuant to this **Section 7.2** to the extent that Exelixis can demonstrate that Wyeth had, as of or prior to the Effective Date, Knowledge of such breach.

7.3 No Additional Representations.

(a) Exelixis, its Affiliates, and its and their directors, officers, employees, agents or contractors shall not have or be subject to any liability to Wyeth or any Third Party resulting from the provision to Wyeth, or Wyeth's use of, any such information, documents or material made available to Wyeth in any "data rooms", management presentations or in any other form in expectation of the transactions contemplated hereby, except to the extent such information, documents or materials are covered by the representations or warranties of Exelixis expressly set forth in this **Article 7**, provided that all such information, documents or material be made available in their original state, without redaction or alteration.

(b) Except as expressly set forth in the representations and warranties set forth in **Sections 7.1** and **7.2** of this Agreement: (i) there are no representations or warranties by either Party of any kind, express or implied, with respect to Licensed Compounds (including its research, Development, manufacture or Commercialization); and (ii) **EXELIXIS NEITHER MAKES OR EXTENDS ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY LICENSED COMPOUND OR PRODUCT OR ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.**

8. INDEMNIFICATION

8.1 Exelixis. Exelixis shall indemnify, defend and hold harmless Wyeth, its Affiliates, and their respective directors, officers and employees (each a "**Wyeth Indemnitee**") from and against any and all liabilities, damages, losses, costs or expenses (including attorneys' and professional fees and other expenses of litigation and/or arbitration) ("**Liabilities**") resulting from any claim, suit or proceeding made or brought by a Third Party against a Wyeth Indemnitee to the extent arising from or occurring as a result of **[*]**. Notwithstanding any provision of this **Section 8.1** to the contrary, Exelixis shall have no obligation to indemnify, defend or hold harmless any Wyeth Indemnitee with respect to any Liability to the extent that: **[*]**.

8.2 Wyeth. Wyeth shall indemnify, defend and hold harmless Exelixis, its Affiliates, and their respective directors, officers and employees (each an "**Exelixis Indemnitee**") from and against any and all Liabilities resulting from any claim, suit or proceeding made or brought by a Third Party against an Exelixis Indemnitee to the extent arising from or occurring as a result of: **[*]**. Notwithstanding any provision of this **Section 8.2** to the contrary, Wyeth shall have no obligation to indemnify, defend or hold harmless any Exelixis Indemnitee with respect to any Liability to the extent that: **[*]**.

8.3 Procedure. In the event that a Party indemnified hereunder (an "**Indemnitee**") intends to claim indemnification under this **Article 8**, such Indemnitee shall promptly notify the other Party (the "**Indemnitor**") in writing of such alleged Liability. The Indemnitor shall have the sole right to control the defense and settlement thereof. The Indemnitee shall cooperate with the Indemnitor and its legal representatives in the investigation of any action, claim or liability covered by this **Article 8**. The Indemnitee shall not, except at its own cost and risk, voluntarily make any payment or incur any expense with respect to any claim or suit without the prior written consent of the Indemnitor, which the Indemnitor shall not be required to give. The Indemnitor shall not be required to provide indemnification with respect to a Liability the defense of which is prejudiced by the failure to give notice by the Indemnitee or the failure of the Indemnitee to cooperate with the Indemnitor or where the Indemnitee settles or compromises a Liability without the written consent of the Indemnitor. Each Party shall cooperate with the other Party in resolving any claim or Liability with respect to which one Party is obligated to indemnify the other under this Agreement, including by making commercially reasonable efforts to mitigate or resolve any such claim or Liability.

8.4 Limitations on Liability. NOTWITHSTANDING ANY PROVISION HEREIN, A PARTY SHALL IN NO EVENT BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES, OFFICERS, DIRECTORS,

EMPLOYEES, STOCKHOLDERS, AGENTS OR REPRESENTATIVES FOR ANY INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOSS OF USE, DAMAGE TO GOODWILL OR LOSS OF BUSINESS), UNLESS SUCH DAMAGES: (a) ARE OWED UNDER THE LIABLE PARTY'S INDEMNIFICATION OBLIGATIONS UNDER **ARTICLE 8**; (b) ARISE FROM A BREACH OF **ARTICLE 5**; OR (c) ARE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LIABLE PARTY.

8.5 Insurance. During the Term, each Party shall maintain commercial general liability insurance including products liability and contractual liability coverage for up to **[*]** to cover any loss caused by its negligence or willful misconduct. This insurance coverage shall be procured from carriers having an A.M. Best rating of A-VII or better.

9. TERM AND TERMINATION

9.1 Term. The term of this Agreement shall commence on the Effective Date and continue until the expiration of all Wyeth's payment obligations under this Agreement, unless earlier terminated pursuant to **Section 9.2** or **9.3**.

9.2 Termination by Wyeth. At any time following the **[*]** following the Effective Date, Wyeth may in its sole discretion terminate this Agreement, in whole, at any time, for any reason or for no reason upon not less than **[*]** advance notice to Exelixis.

9.3 Material Breach. If any Party commits a Material Breach of this Agreement and such Material Breach has continued for **[*]** after written notice thereof was provided to the breaching Party by the non-breaching Party, the non-breaching Party may terminate this Agreement. Any termination shall become effective at the end of such **[*]** period unless the breaching Party has cured any such breach prior to the expiration of the **[*]** period.

9.4 Effect of Termination or Expiration.

(a) Upon termination of this Agreement by Wyeth pursuant to **Section 9.2**:

(i) all rights under the licenses granted under **Section 2.1** shall automatically terminate and revert to Exelixis;

(ii) Wyeth shall not, for a period of **[*]** following such termination, make, have made, use, sell, have sold, offer for sale and import any Uncovered Product;

(iii) Wyeth shall, and it hereby does, grant to Exelixis a worldwide, license, with the right to sublicense, under the Wyeth Know-How and Wyeth Patent Rights and Wyeth's interest in the Joint Patent Rights, solely to make, have made, use, sell, have sold, offer for sale and import any Product **[*]** that **[*]** and any Licensed Compound contained in any such Product. Any license granted to Exelixis under this **Section 9.4(a)(iii)** shall be: (a) Exclusive with respect to the composition of matter of any such Licensed Compound; (b) non-exclusive in all other respects; and (c) subject to royalties payable by Exelixis to Wyeth of **[*]** of Applicable Net Sales;

(iv) Notwithstanding the Exclusive rights granted to Exelixis in **Section 9.4(a)(iii)** with respect to Licensed Compounds, Wyeth retains the right under the Wyeth

Patent Rights, the Wyeth Know-How and Wyeth's interest in the Joint Patent Rights to make, have made, use, and test any Licensed Compound covered by the rights granted in **Section 9.4(a)(iii)** for Wyeth's internal, self-funded research purposes. For the avoidance of doubt, Wyeth retains no right to sell, offer for sale or have sold or to make, have made or use for non-research purposes any Licensed Compound; and

(v) Wyeth shall: (**A**) to the extent available, transfer and assign to Exelixis all of Wyeth's right, title and interest in and to all INDs, NDAs, drug dossiers, and Regulatory Approvals with respect to each Product for which Exelixis acquires a license pursuant to **Section 9.4(a)(iii)**; and (**B**) to the extent not contained in an IND or NDA for a Product for which Exelixis acquires a license pursuant to **Section 9.4(a)(iii)**, transfer to Exelixis the following information relating to each Licensed Compound for which Exelixis acquires a license pursuant to **Section 9.4(a)(iii)**, to the extent available: **[*]**.

Except as expressly provided in this **Section 9.4(a)**, no provision of this Agreement shall be construed to grant any express or implied license or other right to Exelixis with regard to any Patent, Regulatory Approval or other intellectual property right Controlled by Wyeth or any Wyeth Affiliate. The rights provided to Exelixis under this **Section 9.4(a)** shall be Exelixis' sole and exclusive remedy for Wyeth's termination of this Agreement pursuant to **Section 9.2**.

(b) If Exelixis is entitled to terminate this Agreement pursuant to **Section 9.3**, Exelixis may elect, in its sole discretion:

(i) to terminate this Agreement, in which case, all rights under the licenses granted in **Section 2.1** shall automatically terminate and revert to Exelixis and Exelixis shall be entitled to such damages and other remedies as it may have as a result of the Material Breach by Exelixis; or

(ii) to terminate this Agreement and accept as its sole and exclusive remedies for Wyeth's breach of this Agreement, other than Wyeth's breach of its payment obligations pursuant to **Article 4** or its confidentiality obligations pursuant to **Article 5**, the following:

(1) all rights under the licenses granted under **Section 2.1** shall automatically terminate and revert to Exelixis;

(2) Wyeth shall not at any time following such termination, make, have made, use, sell, have sold, offer for sale and import any Uncovered Product;

(3) Wyeth shall, and it hereby does, grant to Exelixis a worldwide, license, with the right to sublicense, under the Wyeth Know-How and Wyeth Patent Rights and Wyeth's interest in the Joint Patent Rights, solely to make, have made, use, sell, have sold, offer for sale and import any Product **[*]** that **[*]** and any Licensed Compound contained in any such Product. Any license granted to Exelixis under this **Section 9.4(b)(ii)(3)** shall be: (A) Exclusive with respect the composition of matter of any such Licensed Compound, and (B) non-exclusive in all other respects;

(4) Notwithstanding the Exclusive rights granted to Exelixis in

Section 9.4(b)(ii)(3) with respect to Licensed Compounds, Wyeth retains the right under the Wyeth Patent Rights, the Wyeth Know-How and Wyeth's interest in the Joint Patent Rights to make, have made, use, and test any Licensed Compound covered by the rights granted in **Section 9.4(b)(ii)(3)** for Wyeth's internal, self-funded research purposes. For the avoidance of doubt, Wyeth retains no right to sell, offer for sale or have sold or to make, have made or use for non-research purposes any Licensed Compound; and

(5) Wyeth shall: (**A**) to the extent available, transfer and assign to Exelixis all of Wyeth's right, title and interest in and to all INDs, NDAs, drug dossiers, and Regulatory Approvals with respect to each Product for which Exelixis acquires a license pursuant to **Section 9.4(b)(ii)(3)**; and (**B**) to the extent not contained in an IND or NDA for a Product for which Exelixis acquires a license pursuant to **Section 9.4(b)(ii)(3)**, transfer to Exelixis the following information relating to each Licensed Compound for which Exelixis acquires a license pursuant to **Section 9.4(b)(ii)(3)**, to the extent available: **[*]**.

Except as expressly provided in this **Section 9.4(b)**, no provision of this Agreement shall be construed to grant any express or implied license or other right to Exelixis with regard to any Patent, Regulatory Approval or other intellectual property right Controlled by Wyeth or any Wyeth Affiliate.

(c) If Wyeth is entitled to terminate this Agreement pursuant to **Section 9.3,** Wyeth may elect, in its sole discretion:

(i) to terminate this Agreement, in which case, all rights under the licenses granted in **Section 2.1** shall automatically terminate and revert to Exelixis and Wyeth shall be entitled to such damages and other remedies as it may have as a result of the Material Breach by Exelixis; or

(ii) to convert its license under **Section 2.1** to a permanent and irrevocable license subject only to Wyeth's continuing obligation to pay royalties to Exelixis at the rates and as provided in **Article 4** but not beyond the date on which Wyeth's royalty payment obligations would otherwise expire, on a country-by-country basis, pursuant to **Section 4.5**, *provided that* Wyeth shall be entitled to set off up to **[*]** of its continuing royalty obligations against **[*]**, and *further provided* that **[*]**.

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

9.5 Survival. The following provisions of this Agreement shall survive expiration or termination of this Agreement for any reason: **[*]**.

9.6 Right to Publish Findings. Notwithstanding any provision of this **Article 9** to

the contrary, and subject to the provisions of **Section 5.5**, Wyeth reserves the right to publish and present the results of **[*]** for a period of **[*]** following termination of this Agreement; *provided, however,* that in any event Wyeth agrees to provide Exelixis the opportunity to review any proposed abstracts, manuscripts or presentations (including verbal presentations) which contain such results at least **[*]** days prior to its intended submission for publication and agrees to revise such proposed publication to take into account all reasonable comments provided by Exelixis within such thirty-day period and/or to delay such publication for up to **[*]** days if needed to secure any additional Patent protection with respect to any Licensed Compound licensed to Exelixis under **Section 9.4(a)(iii)** or **9.4(b)(ii)(3).**

10. MISCELLANEOUS

10.1 Dispute Resolution. In the event of any controversy or claim arising out of, relating to or in connection with any provision of the Agreement (except as described in **Section 10.3**), the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the CEO of Exelixis and the President – Wyeth Pharmaceuticals of Wyeth or their designees. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within **[*]** after such notice, such officers of the Parties shall meet for attempted resolution by good faith negotiations. If such officers are unable to resolve such dispute within thirty **[*]** of their first meeting for such negotiations, either Party may seek to have such dispute resolved in any United States federal or state court of competent jurisdiction and appropriate venue.

10.2 Governing Law. Resolution of all disputes arising out of or related to the Agreement or the performance, enforcement, breach or termination of the Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, without regard to conflicts of law rules applying a different law.

10.3 Patents and Trademarks. Notwithstanding anything to the contrary in this Agreement, any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of any Patent rights covering the manufacture, use or sale of any Product or of any trademark rights related to any Product shall be submitted to a court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

10.4 365(n) of Bankruptcy Code. All rights and licenses now or hereafter granted under or pursuant to any Section of this Agreement, including **Section 2.1** hereof, are rights to "intellectual property" (as defined in Section 101(35A) of Title 11 of the United States Code, as amended (such Title 11, the **"Bankruptcy Code"**)). Exelixis agrees not to interfere with Wyeth's and Affiliates of Wyeth's exercise of rights and licenses to intellectual property licensed hereunder and embodiments thereof in accordance with this Agreement and agrees to use Commercially Reasonable Efforts to assist Wyeth and Affiliates of Wyeth to obtain such intellectual property and embodiments thereof in the possession or control of Third Parties as reasonably necessary or desirable for Wyeth or Affiliates of Wyeth to exercise such rights and licenses in accordance with this Agreement. The Parties hereto acknowledge and agree that **[*]** do not **[*]**.

10.5 Entire Agreement; Amendments. This Agreement sets forth the complete, final

and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto and supersedes and terminates all prior agreements and understandings between the Parties. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. The Parties hereby agree to terminate the Wyeth Non-Disclosure Agreement by mutual consent, and to have this Agreement supersede such Wyeth Non-Disclosure Agreement.

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

10.7 Force Majeure. Each Party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, "**force majeure**" shall include conditions beyond the control of the Parties, including an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe. The payment of invoices due and owing hereunder shall in no event be delayed by the payer because of a force majeure affecting the payer.

10.8 Notices. Any notices given under this Agreement shall be in writing, addressed to the Parties at the following addresses, and delivered by person, by facsimile (with receipt confirmation), or by FedEx or other reputable courier service. Any such notice shall be deemed to have been given: (a) as of the day of personal delivery; (b) one (1) day after the date sent by facsimile service; or (c) on the day of successful delivery to the other Party confirmed by the courier service. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For Exelixis: Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
Attention: SVP, Patents and Licensing

With a copy to:	Cooley Godward LLP Five Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 Attention: Robert L. Jones, Esq.
For Wyeth:	Wyeth Pharmaceuticals 500 Arcola Road Collegeville, Pennsylvania 19426 Attn: Senior Vice President, Corporate Business Development
with a copy to:	Wyeth 5 Giralda Farms Madison, New Jersey 07940 Attn: Executive Vice President and General Counsel

10.9 Maintenance of Records. Each Party shall keep and maintain all records required by law or regulation with respect to Agreement Products.

10.10 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except a Party may make such an assignment without the other Party's consent to an Affiliate or to a Third Party successor to substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction; *provided* that any such permitted successor or assignee of rights and/or obligations hereunder is obligated, by reason of operation of law or pursuant to a written agreement with the other Party, to assume performance of this Agreement or such rights and/or obligations; and *provided, further*, that if assigned to an Affiliate, the assigning Party shall remain jointly and severally responsible for the performance of this Agreement by such Affiliate. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this **Section 10.10** shall be null and void and of no legal effect.

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

10.12 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.

10.13 Severability. If any one (1) or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

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10.14 No Waiver. Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

10.15 Construction of this Agreement. Except where the context otherwise requires, wherever used, the singular will include the plural, the plural the singular, the use of any gender will be applicable to all genders, and the word **"or"** are used in the inclusive sense. When used in this Agreement, **"including"** means **"including without limitation"**. References to either Party include the successors and permitted assigns of that Party. The headings of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The Parties have each consulted counsel of their choice regarding this Agreement, and, accordingly, no provisions of this Agreement will be construed against either Party on the basis that the Party drafted this Agreement or any provision thereof. If the terms of this Agreement conflict with the terms of any Exhibit, then the terms of this Agreement shall govern. The official text of this Agreement and any Exhibits hereto, any notice given or accounts or statements required by this Agreement, and any dispute proceeding related to or arising hereunder, shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language.

10.16 Counterparts. This Agreement may be executed in two (2) counterparts, each of which shall be an original and both of which shall constitute together the same document. Counterparts may be signed and delivered by facsimile, each of which shall be binding when received by the applicable Party.

Signature Page Follows

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

EXELIXIS, INC.

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

X-CEPTOR THERAPEUTICS, INC.

By: /s/ George A. Scangos, PhD
Name: George A. Scangos
Title: President

WYETH
ACTING THROUGH ITS
WYETH PHARMACEUTICALS DIVISION

By: /s/ Mark L. Lee
Name: Mark L. Lee
Title: Senior VP, Business Development, and
Chief Licensing Officer

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EXHIBIT 1.17

WYETH DEVELOPMENT TRACK BASELINE CRITERIA

[*]

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EXHIBIT 1.25

EXISTING COMPOUNDS

[*]

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EXHIBIT 1.38

LICENSED COMPOUND PATENT RIGHTS

[*]

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EXHIBIT 3.6

TECHNOLOGY TRANSFER

[*]

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EXHIBIT 3.8

FORM OF ANNUAL REPORT

[*]

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EXHIBIT 5.4

PRESS RELEASE

For Immediate Release

Contact:
Charles Butler
Director,
Corporate Communications
Exelixis, Inc.
(650) 837-7277
cbutler@exelixis.com

Exelixis and Wyeth Sign License Agreement Related to
Novel Treatments for Metabolic and Liver Diseases

South San Francisco, CA – December 21, 2005 – Exelixis, Inc. (Nasdaq: EXEL) today announced that it signed a license agreement with Wyeth Pharmaceuticals, a division of Wyeth (NYSE: WYE) related to compounds targeting the farnesoid X receptor (FXR), a nuclear hormone receptor implicated in a variety of metabolic and liver disorders. Under the terms of the agreement, Exelixis will receive a $10 million upfront payment and may also receive up to an additional $147.5 million in development and commercialization milestone payments as well as royalties on the sale of products commercialized under the collaboration. Wyeth will be responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds.

“This transaction with Wyeth is a further demonstration of the quality of our drug discovery programs. It provides Exelixis with $10 million in near-term capital to help support the ongoing development of our promising pipeline of cancer therapies, and allows us to share in the future value of the FXR program through milestones and royalties” said George A. Scangos, Ph.D., president and chief executive officer of Exelixis. “Wyeth, with its strong commitment to building a leading presence in metabolic diseases, is an ideal organization to take on the development of the FXR program.” continued Scangos.

“This collaboration complements our growing pipeline and overall strategy of discovering and developing new treatments for patients with abnormal lipid metabolism that is associated with the development of cardiovascular and metabolic diseases” said George P. Vlasuk, Ph.D., vice president of cardiovascular and metabolic disease research at Wyeth Pharmaceuticals. “The role of the FXR nuclear receptor in several key biochemical steps involved in maintaining the balance of various lipids through the regulation of bile acid synthesis makes it an attractive drug development target for several high need clinical indications. We look forward to bringing this exciting class of FXR modulators to the clinic in the near future”

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About the Exelixis FXR Program

FXR is a member of the nuclear hormone receptor superfamily and functions as a receptor for bile acids. Regulation of FXR with endogenous ligands, such as chenodeoxycholic acid, leads to a series of transcriptional responses that regulate triglyceride, cholesterol and bile acid metabolism. Exelixis has developed a series of potent, selective synthetic FXR ligands that lower triglycerides and improve the cholesterol profile in animal models of dyslipidemia and atherosclerosis. Furthermore, in animal models of liver disorders, these compounds are also highly effective in blocking disease progression. The lead compounds have a very favorable pharmacokinetic and safety profile. These data suggest that synthetic FXR ligands may be more promising therapeutics for the therapy of metabolic syndrome and liver disease. The license agreement with Wyeth covers several small-molecule compounds that have been shown in preclinical studies to modulate the activity of FXR. Exelixis gained rights to FXR through the acquisition of X-Ceptor Therapeutics, Inc. in October 2004.

ABOUT EXELIXIS

Exelixis, Inc. is a biotechnology company dedicated to the discovery and development of novel therapeutics that will potentially enhance the care and lives of patients with cancer and other serious diseases. The company is leveraging its fully integrated gene-to-drug platform to fuel the growth of its proprietary drug pipeline. Exelixis' development pipeline covers cancer and metabolism and is comprised of the following compounds: XL119 (becatecarin), for which a multinational Phase III clinical trial in bile duct tumor is ongoing and which has been exclusively licensed to Helsinn Healthcare S.A. with rights to reacquire commercial rights for North America; XL784, which is being advanced as a treatment for renal disease and will enter Phase II early in 2006; XL999, an anticancer compound, currently in Phase II clinical trials for a variety of solid tumors; XL647, XL880, XL820, XL844 and XL184, anticancer compounds currently in Phase I clinical trials; and multiple compounds in preclinical development for diseases including cancer and various metabolic and cardiovascular disorders. Exelixis has established broad corporate alliances with major pharmaceutical and biotechnology companies including GlaxoSmithKline (GSK) and Bristol-Myers Squibb Company. Pursuant to a product development and commercialization agreement between Exelixis and GSK, GSK has the option, after completion of Phase IIa clinical trials by Exelixis, to elect to develop a certain number of compounds in Exelixis' product pipeline, which may include XL784 and the cancer compounds identified in this press release (other than XL119), thus potentially triggering milestone payments and royalties from GSK and co-promotion rights by Exelixis. For more information, please visit the company's web site at www.exelixis.com.

This press release contains forward-looking statements, including without limitation all statements related to the discovery, development and commercializing of therapies targeted against FXR under the license agreement as well as related payments; the therapeutic and commercial potential of XL119, XL784, XL647, XL999, XL880, XL820, XL844 and XL184, other compounds in the Exelixis preclinical pipeline and its program in metabolic diseases. Words such as "believes," "anticipates," "plans," "expects," "intends," "will," "slated," "goal" and

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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. 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 successfully conduct the clinical trials for XL119, XL784, XL647, XL999, XL880, XL820, XL844 and XL184; the ability of the company to advance additional preclinical compounds into clinical development; the uncertainty of the FDA approval process; and the therapeutic and commercial value of the company's compounds. These and other risk factors are discussed under "Risk Factors" and elsewhere in Exelixis' quarterly report on Form 10-Q for the quarter ended September 30, 2005 and other filings with the Securities and Exchange Commission. Exelixis expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

Exelixis and the Exelixis logo are registered U.S. trademarks. Spectrum Selective Kinase Inhibitor is a trademark of Exelixis, Inc.

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EXHIBIT 10.45

COMPENSATION INFORMATION FOR NAMED EXECUTIVE OFFICERS

The table below provides information regarding the 2006 base salary and target cash bonus amount for each "named executive officer" of Exelixis, Inc. All other compensation arrangements between Exelixis and each of its named executive officers are referenced in the Exhibit Index to this Annual Report on Form 10-K.

Named Executive Officer	2006 Annual Base Salary	2006 Target Cash Bonus (percentage of 2006 base salary)[1]
George Scangos	$750,000	60%
Michael Morrissey	$400,520	45%
Jeffrey Latts	$399,376	45%
Frank Karbe	$345,030	45%
Pamela Simonton	$322,189	35%

[1] Actual bonus amounts awarded by Exelixis' compensation committee may exceed or be less than the target amounts.

EXHIBIT 10.46

COMPENSATION INFORMATION FOR NON-EMPLOYEE DIRECTORS

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

2006 Cash Compensation for Non-Employee Directors

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

[1] Meeting at which minutes are generated.

[2] In-person meeting or teleconference at which minutes are generated.

2006 Equity Compensation for Non-Employee Directors

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

[3] For new directors only.

Except as provided above, all other terms and conditions regarding compensation for Non-Employee Directors remain as outlined in the Company's Proxy Statement for the 2005 Annual Meeting of Stockholders, filed with the Securities and Exchange Commission on March 18, 2005. Information regarding compensation for Non-Employee Directors will also be provided in the Company's Proxy Statement for the 2006 Annual Meeting of Stockholders which will be filed with the Securities and Exchange Commission in March 2006.

Exhibit 21.1

SUBSIDIARIES OF EXELIXIS, INC.

Artemis Pharmaceuticals GmbH, a company organized under the laws of Germany

Exelixis Plant Sciences, Inc., a Delaware corporation

X-Ceptor Therapeutics, Inc., a Delaware corporation

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-124536, 333-113472, 333-102770, 333-82724, 333-82722, 333-57026, 333-54868, 333-52434 and 333-35862) pertaining to the Exelixis, Inc. 401(k) Plan, the 2000 Equity Incentive Plan, the 2000 Employee Stock Purchase Plan and the 2000 Non-Employee Directors' Stock Option Plan of Exelixis, Inc. and the Registration Statements on Form S-3 (Nos. 333-66134, 333-119984 and 333-122079), of our reports dated March 7, 2006 with respect to the consolidated financial statements of Exelixis, Inc., Exelixis, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Exelixis, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2005.

/s/ Ernst & Young LLP

Palo Alto, California
March 7, 2006

Exhibit 31.1

CERTIFICATION

I, George A. Scangos, Ph.D., Chief Executive Officer of Exelixis, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Exelixis, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ GEORGE A. SCANGOS
George A. Scangos
President and Chief Executive Officer

Date: March 9, 2006

Exhibit 31.2

CERTIFICATION

I, Frank Karbe, Chief Financial Officer of Exelixis, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Exelixis, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ FRANK KARBE
Frank Karbe
Chief Financial Officer

Date: March 9, 2006

Exhibit 32.1

CERTIFICATION

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350, as adopted), George A. Scangos, Ph.D., the Chief Executive Officer of Exelixis, Inc. (the "Company"), and Frank Karbe, the Chief Financial Officer of the Company, each hereby certifies that, to their knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2005, to which this Certification is attached as Exhibit 32.1 (the "Annual Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition of the Company at the end of the periods covered by the Annual Report and the results of operations of the Company for the periods covered by the Annual Report.

In Witness Whereof, the undersigned have set their hands hereto as of the 9th day of March 2006.

/s/ GEORGE A. SCANGOS, PH.D.	/s/ FRANK KARBE
George A. Scangos, Ph.D. Chief Executive Officer (Principal Executive Officer)	Frank Karbe Chief Financial Officer (Principal Financial Officer)