As filed with the Securities and Exchange Commission on April 7, 2000
Registration No. 333-96335

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 5 TO FORM S-1
REGISTRATION STATEMENT
Under THE SECURITIES ACT OF 1933

Exelixis, Inc.
(Exact name of registrant as specified in its charter)

Delaware	8731	04-3257395
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

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260 Littlefield Avenue
South San Francisco, CA 94080
(650) 825-2200
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

GEORGE A. SCANGOS
President and Chief Executive Officer
260 Littlefield Avenue
South San Francisco, CA 94080
(650) 825-2200
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

ROBERT L. JONES, ESQ.	DEBORAH A. MARSHALL, ESQ.	ALISON S. RESSLER, ESQ.
Sullivan & Cromwell	Cooley Godward LLP	1888 Century Park East
Suite 2100	Five Palo Alto Square	3000 El Camino Real
Los Angeles, CA 90067-1725	Palo Alto, CA 94306-2155	
(310) 712-6600	(650) 843-5000	

Approximate date of proposed sale to the public: As soon as practicable after the effective date of this registration statement as the underwriters shall determine.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box. [_]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement number for the same offering. [_]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [_]

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. [_]

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement

shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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+The information in this prospectus is not complete and may be changed. These +
+securities may not be sold until the registration statement filed with the   +
+Securities and Exchange Commission is effective. This prospectus is not an   +
+offer to sell nor does it seek an offer to buy these securities in any   +
+jurisdiction where the offer or sale is not permitted.   +
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Subject to Completion. Dated April 7, 2000.

9,100,000 Shares

[LOGO OF EXELIXIS]

Common Stock

This is an initial public offering of shares of common stock of Exelixis, Inc. All of the 9,100,000 shares of common stock are being sold by Exelixis.

Prior to this offering, there has been no public market for our common stock. Our common stock has been approved for quotation on the Nasdaq National Market under the symbol "EXEL." We expect the initial public offering price to be between $10.00 and $12.00 per share.

See "Risk Factors" beginning on page 6 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Initial public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to Exelixis	$	$

To the extent that the underwriters sell more than 9,100,000 shares of common stock, the underwriters have the option to purchase up to an additional 1,365,000 shares from Exelixis at the initial public offering price less the underwriting discount.

The underwriters expect to deliver the shares against payment in New York, New York on April , 2000.

Goldman, Sachs & Co.

Credit Suisse First Boston

SG Cowen

Prospectus dated , 2000.

[Description of inside front cover graphics:
Pictures of Model Systems
and
an example of tumor
cell target identification]

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PROSPECTUS SUMMARY

You should read the following summary together with the more detailed information regarding us, the sale of our common stock in this offering, our financial statements and notes to those financial statements that appear elsewhere in this prospectus.

Our Business

Overview

We believe that we are a leader in the fields of model system genetics and comparative genomics. These fields involve the systematic study of simple organisms, such as fruit flies, nematodes, mice, zebrafish and simple plants, to rapidly and efficiently determine gene function and establish its commercial utility in humans and other commercially important biological systems. Recent advances in the genomics field have resulted in significant opportunities to develop novel products for the life sciences industries, which include companies in the pharmaceutical, agrochemical, agricultural, consumer products and healthcare businesses. Now that the sequencing of the human genome and the genomes of many other species is substantially complete, the challenge facing these industries is no longer the identification of genes, but understanding their function and determining the consequences of regulating or modulating those genes.

Our proprietary technologies provide a rapid, efficient and cost-effective way to move beyond DNA sequence data to understand the function of genes and the proteins that they encode. These technologies take advantage of the similarity of genes or a series of genes that perform a particular function in a variety of species. We exploit this similarity to perform genetic analyses quickly and systematically in a variety of simple model organisms. Through these analyses, we can identify genes and related proteins which, when changed or regulated, will lead to a desired outcome. We then utilize our expertise in comparative genomics to identify the corresponding genes of commercial value in humans, plants or livestock. Our proprietary technologies consist of our expertise in genetics, genomics, computer analysis of DNA sequences, or bioinformatics, biology, assay development and chemistry as well as tools, reagents, databases, software and libraries of model organisms we have developed, such as a comprehensive library of fruit flies in which each fly has been bred to identify whether a particular gene in that organism is affected when another gene is manipulated or mated into that fly. We believe that our proprietary technologies will have commercial value for all industries whose products can be enhanced by an understanding of DNA or proteins, including the pharmaceutical, agrochemical, agricultural, diagnostic and biotechnology industries. We are conducting research in more than 12 different programs for these industries.

We have established collaborations with Bayer, Pharmacia & Upjohn and Bristol-Myers Squibb, as well as with U.S. government agencies and academic centers worldwide. Committed funding from our commercial collaborations totals over $180 million. We intend to continue to establish strategic collaborations with leading companies in the life sciences industries. In addition, we invest our own funds in our own programs, and we have retained significant rights to the results of our research and to future applications of our technologies.

Our Technologies

We conduct our work primarily utilizing model system genetics, and we interpret and apply the data through our expertise in comparative genomics. Model system genetics is a process that takes advantage of the short life cycle times, well-characterized biology, and ease of genetic manipulation in species like the fruit fly, D. melanogaster, and nematode worm, C. elegans. These attributes make it possible to scan the entire genome of these organisms for genes capable of leading to a desired outcome. For example,

we can identify each gene in the model system that is capable of blocking the unregulated cell growth characteristic of cancer cells when targeted by a pharmaceutical, or each gene that will lead to the death of insect pests when targeted by an agrochemical. Comparative genomics involves the use of functional information from one biological system, such as a fruit fly or worm, across other biological systems, such as humans. We are a pioneer in the use of comparative genomics and use this approach to move from the genes of interest in our model systems directly to genes performing the same role or function in species for which products are to be developed, such as humans, plant pests, or plants. Together these technologies allow us to rapidly identify high quality product targets for our collaborative partners and for our internal programs focusing on areas such as cancer and animal health.

We believe that we have assembled an outstanding team of leading researchers in the fields of comparative genomics and model system genetics. The application of our technology and expertise has resulted in a substantial increase in the speed, quality and scope of our analyses. Experiments that take a year or more to complete in complex systems can be carried out in one to two weeks in our simple model systems. Our processes are scalable, meaning we can produce superior results in a cost-effective manner because we do not have to repeat many or all of the original experiments. We have developed multiple fungal, nematode, insect, plant and vertebrate genetic systems. In addition, we have established technologies for the development of our own compounds by acquiring the assets of MetaXen, LLC, a privately-held biotechnology company that focused on molecular genetics, by licensing unique chemistry technology from Bristol-Myers Squibb and by expanding our biological expertise internally.

To establish and protect our technologies as well as the output of our research programs, we rely on a combination of patents, copyrights and trade secrets. We have two issued U.S. patents relating to our model genetic systems and comparative genomics technologies and have submitted 49 U.S. and foreign patent applications. We have developed proprietary technologies for use in characterizing a network of pathways within a cell, and for identifying the optimal points in the network for therapeutic intervention. We have also identified many proprietary product targets.

Our Commercial Collaborations

We have established collaborations with Bayer, Pharmacia & Upjohn and Bristol-Myers Squibb. Our relationship with Bayer is focused on the discovery and development of novel insecticides and nematicides for crop protection. The initial collaboration was signed in May 1998. In January 2000, this relationship was substantially expanded and the term was extended for eight additional years.

Our five-year collaboration with Pharmacia & Upjohn was signed in February 1999. We are working exclusively with Pharmacia & Upjohn in the fields of Alzheimer's disease, Type II diabetes and associated complications of diabetes, obesity and other metabolism disorders. In October 1999, this collaboration was expanded to include mechanism of action, or physiological activity, research designed to identify the previously unidentified molecular targets of biologically-active compounds provided by Pharmacia & Upjohn.

In September 1999, we entered into a three-year collaboration with Bristol-Myers Squibb to identify the mechanism of action of compounds delivered to us by Bristol-Myers Squibb. We also entered into a non-exclusive cross-license of research technology.

We have received performance-based milestone payments from both our Bayer and Pharmacia & Upjohn collaborations, and we anticipate that we will receive substantial additional milestone

payments in the future. We will receive royalty income from all of our collaborations should our research lead to marketed products.

Our Strategy

Our strategy has four major components:

- We will continue to develop our technological expertise to enhance our leadership in comparative genomics and model system genetics by investing significantly in research and development programs, entering into partnerships and acquiring new technology.

- We will maximize our product opportunities by applying technologies we have developed for one market to address several multi-billion dollar markets within the life sciences industries, comprised of companies within the pharmaceutical, agrochemical, agricultural, diagnostics and biotechnology industries. We will continue to establish collaborations with leading companies in each of these industries.

- We have retained and plan to continue to retain significant rights to develop our own products and use targets, assays and other technologies developed in each of our collaborations in our own proprietary programs.

- We will continue to invest our funds in discovering and developing our own proprietary products. These potential products will be available for licensing to our collaborative partners or retained by us for further development and commercialization.

Company Information

Exelixis was incorporated in Delaware in 1994 as Exelixis Pharmaceuticals, Inc., and we changed our name to Exelixis, Inc. in February 2000. Our executive offices and laboratories are located at 260 Littlefield Avenue, South San Francisco, California 94080. Our telephone number is (650) 825-2200 and our internet address is www.exelixis.com.

Exelixis and the Exelixis logo are two of our trademarks and service marks. Other trademarks, trade names and service marks referred to in this prospectus are the property of their respective owners.

The Offering

Shares offered by Exelixis in this offering.....	9,100,000 shares
Shares outstanding after the offering.....	42,765,662 shares
Nasdaq National Market symbol.....	EXEL
Use of proceeds.....	For research and development activities, capital expenditures, financing possible acquisitions and investments in technology, working capital and other general corporate purposes. See "Use of Proceeds."

The above information is based on the number of shares outstanding as of March 31, 2000 and excludes:

- 1,094,151 shares of common stock issuable upon the exercise of outstanding options at a weighted average exercise price of $3.20 per share;
- 633,212 shares of common stock issuable upon exercise of outstanding warrants at a weighted average exercise price of $1.71 per share;
- 568,181 of common stock issuable upon conversion of an outstanding promissory note (assuming an initial offering price of $11.00);
- 4,288,221 shares of common stock available for issuance or future grant under our stock option plans; and
- 300,000 shares of common stock available for issuance under our employee stock purchase plan.

Except as otherwise noted, we have presented the information in this prospectus based on the following assumptions:

- the underwriters do not exercise their over-allotment option;
- the outstanding shares of preferred stock convert into 22,877,656 post-split shares of common stock upon the closing of this offering;
- the filing of our amended and restated certificate of incorporation immediately following the closing of this offering; and
- a 4-for-3 reverse common stock split which became effective in April 2000.

Summary Financial Data

The following tables summarize our financial data. The pro forma as adjusted column of the balance sheet data reflects the conversion of our preferred stock into common stock and the sale of 9,100,000 shares of our common stock in this offering at an assumed initial public offering price of $11.00 per share, after deducting the estimated underwriting discounts and offering expenses payable by us.

	Year Ended December 31,				
	1995	1996	1997	1998	1999
	(in thousands, except per share data)				
Statement of Operations Data:					
License revenues	$ --	$ --	$ --	$ 139	$ 1,046
Contract revenues	--	--	--	2,133	9,464
Total revenues	--	--	--	2,272	10,510
Operating expenses:					
Research and development	1,890	4,120	8,223	12,096	21,653
General and administrative	1,096	1,475	3,743	5,472	7,624
Total operating expenses	2,986	5,595	11,966	17,568	29,277
Loss from operations	(2,986)	(5,595)	(11,966)	(15,296)	(18,767)
Interest income (expense), net.	33	284	470	(50)	46
Loss before equity in net loss of affiliated company	(2,953)	(5,311)	(11,496)	(15,346)	(18,721)
Equity in net loss of affiliated company	--	--	--	(320)	--
Net loss	$(2,953)	$(5,311)	$(11,496)	$(15,666)	$(18,721)
Basic and diluted net loss per share	$ (2.60)	$ (4.50)	$ (8.76)	$ (3.83)	$ (3.47)
Shares used in computing basic and diluted net loss per share	1,137	1,180	1,312	4,088	5,389
Pro forma basic and diluted net loss per share					$ (0.67)
Shares used in computing pro forma basic and diluted net loss per share					27,996

	December 31, 1999	
	Actual	Pro Forma As Adjusted
	(in thousands)	
Balance Sheet Data:		
Cash, cash equivalents and short-term investments	$ 6,904	$ 98,597
Working capital	(672)	91,021
Total assets	18,901	110,594
Long-term obligations, less current portion	11,132	11,132
Mandatorily redeemable convertible preferred stock	46,780	--
Deferred stock compensation	(14,167)	(14,167)
Accumulated deficit	(54,727)	(54,727)
Total stockholders' (deficit) equity	(49,605)	88,868

RISK FACTORS

An investment in our common stock is risky. You should carefully consider the risks described below, together with all of the other information included in this prospectus, before deciding whether to invest in our common stock. The occurrence of any of the following risks could harm our business, financial condition or results of operations. In such case, the trading price of our common stock could decline, and you may lose all or part of your investment. The risks and uncertainties described below are not exhaustive. Additional risks and uncertainties not presently known to us, or that we currently consider immaterial, may also harm our business.

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

We have incurred net losses each year since our inception, including a net loss of approximately $18.7 million for the year ended December 31, 1999. As of that date, we had an accumulated deficit of approximately $54.7 million. We expect these losses to continue and anticipate negative cash flow for the foreseeable future. The size of these net losses will depend, in part, on the rate of growth, if any, in our license and contract revenues and on the level of our expenses. Our research and development expenditures and general and administrative costs have exceeded our revenues to date, and we expect to spend significant additional amounts to fund research and development in order to enhance our core technologies and undertake product development. As a result, we expect that our operating expenses will increase significantly in the near term and, consequently, we will need to generate significant additional revenues to achieve profitability. Even if we do increase our revenues and achieve profitability, we may not be able to sustain or increase profitability.

We will need additional capital in the future, which may not be available to us.

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

- payments received under collaborative agreements;
- the progress and scope of our collaborative and independent research and development projects;
- our need to develop manufacturing and marketing capabilities to commercialize products; and
- the filing, prosecution and enforcement of patent claims.

We anticipate that the net proceeds of this offering and interest earned thereon will enable us to maintain our currently planned operations for at least the next two years. Changes to our current operating plan may require us to consume available capital resources significantly sooner than we expect. We may be unable to raise sufficient additional capital when we need it, on favorable terms, or at all. If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. The sale of equity or convertible debt securities in the future may be dilutive to our stockholders, and debt financing arrangements may require us to pledge certain assets and enter into covenants that would restrict our ability to incur further indebtedness. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or to obtain funds by entering into financing, supply or collaboration agreements on unattractive terms.

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

We have experienced a period of rapid and substantial growth that has placed, and our anticipated growth in the future will continue to place, a strain on our administrative and operational infrastructure. The number of our employees increased from 102 at December 31, 1998 to 168 at

December 31, 1999. Our revenues increased from $2.3 million in 1998 to $10.5 million in 1999. As our operations expand, we expect that we will need to manage additional relationships with various collaborative partners, suppliers and other third parties. Our ability to manage our operations and growth effectively requires us to continue to improve our operational, financial and management controls, reporting systems and procedures. We may not be able to successfully implement improvements to our management information and control systems in an efficient or timely manner and may discover deficiencies in existing systems and controls.

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

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

We currently have collaborative research agreements with Bayer, Pharmacia & Upjohn and Bristol-Myers Squibb. Our current collaborative agreement with Bayer is scheduled to expire in 2008, after which it will automatically be extended for one-year terms unless terminated by either party upon 12-month written notice. Our agreement permits Bayer to terminate our collaborative activities prior to 2008 upon the occurrence of specified conditions, such as the failure to agree on key strategic issues after a period of years or the acquisition of Exelixis by certain specified third parties. Similarly, our collaborative agreement with Pharmacia & Upjohn allows either party to terminate our research collaboration at the conclusion of its third year in 2002, at the conclusion of its fifth year in 2004, or any subsequent year. The Pharmacia & Upjohn agreement may also be terminated in the event of a conflict over material third-party intellectual property rights. Our collaborative agreement with Bristol-Myers Squibb expires in September 2002, unless terminated earlier by Bristol-Myers Squibb in the event that we fail to deliver specified gene targets prior to the first anniversary of our agreement. In addition, both our agreements with Bayer and Pharmacia & Upjohn are subject to termination at an earlier date if certain specified individuals are no longer employed by us and we are unable to find replacements acceptable to Bayer or Pharmacia & Upjohn, as the case may be. In the case of Pharmacia & Upjohn, the right is triggered if either of two specified individuals directly involved in the research program cease to be employed by us. In the case of Bayer, the right is triggered if two or more of our Chief Executive Officer, Chief Scientific Officer, Agricultural Biotechnology Program Leader and Chief Information Officer cease to have a relationship with us within six months of each other.

If these existing agreements are not renewed or if we are unable to enter into new collaborative agreements on commercially acceptable terms, our revenues and product development efforts may be adversely affected.

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

We intend to conduct proprietary research programs in specific disease and agricultural product areas that are not covered by our collaborative agreements. Our pursuit of opportunities in agricultural and pharmaceutical markets could, however, result in conflicts with our collaborators in the event that any of our collaborators takes the position that our internal activities overlap with those

areas that are exclusive to our collaborative agreements, and we should be precluded from such internal activities. Moreover, disagreements with our collaborators could develop over rights to our intellectual property. In addition, our collaborative agreements may have provisions that give rise to disputes regarding the rights and obligations of the parties. Any conflict with our collaborators could lead to the termination of our collaborative agreements, delay collaborative activities, reduce our ability to renew agreements or obtain future collaboration agreements or result in litigation or arbitration and would negatively impact our relationship with existing collaborators.

We have limited or no control over the resources that our collaborators may choose to devote to our joint efforts. Our collaborators may breach or terminate their agreements with us or fail to perform their obligations thereunder. Further, our collaborators may elect not to develop products arising out of our collaborative arrangements or may fail to devote sufficient resources to the development, manufacture, market or sale of such products. Certain of our collaborators could also become our competitors in the future. If our collaborators develop competing products, preclude us from entering into collaborations with their competitors, fail to obtain necessary regulatory approvals, terminate their agreements with us prematurely or fail to devote sufficient resources to the development and commercialization of our products, our product development efforts could be delayed and may fail to lead to commercialized products.

We are deploying unproven technologies, and we may not be able to develop commercially successful products.

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

We have no experience in developing, manufacturing and marketing products and may be unable to commercialize proprietary products.

Initially, we will rely on our collaborators to develop and commercialize products based on our research and development efforts. We have no experience in using the targets that we identify to develop our own proprietary products. In order for us to commercialize products, we would need to significantly enhance our capabilities with respect to product development, and establish manufacturing and marketing capabilities, either directly or through outsourcing or licensing arrangements. We may not be able to enter into such outsourcing or licensing agreements on commercially reasonable terms, or at all.

Since our technologies have many potential applications and we have limited resources, our focus on a particular area may result in our failure to capitalize on more profitable areas.

We have limited financial and managerial resources. This requires us to focus on product candidates in specific industries and forego opportunities with regard to other products and industries. For example, depending on our ability to allocate resources, a decision to concentrate on a particular agricultural program may mean that we will not have resources available to apply the same technology to a pharmaceutical project. While our technologies may permit us to work in both areas, resource commitments may require trade-offs resulting in delays in the development of certain

programs or research areas, which may place us at a competitive disadvantage. Our decisions impacting resource allocation may not lead to the development of viable commercial products and may divert resources from more profitable market opportunities.

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

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

Any products that are developed through our technologies will compete in highly competitive markets. Further, our competitors may be more effective at using their technologies to develop commercial products. Many of the organizations competing with us have greater capital resources, larger research and development staffs and facilities, more experience in obtaining regulatory approvals, and more extensive product manufacturing and marketing capabilities. As a result, our competitors may be able to more easily develop technologies and products that would render our technologies and products, and those of our collaborators, obsolete and noncompetitive.

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

Our success will depend in part on our ability to obtain patents and maintain adequate protection of the intellectual property related to our technologies and products. The patent positions of biotechnology companies, including our patent position, are generally uncertain and involve complex legal and factual questions. We will be able to protect our intellectual property rights from unauthorized use by third parties only to the extent that our technologies are covered by valid and enforceable patents or are effectively maintained as trade secrets. The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the U.S., and many companies have encountered significant problems in protecting and defending such rights in foreign jurisdictions. We will apply for patents covering our technologies and products as and when we deem appropriate. However, these applications may be challenged or may fail to result in issued patents. Our existing patents and any future patents we obtain may not be sufficiently broad to prevent others from practicing our technologies or from developing competing products. Furthermore, others may independently develop similar or alternative technologies or design around our patents. In addition, our patents may be challenged, invalidated or fail to provide us with any competitive advantages.

We rely on trade secret protection for our confidential and proprietary information. We have taken security measures to protect our proprietary information and trade secrets, but these measures may not provide adequate protection. While we seek to protect our proprietary information by entering into confidentiality agreements with employees, collaborators and consultants, we cannot assure you that our proprietary information will not be disclosed, or that we can meaningfully protect our trade secrets. In addition, our competitors may independently develop substantially equivalent proprietary information or may otherwise gain access to our trade secrets.

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

Our commercial success depends in part on our ability to avoid infringing patents and proprietary rights of third parties, and not breaching any licenses that we have entered into with regard to our technologies. Other parties have filed, and in the future are likely to file, patent applications covering genes and gene fragments, techniques and methodologies relating to model systems, and products and technologies that we have developed or intend to develop. If patents covering technologies required by our operations are issued to others, we may have to rely on licenses from third parties, which may not be available on commercially reasonable terms, or at all.

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

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

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

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

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

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

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

The Food and Drug Administration, or FDA, must approve any drug or biologic product before it can be marketed in the U.S. Any products resulting from our research and development efforts must also be approved by the regulatory agencies of foreign governments before the product can be sold outside the U.S. Before a new drug application or biologics license application can be filed with the FDA, the product candidate must undergo extensive clinical trials, which can take many years and may require substantial expenditures. The regulatory process also requires preclinical testing. Data obtained from preclinical and clinical activities are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review. The clinical development and regulatory approval process is expensive and time consuming. Any failure to obtain regulatory approval could delay or prevent us from commercializing products.

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

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

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

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

Laws and regulations may reduce our ability to sell genetically engineered products that 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 products may be subject to lengthy FDA reviews and unfavorable FDA determinations if they raise questions regarding safety or our products are deemed to be food additives.

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

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

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

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

If product liability lawsuits are successfully brought against us, we could face substantial liabilities that exceed our resources.

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

Our facilities are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could cause damage to our facilities and equipment, which could require us to cease or curtail operation.

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

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 milestones and royalties;
- the introduction of new technologies or products by our competitors;
- the timing and willingness of collaborators to commercialize our products;
- our ability to enter into new collaborative relationships;
- the termination or non-renewal of existing collaborations; 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 during 2000. Accordingly, if our revenues decline or do not grow as anticipated due to the expiration of existing contracts, our failure to obtain new contracts, our inability to meet milestones or other factors, we may not be able to correspondingly reduce our operating expenses. Failure to achieve anticipated levels of revenues could therefore significantly harm our operating results for a particular fiscal period.

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

Our stock price may be extremely volatile, and you may not be able to resell your shares at or above the initial offering price.

Prior to this offering, there has been no public market for shares of our common stock. An active trading market may not develop or be sustained following completion of this offering. The initial public

offering price for the shares will be determined by negotiations between us and representatives of the underwriters. This price may bear no relationship to the price at which our common stock will trade upon completion of this offering. The stock market has experienced significant price and volume fluctuations, and the market prices of technology companies, particularly biotechnology and genomics companies, have been highly volatile.

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

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

The market price of our common stock could decline as a result of sales of substantial amounts of our common stock in the public market after the closing of this offering, or even the perception that such sales could occur. There will be 42,765,662 shares of common stock outstanding immediately after this offering, or 44,130,662 shares if the representatives of the underwriters exercise their over-allotment option in full. Of these shares, the following will be available for sale in the public market as follows:

- 625,884 shares will be eligible for sale upon completion of this offering;
- 7,106 shares will be eligible for sale 90 days from the completion of this offering;
- 33,032,672 shares will be eligible for sale upon the expiration of lock-up agreements, beginning 180 days after the date of this prospectus; and
- 1,594,481 shares will be eligible for sale upon the exercise of vested options 180 days after the date of this prospectus.

Some of our existing stockholders can exert control over us, and may not make decisions that are in the best interests of all stockholders.

After this offering, our officers, directors and principal stockholders (stockholders holding more than 5% of our common stock) will together control approximately 38% of our outstanding common stock. As a result, these stockholders, acting together, would be able to exert significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. In addition, this concentration of ownership may delay or prevent a change in control of our company, even when a change may be in the best interests of our stockholders. In addition, the interests of these stockholders may not always coincide with our interests as a company or the interests of other stockholders. Accordingly, these stockholders could cause us to enter into transactions or agreements that you would not approve.

As a new investor, you will experience immediate and substantial dilution.

Investors purchasing shares of our common stock in this offering will pay more for their shares than the amount paid by existing stockholders who acquired shares prior to this offering. Accordingly, if you purchase common stock in this offering, you will incur immediate dilution in pro forma net tangible book value of approximately $8.68 per share. If the holders of outstanding options or warrants exercise those options or warrants, you will incur further dilution. See "Dilution."

USE OF PROCEEDS

We will receive net proceeds from the sale of the 9,100,000 shares of common stock in the public offering of approximately $91,693,000 ($105,656,950 if the underwriters' over-allotment option is exercised in full), assuming an initial public offering price of $11.00 per share and after deducting the estimated underwriting discounts and our estimated offering expenses.

We intend to use the net proceeds of this offering for research and development activities, working capital and other general corporate purposes and capital expenditures. The amounts and timing of our actual expenditures will depend upon numerous factors, including the status of our product development and commercialization efforts, the amount of proceeds actually raised in this offering, the amount of cash generated by our operations, competition, and sales and marketing activities. We may also use a portion of the proceeds for the acquisition of, or investment in, companies, technologies or assets that complement our business. However, we have no present understandings, commitments or agreements to enter into any potential acquisitions or investments. The balance of the proceeds, as well as existing cash, will be used for general corporate purposes. Until the funds are used as described above, we intend to invest the net proceeds of this offering in short-term, interest-bearing securities.

The principal purposes of this offering are to increase our capitalization and financial flexibility, to provide a public market for our common stock and to facilitate access to public equity markets. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds we will have upon completion of this offering. Accordingly, our management will have broad discretion to allocate the net proceeds from this offering.

DIVIDEND POLICY

We have never declared or paid cash dividends on our capital stock. We currently intend to retain earnings, if any, to support the development of our business and do not anticipate paying cash dividends for the foreseeable future.

CAPITALIZATION

The following table sets forth our capitalization as of December 31, 1999:

- on an actual basis;
- on a pro forma basis to reflect the automatic conversion of all of our preferred stock into an aggregate of 22,877,656 shares of common stock, which will occur upon the closing of this offering; and
- on a pro forma as adjusted basis to reflect our receipt of the net proceeds from the sale of 9,100,000 shares of common stock in this offering, at an assumed initial public offering price of $11.00 per share, after deducting the estimated underwriting discounts and offering expenses payable by us in this offering and assuming no exercise of the underwriters' over-allotment option.

	December 31, 1999		
	Actual	Pro Forma	Pro Forma As Adjusted
	(in thousands, except share and per share amounts)		
Long-term obligations, less current portion	$ 11,132	$11,132	$ 11,132
Mandatorily redeemable convertible preferred stock, $0.001 par value; 35,000,000 shares authorized; 30,503,571 shares issued and outstanding, actual; none issued pro forma and pro forma as adjusted	46,780	--	--
Stockholders' (deficit) equity:			
Common stock, $0.001 par value; 50,000,000 shares authorized, 6,258,805 shares issued and outstanding, actual; 50,000,000 shares authorized, 29,136,461 shares issued and outstanding, pro forma; and 100,000,000 shares authorized, 38,236,461 shares issued and outstanding pro forma as adjusted	6	29	38
Additional paid-in capital	19,523	66,280	157,964
Notes receivable from stockholders	(240)	(240)	(240)
Deferred stock compensation	(14,167)	(14,167)	(14,167)
Accumulated deficit	(54,727)	(54,727)	(54,727)
Total stockholders' (deficit) equity	(49,605)	(2,825)	88,868
Total capitalization	$ 8,307	$ 8,307	$100,000

The number of shares of common stock to be outstanding after this offering is based on the number of shares outstanding as of December 31, 1999 and excludes:

- 4,466,527 shares of common stock underlying options outstanding at a weighted average exercise price of $0.29 per share;
- 654,908 shares of common stock underlying warrants outstanding at a weighted average exercise price of $1.71 per share;
- 568,181 shares of common stock issuable upon conversion of an outstanding promissory note (assuming an initial offering price of $11.00); and
- 417,381 shares of common stock available for issuance or future grant under our stock option plans.

See "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and notes thereto included in this prospectus.

DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the net tangible book value per share of our common stock after this offering.

Our net tangible book value (deficit) at December 31, 1999 was $(49.6) million, or $(7.93) per share of common stock. After giving effect to the sale of the 9,100,000 shares of common stock in this offering, at an assumed initial public offering price of $11.00 per share, assuming that the underwriters' over-allotment option is not exercised, and after deducting the estimated underwriting discounts, commissions and estimated offering expenses, our net tangible book value at December 31, 1999 would be $42.1 million, or $2.74 per share.

Net tangible book value per share before the offering represents total tangible assets less total liabilities, divided by the number of shares of common stock outstanding at December 31, 1999. The offering will result in an immediate increase in the book value of $10.67 per share to existing stockholders and an immediate dilution in net tangible book value of $8.26 per share to new investors, or approximately 75% of the assumed initial public offering price of $11.00 per share. Dilution is determined by subtracting net tangible book value per share after the offering from the assumed initial public offering price of $11.00 per share. Pro forma dilution per share represents the dilution per share to new investors after giving effect to the automatic conversion of all outstanding shares of our preferred stock into an aggregate of 22,877,656 shares of common stock, which will occur upon the closing of this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share		$11.00
Net tangible book value (deficit) per share at December 31, 1999	$(7.93)	
Increase per share attributable to this offering	10.67	
Net tangible book value per share after the public offering		2.74
Dilution per share to new investors		8.26
Incremental dilution effect of the conversion of all outstanding shares of our preferred stock into an aggregate of 22,877,656 shares of common stock		0.42
Pro forma dilution per share to new investors		$ 8.68

The following table summarizes the total consideration paid to us and the average price paid per share by existing stockholders and new investors purchasing common stock in this offering. This information is presented on a pro forma as adjusted basis at December 31, 1999, after giving effect to the sale of the 9,100,000 shares of common stock in this offering at an assumed initial public offering price of $11.00 per share, before deducting estimated underwriting discounts, commissions and estimated offering expenses.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
			(in thousands)		
Existing stockholders	29,136,461	76.2%	$ 47,440	32.2%	$ 1.63
New investors	9,100,000	23.8	100,000	67.8	11.00
Total	38,236,461	100.0%	$147,440	100.0%	

These tables assume no exercise of the underwriters' over-allotment option, no conversion of a convertible promissory note in favor of Pharmacia & Upjohn and no exercise of stock options and warrants outstanding at December 31, 1999. Pharmacia & Upjohn made us an interest-free loan of

$7.5 million that is evidenced by a promissory note. This promissory note must be converted into shares of our common stock during the two-year period following this offering at a price per share equal to 120% of the initial public offering price, the time of such conversion to be determined by Pharmacia & Upjohn. At March 31, 2000, there were 1,094,151 shares of common stock issuable upon exercise of outstanding stock options at a weighted average exercise price of $3.20 per share and 633,212 shares of common stock issuable upon exercise of outstanding warrants at a weighted average exercise price of $1.71 per share. If any of these options or warrants are exercised, there will be further dilution to new public investors.

SELECTED FINANCIAL DATA

This section presents our historical financial data. You should read carefully the financial statements and the notes thereto included in this prospectus and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

The statement of operations data for the years ended December 31, 1997, 1998 and 1999 and the balance sheet data as of December 31, 1998 and 1999 have been derived from our audited financial statements included elsewhere in this prospectus. The statement of operations data for the years ended December 31, 1995 and 1996 and the balance sheet data as of December 31, 1995, 1996 and 1997 have been derived from our audited financial statements that are not included in this prospectus. Historical results are not necessarily indicative of future results. See the Notes to Financial Statements for an explanation of the method used to determine the number of shares used in computing basic and diluted and pro forma basic and diluted net loss per share.

	Year Ended December 31,				
	1995	1996	1997	1998	1999
	(in thousands, except per share data)				
Statement of Operations Data:					
License revenues	$ --	$ --	$ --	$ 139	$ 1,046
Contract revenues	--	--	--	2,133	9,464
Total revenues	--	--	--	2,272	10,510
Operating expenses:					
Research and development	1,890	4,120	8,223	12,096	21,653
General and administrative	1,096	1,475	3,743	5,472	7,624
Total operating expenses	2,986	5,595	11,966	17,568	29,277
Loss from operations	(2,986)	(5,595)	(11,966)	(15,296)	(18,767)
Interest income (expense), net	33	284	470	(50)	46
Loss before equity in net loss of affiliated company	(2,953)	(5,311)	(11,496)	(15,346)	(18,721)
Equity in net loss of affiliated company	--	--	--	(320)	--
Net loss	$(2,953)	$(5,311)	$(11,496)	$(15,666)	$(18,721)
Basic and diluted net loss per share	$ (2.60)	$ (4.50)	$ (8.76)	$ (3.83)	$ (3.47)
Shares used in computing basic and diluted net loss per share	1,137	1,180	1,312	4,088	5,389
Pro forma basic and diluted net loss per share					$ (0.67)
Shares used in computing pro forma basic and diluted net loss per share					27,996

	December 31,				
	1995	1996	1997	1998	1999
	(in thousands)				
Balance Sheet Data:					
Cash, cash equivalents and short-term investments	$ 345	$ 8,086	$ 9,715	$ 2,058	$ 6,904
Working capital	(57)	6,686	7,619	182	(672)
Total assets	1,224	9,747	15,349	8,981	18,901
Long-term obligations, less current portion	592	1,104	1,759	2,556	11,132
Mandatorily redeemable convertible preferred stock	3,730	16,030	31,780	38,138	46,780
Deferred stock compensation	(47)	(59)	(102)	(1,803)	(14,167)
Accumulated deficit	(2,953)	(8,844)	(20,340)	(36,006)	(54,727)
Total stockholders' (deficit) equity	166	(8,853)	(20,364)	(35,065)	(49,605)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis contains forward-looking statements that are based upon current expectations. Forward-looking statements involve risks and uncertainties. Our actual results and the timing of events could differ materially from those anticipated in our forward-looking statements as a result of many factors, including those set forth under "Risk Factors" and elsewhere in this prospectus. 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 prospectus.

Overview

Exelixis was founded in November 1994 and began operations in January 1995. Since that time, we have made significant investments in developing our capabilities in comparative genomics and model system genetics. Our proprietary technologies provide a rapid, efficient and cost-effective way to move beyond DNA sequence data to understand the function of genes and the proteins that they encode. We believe that our technologies are commercially applicable to all industries whose products can be enhanced by an understanding of DNA or proteins. To date, we have recognized revenues from research collaborations with large pharmaceutical and agrochemical companies. Our current collaborations are with Bayer, Pharmacia & Upjohn and Bristol-Myers Squibb. These agreements provide for committed funding of over $180 million through January 2008, of which $7.5 million in equity, $7.5 million in the form of a convertible promissary note and approximately $12.6 million in revenues have been recorded as of December 31, 1999. Additional revenues from these collaborations are anticipated from the attainment of research milestones and royalties from sales of our future products.

We have invested heavily in building our two core technologies, model system genetics and comparative genomics. These core technologies have enabled us to establish collaborations that contributed to revenue growth from zero in 1997 to $10.5 million in 1999. Our total headcount increased from 78 employees at December 31, 1997 to 168 employees at December 31, 1999, of which 77% were engaged in research and development activities.

Since inception we have funded our operations primarily through private placements of preferred stock, revenues received from collaborative arrangements, equipment lease financings and other loan facilities.

Our sources of potential revenue for the next several years are likely to include upfront license and other fees, funded research payments under existing and possible future collaborative arrangements, milestone payments and royalties from our collaborators based on revenues received from any products commercialized under those agreements.

We have incurred operating losses in each of the last three years with net losses of approximately $11.5 million in 1997, $15.7 million in 1998 and $18.7 million in 1999. As of December 31, 1999, we had an accumulated deficit of approximately $54.7 million. Our losses have resulted principally from costs associated with research and development activities, investment in core technologies and general and administrative functions. As a result of planned expenditures for future research and development activities, we expect to incur additional operating losses for the forseeable future.

Artemis Pharmaceuticals

In June 1998, we purchased a minority interest in Artemis Pharmaceuticals GmbH, a genetics company located in Cologne, Germany. We also entered into certain non-exclusive license agreements providing Artemis with access to our technologies. In September 1998, we entered into a five-year cooperation agreement with Artemis under which we agreed to share technology and business opportunities as they arise. While either party may terminate this agreement at any time, we believe that it provides us a significant opportunity to access complementary genetic research. We have no financial obligation or current intention to fund Artemis. We account for our investment in Artemis under the equity method of accounting.

MetaXen Asset Acquisition

In July 1999, we acquired substantially all the assets of MetaXen, LLC, a biotechnology company focused on molecular genetics. In addition to paying cash consideration of $0.9 million, we assumed a note payable relating to certain acquired assets with a principal balance of $1.1 million. We also assumed responsibility for a facility sub-lease relating to the office and laboratory space occupied by MetaXen. See Note 5 of Notes to Financial Statements.

At the time of the acquisition, MetaXen had an existing research collaboration with Eli Lilly & Company. This agreement provided for sponsored research payments to be made to MetaXen. The scope of work under the agreement was completed by us in October 1999. Accordingly, we received and recognized revenues of approximately $0.2 million in fulfillment of that arrangement.

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 relevant periods specified in the agreements, generally the research term. We recognize contract research revenues as services are performed in accordance with the terms of the agreements. Any amounts received in advance of performance are recorded as deferred revenue.

Results of Operations

Comparison of Fiscal Years Ended December 31, 1997, 1998 and 1999

Total Revenues

Total revenues were $2.3 million for the year ended December 31, 1998, compared to $10.5 million in 1999. License and contract revenues earned in 1998 were related to our collaboration with Bayer. During 1999, revenues of $5.6 million and $4.3 million were earned under our collaborations with Pharmacia & Upjohn and Bayer, respectively.

Research and Development Expenses

Research and development expenses consist primarily of salaries and other personnel-related expenses, facility costs, supplies and depreciation of facilities and laboratory equipment. Research and development expenses were $8.2 million for the year ended December 31, 1997, compared to $12.1 million in 1998 and $21.7 million in 1999. The increases were due primarily to increased staffing and other personnel-related costs, including non-cash stock compensation expense, incurred to support new collaborative arrangements and our internal self-funded research efforts, including the acquisition of MetaXen. We expect to continue to devote substantial resources to research and development, and we expect that research and development expenses will continue to increase in absolute dollar amounts in the future.

General and Administrative Expenses

General and administrative expenses consist primarily of personnel costs to support our activities, facility costs and professional expenses, such as legal fees. General and administrative expenses were $3.7 million for the year ended December 31, 1997, compared to $5.5 million in 1998 and $7.6 million in 1999. The increase in general and administrative expenses in 1999 compared to 1998 related primarily to increased legal expenses, non-cash stock compensation expense and rent for facilities and lease expenses for equipment. The increase in general and administrative expense in 1998 compared to 1997 related primarily to California sales tax, salaries and legal expenses. We expect that our general and administrative expenses will increase in absolute dollar amounts in the future as we expand our business development, legal and accounting staff, add infrastructure and incur additional costs related to being a public company, including directors' and officers' insurance, investor relations programs and increased professional fees.

Deferred Stock Compensation

Deferred stock compensation for options granted to employees is the difference between the deemed value for financial reporting purposes of our common stock on the date such options were granted and their exercise price. Deferred stock compensation for options granted to consultants has been determined in accordance with Statement of Financial Accounting Standards No. 123 as the fair value of the equity instruments issued. Deferred stock compensation for options granted to consultants is periodically remeasured as the underlying options vest in accordance with Emerging Issues Task Force No. 96-18.

In connection with the grant of stock options to employees and consultants, we recorded deferred stock compensation of approximately $0.1 million in the year ended December 31, 1997, compared to $2.4 million in 1998 and $15.9 million in 1999. These amounts were recorded as a component of stockholders' (deficit) equity and are being amortized as charges to operations over the vesting periods of the options. We recorded amortization of deferred stock compensation of approximately $25,000 for the year ended December 31, 1997, compared to $0.7 million in 1998 and $3.5 million in 1999. For options granted through December 31, 1999, we expect to record additional amortization expense for deferred compensation as follows: $7.6 million in 2000, $3.9 million in 2001, $2.0 million in 2002 and $0.6 million in 2003. We will also record an additional $6.3 million of deferred stock compensation related to options for 829,311 shares of common stock granted during January 2000. See Note 9 of Notes to Financial Statements.

Interest Income (Expense), Net

Interest income represents income earned on our cash, cash equivalents and short-term investments. Net interest income was $0.5 million in 1997 and $46,000 in 1999, and consisted of amounts earned on cash, cash equivalents and short-term investments, substantially offset by interest expense incurred on notes payable and capital lease obligations. Net interest expense of $50,000 in 1998 resulted primarily from reduced interest income incurred on investments.

Equity in Net Loss of Affiliated Company

During the year ended December 31, 1998, we recorded a loss of $0.3 million representing our share of the loss recorded by Artemis using the equity method of accounting. As this loss reduced our investment in and receivables from Artemis to zero, no subsequent loss amounts have been recorded in the statements of operations.

Income Taxes

We have incurred net operating losses since inception and, consequently, have not recorded any federal or state income taxes.

As of December 31, 1999, we had federal net operating loss carryforwards of approximately $33.9 million. We also had federal research and development credit carryforwards of approximately $2.1 million. If not utilized, the net operating loss and credit carryforwards expire at various dates beginning in 2005. Under the Internal Revenue Code of 1986, as amended, 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 carry forwards before they are used. See Note 10 of Notes to Financial Statements.

Liquidity and Capital Resources

Since inception, we have financed our operations primarily through private placements of preferred stock totaling $46.8 million, loans, equipment lease financings and other loan facilities of $10.9 million and revenues from collaborators of $12.8 million. As of December 31, 1999, we had $6.9 million in cash, cash equivalents and short-term investments and $0.1 million available for future borrowings under an equipment financing line of credit.

Our operating activities used cash of $10.8 million for the year ended December 31, 1997, compared to $12.7 million in 1998 and $7.3 million in 1999. Cash used in operating activities related primarily to funding net operating losses, partially offset by an increase in deferred revenue from collaborators and non-cash charges related to depreciation and amortization of deferred stock compensation.

Investing activities used cash of $6.0 million for the year ended December 31, 1997, compared to $0.5 million in 1998 and $6.5 million in 1999. Investing activities consist primarily of purchases of property, equipment and short-term investments. We expect to continue to make significant investments in research and development and our administrative infrastructure, including the purchase of property and equipment to support our expanding operations.

Financing activities provided cash of $16.4 million for the year ended December 31, 1997, compared to $7.6 million in 1998 and $17.1 million in 1999. These amounts consist primarily of proceeds from sales of preferred stock, net of issuance costs, and amounts received under various financing arrangements.

We believe that the net proceeds from this offering, together with our current cash and cash equivalents, short-term investments and funding to be received from collaborators will be sufficient to satisfy our anticipated cash needs for at least the next two years. However, it is possible that we will seek additional financing within this timeframe. We may raise additional funds through public or private financing, collaborative relationships or other arrangements. We cannot assure you that additional funding, if sought, will be available or, even if available, on terms favorable to us. Further, any additional equity financing may be dilutive to stockholders, and debt financing, if available, may involve restrictive covenants. Our failure to raise capital when needed may harm our business and operating results.

Disclosure About Market Risk

Market risk represents the risk of loss that may impact our financial position, operating results or cash flows due to changes in U.S. interest rates. This exposure is directly related to our normal operating activities. Our cash, cash equivalents and short-term investments are invested with high quality issuers and are generally of a short-term nature. Interest rates payable on our notes and lease obligations are generally fixed. As a result, we do not believe that near-term changes in interest rates will have a material effect on our future results of operations.

Recent Accounting Pronouncements

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Financial Instruments and for Hedging Activities," which will be effective for our 2001 fiscal year. This statement establishes accounting and reporting standards requiring that every derivative instrument, including certain derivative instruments embedded in other contracts, be recorded in the balance sheet as either an asset or liability measured at its fair value. The statement also requires that changes in the derivative's fair value be recognized in earnings unless specific hedge accounting criteria are met. SFAS 133 is not anticipated to have a significant impact on our operating results or financial condition when adopted, since we currently do not engage in hedging activities.

BUSINESS

Overview

We believe that we are a leader in the fields of model system genetics and comparative genomics. These fields involve the systematic study of simple organisms, such as fruit flies, nematodes, mice, zebrafish and simple plants, to rapidly and efficiently determine gene function and establish its commercial utility in humans and other commercially important biological systems. Recent advances in the genomics field have resulted in significant opportunities to develop novel products for the life sciences industries, which include companies in the pharmaceutical, agrochemical, agricultural, consumer products and healthcare businesses. Now that the sequencing of the human genome and the genomes of many other species is substantially complete, the challenge facing these industries is no longer the identification of genes, but understanding their function and determining the consequences of regulating or modulating those genes.

Our proprietary technologies take advantage of the evolutionary similarity in genes and gene function among diverse species. We believe that our proprietary technologies will be valuable to all industries whose products can be enhanced by an understanding of DNA or proteins, including the pharmaceutical, agrochemical, agricultural, diagnostic and biotechnology industries. We are conducting research in more than 12 different programs for these industries.

We have established collaborations with Bayer, Pharmacia & Upjohn and Bristol-Myers Squibb, as well as with U.S. government agencies and academic centers worldwide. Committed funding from our commercial collaborations totals over $180 million. We intend to continue to establish strategic collaborations with leading companies in the life sciences industries. In addition, we invest our own funds in our own programs, and we have retained significant rights to the results of our research and to future applications of our technologies.

Background

The Genetic Cascade: DNA->RNA->Protein->Signal Transduction

The physical characteristics of all living things, or organisms, are determined by genetic information inherited from the preceding generation. This genetic information resides in the deoxyribonucleic acid, or DNA, found in the cells of all organisms. DNA is composed of four different chemical subunits called nucleotide bases that are strung together in a precise sequence. Encoded within this DNA sequence are distinct sets of instructions, or genes, that collectively serve as a blueprint for the functions of an organism. The DNA in a cell is divided into several segments called chromosomes. The complete set of chromosomes of an organism contains all of its genetic information, and is commonly referred to as the "genome" of that organism. The human genome is comprised of 23 pairs of chromosomes and over three billion nucleotide bases encoding in excess of 100,000 genes. Variations in DNA sequences between individuals contribute to the observable variation in physical traits, such as height, weight and eye color, predisposition towards disease and response to therapy.

The genetic cascade is the mechanism by which instructions encoded in each gene are carried out in the cell. In this process, the genetic information encoded in the DNA is copied into an intermediate molecular form referred to as messenger ribonucleic acid or mRNA. The information in mRNA is then translated by specialized cellular machinery into a specific protein. Proteins are made of 20 different building blocks called amino acids. Individual proteins vary in composition and order of their amino acids. The number and order of these amino acids are determined by the DNA sequence of the corresponding gene. It is estimated that while there are more than 100,000 human genes, an individual cell expresses no more than 10,000 different proteins at any one time. Thus, cells may be differentiated from one another by the identity and relative abundance of proteins found within the cells.

Basic cellular function is largely mediated by the action of proteins. This process generally involves interactions between proteins as well as other molecules within a cell. This is a dynamic process that responds to changes in both the internal and external cellular environments. Proteins have various roles in the cell such as structural building blocks, enzymes that catalyze reactions or receptors that sense the environment. Subsets of approximately 50 to 100 of these proteins act as functionally interconnected networks for the transmission of signals in and between cells. This process is known as signal transduction.

Alterations in signal transduction underlie many human diseases. Therefore, understanding these processes and the best points for intervention is key to the development of novel therapeutics. The ability to intervene in signal transduction is also important for agricultural purposes such as the development of novel pesticides or the enhancement of desirable traits in plants or animals. The challenge facing biological researchers is to understand the role of specific genes in signal transduction and to identify those genes whose change or regulation will result in a desired outcome.

Genomics Phase I: Genome Sequence

Recognition of the central role of DNA in disease coupled with advances in enabling technologies gave rise to the emergence of the field of genomics, or the study of human and other genomes. This led to an international effort known as the Human Genome Project, or the HGP. The first phase of the HGP has been focused primarily on determining the complete human DNA sequence and common variations in DNA sequences among individuals. The HGP also encompasses efforts dedicated to exploring the genomes of other organisms, including a number of bacterial, yeast, invertebrate and vertebrate species. This research has generated significant amounts of data, and the first working draft of the human genome sequence is expected later this year. The importance of the HGP effort has also attracted substantial private investment in related research, with several billion dollars already having been spent on these endeavors. To date, researchers have principally used large-scale processing tools to identify the sequences of small portions of the DNA, often without knowledge of the relevance of what they have discovered. They have identified the pieces of the human genetic puzzle without understanding the interrelationships between the different pieces. The majority of the human DNA sequence is now readily available in computerized databases, and has become an important commodity of biological research.

Genomics Phase II: Gene Function

The vast amounts of gene sequence data now available have created a critical mismatch between data generation and knowledge generation. As a result, genomics has recently moved into a second phase in which the elucidation of function has become the primary challenge for biologists. Function means the discovery of a gene's role in a cell based upon its assignment to, or relationship with, a particular series of genes that collectively perform a specific function, also known as a signaling network, and the predicted consequence of changing or regulating its activity. Gene function cannot be directly inferred from DNA sequence, nor can it be derived from attributes such as sequence variation, similarities to other genes of known function or expression of encoded proteins. Rather, it requires the integration of these observations with a detailed understanding of how proteins interact with each other to form signaling networks. Thus, assignment of function with respect to a disease state or condition is a complex process requiring the application of new tools that are knowledge-based rather than process-oriented.

Rational Selection of Molecular Targets

The life sciences industries consist of pharmaceutical, agrochemical, agricultural, diagnostic and biotechnology companies. Many of the principal products of these industries were developed without knowledge of the specific protein or network affected, while others were developed against specific

proteins whose impact in signal transduction was uncertain. As a result, product development in these industries is costly, time consuming and inefficient and is characterized by high failure rates. Life sciences companies have turned to genomics technologies, primarily for DNA sequence information, to help address these problems with respect to the selection of molecular targets. Despite significant investment in genomics, there has not been appreciable improvement in the efficiency in selecting molecular targets. It is now clear that the rational selection of molecular targets requires knowledge about genes and their encoded proteins as well as their interaction with other components of signaling networks. Since the complete human sequence as well as the sequence of other commercially important genomes will soon be widely available, the competitive advantage for life sciences companies will become the capability to rapidly and accurately translate sequence information into knowledge about function.

The Exelixis Solution

We believe that we have developed a faster and more efficient method to understand gene function and to select superior commercial product targets for the life sciences industries. Our technologies are scalable, cost-effective and enable us to industrialize the process of determining gene function by utilizing comparative genomics and model system genetics.

Comparative Genomics. We are a pioneer in the use of comparative genomics, an approach that applies functional information from one biological system across all other biological systems. Comparison of genomic sequence and gene function data from a variety of organisms has affirmed the basic principles of Charles Darwin's evolutionary theory that life has emerged from a common ancestor. This common origin is reflected not only in the high degree of conservation of genes between organisms but also in the role of genes in signaling networks. In many cases, the same proteins interacting in the same manner are involved in analogous processes in different species. The use of comparative genomics is analogous to comparative linguistics, where a language such as Latin can be used as a basis for understanding any of the Romance languages. Comparative genomics enables tests to be performed quickly in organisms with simple genomes such as the fruit fly or algae to predict and guide the analysis of gene function in organisms with complex genomes such as humans and crops.

Model System Genetics. We are also a leading model systems genetics company. Model system genetics serves as the experimental engine for the application of comparative genomics. We conduct systematic genetic experimentation of simple and well-understood organisms, such as worms, flies, yeasts and simple plant models, to identify the relationships among genes and signaling networks. Model systems have key advantages that result in speed and efficiency due to a number of characteristics. These include short life cycles that allow experiments to be completed significantly quicker than with more complicated organisms; genomes that can be easily manipulated to develop variants that, for example, mimic biochemical processes underlying disease; well-characterized biology that allows easy detection of changes through physical traits; and low cost of maintenance.

Our systematic research capabilities allow us to rapidly define gene function and select targets for the development of new products for the life sciences industries. Our unique approach provides a shortcut to understanding complex biological signaling networks. We have developed proprietary research tools, such as libraries of modified organisms, specialized reagents, databases and software, to facilitate this research. We believe that our systematic use and application of these proprietary technologies and tools provides us with a unique ability to quickly and cost-effectively address key drug and agricultural product development questions.

Our Comparative Genomics and Model System Genetics Technologies

We conduct our work primarily utilizing model system genetics, and we interpret and apply the data through our expertise in comparative genomics. We also have significant expertise in human

genetic analysis. Our primary model systems are the fruit fly, D. melanogaster, and the nematode worm, C. elegans. Scientists have used these organisms as discovery tools for several decades. Empirical evidence has provided us accurate benchmarks for applying biological and biochemical discoveries to more developed organisms, such as humans. We have adapted these systems from the academic community and have industrialized them by developing a suite of proprietary tools and reagents that allows us to perform systematic genetic analyses at a larger scale and substantially faster than otherwise is currently available. Among other proprietary tools, we have exclusively licensed the U.S. patent covering P-elements, which are genetic elements essential for performing modern fruit fly genetics because they allow for direct genetic manipulation. Additionally, we have adapted and developed a number of other model systems, including fungal, insect, plant and vertebrate species. Each of these model systems has unique advantages that can be applied in different ways. Our expertise allows us to leverage knowledge across species and to select the best model systems for a particular commercial application.

Our technologies enable us to quickly analyze the consequences of gene modulation on a desired outcome. Specifically, we can generate information that results in a rational selection of targets for our life sciences company partners as well as our own proprietary programs. We believe that the rapid identification of superior targets will lead to shorter product development times and higher success rates for our partners and ourselves.

Our genetic tools include proprietary libraries of existing and engineered model organisms as well as technologies for the conditional expression, removal or addition of an existing or novel gene(s) from an organism's genome. Our complete set of genomic tools provides us with the ability to rapidly characterize the genome of a model system. We have state-of-the-art expertise in data storage management and representation capabilities for externally and internally generated genomic and genetic data and analysis. We use computer-aided approaches for analyzing DNA sequence, protein structure and function as well as building and maintaining information management systems supporting our high throughput research process.

We have developed a proprietary process to quickly determine the genes and proteins with which chemical compounds such as pharmaceuticals or agrochemicals interact to produce their effect. Understanding physiological activity, or the mechanism of action, of a compound can be of significant value to pharmaceutical and agrochemical companies for several reasons. For example, many companies have a number of compounds that have commercially useful activities, but are too complex to manufacture cost-effectively. Compounds extracted from plants or marine organisms are examples of this class of compounds. By identifying the gene or protein with which a compound interacts, compounds can be designed that have the same activity, but which overcome the manufacturing or other limitations of the original compound. In addition, companies may have compounds that have commercially useful activities, but also have undesirable side effects due to their interaction with more than one gene or protein. By understanding the genes or proteins with which a compound interacts, new compounds can be designed that have the desired activity, but do not have the undesirable side effect.

We apply our technologies to select and validate targets that we believe will lead to new pharmaceuticals and agrochemicals. We also use our technologies to identify the molecular targets of existing pharmaceutical and agrochemical compounds. These two approaches, the forward target-to-compound approach and the reverse compound-to-target approach, address major bottlenecks in the application of genomics to research and development processes.

Our research involves a four-step process described below:

[Graphic Description: Illustration of four-step target indentification process.]

Step I: Definition of the Desired Outcome

The first step in selecting a target is to identify the ideal properties of a product for pharmaceutical or agricultural use. For example, an ideal cancer drug would selectively kill cancer cells and spare normal cells. Most tumors arise as a consequence of one or more common acquired changes or mutations in their genomic DNA sequence. These mutations alter gene function and lead to a disruption of specific signaling networks that contribute to unregulated cell growth. An ideal therapeutic target would be one located in another part of the signaling network regulating cell growth that, when affected by a drug, would either restore normal cell function or selectively kill the cell. Similar approaches can be applied to many other major human diseases and to the development of products for agricultural use or trait development.

Step II: Selection of a Model System

We use our experience and expertise to select the model organism(s) most appropriate for a particular commercial application. The mechanisms for many human diseases and agricultural

products have been characterized at least partially at the molecular level. When at least one molecular mechanism is defined and a therapeutic rationale is established, the appropriate model system may be selected. The most important criteria for selection are the degree of genetic similarity between the targeted signaling network in a model system and technical considerations for studying that network. The fruit fly and nematode are ideal genetic model systems for fundamental questions of signal transduction, because the complete genomic sequences for these organisms are available, the presence or absence of a particular pathway can be easily established by use of computer-aided biology, and we can modify these organisms using an extensive array of proprietary tools. In cases where underlying mechanisms have not been established, such as those mechanisms that enhance specific physical characteristics, or traits, such as size or nutritional content in animals or plants, model systems are selected on the basis of physiological similarity and ease of technical manipulation. Understanding the evolutionary relationship between the targeted organism and the prospective model system is most important to selecting the proper model system for a particular commercial application. If an appropriate model system does not already exist, we can rapidly develop a new model system.

One of our insecticide projects provides an example of how we utilize our existing genetic systems in combination with new model systems that we develop. We have utilized fruit flies to define many of the genes that are good targets for compounds designed to kill moth and beetle agricultural pests. Most of the targets identified in fruit flies have direct counterparts in the target species and can be used directly for the development of novel pesticides. However, to develop compounds that could specifically kill moths and not other insects, we have taken advantage of the fact that while the gut of most organisms, including humans, is extremely acidic, the gut of moths is extremely basic. To specifically target the moth gut and to identify moth-specific targets, our researchers developed a moth genetic system in which we are performing genetic experiments directly in the moth. These experiments will enhance the programs carried out in fruit flies by identifying genes and proteins that are unique in the moth gut and therefore could lead to compounds that are selectively lethal for moths.

Step III: Genetic Assays

Target-to-Compound: Target Identification. We develop proprietary genetic assays that measure the ability of a particular gene or protein to change or regulate the signaling network of interest, leading to the definition of the constituents of such networks as well as candidate targets. The initial step is to mimic at the molecular level a specific disease in the selected model system. This step involves modifying the DNA sequence of a gene or genes in the model system that are known to be involved in the disease. The modified DNA sequence leads to altered proteins, which in turn result in a physiological, behavioral or structural alteration in the organism that can be observed as a physical trait.

Our altered organisms are systematically mated with a comprehensive collection of organisms of the same species carrying mutations in each gene. Analysis of the offspring of these matings is used to identify the small number of genes among the many thousands in the genome whose change or regulation affects the targeted signaling network. These genes and their encoded proteins are potential targets. The populations of well-characterized genetically modified organisms we have produced are one of our key strategic assets and the strategy for their production is one of our core technologies. We have libraries of these organisms that have been modified in a controlled fashion, so that comprehensive pairwise breeding allows us to test the effect on the disease of increasing or decreasing the output of each gene in the model organism. The availability of this asset significantly enhances the efficiency of research directed at candidate target identification. Our ability to rapidly and selectively move from an alteration in a gene directly to the identification of targets that can reverse the effects of that alteration is an extremely powerful, rapid, direct route to new pharmaceuticals and agricultural products.

Compound-to-Target: Mechanism of Action. The molecular targets and mechanism of action for many promising or marketed pharmaceutical and agrochemical compounds are unknown. Determination of the target as well as the mechanism of action for such compounds provides starting points for the development of new compounds that may retain the desired biological effect without the limitations previously identified in the original compound, such as high manufacturing costs or undesirable side effects. Alternatively, such information may provide a new commercial opportunity to develop a small molecule directed at a validated signaling network. Application of our technology and tools not only permits us to identify key targets and functions for existing compounds provided by our partners, but also serves as the basis for us to rapidly and more effectively develop our own unique compounds.

The first step in this process requires the identification of compounds based on the availability of efficacy data and absence of information regarding the target(s) of the compound. The second step is to establish whether or not this pharmaceutical or agricultural compound induces an alteration in the appearance or observable behavior of the appropriate model organism. If such a biologically relevant effect is observed, a genetic assay designed to identify genes and encoded proteins that confer sensitivity or resistance to the applied compounds is established. This information can be readily assembled into a signaling network, establishing the mechanism of action for the compound.

Step IV: Target Validation and Product Development

Once the set of genes that interact with a signaling network of interest has been identified in the model system, the corresponding genes from other species can be identified using the tools of comparative genomics. These tools include computer-aided analysis, protein biochemistry, protein expression and gene transfer technologies, as well as the experimental and computational tools of structural biology, such as mass spectroscopy-based protein sequencing and x-ray crystallography. The result of these model genetic programs is a more focused and relevant collection of targets with a high degree of biological data supporting their function in a signaling network. This provides a superior basis for target selection in product development.

Our current capabilities provide a foundation for building a significant drug discovery program that will enable us to develop our own commercially valuable drugs and agrochemicals. Through our acquisition of the assets of MetaXen and our licensing of Bristol-Myers Squibb's chemical synthesis platform, we are now able to develop assays to identify compounds that modulate target activity, design and develop compounds that perform well under assay conditions and apply unique chemistry approaches to produce more effective compounds.

We use our model systems to identify genes whose change or regulation will lead to a desired therapeutic effect. Our model organisms that carry mutations common to human tumor cells are mated with large numbers of other organisms of the same species carrying mutations in each gene in order to identify those genes which are capable of specifically killing the tumor-like cells. Drugs can then be identified that modulate the same gene or protein and therefore lead to the desired therapeutic effect.

[DIAGRAM OF IDENTIFYING GENE IN MODEL SYSTEM]

The Exelixis Strategy

Our goal is to leverage our position as a leader in developing and applying comparative genomics and model system genetics to discover and develop new pharmaceutical, agrochemical, agricultural, diagnostic and biotechnology products. There are four principal elements to our business strategy:

Enhance Our Leadership in Comparative Genomics and Model System Genetics

We will continue to develop our proprietary technologies and infrastructure in support of our existing comparative genomics and model systems genetics platform. In addition, we will develop additional model systems in order to broaden the range of pharmaceutical and agricultural product opportunities that we can address using our fundamental knowledge and capabilities. We will continue to in-license and acquire technologies that complement our fundamental knowledge and capabilities and protect our technologies with patents and trade secrets. We will continue to recruit and collaborate with leaders in the field of model system genetics.

Maximize Opportunities in Multiple Markets

We believe that our model system genetics capabilities will enable us to develop products that address opportunities in the pharmaceutical, agrochemical, agricultural, diagnostic and biotechnology industries. We intend to address these opportunities through the establishment of collaborations with leading companies in their respective fields and through the development of our own proprietary products. We intend to enter into collaborations in order to fund the development of our core technologies and our own products, as well as provide us with the opportunity to receive significant future payments if our collaborators successfully market products that result from our collaborative work.

Retain Significant Rights in Each Collaboration

We have retained and plan to continue to retain significant technology rights to use targets and assays and other technologies developed in each of our collaborations for use in our proprietary research programs. These rights will enable us to use the genetic information that we develop within each individual collaboration to pursue additional opportunities that are outside of the scope of that particular collaboration.

Establish Internal Programs to Capture Greater Value From Our Core Technologies

We have invested and plan to continue to invest our own funds in discovering and developing our own proprietary products. These potential products will be available for licensing to our collaborative partners or to be retained by us for further development and commercialization.

Current Status of Our Programs

Our comparative genomics and model system genetics technologies can be applied to address opportunities in any market whose products can be enhanced by an understanding of DNA or proteins, including pharmaceutical, agrochemical, diagnostic, biotechnology, animal health, pesticides, crop improvement, livestock improvement and industrial enzymes. We have focused our initial research efforts to address attractive pharmaceutical and agrochemical markets. We will use our proprietary comparative genomics and model system genetics platform to analyze signaling networks to identify genes that can be used to develop treatments for a broad range of important diseases and to develop more productive crops and livestock.

We currently have active research programs in the following areas:

Human Pharmaceutical Research Programs

- Alzheimer's disease. Alzheimer's disease is a progressive neurological disease that results in the loss of cognitive functions, including memory. In collaboration with Pharmacia & Upjohn, we are applying our genetics technologies to understand the causes of Alzheimer's disease and to determine how to stop or reverse the progression of the disease. As a result of genetic screens performed to date, we have identified a target that may reduce the formation of structural abnormalities that are associated with Alzheimer's disease, and we have received a milestone payment for delivering this target to Pharmacia & Upjohn. We have also identified additional targets that are currently being evaluated for commercial application. Under the terms of our agreement with Pharmacia & Upjohn, we remain free to conduct research on our own behalf or in collaboration with third parties in other areas of central nervous system and cognitive disorders, such as Parkinson's disease, depression and schizophrenia.

- Angiogenesis and anti-angiogenesis. Angiogenesis is the formation of blood vessels. Products that promote angiogenesis could be used to treat coronary heart disease and vascular complications of diabetes. The ability to prevent the formation of new blood vessels could be used to kill cancer cells by depriving them of nutrients.

- Cancer. Cancer is a leading cause of death in developed countries. Cancer is caused by a number of genetic defects in cells resulting in unregulated cell growth. We are applying our genetics technologies to identify targets that will enable us to selectively kill cells in a broad range of solid tumors without damaging normal cells by using the cancer's genetic defects as a means of targeting treatment. As a result of genetic screens performed to date, we have identified several targets that may be used to develop new anti-cancer pharmaceutical products that have fewer side effects than current cancer treatments.

- Metabolic syndrome. Metabolic syndrome is a condition that underlies many human diseases, including coronary artery disease and diabetes. This condition results in the inability of individuals to maintain essential elements of blood chemistry, such as cholesterol and blood sugar, within desirable ranges. In our collaboration with Pharmacia & Upjohn, we have identified several targets that may be useful in developing products to optimize the levels of both cholesterol and fat in the bloodstream. We have also identified several targets that may be useful in developing products to control Type II diabetes. Under the terms of our agreement with Pharmacia & Upjohn, we remain free to conduct research on our own behalf or in collaboration with third parties in other areas of cardiovascular disease, including hypertension and control of heart rate, rhythm and contraction.

- Inflammation. Our inflammation program focuses on the innate immune system. The innate immune system is involved in diseases of inflammation, such as asthma and arthritis. We are applying our technologies to identify targets that control inflammation.

Agricultural Research Programs

- Animal Health. Livestock producers experience significant losses due to disease, and incur significant costs to control insects, parasites and other pests. Companion animals also represent a significant opportunity for products that control pests such as fleas, ticks and heartworms. During the course of conducting research in the area of insecticides and nematicides in our collaboration with Bayer, we have identified and will continue to identify targets that may be used to develop animal health products. Under the terms of our agreement with Bayer, we remain free to pursue animal health opportunities on our own behalf or in collaboration with third parties.

- Fungicides. Farmers experience significant crop losses due to fungal disease, which can destroy specific parts of the plant that are necessary for normal growth. The current market for fungicides is approximately $6 billion per year. We are developing fungal model systems, which we intend to use to identify targets that will lead to the development of new, more effective fungicides.

- Herbicides. Farmers experience significant reductions in crop yields due to weeds, which compete with crops for nutrients. The current market for herbicides is approximately $15 billion per year. We are developing plant model systems, which we intend to use to identify targets that will lead to the development of new, more effective herbicides.

- Insecticides. Farmers experience significant crop losses due to damage from insects. The current market for insecticides is approximately $9 billion per year. In collaboration with Bayer, we are applying our genetics technologies to identify targets that may be used to develop new, more effective insecticides. As a result of genetic screens performed to date, we have identified several targets that may be useful in developing new insecticides, and we have received milestone payments for delivering these targets to Bayer. We are currently developing assays that Bayer will use to develop the active component of new insecticides. Under the terms of our agreement with Bayer, we remain free to conduct research on our own behalf or in collaboration with third parties in pesticides other than insecticides or nematicides, as well as in the development of pest-resistant crops.

- Nematicides. Farmers experience significant crop losses due to damage from nematodes, which are small worms that infest plants. Currently, there are no products that effectively and safely control nematicides. In collaboration with Bayer, we are applying our genetics technologies to identify targets that may be used to develop new, more effective nematicides. We are in the process of taking the genetic tools we have developed for C. elegans, and applying these tools to various nematodes.

. Plant and Livestock Traits. Farmers and livestock producers rely on seed companies and animal genetics companies to develop products that will enable them to produce their crops or livestock at a competitive cost. The U.S. market for planting seed is approximately $7 billion. The market for meat and dairy products is in excess of $235 billion per year. We are in the process of developing plant model systems, and we intend to use these model systems to identify targets that may be used to develop crops with superior yield and improved nutritional profiles. We also intend to apply our comparative genomics and mouse model systems to develop more rapidly growing livestock and cattle that produce milk with an improved nutritional profile.

The following table summarizes the current status of the research projects described above:

[DIAGRAM OF SUMMARY OF CURRENT STATUS OF RESEARCH PROJECTS]

Mechanism of Action Programs

We are performing mechanism of action studies for Bayer, Pharmacia & Upjohn and Bristol-Myers Squibb. Each of our partners has provided us a number of compounds that have interesting biological activity but whose molecular target is unknown. We utilize our model systems to identify the targets for the compounds and provide those targets to our partners. The first step in this process is referred to as a "feasibility study." We use such studies to establish whether or not our model systems can be used to determine the mechanism of action for a particular compound. Our experience to date indicates that more than 50% of compounds selected by our partners and provided to us in a blinded fashion are suitable for further study. Once feasibility has been established, we work towards the identification of the target for the compound as well as other components of its associated signaling pathway. The targets are identified through the analysis of organisms that are either resistant or hypersensitive to the compound. Following identification, the targets are confirmed using biochemical assays. Targets and other components of the signaling pathways are candidates for further compound development.

Mechanism of action projects are very efficient: a small research team can typically identify the gene targets of a number of compounds within a few months. We intend to establish multiple mechanism of action collaborations with pharmaceutical and agrochemical companies. Since our partners are confident that modulating these targets leads to desirable biological activity, we believe that our partners will actively pursue many of the targets without further validation. Additionally, since

many of the compounds with which we identify the targets can be used as the basis for developing better compounds, we believe that this approach can save two years or more in time to market as compared to more traditional approaches. We are also capitalizing on this technology to develop our own proprietary compounds.

The following table summarizes the current status of our mechanism of action programs described above:

[TABLE: MECHANISM OF ACTION STATUS]

Corporate Collaborations

It is part of our strategy to establish collaborations with leading companies in the pharmaceutical and agrochemical industries. Through these collaborations, we obtain license fees and research funding, together with the opportunity to receive milestone payments and royalties resulting from research results and subsequent product development. To date we have structured our agreements to retain significant rights in technology developed in each program for use elsewhere in our business.

Bayer accounted for 41% of our revenues in 1999, and Pharmacia & Upjohn accounted for 54% of our revenues in 1999. The loss of either of them as a customer would have a material adverse effect on our business, financial condition and results of operations. While the amount of milestone payments for any product development pursuant to any collaboration is not expected to be material under our existing revenue recognition policy, the aggregate of such payments may be material depending upon our collaborators' development decisions and the number of products achieving milestones.

Bayer Corporation

In December 1999, we established GenOptera LLC, a Delaware limited liability company, with Bayer Corporation to develop insecticides and nematicides for crop protection. As part of the formation of this joint venture, Bayer agreed to pay us, through GenOptera, license fees and research commitment fees of $20 million and to provide eight years of research funding at a minimum level of $10 million per year (for a total of $100 million of committed fees and research support). One-half, or $10 million, of these license and research commitment fees were received in January 2000, with the remaining amounts to be received in January 2001. Bayer owns 60% of

GenOptera and Exelixis owns the remaining 40%. The formation of this joint venture is an outgrowth of, and replaces, the contractual collaboration we first established with Bayer AG (the corporate parent of Bayer Corporation) in May 1998. The funding committed as part of the formation of GenOptera is in addition to the research support that has already been provided under the original agreement. Bayer will pay GenOptera milestones and royalties on products developed by it resulting from the GenOptera research, and we will pay GenOptera royalties on certain uses of technology arising from such research.

GenOptera has been organized to conduct its research in close conjunction with the other research conducted at Exelixis. Pursuant to a services agreement, Exelixis employees will conduct the GenOptera research, and the operations of the joint venture will be located in Exelixis research facilities. We have agreed that during the term of GenOptera research support, we will not conduct other research directed towards the specified field of research except through the joint venture.

GenOptera will identify and validate molecular targets within its field of research. GenOptera will also conduct assay development based on those targets to the extent determined by the management committee of the joint venture. Bayer will have the first right to screen compounds in assays developed by GenOptera for insecticidal and nematicidal use.

The parties have agreed on a detailed allocation of rights with respect to the use of targets identified by GenOptera, and the use of assays developed against those targets by GenOptera. The allocation of rights takes into consideration many different factors, but is designed generally to:

- provide Bayer exclusive rights to research in the areas of insecticides and nematicides, which precludes Exelixis from conducting research in these areas with other parties;

- permit Bayer to market any resulting products for most nonpharmaceutical uses; and

- permit Exelixis to use the technology generated by Exelixis or GenOptera in the course of the joint venture's research for other purposes, although this work is subject to restrictions designed to protect Bayer's interests arising from the joint venture.

We retain exclusive rights to use the technology resulting from the joint venture's work for pharmaceutical purposes, subject to rights in favor of Bayer to collaborate with us in such projects.

Either Bayer or Exelixis may terminate the GenOptera research efforts after eight years. In addition, Bayer may terminate the joint venture or buy out our interest in the joint venture under specified conditions, including, by way of example, failure to agree on key strategic issues after a period of years, the acquisition of Exelixis by another company or the loss of key personnel that we are unable to replace with individuals acceptable to Bayer.

Pharmacia & Upjohn AB

In February 1999, we established a five-year collaboration with Pharmacia & Upjohn to identify targets in the fields of Alzheimer's disease, Type II diabetes and associated complications of metabolic syndrome, a condition which comprises much of diabetes, obesity and portions of cardiovascular disease. In October 1999, this collaboration was expanded to include mechanism of action work designed to identify biological targets of agents already identified by Pharmacia & Upjohn as having activity in these fields. Under this agreement, Pharmacia & Upjohn paid us a $5 million license fee and provides ongoing research funding and support. Pharmacia & Upjohn will also pay us milestones based on target selection and royalties in the event that products result from the targets that we identify.

Under this agreement, Pharmacia & Upjohn has the exclusive right to pursue, within the field of Alzheimer's disease and metabolic syndrome, a specified number of targets that we identify. Although Pharmacia & Upjohn is obligated to use these targets only for research related to

Alzheimer's disease and metabolic syndrome, it may develop and commercialize any resulting products for any use. Pharmacia & Upjohn has the right to substitute targets if newly identified ones appear more promising than those previously designated by Pharmacia & Upjohn, but there are numerical limitations on the total number of targets that can be reserved by Pharmacia & Upjohn at any single time. We retain the exclusive right, subject to certain rights of first negotiation of Pharmacia & Upjohn, to use all targets identified in the course of the research performed for Pharmacia & Upjohn that are not subsequently selected by Pharmacia & Upjohn. In addition, we retain rights for specified uses of those targets that are selected by Pharmacia & Upjohn for further research.

Either party may terminate the research at the end of the third year of the collaboration, the fifth year or any subsequent year. Pharmacia & Upjohn may terminate the research at any time with advance written notice in the event of our failure to find an acceptable replacement for a particular key employee or in the event of conflicting material third-party intellectual property rights.

In conjunction with the establishment of our research collaboration, Pharmacia & Upjohn purchased 2,500,000 shares of our Series D preferred stock for a purchase price of $7.5 million, and also made us an interest-free loan of $7.5 million. The loan is evidenced by a promissory note which must be converted into shares of our common stock during the two-year period following this offering at a price per share equal to 120% of the initial public offering price, the time of such conversion prior to March 2002 to be determined by Pharmacia & Upjohn.

Bristol-Myers Squibb

In September 1999, we entered into a three-year research collaboration with Bristol-Myers Squibb to identify the mechanism of action of compounds delivered to us by Bristol-Myers. The identity and function of these compounds, including their field of activity, are not known to us prior to their delivery to us.

Under this agreement, the parties agreed to a non-exclusive cross-license of research technology. We granted Bristol-Myers the right to use our proprietary technology covering C. elegans and D. melanogaster genetics, and in exchange Bristol-Myers transferred to us combinatorial chemistry hardware and software, together with related intellectual property rights, which had been developed by Bristol-Myers. The technology received from Bristol-Myers under this agreement will expedite the development of our compound discovery capabilities.

Under the agreement, Bristol-Myers pays us a technology access fee and research support payments, as well as additional milestones and royalties based on achievements in the research and commercialization of products.

Relationship with Artemis

In June 1998, we purchased a minority interest in Artemis Pharmaceuticals GmbH, a genetics company located in Cologne, Germany, focusing on the development of vertebrate model genetic systems such as mice and zebrafish. We established this relationship with Artemis in order to expand our access to other model systems technology beyond our existing systems. The individual founders of Artemis include Professor Christianne Nusslein-Volhard, Ph.D., a geneticist and 1995 Nobel Laureate in medicine and physiology, Professor Klaus Rajewsky, Ph.D., professor and director of the Institute of Genetics at the University of Cologne, and Peter Stadler, Ph.D., the former head of pharma-biotechnology for Bayer AG's European operations. As of December 31, 1999, we own 24% of the outstanding equity of Artemis and, pursuant to a shareholders' agreement, we have appointed three of the five members of the Artemis shareholders' governing board. We have agreed in principle with Artemis, and Artemis has solicited shareholder consent, to amend the shareholders' agreement to increase the size of the Artemis shareholders' governing board to six members, of which we will have the right to appoint three members.

In September 1998, we also entered into a five-year cooperation agreement with Artemis under which we agreed to share technology and business opportunities as they arise. While either party may terminate this agreement at any time, we believe that it provides a significant opportunity to access complementary genetic research. In addition to developing zebrafish and mouse model system technology, Artemis is studying cartilage biology, angiogenesis and cardiovascular biology. We and Artemis have developed an integrated research approach in the field of angiogenesis and are jointly marketing this capability.

Academic and Government Collaborations

In order to enhance our research and technology access, we have established key relationships with government agencies and major academic centers in the U.S. and Europe. Our government collaborators include a number of U.S. Department of Agriculture campuses, and we maintain over ten academic collaborations with investigators at such institutions as Stanford University, Columbia University, University of Cologne, The Rockefeller Institute and the University of North Carolina. The purpose of these government and academic collaborations is to continuously improve our core technology and to facilitate the establishment of new discovery programs.

We will continue to establish strategic collaborations with government agencies and academic centers. We will seek to retain significant rights to develop and market products arising from our strategic alliances. In addition, we will continue to invest our own funds in certain specific areas and product opportunities with the aim of maintaining, enhancing and extending our core technology, as well as increasing our opportunities to generate greater revenue from such activities.

Competition

We are aware of other companies, including Paradigm Genetics, Inc., DeltaGen, Inc., Devgen N.V. and Lexicon Genetics Incorporated, that have or are developing capabilities in the use of model systems to define gene function. In addition, many genomics companies are expanding their capabilities, using a variety of techniques, to determine gene function. The pharmaceutical industry more broadly has invested heavily in obtaining access to genomics data and identifying biological targets.

We are aware that companies focused specifically on other model systems such as mice and yeast have alternative methods for identifying product targets. In addition, pharmaceutical, biotechnology and genomics companies and academic institutions are conducting work in this field. In the future, we expect the field to become more competitive with companies and academic institutions seeking to develop competing technologies.

Any products that we may develop or discover through application of our technologies will compete in highly competitive markets. Many of our potential competitors in these markets have substantially greater financial, technical and personnel resources than we do, and we cannot assure you that they will not succeed in developing technologies and products that may render our technologies and products and those of our collaborators obsolete or noncompetitive. In addition, many of our competitors have significantly greater experience than we do in their respective fields.

Proprietary Rights

To establish and protect our proprietary technologies and targets, we rely on a combination of patent, copyright, trademark and trade secret laws, as well as confidentiality provisions in our contracts. We believe that we have developed proprietary technology for use in target identification, biochemical pathway identification and assay design and that we have identified proprietary targets. Our patent strategy is designed to provide us with freedom to operate and facilitate commercialization

of our current and future products. Our patent portfolio includes two issued U.S. patents relating to our proprietary model genetic systems and comparative genomics technologies exclusively licensed from the Carnegie Institution of Washington and Yale University. We have an additional 49 pending U.S. and foreign patent applications related to our technologies and specialized screens, and the application of these technologies to diverse industries including agriculture, pharmaceuticals, diagnostics, chemicals and small molecule therapeutics. The patent licensed from the Carnegie Institution of Washington will expire on June 2, 2004, and the patent licensed from Yale University will expire on April 18, 2012. Patents that issue from the pending patent applications we exclusively own will begin to expire in March 2018.

We also rely in part on trade secret protection of our intellectual property. We attempt to protect our trade secrets by entering into confidentiality agreements with third parties, employees and consultants. Our employees and consultants also sign agreements requiring that they assign to us their interests in patents and other 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 assure you that employees, consultants or third parties will not breach the confidentiality provisions in our contracts or infringe or misappropriate our patents, trade secrets and other proprietary rights, and the measures we are taking to protect our proprietary rights may not 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 ourself against such claims, whether they are with or without merit and whether they are resolved in favor of or against us or our licensors, we may face costly litigation and 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, which could seriously harm our business or financial condition.

Legal Proceedings

We are not a party to any material legal proceedings.

Employees

As of December 31, 1999, we had 168 full-time employees, 76 of whom hold Ph.D. and/or M.D. degrees and 130 of whom were engaged in full-time research activities. We plan to expand our corporate development programs and hire additional staff as corporate collaborations are established and we expand our internal development programs. Our success will depend upon our ability to attract and retain employees. We face competition in this regard from other companies in both the biotechnology 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.

Facilities

We currently lease an aggregate of 70,000 square feet of office and laboratory facilities in South San Francisco, California in two buildings. The first building lease, for 33,000 square feet, expires on July 31, 2005. The second building lease, for 37,000 square feet, expires concurrent with our move to new facilities described below.

We are party to a lease arrangement for two new office and laboratory facilities totaling a maximum of 120,000 square feet. The first building lease, for 70,000 square feet, expires 17 years from the rent commencement date. Under this lease, we have two five-year options to extend the term prior to expiration. We exercised an option to obtain an additional 50,000 square feet in a building to be constructed across the street. Construction is required to begin following an agreement on the terms of a lease for this second building. We will move into the first building beginning in the second half of 2000 and believe that the new facilities, including the space in the building to be constructed, will be sufficient for a minimum of three years. Depending on our growth, we believe we may require additional space thereafter and will seek additional facilities.

Executive Officers and Directors

The following table sets forth information as of February 28, 2000 regarding our current executive officers and directors.

Name	Age	Position
George A. Scangos, Ph.D.	51	President, Chief Executive Officer and Director
Geoffrey Duyk, M.D., Ph.D.	40	Chief Scientific Officer and Director
Lloyd M. Kunimoto	46	Senior Vice President of Business Development
Michael Morrissey	39	Vice President, Discovery Research
Michael Rusnak	43	Vice President, Pharmaceutical Business Development
Glen Y. Sato	40	Chief Financial Officer, Vice President of Legal Affairs and Secretary
Stelios Papadopoulos, Ph.D. (1)(2)	51	Chairman of the Board of Directors
Charles Cohen, Ph.D. (1)	49	Director
Jurgen Drews, M.D.	67	Director
Jason S. Fisherman, M.D. (2)	43	Director
Jean-Francois Formela, M.D. (2)	43	Director
Edmund Olivier de Vezin (1)	62	Director
Peter Stadler, Ph.D.	54	Director
Lance Willsey, M.D.	38	Director

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(1) Member of the compensation committee.
(2) Member of the audit committee.

George A. Scangos, Ph.D., has served as our President and Chief Executive Officer since October 1996 and as a Director since October 1996. From September 1993 to October 1996, Dr. Scangos served as President of Biotechnology at Bayer Corporation, a pharmaceutical company, and was responsible for research, business and process development, manufacturing, engineering and quality assurance. Dr. Scangos holds a B.A. in Biology from Cornell University and a Ph.D. in Microbiology from the University of Massachusetts. He was a Post-Doctoral Fellow at Yale University and a faculty member at the Johns Hopkins University. He currently holds an appointment as Adjunct Professor of Biology at Johns Hopkins University.

Geoffrey Duyk, M.D., Ph.D., has served as our Chief Scientific Officer since April 1997 and as a Director since April 1998. From 1994 to 1997, Dr. Duyk served at Millennium Pharmaceuticals, Inc., a genomics company, mostly recently as Vice President of Genomics. From 1992 to 1994, Dr. Duyk was an Assistant Professor in the Department of Genetics at Harvard Medical School and an Assistant Investigator of the Howard Hughes Medical Institute. While at Harvard Medical School, Dr. Duyk was a co-principal investigator in the NIH-funded Cooperative Human Linkage Center. Dr. Duyk holds a Ph.D. and M.D. from Case Western Reserve University and completed his residency and post-doctoral training at University of California, San Francisco.

Lloyd M. Kunimoto has served as our Senior Vice President of Business Development since August 1999. From 1997 to 1999, Mr. Kunimoto served as Vice President of Commercial Development for the Nutrition and Consumer Products sector of Monsanto Company, a life sciences company. While at Monsanto, Mr. Kunimoto was responsible for directing Monsanto's genetic

engineering program in the area of food ingredients. From 1996 to 1997, Mr. Kunimoto served as President and Chief Executive Officer of Calgene, Inc., an agricultural biotechnology company. Mr. Kunimoto holds a B.S. in Mathematics from Stanford University.

Michael M. Morrissey, Ph.D. has served as our Vice President of Discovery Research since February 2000. Previously with Berlex Biosciences since 1991, Dr. Morrissey held positions of increasing responsibility, including Vice President of Discovery Research, Director of Pharmaceutical Discovery and Unit Head of Medicinal Chemistry. Dr. Morrissey received his Ph.D. in Chemistry from Harvard University and his B.S. Honors in Chemistry from the University of Wisconsin.

Michael Rusnak, has served as our Vice President of Pharma Business Development since February 2000. Mr. Rusnak was Vice President of Business Development for CombiChem, Inc. from March 1999 until the company was acquired by DuPont Pharmaceuticals in November of 1999. From January 1996 to November 1999, Mr. Rusnak was employed by Lexicon Genetics Incorporated in The Woodlands, Texas as Vice President of Marketing and Business Development. Previous to Lexicon, he served as Director of Marketing for Aprogenex, Inc. He received his B.S. in Microbiology from St. Bonaventure University and his M.S. in Clinical Science from San Francisco State University.

Glen Y. Sato has served as our Chief Financial Officer, Vice President of Legal Affairs and Secretary since November 1999. From April 1999 to November 1999, Mr. Sato served as Vice President, Legal and General Counsel for Protein Design Labs, Inc., a biotechnology company, where he previously served as the Associate General Counsel and Director of Corporate Planning from July 1993 to April 1999. Mr. Sato holds a B.A. from Wesleyan University and a J.D. and M.B.A. from the University of California, Los Angeles.

Stelios Papadopoulos, Ph.D., has been a Director since December 1994 and Chairman of the Board since January 1998. Dr. Papadopoulos has been an investment banker at SG Cowen since February, 2000. Prior to this, Dr. Papadopoulos was an investment banker at PaineWebber from April 1987 to February 2000, and Chairman of PaineWebber Development Corp., a PaineWebber subsidiary, from June 1998 to February 2000. Dr. Papadopoulos is a member of the Board of Directors of Diacrin, Inc. and several private companies. Dr. Papadopoulos holds a Ph.D. in Biophysics and an M.B.A. in Finance, both from New York University.

Charles Cohen, Ph.D., has been a Director since November 1995. Dr. Cohen co-founded Creative BioMolecules, Inc., a biotechnology company, in 1982 and is its Chief Scientific Officer. Dr. Cohen serves on the board of directors of Creative BioMolecules, Inc. and several private companies. Dr. Cohen holds a B.A. from State University of New York at Buffalo and a Ph.D. in Basic Medical Sciences from New York University School of Medicine.

Jurgen Drews, M.D., has been a Director since July 1998. Dr. Drews has been Chairman of the Board of International Biomedicine Management Partners, Inc. since October 1997. From 1996 to 1997, Dr. Drews served as President of Global Research for Hoffmann-La Roche Inc. and also served as a member of the Corporate Executive Committee of the Roche Group. From 1991 to 1995, Dr. Drews served as President of International Research and Development and as a member of the Corporate Executive Committee for Roche. Dr. Drews is also a director of Protein Design Labs, Inc., Human Genome Sciences, Inc. and MorphoSys GmbH. Dr. Drews holds an M.D. in Internal Medicine and Molecular Biology from the University of Heidelberg.

Jason S. Fisherman, M.D., has been a Director since March 1996. Dr. Fisherman has been a partner of Advent International Corporation since 1994. From 1991 to 1994, Dr. Fisherman served as Senior Director of Medical Research at Enzon, where he managed clinical programs in oncology, genetic diseases and blood substitutes. Dr. Fisherman is a director of Mediconsult.com, Inc., ILEX

Oncology, Inc. and several private companies. Dr. Fisherman holds a B.A. in Molecular Biophysics and Biochemistry from Yale University, an M.D. from the University of Pennsylvania and an M.B.A. from the Wharton Graduate School of Business.

Jean-Francois Formela, M.D., has been a Director since September 1995. Dr. Formela was a partner of Atlas Venture from 1993 to 1995, and has been a general partner of Atlas since 1995. From 1989 to 1993, Dr. Formela served at Schering-Plough, most recently as Senior Director, Medical Marketing and Scientific Affairs, where he had biotechnology licensing and marketing responsibilities. Dr. Formela serves on the board of directors of BioChem Pharma, Inc. and several private companies. Dr. Formela holds an M.D. from Paris University School of Medicine and an M.B.A. from Columbia Business School.

Edmund Olivier de Vezin has been a Director since July 1997. Mr. Olivier has been a General Partner of Oxford BioScience Partners and general partner of Fairfield/Steuben Venture Partners since 1993. From 1983 to 1993, Mr. Olivier served as Vice President of Technology and Planning at Diamond Shamrock. Mr. Olivier is a Life Fellow and a Member of the National Council of the Salk Institute and a former Chairman of the Biotechnology Venture Investors Group. Mr. Olivier holds a B.S. in Chemical Engineering from Rice University and an M.B.A. from Harvard University Graduate School of Business.

Peter Stadler, Ph.D., has been a Director since April 1998. Dr. Stadler has been President and Chief Executive Officer of Artemis Pharmaceuticals, GmbH since June 1998. From 1987 to 1997, Dr. Stadler was head of pharma-biotechnology at Bayer AG. From 1986 to 1987, Dr. Stadler served as a visiting scientist at the University of Munster, Germany and the Massachusetts Institute of Technology in the area of biotechnology. Dr. Stadler holds a Ph.D. in Organic Chemistry and Biochemistry from the University of Hamburg.

Lance Willsey, M.D., has been a Director since April 1997. Dr. Willsey has been a Founding Partner of DCF Capital, a hedge fund focused on investing in the life sciences, since July 1998. From July 1997 to July 1998, Dr. Willsey served on the Staff Department of Urologic Oncology at the Dana Farber Cancer Institute at Harvard University School of Medicine. From July 1996 to July 1997, Dr. Willsey served on the Staff Department of Urology at Massachusetts General Hospital at Harvard University School of Medicine, where he was a urology resident from July 1992 to July 1996. Dr. Willsey holds a B.S. in Physiology from Michigan State University and an M.S. in Biology and an M.D. from Wayne State University.

Scientific Advisory Board

The following individuals are members of our Scientific Advisory Board:

Name	Current Position
Spyridon Artavanis-Tsakonas, Ph.D.	Director of Developmental Biology and Cancer at the Massachusetts General Hospital Cancer Center
Richard ffrench-Constant, Ph.D.	Chair of Insect Molecular Biology, Department of Biology and Biochemistry at the University of Bath
Corey S. Goodman, Ph.D.	Evan Rauch Professor of Neuroscience and Director of the Wills Neuroscience Institute at the University of California, Berkeley
Ronald Plasterk, Ph.D.	Director of the Hubrecht Laboratory for Developmental Biology (Utrecht, the Netherlands)
Marc Tessier-Lavigne, Ph.D.	Professor of Anatomy and of Biochemistry and Biophysics, and Director of the Center for Brain Development, University of California, San Francisco, and Investigator of the Howard Hughes Medical Institute
James H. Thomas, Ph.D.	Associate Professor in the Department of Genetics and member of the Programs in Molecular and Cellular Biology and in Neuroscience and Behavior, University of Washington, Seattle
Christianne Nusslein-Volhard, Ph.D.	Director of the Max-Planck Institute (Tubingen, Germany)
Klaus Rajewsky, Ph.D.	Professor and Director of the Institute of Genetics at the University of Kohn

Board Composition

We currently have ten directors. Subject to approval, in accordance with the terms of our certificate of incorporation and bylaws, upon the closing of this offering we will have ten directors and the terms of office of the board of directors will be divided into three classes. As a result, a portion of our board of directors will be elected each year. The division of the three classes and their respective election dates are as follows:

- the class I directors will be Drs. Cohen, Drews and Duyk, and their term will expire at the annual meeting of stockholders to be held in 2000;
- the class II directors will be Drs. Fisherman and Formela and Mr. Olivier, and their term will expire at the annual meeting of stockholders to be held in 2001; and
- the class III directors will be Drs. Papadopoulos, Scangos, Stadler and Willsey, and their term will expire at the annual meeting of stockholders to be held in 2002.

At each annual meeting of stockholders after the initial classification, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. In addition, our certificate of incorporation provides that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of the board of directors may have the effect of delaying or preventing changes in control or management of Exelixis.

The holders of our preferred stock currently have rights to appoint directors pursuant to the Fourth Amended and Restated Securityholders' Agreement that we entered into in February 1999 with our Series A, Series B, Series C and Series D preferred stockholders. In accordance with these appointment rights:

- Dr. Formela was appointed by Atlas Venture Fund II, L.P. and Atlas Venture Europe Fund B.V.;
- Dr. Fisherman was appointed by our Series A and Series B preferred stockholders;
- Drs. Papadopoulos, Drews and Willsey and Mr. Olivier were appointed by our Series A, Series B, Series C and Series D preferred stockholders voting together as a single class; and
- Dr. Scangos serves as a director by virtue of his position as our Chief Executive Officer.

Upon the closing of this offering, our preferred stock will be converted to common stock and these appointment rights will cease to exist.

Board Committees

Audit Committee. Our audit committee reviews our internal accounting procedures and consults with, and reviews the services provided by, our independent accountants. Current members of our audit committee are Drs. Fisherman, Formela and Papadopoulos.

Compensation Committee. Our compensation committee reviews and recommends to the board of directors the compensation and benefits of all our officers and establishes and reviews general policies relating to compensation and benefits of our employees. The compensation committee also administers the issuance of stock options and other awards under our stock plans. Current members of the compensation committee are Mr. Olivier and Drs. Cohen and Papadopoulos.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has at any time been an officer or employee of Exelixis. No interlocking relationship exists between our board of directors or compensation committee and the board of directors or compensation committee of any other company, nor has any interlocking relationship existed in the past.

Drs. Formela, Papadopoulus and Scangos serve as members of the Shareholders' Committee of Artemis, the governing board of Artemis responsible for compensation decisions. Dr. Stadler, a member of our board, is Chief Executive Officer of Artemis.

Director Compensation

Directors currently receive no cash compensation from us for their services as members of the board or for attendance at committee meetings.

In January 2000, we adopted the 2000 Non-Employee Directors' Stock Option Plan to provide for the automatic grant of options to purchase shares of common stock to our directors who are not employees of Exelixis or of any affiliate of Exelixis. Any non-employee director elected after the closing of this offering will receive an initial option to purchase 25,000 shares of common stock. Starting at the annual stockholder meeting in 2000, all non-employee directors will receive an annual option to purchase 5,000 shares of common stock. See "--Employee Benefit Plans--2000 Non-Employee Directors' Stock Option Plan" for a more detailed explanation of the terms of these stock options.

Executive Compensation

The following table sets forth information concerning the compensation that we paid during 1999 to our Chief Executive Officer and each of the four other most highly compensated executive officers who earned more than $100,000 during 1999. These individuals are referred to as the "named executive officers."

Summary Compensation Table

Name and Principal Position	Annual Compensation		Long-Term Compensation Awards
	Salary	Bonus	Securities Underlying Options
George A. Scangos, Ph.D. President and Chief Executive Officer	$400,000	$250,000(1)	600,000
Geoffrey Duyk, M.D., Ph.D. Chief Scientific Officer	290,000	162,000(2)	375,000
Lloyd M. Kunimoto (3) Senior Vice President of Business Development	87,500	71,875	262,500
Glen Y. Sato (4) Chief Financial Officer, Vice President of Legal Affairs and Secretary	30,962	--	243,750
Lynne Zydowsky, Ph.D.(5)	162,500	48,000(6)	90,000

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(1) Includes a 1998 bonus of $50,000 that was paid in 1999.
(2) Includes a 1998 bonus of $87,000 that was paid in 1999.
(3) Mr. Kunimoto joined Exelixis in August 1999. Mr. Kunimoto's annual salary is $210,000.
(4) Mr. Sato joined Exelixis in November 1999. Mr. Sato's annual salary is $210,000.
(5) Dr. Zydowsky left her position as our Vice President, Pharmaceutical Business Development in January 2000.
(6) Includes a 1998 bonus of $20,000 that was paid in 1999.

Option Grants in Fiscal Year 1999

The following table sets forth each grant of stock options during the fiscal year ended December 31, 1999, to each of the named executive officers.

The exercise price of each option is equal to the estimated fair market value of our common stock as determined by the board of directors on the date of grant. In determining the estimated fair market value of our common stock on the date of grant our board of directors considered many factors, including:

- the fact that our options involved illiquid securities in a nonpublic company;
- prices of preferred stock issued by Exelixis to outside investors in arm's-length transactions;
- the rights, preferences and privileges of our preferred stock over our common stock;
- our stage of development and business strategy; and
- the likelihood that our common stock would become liquid through an initial public offering, a sale of Exelixis or another event.

The exercise price may be paid in cash, promissory notes, shares of our common stock valued at fair market value on the exercise date or through a cashless exercise procedure involving a same-day sale of the purchased shares.

The potential realizable value of our options is calculated based on the ten-year term of the option at the time of grant. Stock price appreciation of 5% and 10% is assumed pursuant to rules promulgated by the Securities and Exchange Commission and does not represent our prediction of our stock price performance. The potential realizable values at 5% and 10% appreciation are calculated by:

- multiplying the number of shares of common stock subject to a given option by the assumed initial public offering price of $11.00 per share;
- assuming that the aggregate stock value derived from that calculation compounds at the annual 5% or 10% rate shown in the table until the expiration of the options; and
- subtracting from that result the aggregate option exercise price.

Percentages shown under "Percent of Total Options Granted to Employees in 1999" are based on an aggregate of 2,892,202 (post-split) options granted to our employees, consultants and directors under our stock option plans during 1999.

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
Name	Number of Securities Underlying Options Granted (#)	Percent of Total Options Granted to Employees in 1999 (%)	Exercise Price per Share ($)	Expiration Date	5%	10%
George A. Scangos, Ph.D.	375,000	12.97	0.27	08/04/09	6,297,979	9,625,284
	225,000	7.78	1.33	12/16/09	3,540,287	5,536,671
Geoffrey Duyk, M.D., Ph.D.	225,000	7.78	0.27	08/04/09	3,778,787	5,775,171
	150,000	5.19	1.33	12/16/09	2,360,192	3,691,114
Lloyd M. Kunimoto	225,000	7.78	0.27	08/01/09	3,778,787	5,775,171
	37,500	1.33	1.33	12/16/09	590,048	922,778
Glen Y. Sato	243,750	8.43	0.40	11/07/09	4,061,832	6,224,492
Lynne Zydowsky, Ph.D.	60,000	2.07	0.27	06/03/09	1,007,677	1,540,045
	30,000	1.04	0.40	10/31/09	499,938	766,123

Option Values at December 31, 1999

The following table sets forth the number and value of securities underlying unexercised options that are held by each of the named executive officers as of December 31, 1999.

Amounts shown under the column "Value of Unexercised In-the-Money Options at December 31, 1999" are based on the assumed initial public offering price of $11.00, without taking into account any taxes that may be payable in connection with the transaction, multiplied by the number of shares underlying the option, less the exercise price payable for these shares.

			Number of Securities Underlying Unexercised Options at December 31, 1999(1)		Value of Unexercised In-the-Money Options at December 31, 1999(1)	
Name	Shares Acquired on Exercise (#)	Value Realized ($)	Exercisable/ Vested	Exercisable/ Unvested	Exercisable/ Vested	Exercisable/ Unvested
George A. Scangos, Ph.D.	--	--	196,094	666,406	2,104,089	6,912,036
Geoffrey Duyk, M.D., Ph.D.	--	--	123,047	420,703	1,320,294	4,355,143
Lloyd M. Kunimoto	--	--	--	262,500	--	2,776,875
Glen Y. Sato	62,500	58,125	--	181,250	--	1,921,250
Lynne Zydowsky, Ph.D.	42,263	30,743	--	96,487	--	1,031,770

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(1) All options are exercisable upon grant but are subject to a right of repurchase by Exelixis until vested.

Employee Benefit Plans

2000 Equity Incentive Plan

We adopted our 2000 Equity Incentive Plan in January 2000 to replace the 1997 Equity Incentive Plan.

Administration. The plan is administered by our board of directors, or a committee appointed by the board, which determines recipients and types of stock awards to be issued, including number of shares under the stock award and the exercisability of the stock award, and also has the power to construe, interpret and amend the incentive plan.

Share Reserve. We have reserved a total of 3,000,000 shares of our common stock for issuance under the incentive plan. On the last day of each of our fiscal years for ten years, starting in 2000, the share reserve will automatically be increased by a number of shares equal to the greater of:

- 5% of our outstanding shares on a fully-diluted basis; or
- that number of shares subject to stock awards granted under the incentive plan during the prior 12-month period.

The automatic increase is subject to reduction by the board, and share reserve increases for incentive stock options may not exceed an aggregate of 30,000,000 shares over the term of the plan. If the recipient of a stock award does not purchase the shares subject to his or her stock award before the stock award expires or otherwise terminates, the shares that are not purchased will again become available for issuance under the incentive plan. Likewise, if the recipient of a stock award terminates his or her service to us, any unvested shares that we repurchase will again become available for issuance under the incentive plan for all awards other than incentive stock options.

Eligibility. The board may grant incentive stock options that qualify under Section 422 of the Internal Revenue Code to our employees and to the employees of our affiliates. The board also may grant nonstatutory stock options, stock bonuses and restricted stock purchase awards to our employees, directors and consultants as well as to the employees, directors and consultants of our affiliates.

Under certain conditions the board may grant an incentive stock option to a person who owns or is deemed to own stock possessing more than 10% of our total combined voting power or the total combined voting power of an affiliate of ours. In such a case, the exercise price of any such options must be at least 110% of the fair market value of the stock on the grant date, and the option term must be five years or less.

Option Terms. The board may grant incentive stock options with an exercise price of 100% or more of the fair market value of a share of our common stock on the grant date, but it has the discretion to set a lower exercise price for nonstatutory stock options. If the value of our shares declines thereafter, the board may offer optionholders the opportunity to replace their outstanding higher-priced options with new lower-priced options.

The maximum option term is ten years. Subject to this limitation, the board may provide for exercise periods of any length with respect to individual option grants. An option generally terminates three months after the optionholder's service to us or one of our affiliates terminates. If this termination is due to the optionholder's disability, the exercise period generally is extended to 12 months. If termination is due to the optionholder's death or if the optionholder dies within three months of the date on which his or her service terminates, the exercise period generally is extended to 18 months following the optionholder's death.

The board may provide for the transferability of nonstatutory stock options but not incentive stock options. However, the optionholder may designate a beneficiary to exercise either type of option in the event of the optionholder's death. If the optionholder does not designate a beneficiary, the optionholder's option rights will pass by his or her will or by the laws of descent and distribution.

Terms of Other Stock Awards. The board determines the purchase price of other stock awards. The board may award stock bonuses in consideration of past services without a purchase payment. Shares that we sell or award under our incentive plan may, but need not, be restricted and subject to a repurchase option in our favor in accordance with a vesting schedule that the board determines. The board, however, may accelerate the vesting of the restricted stock.

Other Provisions. Transactions that do not involve our receipt of consideration, including a merger, consolidation, reorganization, stock dividend and stock split, may trigger a change in the class and number of shares subject to the incentive plan and to outstanding awards. In that event, the board will appropriately adjust the incentive plan as to the class and the maximum number of shares subject to the incentive plan and the cap on the number of shares available for incentive stock options. It will also adjust outstanding awards as to the class, number and price of shares subject to such awards.

Effect of a Merger on Stock Awards. If we dissolve or liquidate, then our outstanding stock awards will terminate immediately prior to such event. However, we treat outstanding stock awards differently in the following change in control situations:

- a sale, lease or other disposition of all or substantially all of our assets;
- a merger or consolidation in which we are not the surviving corporation;
- a reverse merger in which we are the surviving corporation but the shares of our common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property; and
- an acquisition of the beneficial ownership of our securities representing at least 50% of the combined voting power entitled to vote in the election of our directors.

In these situations, any surviving entity may either assume or replace all outstanding awards under the incentive plan. Otherwise, the vesting and exercisability of outstanding awards will accelerate.

If a participant's service is either involuntarily terminated without cause or voluntarily terminated for good reason within the period of time beginning one month before and ending 13 months after a change in control, then the vesting of an award (and, if applicable, the exercisability of the award) will accelerate by one year.

Stock Awards Granted. As of the date of this prospectus, we have issued no options under the incentive plan, and all 3,000,000 shares remained available for future grants. As of the date of this prospectus, the board had not granted any stock bonuses or restricted stock under the incentive plan.

Plan Termination. The incentive plan will terminate in 2010 unless the board terminates it sooner.

1997 Equity Incentive Plan and 1994 Employee, Director and Consultant Stock Plan

Our 1997 Equity Incentive Plan was adopted in September 1997 and terminated for purposes of new option grants in January 2000. Our 1994 Employee, Director and Consultant Stock Plan was adopted in January 1995 and terminated for purposes of new option grants in September 1997. Each of the plans remains in effect as to outstanding stock options granted under that plan.

Each of the 1997 plan and the 1994 plan provided for the grant of incentive stock options to employees and nonstatutory stock options to employees, directors and consultants of Exelixis and its affiliates. The plans also provided for the outright sale of stock to employees, directors and consultants. Each of these plans is administered by the board of directors, or a committee appointed by the board, which determined recipients and types of stock awards to be issued, including the number of shares under the stock award and the exercisability of the stock award, and also has the power to construe, interpret and amend the plan.

Prior Option Grants. As of December 31, 1999, under the 1997 Equity Incentive Plan and 1994 Employee, Director and Consultant Stock Plan, options to purchase 4,504,027 shares of common stock were outstanding under these plans, 375,000 of which were granted subject to stockholder approval of an increase in the available share reserve, and options to purchase 2,353,889 shares of common stock had been exercised.

Effect of a Merger on Options. If we dissolve or liquidate or have a change of control transaction, options outstanding under the 1997 plan and the 1994 plan will be treated in the same manner as options outstanding under the 2000 Equity Incentive Plan.

2000 Non-Employee Directors' Stock Option Plan

We adopted the 2000 Non-Employee Directors' Stock Option Plan in January 2000. The directors' plan provides for the automatic grant of options to purchase shares of our common stock to our non-employee directors.

Administration. The board of directors administers the directors' plan unless it delegates administration to a committee. The board has the authority to construe, interpret and amend the directors' plan but the directors' plan specifies the essential terms of the options, including recipients, grant dates, the number of shares in each option and price per share.

Share Reserve. We have reserved a total of 500,000 shares of our common stock for issuance under the directors' plan. On the last day of each of our fiscal years for ten years, starting in 2000, the share reserve will automatically be increased by a number of shares equal to the greater of:

- 0.75% of our outstanding shares on a fully-diluted basis; or
- that number of shares subject to options granted under the directors' plan during the prior 12-month period.

The automatic increase is subject to reduction by the board. If an optionholder does not purchase the shares subject to his or her option before the option expires or otherwise terminates, the shares that are not purchased will again become available for issuance under the directors' plan. Likewise, if an optionholder terminates his or her service to us, any unvested shares that we repurchase will again become available for issuance under the directors' plan

Eligibility. We will automatically issue options to our non-employee directors under the directors' plan as follows:

- Each person who is an non-employee director on the effective date of the closing of this offering or who is first elected or appointed thereafter as a non-employee director will automatically receive an initial grant for 25,000 shares. The initial grant is exercisable immediately but will vest at the rate of 25% of the shares on the first anniversary of the grant date and monthly thereafter over the next three years.
- In addition, on the day after each of our annual meetings of the stockholders each non-employee director will automatically receive an annual grant for 5,000 shares. This annual

grant is exercisable immediately but will vest monthly over the following year. If the non-employee director is appointed to the board after the annual meeting, the annual grant will be pro rated.

As long as the optionholder continues to serve with us or with an affiliate of ours, whether in the capacity of a director, an employee or a consultant, the option will continue to vest and be exercisable during its term. When the optionholder's service terminates, we will have the right to repurchase any unvested shares at the original exercise price, without interest.

Option Terms. Options have an exercise price equal to 100% of the fair market value of our common stock on the grant date. The option term is ten years but terminates three months after the optionholder's service terminates. If this termination is due to the optionholder's disability, the post-termination exercise period is extended to 12 months. If termination is due to the optionholder's death or if the optionholder dies within three months of the date on which his or her service terminates, the post-termination exercise period is extended to 18 months following death.

The optionholder may transfer the option by gift to immediate family members or for estate-planning purposes. The optionholder may also designate a beneficiary to exercise the option in the event of the optionholder's death. If the optionholder does not designate a beneficiary, the option exercise rights will pass by the optionholder's will or by the laws of descent and distribution.

Other Provisions. Transactions that do not involve our receipt of consideration, including a merger, consolidation, reorganization, stock dividend and stock split, may trigger a change in the class and number of shares subject to the directors' plan and to outstanding options. In that event, the board will appropriately adjust the directors' plan as to the class and the maximum number of shares subject to the directors' plan and the automatic option grants. It will also adjust outstanding options as to the class, number and price of shares subject to such options.

Effect of a Merger on Options. If we dissolve or liquidate, outstanding options will terminate immediately prior to such event. However, we treat outstanding options differently in the following situations:

- a sale, lease or other disposition of all or substantially all of our assets;
- a merger or consolidation in which we are not the surviving corporation;
- a reverse merger in which we are the surviving corporation but the shares of our common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property; and
- an acquisition of the beneficial ownership of our securities representing at least 50% of the combined voting power entitled to vote in the election of our directors.

In these situations, any surviving entity will either assume or replace all outstanding options under the directors' plan. Otherwise, the vesting of the options will accelerate.

Options Issued. The directors' plan will not be effective until the effective date of the closing of this offering. Therefore, we have not issued any options under the directors' plan.

Plan Termination. The directors' plan will terminate in 2010 unless the board terminates it sooner.

2000 Employee Stock Purchase Plan

Our board adopted the 2000 Employee Stock Purchase Plan in January 2000.

Administration. The board administers the purchase plan unless it delegates administration to a committee. The board has the authority to construe, interpret and amend the purchase plan as well as to determine the terms of rights granted under the purchase plan.

Share Reserve. We authorized the issuance of 300,000 shares of our common stock pursuant to purchase rights granted to eligible employees under the purchase plan. On the last day of each of our fiscal years for ten years, starting in 2000, the share reserve will automatically be increased by a number of shares equal to the greater of:

- 0.75% of our outstanding shares on a fully-diluted basis; or
- that number of shares subject to stock awards granted under the incentive plan during the prior 12-month period.

The automatic increase is subject to reduction by the board, and the share reserve may not increase by more than an aggregate of 1.5 million shares over the ten-year period.

Eligibility. The purchase plan is intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Internal Revenue Code. The purchase plan provides a means by which eligible employees may purchase our common stock through payroll deductions. We implement the purchase plan by offering purchase rights to eligible employees. Generally, all of our full-time employees who have been employed for at least ten days may participate in offerings under the purchase plan. However, no employee may participate in the purchase plan if immediately after we grant the employee a purchase right, such employee would have voting power over 5% or more of our outstanding capital stock.

Offerings. The board has the authority to set the terms of an offering. It may specify offerings of up to 27 months where common stock is purchased for accounts of participating employees at a price per share equal to the lower of:

- 85% of the fair market value of a share on the first day of the offering; or
- 85% of the fair market value of a share on the purchase date.

The first offering will begin on the effective date of the closing of this offering. The fair market value of the shares will be the initial public offering price. Thereafter, the fair market value will be the closing sales price (rounded up where necessary to the nearest whole cent) for our shares (or the closing bid, if no sales were reported) as quoted on the Nasdaq National Market on the last trading day prior to the relevant determination date, as reported in The Wall Street Journal.

The board may provide that employees who become eligible to participate after an offering period begins may nevertheless enroll in the offering. These employees will purchase our stock at the lower of:

- 85% of the fair market value of a share on the day they began participating in the purchase plan; or
- 85% of the fair market value of a share on the purchase date.

The board has determined that participating employees may authorize payroll deductions of up to 15% of their compensation for the purchase of stock under the purchase plan. These employees may end their participation in the offering at any time up to ten days before a purchase date. Their participation ends automatically on termination of their employment.

Other Provisions. A participant's right to purchase our stock under our purchase plan, plus any other purchase plans established by us or by our affiliates, is limited. An employee may not accrue

the right to purchase stock at a rate of more than $25,000 of the fair market value of our stock for each calendar year in which the purchase right is outstanding. We determine the fair market value of our stock, for the purpose of this limitation, as of the first day of the offering.

Upon a change in control, the board may provide that the successor corporation will either assume or replace outstanding purchase rights. Alternatively, the board may shorten the ongoing offering period and provide that our stock will be purchased for the participants immediately before the change in control.

Shares Issued. As of the date of this prospectus, no shares of common stock had been issued under the purchase plan.

Plan Termination. The purchase plan will terminated in 2010. Prior to that time, the board may terminate the purchase plan at any time after the end of an offering.

401(k) Plan

All of our employees generally are eligible to participate in our 401(k) Retirement Plan. Pursuant to the 401(k) Plan, employees may elect to reduce their current compensation by up to the lesser of 20% of their annual compensation or the statutorily prescribed annual limit allowable under Internal Revenue Service Regulations and to have the amount of such reduction contributed to the 401(k) Plan. The 401(k) Plan permits us, but does not require us, to make additional matching contributions on behalf of all participants in the 401(k) Plan. We have not made any contributions to the 401(k) Plan. The 401(k) Plan is intended to qualify under Section 401(k) of the Code so that contributions to the 401(k) Plan by employees or by Exelixis, and the investment earnings thereon, will not be taxable to employees until withdrawn from the 401(k) Plan, and our contributions, if any, will be deductible by us when made.

Limitations of Liability and Indemnification Matters

In connection with the consummation of this offering, we will adopt and file an amended and restated certificate of incorporation and restated bylaws. As permitted by Delaware law, our amended and restated certificate of incorporation provides that no director will be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated bylaws provide that we shall indemnify our directors and executive officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our amended and restated bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether the amended and restated bylaws would permit indemnification.

We have entered into agreements to indemnify our directors and executive officers, in addition to the indemnification provided for in our amended and restated bylaws. These agreements, among other things, indemnify our directors and executive officers for certain expenses, including attorneys'

fees, judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by us, arising out of such person's services as a director or executive officer with respect to Exelixis, any of our subsidiaries or any other company or enterprise to which the person provides services at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

Change in Control Arrangements and Employment Agreements

At the time of commencement of employment, our employees generally sign offer letters specifying basic terms and conditions of employment. In general, our employees are not subject to written employment agreements. Each officer and employee has entered into a standard form agreement with respect to confidential information and invention assignment that provides that the employee will not disclose any confidential information of Exelixis received during the course of employment and that, with some exceptions, the employee will assign to Exelixis any and all inventions conceived or developed during the course of employment.

In September 1996, we entered into an agreement with George Scangos in connection with his appointment as President and Chief Executive Officer of Exelixis. The agreement provides that Dr. Scangos' term of employment will be renewed automatically each year unless either party provides written notice of its intention not to renew. In the event that Dr. Scangos' employment is terminated without cause, he may receive up to six months base salary and bonus, together with all benefits. The agreement also provides that in the event of a merger or sale of more than 50% of Exelixis' assets, Dr. Scangos' unvested stock options shall automatically accelerate and vest in full.

In April 1997, we entered into an agreement with Geoffrey Duyk in connection with his appointment as Chief Scientific Officer and Senior Vice President of Research and Development. The agreement provides that Dr. Duyk's term of employment will be renewed automatically each year unless either party provides written notice of its intention not to renew. In the event that Dr. Duyk's employment is terminated without cause, he may receive up to six months base salary and any declared but unpaid bonus as of the date of termination, together with all benefits. The agreement also provides that in the event of a change of control, Dr. Duyk's unvested stock options shall automatically accelerate and vest in full.

In October 1999, we entered into an agreement with Glen Sato in connection with his appointment as Chief Financial Officer and Vice President of Legal Affairs. The agreement provides that in the event that Mr. Sato's employment is terminated without cause, he will receive six months base salary and benefits.

Stock option grants to our executive officers and directors are described in this prospectus under the headings "Management--Director Compensation," and "Management--Executive Compensation."

The following executive officers, directors and holders of more than five percent of our voting securities purchased securities in the amounts as of the dates shown below since January 1, 1997.

		Shares of Preferred Stock (1)	
	Common Stock	Series C	Series D
Executive Officers and Directors			
George A. Scangos	1,977,750	--	--
Geoffrey Duyk	1,049,999	--	--
Lloyd Kunimoto	262,500	--	--
Michael Morrissey	82,500	--	--
Michael Rusnak	56,250	--	--
Glen Y. Sato	243,749	--	--
Stelios Papadopoulos	128,571	37,500	--
Charles Cohen	90,000	--	--
Peter Stadler	37,500	--	--
Lance Willsey	--	37,500	--
5% Stockholders			
Atlas Venture Fund II, L.P. (2)	--	200,022	101,064
Atlas Venture Europe Fund B.V. (2)	--	99,978	50,532
Pharmacia & Upjohn AB	--	--	1,875,000
Oxford Bioscience Partners, L.P. (3)	--	126,225	63,602
Oxford Bioscience Partners (Bermuda) L.P.(3)	--	35,025	17,648
Advent Partners L.P.(4)	--	5,048	2,884
Advent Performance Materials, L.P.(4)	--	22,651	12,944
Adwest L.P.(4)	--	12,944	7,396
Rovent II L.P.(4)	--	90,606	51,774
Hambrecht & Quist Healthcare Investors	--	112,500	
Hambrecht & Quist Life Science Investors	--	75,000	
Price per share	$0.001 to $ 1.33	$ 2.67	$ 4.00
Date(s) of purchase	4/97 to 3/00	4/97	8/98 to 2/99

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(1) The Series A, Series B, Series C and Series D preferred stock will all convert into shares of common stock on a 1-for-0.75 basis upon the closing of this offering.
(2) Jean-Francois Formela, one of our directors, is a general partner of Atlas Venture.
(3) Edmund Olivier, one of our directors, is a partner of Oxford Bioscience Partners.
(4) Jason S. Fisherman, one of our directors, is a partner of Advent International Corporation.

Fourth Amended and Restated Securityholders' Agreement. In February 1999, Exelixis and the Series A, Series B, Series C and Series D preferred stockholders entered into the fourth amended and restated securityholders' agreement. The agreement provides that in the event of an underwritten public offering such as this offering, Exelixis will use its best efforts to cause the underwriters to reserve up to 10% of the shares included in the public offering for purchase by individuals who hold Series C preferred stock and do not hold shares of any other class of our capital stock. If these Series C stockholders are able to participate in such public offering, they may purchase shares of our common stock in the public offering pro rata to their holdings of Series C preferred stock. This provision derives from agreements entered into in April 1997 in connection with the issuance of the Series C preferred stock.

Executive Employment Agreements. We have entered into employment agreements with George Scangos, President and Chief Executive Officer, Geoffrey Duyk, Chief Scientific Officer and Senior Vice President of Research and Development, and Glen Sato, Chief Financial Officer and Vice President of Legal Affairs. See "Management--Change in Control Arrangements and Employment Agreements."

Indemnification Agreements. We intend to enter into indemnification agreements with our directors and certain officers for the indemnification of and advancement of expenses to these persons to the fullest extent permitted by law. We also intend to execute these agreements with our future directors and officers. See "Management--Limitations of Liability and Indemnification Matters."

Indebtedness of Management. In January 1998, we entered into a loan agreement with George Scangos, President, Chief Executive Officer and a director, in the amount of $150,000. The loan has an interest rate of 6.13% and matures on January 19, 2003. Pursuant to the terms of the loan agreement, the loan may be forgiven under certain circumstances.

In January 1998, we entered into a loan agreement with Geoffrey Duyk, Chief Scientific Officer, Senior Vice President of Research and Development, and a director, in the amount of $90,000. The loan has an interest rate of 6.13% and matures on January 16, 2003. Pursuant to the terms of the loan agreement, the loan may be forgiven under certain circumstances.

In March 1999, we entered into a loan agreement with Lynne Zydowsky, former Vice President, Pharmaceutical Business Development, in the amount of $150,000. The loan has an interest rate of 5.5% and matures on the earlier of 181 days after the closing of our initial public offering or upon the financing of a new business venture by Dr. Zydowsky.

Artemis. In 1998, we purchased a minority interest in Artemis Pharmaceuticals GmbH, a genetics company located in Cologne, Germany, focusing on the study of vertebrate model genetic systems such as mice and zebrafish. As of December 31, 1999, we own 24% of the outstanding equity of Artemis, and, pursuant to a shareholders' agreement, we have appointed three of the five members of the Artemis shareholders' governing board. In January 2000, we agreed in principal with Artemis to amend the shareholders' agreement to increase the size of the Artemis shareholders' governing board to six members, of which we will have the right to appoint three members.

In September 1998, we entered into a five-year cooperation agreement with Artemis under which we agreed to share technology and business opportunities as they arise. While either party may terminate this agreement at any time, we believe that it provides a significant opportunity to access complementary genetic research. In addition to developing zebrafish and mouse model system technology, Artemis is studying cartilage biology, angiogenesis and cardiovascular biology. We and Artemis have developed an integrated research approach in the field of angiogenesis and are jointly marketing this capability.

We believe that all of the transactions set forth above were made on terms no less favorable to us than could have been obtained from unaffiliated third parties. All future transactions, including loans, between us and our officers, directors, principal stockholders and their affiliates will be approved by a majority of the board of directors, including a majority of the independent and disinterested directors, and will continue to be on terms no less favorable to us than could be obtained from unaffiliated third parties.

PRINCIPAL STOCKHOLDERS

The following table sets forth summary information regarding the beneficial ownership of our outstanding common stock as of March 31, 2000 (assuming the reverse stock split and conversion of all outstanding shares of preferred stock into common stock upon the closing of this offering and as adjusted to reflect the sale of the shares offered by this prospectus) by:

- each of the named executive officers;
- each of our directors;
- each person or group who is known by us to beneficially own more than 5% of our common stock; and
- all of our current directors and executive officers as a group.

Beneficial ownership of shares is determined under the rules of the Securities and Exchange Commission and generally includes any shares over which a person exercises sole or shared voting or investment power. Except as indicated by footnote, and subject to applicable community property laws, each person identified in the table possesses sole voting and investment power with respect to all shares of common stock held by them. Shares of common stock subject to options currently exercisable or exercisable within 60 days of March 31, 2000 as of that date are deemed outstanding for calculating the percentage of outstanding shares of the person holding these options, but are not deemed outstanding for calculating the percentage of any other person. Applicable percentage ownership in the following table is based on 33,665,662 shares of common stock outstanding as of March 31, 2000, after giving effect to the conversion of all outstanding shares of preferred stock into common stock upon the closing of this offering, and 42,765,662 shares of common stock outstanding immediately following the completion of this offering. Unless otherwise indicated, the address of each individual listed in the table is in care of Exelixis, Inc., 260 Littlefield Avenue, South San Francisco, California 94080.

Name and Address of Beneficially Owned	Number of Shares Beneficially Owned	Percentage Beneficially Owned	
		Before Offering	After Offering
Executive Officers and Directors			
George A. Scangos, Ph.D(1).....	1,977,750	5.9%	4.6
Geoffrey Duyk, M.D., Ph.D(2).....	1,218,749	3.6	2.8
Lloyd M. Kunimoto(3).....	262,500	*	*
Glen Y. Sato(4).....	243,749	*	*
Lynne Zydowsky, Ph.D.	109,762	*	*
Stelios Papadopoulos, Ph.D.....	348,213	1.0	*
Charles Cohen, Ph.D.(5).....	355,713	1.1	*
Jurgen Drews, M.D.(6).....	1,250,000	3.7	3.0
Jason S. Fisherman, M.D.(7).....	1,730,997	5.1	4.1
Jean-Francois Formela, M.D.(8)....	4,023,736	12.0	9.4
Edmund Olivier de Vezin(9).....	2,153,924	6.4	5.0
Lance Willsey, M.D.....	37,500	*	*
Peter Stadler, Ph.D.(10).....	225,000	*	*
5% Stockholders			
Atlas Venture(8).....	4,023,736	12.0	9.4
Oxford Bioscience Partners(9).....	2,153,924	6.4	5.0
Pharmacia & Upjohn AB(11).....	1,875,000	5.6	4.4
Advent International Group(7)	1,730,997	5.1	4.1
Hambrecht & Quist Capital Management, Inc.(12).....	1,687,500	5.0	4.0
All directors and executive officers as a group (15 persons)(13).....	14,076,343	41.3%	32.6%

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* Represents beneficial ownership of less than 1 percent.

(1) Includes 121,212 shares held by George A. Scangos, Trustee of The Leslie S. Wilson Grantor Annuity Trust, 4,875 shares held by Clare Springs, Trustee of The Jennifer Scangos Trust and 4,875 shares held by Clare Springs, Trustee of The Katherine Scangos Trust. Includes 732,812 shares that Exelixis has the right to repurchase within 60 days of March 31, 2000.

(2) Includes 17,137 shares held by Geoffrey M. Duyk and Ulrike Barbara Wolter, Trustees of The Duyk 2000 Irrevocable Trust dated 2/21/00, 4,275 shares held by Geoffrey M. Duyk and Ulrike Barbara Wolter, Trustees of The Charles Duyk Trust dated 2/21/00, 22,500 shares held by Ulrike Barbara Wolter, Trustee of The Geoffrey M. Duyk Irrevocable Trust dated 2/21/00 and 75,000 shares held by Geoffrey M. Duyk, Trustee of The Geoffrey M. Duyk Annuity Trust dated 2/21/00. Also includes 168,750 shares Dr. Duyk has the right to acquire pursuant to an option exercisable within 60 days of March 31, 2000 of which Exelixis has the right to repurchase 543,750 shares within 60 days of March 31, 2000.

(3) Consists of 262,500 shares that Exelixis has the right to repurchase within 60 days of March 31, 2000. Mr. Kunimoto has indicated an interest to purchase 1,000 shares of common stock in this offering as part of a directed shares program for certain directors, employees and friends of Exelixis.

(4) Consists of 243,749 shares that Exelixis has the right to repurchase within 60 days of March 31, 2000. Mr. Sato has indicated an interest to purchase 2,500 shares of common stock in this offering as part of a directed shares program for certain directors, employees and friends of Exelixis.

(5) Includes 107,142 shares held by Creative BioMolecules, Inc. and 53,571 shares issuable upon exercise of a warrant held by Creative BioMolecules, Inc. within 60 days of March 31, 2000. Dr. Cohen is a director of Creative BioMolecules, Inc. and disclaims beneficial ownership of these shares. Creative BioMolecules, Inc. is located at 101 Huntington Avenue, Suite 2400, Boston, MA 02199. Dr. Cohen has indicated an interest to purchase 5,000 shares of common stock in this offering as part of a directed shares program for certain directors, employees and friends of Exelixis.

(6) Consists of 1,250,000 shares held by FEI Biomedicine Private Equity Holding Inc., an investment company managed by International Biomedicine Management Partners Inc. ("IBMP"). Dr. Drews is the Chairman of the Board of IBMP and disclaims beneficial ownership of these shares except to the extent of his pecuniary interest in these shares. IBMP is located at House of Commerce, Aeschenplatz 7, Basel, Switzerland. Dr. Drews has indicated an interest to purchase 1,000 shares of common stock in this offering as part of a directed shares program for certain directors, employees and friends of Exelixis.

(7) Includes 1,192,380 shares held by Rovent II L.P., 298,095 shares held by Advent Performance Materials, L.P., 170,341 shares held by Adwest L.P., 66,432 shares held by Advent Partners L.P. and 3,750 shares held by Advent International Investors II, L.P. Advent International Corporation, the venture capital firm that is the manager of the funds affiliated with Advent International Group, exercises sole voting and investment power with respect to all shares held by these funds. Dr. Fisherman is a partner of Advent International Corporation and disclaims beneficial ownership of these shares except for 17,053 shares that are indirectly beneficially owned by Dr. Fisherman. Advent International Corporation is located at 75 State Street, Boston, MA 02109. Dr. Fisherman has indicated an interest to purchase 1,000 shares of common stock in this offering as part of a directed shares program for certain directors, employees and friends of Exelixis.

(8) Consists of 2,682,763 shares held by Atlas Venture Fund II, L.P. and 1,340,973 shares held by Atlas Venture Europe Fund B.V. Atlas Venture Fund II, L.P. and Atlas Venture Europe Fund B.V are part of the Atlas Venture, a group of funds under common control. Dr. Formela is a general partner of Atlas Venture. No general partner of Altas Venture is deemed to have voting and investment power with respect to such shares and Dr. Formela disclaims beneficial ownership of these shares. Atlas Venture is located at 222 Berkeley Street, Suite 1950, Boston, MA 02116. Dr. Formela has indicated an interest to purchase 5,000 shares of common stock in this offering as part of a directed shares program for certain directors, employees and friends of Exelixis.

(9) Consists of 1,473,102 shares held by Oxford Bioscience Partners, L.P., 408,678 shares held by Oxford Bioscience Partners (Bermuda) L.P., 182,144 shares held by Oxford Bioscience Partners (Adjunct) L.P. and 90,000 shares held by Oxford Bioscience Management Partners. Mr. Olivier is

a general partner of Oxford Bioscience Partners and disclaims beneficial ownership of these shares except to the extent of his proportionate partnership interest in these shares. Oxford Bioscience Partners is located at 650 Town Center Drive, Suite 810, Costa Mesa, CA 92626.

(10) Includes 187,500 shares Dr. Stadler has the right to acquire pursuant to an option exercisable within 60 days of March 31, 2000 of which Exelixis has the right to repurchase 89,062 shares within 60 days of March 31, 2000.

(11) Pharmacia & Upjohn is entitled to additional shares of common stock by virtue of an interest free loan of $7.5 million made to Exelixis in 1999 that is evidenced by a convertible promissory note. The promissory note must be converted into shares of our common stock during the two-year period following this offering at a price per share equal to 120% of the initial public offering price, the time of such conversion prior to March 2002 to be determined by Pharmacia & Upjohn.

(12) Consists of 937,500 shares held by Hambrecht & Quist Healthcare Investors and 750,000 held by Hambrecht & Quist Life Science Investors, closed-end registered investment companies for which Hambrecht & Quist Capital Management, Inc. ("HQCM") is the investment adviser. HQCM is wholly owned by Chase H&Q Group, which is owned by the Chase Manhattan Bank. HQCM is located at 50 Rowes Wharf, Boston, MA 02110.

(13) Total number of shares includes 9,265,799 shares of common stock held by entities affiliated with directors and executive officers, 409,821 shares issuable upon the exercise of options and warrants within 60 days of March 31, 2000 and 2,010,623 shares that Exelixis has the right to repurchase within 60 days of March 31, 2000. See footnotes 1 through 10 above.

DESCRIPTION OF CAPITAL STOCK

Upon completion of this offering and the filing of our amended and restated certificate of incorporation, our authorized capital stock will consist of 100,000,000 million shares of common stock, $0.001 par value, and 10,000,000 million shares of preferred stock, $0.001 par value.

Common Stock

As of March 31, 2000, there were 33,665,662 shares of common stock outstanding that were held of record by approximately 365 stockholders after giving effect to the reverse stock split and the conversion of our preferred stock into common stock at a 1-to-0.75 ratio. There will be 42,765,662 shares of common stock outstanding (assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options) after giving effect to the sale of the shares of common stock offered by this prospectus.

The holders of common stock are entitled to one vote per share on all matters submitted to a vote of our stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election. Subject to preferences that may be applicable to any preferred stock outstanding at the time, the holders of outstanding shares of common stock are entitled to receive ratably any dividends out of assets legally available therefor as our board of directors may from time to time determine. Upon liquidation, dissolution or winding up of Exelixis, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preference of any then outstanding shares of preferred stock. Holders of common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are fully paid and nonassessable.

Preferred Stock

According to our amended and restated certificate of incorporation, our board of directors will have the authority, without further action by the stockholders, to issue up to 10,000,000 shares of preferred stock, in one or more series. Our board shall determine the rights, preferences, privileges and restrictions of the preferred stock, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of any series. The issuance of preferred stock could diminish voting power of holders of common stock, and the likelihood that holders of preferred stock will receive dividend payments and payments upon liquidation may have the effect of delaying, deferring or preventing a change in control of Exelixis, which could depress the market price of our common stock. We have no present plan to issue any shares of preferred stock.

Warrants

As of March 31, 2000, warrants to purchase 188,214 shares of Series A preferred stock were outstanding at an exercise price of $0.70 per share. These warrants were immediately exercisable upon issuance and expire upon the later of July 20, 2005 or five years after completion of this offering. The warrants contain provisions for the adjustment of the exercise price and the aggregate number of shares that may be issued upon the exercise of the warrant if a stock dividend, stock split, reorganization, reclassification or consolidation occurs. Upon the closing of this offering, the warrants to purchase Series A preferred stock will become exercisable for common stock at the rate of 0.75 of a share of common stock for each share of preferred stock underlying the warrants.

As of March 31, 2000, warrants to purchase 357,143 shares of Series B preferred stock were outstanding at an exercise price of $0.85 per share. The warrants expire upon the later of

January 24, 2006 or five years after completion of this offering. The warrants contain provisions for the adjustment of the exercise price and the aggregate number of shares that may be issued upon the exercise of the warrants if a stock dividend, stock split, reorganization, reclassification or consolidation occurs. Upon the closing of this offering, the warrants to purchase Series B preferred stock will become exercisable for common stock at the rate of 0.75 of a share of common stock for each share of preferred stock underlying the warrants.

As of March 31, 2000, warrants to purchase a total of 224,196 shares of common stock (post-reverse stock split) were outstanding. During 1995, we issued warrants to purchase 69,642 shares of our common stock (post-reverse stock split) at an exercise price of $0.93 per share to two stockholders. During January 2000, one warrant to purchase 16,071 shares (post-reverse stock split) was exercised. These warrants expire in January 2005. In September 1997, we issued warrants to purchase 63,750 shares of our common stock (post-reverse stock split) at an exercise price of $2.67 per share as part of an equipment lease financing arrangement. These warrants expire upon the earlier of September 25, 2007 or five years after completion of this offering. In May 1999, we issued warrants to purchase 112,500 shares of our common stock (post-reverse stock split) at an exercise price of $4.00 per share in connection with a building lease. During February 2000, two warrants to purchase 5,625 shares of our common stock were exercised. These warrants expire five years after completion of this offering. Each warrant contains provisions for the adjustment of the exercise price and the aggregate number of shares that may be issued upon the exercise of the warrants if a stock dividend, stock split, reorganization, reclassification or consolidation occurs.

Registration Rights of Stockholders

Upon completion of this offering, holders of an aggregate of 22,877,656 shares of common stock and holders of warrants to purchase an aggregate of 409,017 shares of common stock will be entitled to rights to register these shares under the Securities Act. These rights are provided under the Fourth Amended and Restated Securityholders' Agreement, dated January 28, 1999, under the Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999, and under agreements with similar registration rights. If we propose to register any of our securities under the Securities Act, either for our own account or for the account of others, the holders of these shares are entitled to notice of the registration and are entitled to include, at our expense, their shares of common stock in the registration and any related underwriting, provided, among other conditions, that the underwriters may limit the number of shares to be included in the registration and in some cases, including this offering, exclude these shares entirely. In addition, the holders of these shares may require us, at our expense and on not more than two occasions at any time beginning six months from the date of the closing of the offerings, to file a registration statement under the Securities Act with respect to their shares of common stock, and we will be required to use our best efforts to effect the registration. Further, the holders may require us at our expense to register their shares on Form S-3 when this form becomes available.

Anti-Takeover Provisions of Delaware Law and Charter Provisions

In general, Section 203 of the Delaware General Corporation Law prohibits a publicly-held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder unless:

- prior to that date, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding those shares owned by persons who are directors and also officers, and by employee stock plans in which shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or subsequent to that date, the business combination is approved by our board of directors and is authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

Section 203 defines "business combination" to include:

- any merger or consolidation involving the corporation and the interested stockholder;

- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;

- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; and

- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Our amended and restated certificate of incorporation requires that upon completion of the public offerings, any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by a consent in writing. Additionally, our certificate of incorporation:

- substantially limits the use of cumulative voting in the election of directors;

- provides that the authorized number of directors may be changed only by resolution of our board of directors; and

- authorizes our board of directors to issue blank check preferred stock to increase the amount of outstanding shares.

Our amended and restated bylaws provide that candidates for director may be nominated only by our board of directors or by a stockholder who gives written notice to us no later than 60 days prior nor earlier than 90 days prior to the first anniversary of the last annual meeting of stockholders. Our board of directors currently consists of ten members, who will be divided into three classes. As a result, a portion of our board of directors will be elected each year. Our board of directors may appoint new directors to fill vacancies or newly created directorships. Our bylaws also limit who may call a special meeting of stockholders.

Delaware law and these charter provisions may have the effect of deterring hostile takeovers or delaying changes in control of our management, which could depress the market price of our common stock.

Transfer Agent and Registrar

The transfer agent and registrar for the common stock is ChaseMellon Shareholder Services.

National Market Listing

Our common stock has been approved for listing on the Nasdaq National Market under the symbol "EXEL."

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Future sales of substantial amounts of our common stock in the public market could reduce prevailing market prices. As described below, no shares currently outstanding will be available for sale immediately after this offering because of contractual restrictions on resale. Sales of substantial amounts of our common stock in the public market after the restrictions lapse could adversely affect the prevailing market price and impair our ability to raise equity capital in the future.

Upon completion of this offering, we will have outstanding 42,765,662 shares of common stock. Of these shares, all of the shares sold in this offering will be freely tradeable without restriction or further registration under the Securities Act, unless these shares are purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. In general, affiliates include officers, directors or 10% stockholders. The remaining 33,665,662 shares outstanding are "restricted securities" within the meaning of Rule 144. These restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rules 144, 144(k) or 701 promulgated under the Securities Act, which are summarized below. Sales of the restricted securities in the public market, or the availability of these shares for sale, could adversely affect the market price of our common stock.

All of our directors and officers and some of our stockholders and option holders have entered into lock-up agreements in connection with this offering generally providing that they will not offer, sell, contract to sell or grant any option to purchase or otherwise dispose of our common stock or any securities exercisable for or convertible into our common stock owned by them for a period of 180 days after the date of this prospectus without the prior written consent of Goldman, Sachs & Co.

Taking into account these lock-up agreements, and assuming Goldman, Sachs & Co. does not release stockholders from their agreements, the following shares will be eligible for sale in the public market at the following times:

- 625,884 shares will be eligible for sale upon completion of this offering;
- 7,106 shares will be eligible for sale 90 days from completion of this offering;
- 33,032,672 shares will be eligible for sale upon the expiration of lock-up agreements, beginning 180 days after the date of this prospectus; and
- 1,594,481 shares will be eligible for sale upon the exercise of vested options 180 days after the date of this prospectus.

In general, under Rule 144 as currently in effect, after expiration of the lock-up agreements, a person who has beneficially owned restricted securities for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of common stock then outstanding, which will equal approximately 427,700 shares immediately after this offering; or
- the average weekly trading volume of the common stock during the four calendar weeks preceding the sale.

Sales under Rule 144 must comply with the requirements with respect to manner of sale, notice and the availability of current public information about us. Under Rule 144(k), a person who is not deemed to have been our affiliate at any time during the three months preceding a sale, and who has beneficially owned the shares proposed to be sold for at least two years, is entitled to sell these shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144.

Rule 701, as currently in effect, permits our employees, officers and directors or consultants who purchased shares under a written compensatory plan or contract to resell these shares in reliance upon Rule 144 but without compliance with specific restrictions. Commencing 90 days after the date of this offering, Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirement and permits non-affiliates to sell these shares in reliance on Rule 144 without complying with the holding period, public information, volume limitation or notice provisions of Rule 144.

Registration Rights. Upon completion of this offering, the holders of 22,877,656 shares of our common stock and holders of warrants to purchase an aggregate of 409,017 shares of our common stock, or their transferees, will be entitled to rights with respect to the registration of their shares under the Securities Act. Registration of their shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act, except for shares purchased by affiliates, immediately upon the effectiveness of this registration.

In addition, we intend to file, immediately after the effectiveness of this offering, a registration statement on Form S-8 under the Securities Act covering all shares of common stock reserved for issuance under our stock option plans. Shares registered under this registration statement would be available for sale in the open market in the future, providing there is compliance with Rule 144 restrictions, in the case of affiliates, and the contractual restrictions described above.

UNDERWRITING

Exelixis and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman, Sachs & Co., Credit Suisse First Boston Corporation and SG Cowen Securities Corporation are the representatives of the underwriters:

Underwriters	Number of Shares
Goldman, Sachs & Co.	
Credit Suisse First Boston Corporation	
SG Cowen Securities Corporation	
Total	9,100,000

If the underwriters sell more shares than the total number set forth in the table above, the underwriters have an option to buy up to an additional 1,365,000 shares from Exelixis to cover such sales. They may exercise that option for 30 days. If any shares are purchased under this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by Exelixis. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

The following table summarizes the compensation and expenses we will pay.

Paid by Exelixis	No Exercise	Full Exercise
Per share	$	$
Total	$	$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. Any of these securities dealers may resell any shares purchased from the underwriters to other brokers or dealers at a discount of up to $ per share from the initial public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms.

Exelixis has agreed with the underwriters not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of the representatives. This restriction does not apply to any existing employee benefit plans or securities issued in connection with acquisition transactions, provided that the recipients of such securities agree not to dispose of or hedge any of such securities for the same 180 day period. See "Shares Eligible for Future Sale" for a discussion of transfer restrictions.

Exelixis currently anticipates that it will undertake a directed shares program, pursuant to which it will direct the underwriters to reserve up to 637,000 shares of common stock for certain directors, employees and friends of Exelixis. In addition, at the request of Exelixis and in accordance with contractual rights granted in April 1997 to the holders of Exelixis Series C preferred stock who do not hold shares of any other class of capital stock, the underwriters have reserved for sale, at the initial

public offering price, 10% of the shares included in this offering for those individuals. There can be no assurance that any of the reserved shares will be so purchased. The number of shares available for sale to the general public in the offering will be reduced to the extent these persons purchase any reserved shares. Any reserved shares not so purchased will be offered to the general public on the same basis as the other shares offered hereby.

Prior to this offering, there has been no public market for the common stock. The initial public offering price for the common stock will be negotiated among Exelixis and the representatives of the underwriters. Among the factors considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be Exelixis' historical performance, estimates of Exelixis' business potential and earnings prospects, an assessment of Exelixis' management and the consideration of the above factors in relation to market valuation of companies in related businesses.

Exelixis' application for its common stock has been approved for quotation on the Nasdaq National Market under the symbol "EXEL."

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of the common stock while the offering is in progress.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

These activities by the underwriters may stabilize, maintain or affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. These transactions may be effected on The Nasdaq National Market, in the over-the-counter market or otherwise.

A prospectus in electronic format may be made available on the web sites maintained by one or more underwriters or securities dealers. The underwriters may agree to allocate a number of shares to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the lead managers to underwriters that may make Internet distributions on the same basis as other allocations. In addition, shares may be sold by the underwriters to securities dealers who resell shares to online brokerage account holders.

The underwriters do not expect sales to discretionary accounts to exceed five percent of the total number of shares offered.

Exelixis estimates that its share of the total expenses of the offering, excluding underwriting discounts and commissions, will be approximately $1,400,000.

Exelixis has agreed to indemnify the several underwriters against liabilities, including liabilities under the Securities Act of 1933.

VALIDITY OF THE COMMON STOCK

The validity of the common stock offered hereby will be passed upon by our counsel, Cooley Godward LLP, Palo Alto, California and for the underwriters by Sullivan & Cromwell, Los Angeles, California.

EXPERTS

The consolidated financial statements of Exelixis, Inc. as of December 31, 1998 and 1999 and for each of the three years in the period ended December 31, 1999 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

The financial statements of MetaXen, LLC as of December 31, 1997 and 1998 and for each of the two years in the period ended December 31, 1998 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the common stock offered in this offering. This prospectus does not contain all of the information set forth in the registration statement. For further information with respect to Exelixis, Inc. and the common stock offered in this offering, we refer you to the registration statement and to the attached exhibits and schedules. Statements made in this prospectus concerning the content of any document referred to in this prospectus are not necessarily complete. With respect to each such document filed as an exhibit to the registration statement, we refer you to the exhibit for a more complete description of the matter involved.

You may inspect our registration statement and the attached exhibits and schedules without charge at the public reference facilities maintained by the Securities and Exchange Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 and at the regional offices of the Commission located at Seven World Trade Center, 13th Floor, New York, New York 10048 and the Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. You may obtain copies of all or any part of our registration statement from the Securities and Exchange Commission upon payment of prescribed fees. You may also inspect reports, proxy and information statements and other information regarding registrants that file electronically with the Securities and Exchange Commission without charge at the website maintained by the Securities and Exchange Commission at www.sec.gov. Information contained on our website does not constitute part of this prospectus.

Upon completion of the offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, as amended, and we will file reports, proxy statements and other information with the SEC.

We intend to furnish our stockholders with annual reports containing financial statements audited by our independent public accountants and quarterly reports for the first three fiscal quarters of each fiscal year containing unaudited interim financial information. Our telephone number is (650) 825-2200.

EXELIXIS, INC.

INDEX TO FINANCIAL STATEMENTS

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Stockholders of
Exelixis, Inc.

In our opinion, the accompanying balance sheets and the related statements of operations, of stockholders' deficit and of cash flows present fairly, in all material respects, the financial position of Exelixis, Inc. at December 31, 1998 and 1999, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States which 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, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

/s/ PricewaterhouseCoopers LLP

San Jose, California
January 31, 2000, except as to the
fifth paragraph of Note 1 which
is as of April 7, 2000

EXELIXIS, INC.

BALANCE SHEETS
(in thousands, except share and per share data)

	December 31,		Pro Forma Stockholders' Equity December 31,
	1998	1999	1999
			(unaudited)
ASSETS			
Current assets:			
Cash and cash equivalents	$ 2,058	$ 5,400	
Short-term investments	--	1,504	
Other receivables	150	185	
Other current assets	423	943	
Total current assets	2,631	8,032	
Property and equipment, net	5,744	9,498	
Related party receivables	458	619	
Other assets	148	752	
Total assets	$ 8,981	$ 18,901	
LIABILITIES, MANDATORILY REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT			
Current liabilities:			
Accounts payable and accrued expenses	$ 584	$ 3,648	
Current portion of capital lease obligations	924	735	
Current portion of notes payable	504	1,554	
Deferred revenue	437	2,767	
Total current liabilities	2,449	8,704	
Capital lease obligations	973	229	
Notes payable	1,583	3,299	
Convertible promissory note	--	7,500	
Other long-term liability	--	104	
Deferred revenue	903	1,890	
Total liabilities	5,908	21,726	
Commitments (Note 11)			
Mandatorily redeemable convertible preferred stock, $0.001 par value; 35,000,000 shares authorized; issued and outstanding: 27,623,110 shares in 1998, 30,503,571 shares in 1999 and none pro forma (aggregate liquidation preference $46,780)	38,138	46,780	$ --
Stockholders' deficit:			
Common stock, $0.001 par value; 50,000,000 shares authorized; issued and outstanding: 4,001,505 shares in 1998, 6,258,805 shares in 1999 and 29,136,461 pro forma	4	6	29
Class B common stock, $0.001 par value; 526,819 shares authorized; shares issued and outstanding: 526,819 shares in 1998, none in 1999 and pro forma	1	--	--
Additional paid-in-capital	2,979	19,523	66,280
Notes receivable from stockholders	(240)	(240)	(240)
Deferred stock compensation	(1,803)	(14,167)	(14,167)
Accumulated deficit	(36,006)	(54,727)	(54,727)
Total stockholders' deficit	(35,065)	(49,605)	$ (2,825)
Total liabilities, mandatorily redeemable convertible preferred stock and stockholders' deficit	$ 8,981	$ 18,901	

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

EXELIXIS, INC.

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

	Year Ended December 31,		
	1997	1998	1999
Revenues:			
License	$ --	$ 139	$ 1,046
Contract	--	2,133	9,464
Total revenues	--	2,272	10,510
Operating expenses:			
Research and development (including stock compensation expense of $25, $557 and $2,241 in 1997, 1998 and 1999, respectively)	8,223	12,096	21,653
General and administrative (including stock compensation expense of $0, $168 and $1,281 in 1997, 1998 and 1999, respectively)	3,743	5,472	7,624
Total operating expenses	11,966	17,568	29,277
Loss from operations	(11,966)	(15,296)	(18,767)
Interest income	689	266	571
Interest expense	(219)	(316)	(525)
Loss before equity in net loss of affiliated company	(11,496)	(15,346)	(18,721)
Equity in net loss of affiliated company	--	(320)	--
Net loss	$(11,496)	$(15,666)	$(18,721)
Net loss per share, basic and diluted	$ (8.76)	$ (3.83)	$ (3.47)
Shares used in computing net loss per share, basic and diluted	1,312	4,088	5,389
Pro forma net loss per share, basic and diluted	--	--	$ (0.67)
Shares used in computing pro forma net loss per share	--	--	27,996

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

EXELIXIS, INC.

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

	Common Stock		Class B Common Stock		Additional Paid-in	Notes Receivable from	Deferred Stock	Accumulated	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Stockholders	Compensation	Deficit	Deficit
Balance at January 1, 1997	1,239,912	$ 1	526,819	$ 1	$ 147	$ --	$ (59)	$ (8,844)	$ (8,754)
Exercise of stock options	246,695	--	--	--	7	--	--	--	7
Deferred stock compensation	--	--	--	--	68	--	(68)	--	--
Amortization of deferred stock compensation	--	--	--	--	--	--	25	--	25
Net loss	--	--	--	--	--	--	--	(11,496)	(11,496)
Balance at December 31, 1997	1,486,607	1	526,819	1	222	--	(102)	(20,340)	(20,218)
Exercise of stock options	2,514,898	3	--	--	331	--	--	--	334
Issuance of notes to stockholders for the exercise of stock options	--	--	--	--	--	(240)	--	--	(240)
Deferred stock compensation	--	--	--	--	2,426	--	(2,426)	--	--
Amortization of deferred stock compensation	--	--	--	--	--	--	725	--	725
Net loss	--	--	--	--	--	--	--	(15,666)	(15,666)
Balance at December 31, 1998	4,001,505	4	526,819	1	2,979	(240)	(1,803)	(36,006)	(35,065)
Exercise of stock options	1,057,300	1	--	--	267	--	--	--	268
Issuance of stock purchase warrants	--	--	--	--	391	--	--	--	391
Deferred stock compensation	--	--	--	--	15,886	--	(15,886)	--	--
Amortization of deferred stock compensation	--	--	--	--	--	--	3,522	--	3,522
Conversion of Class B common stock into common stock	1,200,000	1	(526,819)	(1)	--	--	--	--	--
Net loss	--	--	--	--	--	--	--	(18,721)	(18,721)
Balance at December 31, 1999	6,258,805	$ 6	--	$ --	$ 19,523	$ (240)	$ (14,167)	$ (54,727)	$ (49,605)

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

EXELIXIS, INC.

STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	1997	1998	1999
Cash flows from operating activities:			
Net loss	$(11,496)	$(15,666)	$(18,721)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	731	1,529	2,166
Loss on disposal of property and equipment	19	--	--
Amortization of deferred stock compensation	25	725	3,522
Changes in assets and liabilities:			
Other receivables	(52)	(98)	(35)
Other current assets	40	(397)	(497)
Other assets	(103)	(6)	(81)
Related party receivables	(635)	177	(161)
Accounts payable and accrued expenses	706	(334)	3,064
Deferred revenue	--	1,340	3,317
Other long-term liabilities	--	--	104
Net cash used in operating activities	(10,765)	(12,730)	(7,322)
Cash flows used in investing activities:			
Acquisition, net	--	--	(870)
Purchases of property and equipment	(3,973)	(2,494)	(4,100)
Proceeds from short-term investments	--	1,997	--
Purchase of short-term investments	(1,997)	--	(1,504)
Net cash used in investing activities	(5,970)	(497)	(6,474)
Cash flows from financing activities:			
Proceeds from sale of mandatorily redeemable convertible preferred stock	15,703	6,333	8,642
Proceeds from exercise of stock options	7	94	268
Proceeds from capital lease financing	1,838	179	--
Principal payments on capital lease obligations	(461)	(899)	(933)
Proceeds from issuance of notes payable	--	2,315	10,066
Principal payments on note payable	(720)	(455)	(905)
Net cash provided by financing activities	16,367	7,567	17,138
Net increase (decrease) in cash and cash equivalents	(368)	(5,660)	3,342
Cash and cash equivalents, at beginning of year	8,086	7,718	2,058
Cash and cash equivalents, at end of year	$ 7,718	$ 2,058	$ 5,400
Supplemental cash flow disclosure:			
Property and equipment acquired under capital leases	$ 1,169	$ --	$ --
Cash paid for interest	219	316	525

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

Note 1 The Company and a Summary of Significant Accounting Policies

The Company

Exelixis, Inc. ("Exelixis" or the "Company"), formerly Exelixis Pharmaceuticals, Inc., is a model system genetics and comparative genomics company that uses model systems to identify critical genes in disease pathways and to determine functional relationships of genes and functionality of potential targets for the pharmaceutical and agriculture industries. The Company operates in one business segment in the U.S. and exited the development stage during the year ended December 31, 1998.

Equity in Affiliated Companies

The Company reports its minority ownership interests in GenOptera LLC and Artemis Pharmaceuticals, GmbH using the equity method of accounting.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles 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 from those estimates.

Initial Public Offering

In January 2000, the Board of Directors authorized management of the Company to file a registration statement with the Securities and Exchange Commission to sell shares of its common stock to the public. If the initial public offering is completed under the terms presently anticipated, all outstanding shares of mandatorily redeemable convertible preferred stock will automatically convert into 22,877,656 shares of common stock. Unaudited pro forma stockholders' equity adjusted for the assumed conversion of the preferred stock is set forth on the balance sheets.

In February 2000, the Company's Board of Directors authorized a 4-for-3 reverse split of its common stock. The reverse stock split became effective on April 7, 2000. The accompanying financial statements have been adjusted retroactively to reflect the stock split.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash equivalents and short-term investments. The Company's cash equivalents and short-term investments are held by three financial institutions. Deposits held with financial institutions may exceed the amount of insurance provided on such deposits. The Company has not experienced any losses on its deposits of cash and cash equivalents. See Note 3 for a discussion of notes and other receivables.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. The Company invests its excess cash in high grade short-term commercial paper and money market funds which invest in U.S. Treasury securities that are subject to minimal credit and market risk. The Company had $1.8 million and $1.0 million of high grade short-term commercial paper which was included in cash and cash equivalents at December 31, 1998 and 1999, respectively. These investments are carried at cost, which approximates fair market value.

Short-term Investments

The Company classifies all short-term investments as available-for-sale in accordance with Statement of Financial Accounting Standards ("SFAS") No. 115, "Accounting for Certain Investments in Debt and Equity Securities." The Company's short-term investments consist of high grade corporate securities maturing one year or less from the date of purchase. Available-for-sale securities are carried at fair value with unrealized gains or losses reported in stockholders' deficit and included in other comprehensive loss. The cost of securities sold is based on the specific identification method.

Property and Equipment

Property and equipment are recorded at cost and depreciated using the straight-line method over their estimated useful lives, generally four to ten years. Leasehold improvements are amortized over the shorter of the estimated useful life or the remaining term of the lease. Equipment held under capital leases is stated at the lower of the fair market value of the related asset or the present value of the minimum lease payments and is amortized on a straight-line basis over the shorter of the estimated useful life of the related asset or the term of the lease. Repair and maintenance costs are charged to expense as incurred.

Long-lived Assets

The Company accounts for its long-lived assets under SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of" ("SFAS 121"). Consistent with SFAS 121, the Company identifies and records impairment losses on long-lived assets used in operations when events and circumstances indicate that the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets. None of these events have occurred with respect to the Company's long-lived assets, which consist primarily of machinery and equipment and leasehold improvements.

Income Taxes

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are determined on the basis of the difference between the income tax bases of assets and liabilities and their respective financial reporting amounts at enacted tax rates in effect for the periods in which the differences are expected to reverse. A valuation allowance is established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Fair Value of Financial Instruments

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable and accounts payable, approximate fair value due to their short maturities. Based on borrowing rates currently available to the Company for loans with similar terms, the carrying value of its debt obligations approximates fair value.

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 relevant periods specified in the agreements, generally the research term. The Company recognizes contract research revenues as services are performed, pursuant to the terms of the agreements. Any amounts received in advance of performance are recorded as deferred revenue.

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 which conduct certain research activities on behalf of the Company. Research and development expenses incurred in connection with collaborative agreements approximated contract revenues for the years ended December 31, 1998 and 1999, respectively.

Net Loss per Share

The Company computes net loss per share in accordance with SFAS No. 128, "Earnings per Share" and SEC Staff Accounting Bulletin No. 98. Basic and diluted net loss per share are computed by dividing the net loss for the period by the weighted average number of shares of common stock outstanding during the period. The calculation of diluted net loss per share excludes potential common stock if their effect is antidilutive. Potential common stock consists of common stock subject to repurchase, incremental common shares issuable upon the exercise of stock options and warrants and shares issuable upon conversion of the preferred stock and note payable.

The following table sets forth potential shares of common stock that are not included in the diluted net loss per share because to do so would be anti-dilutive for the periods indicated:

	Year Ended December 31,		
	1997	1998	1999
Preferred stock	17,405,007	19,723,780	22,607,614
Options to purchase common stock	2,867,709	2,834,619	3,649,611
Common stock subject to repurchase	326,392	1,653,066	994,657
Conversion of note payable	--	--	1,718,750
Warrants	497,255	542,411	612,724
	21,096,363	24,753,876	29,583,356

Pro Forma Net Loss per Share (Unaudited)

Pro forma net loss per share for the year ended December 31, 1999 was computed using the weighted average number of shares of common stock outstanding, including the pro forma effect of

the automatic conversion of all of the Company's preferred stock into shares of the Company's common stock effective upon the closing of the Company's initial public offering as if such conversion occurred on January 1, 1999, or at the date of original issuance, if later. The resulting pro forma adjustment includes an increase in the weighted average shares used to compute pro forma basic net loss per share for the year ended December 31, 1999. The calculation of pro forma diluted net loss per share excludes potential common stock as their effect would be anti-dilutive.

Stock-based Compensation

The Company has adopted the pro forma disclosure requirements of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). As permitted, the Company continues to recognize employee stock-based compensation under the intrinsic value method of accounting as prescribed by Accounting Principles Board Opinion No. 25. The pro forma effects of applying SFAS 123 are shown in Note 9 to the financial statements. The Company accounts for stock options issued to non-employees in accordance with the provisions of SFAS 123 and EITF 96-18, "Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with, Selling Goods or Services."

Comprehensive Income

The Company adopted the provisions of SFAS No. 130, "Reporting Comprehensive Income." This statement requires companies to classify items of other comprehensive income by their nature in the financial statements and display the accumulated balance of other comprehensive income separately from accumulated deficit and additional paid-in capital in the equity section of the balance sheet. For all periods presented, there were no material differences between comprehensive loss and net loss.

Recent Accounting Pronouncements

In June 1998, the Financial Accounting Standards Board ("FASB") issued SFAS No. 133, "Accounting for Derivatives and Hedging Activities" ("SFAS No. 133"). SFAS No. 133 establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. In July 1999, the FASB issued SFAS No. 137, "Accounting for Derivative Instruments and Hedging Activities--Deferral of the Effective Date of FASB Statement No. 133." SFAS No. 137 deferred the effective date of SFAS No. 133 until fiscal years beginning after June 15, 2000. To date, the Company has not engaged in derivative or hedging activities.

Note 2 Research and Collaboration Agreements

Bayer

In May 1998, the Company entered into a six-year research collaboration agreement with Bayer AG (including its affiliates, "Bayer") to identify novel screening targets for the development of new pesticides for use in crop protection. The Company will provide research services directed towards identifying and investigating molecular targets in insects and nematodes that may be useful in developing and commercializing pesticide products. The Company received a $1.2 million license fee upon execution of the agreement which has been deferred and will be recognized as revenue over the term of the agreement. The Company will also receive annual research funding of approximately

$2.8 million. The Company can earn additional payments under the agreement upon the achievement of certain milestones. The Company can also earn royalties on the future sale by Bayer of pesticide products incorporating compounds developed under the agreement. The agreement also provides Bayer an exclusive royalty free option to use certain technology developed under the agreement in the development of fungicides and herbicides.

In December 1999, the Company significantly expanded its 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 will provide 100% of the capital necessary to fund the operations of GenOptera and will control the entity with a 60% ownership interest. The Company will own the other 40% interest in GenOptera without making any capital contribution and will report its investment in GenOptera using the equity method of accounting. Bayer's initial capital contribution to GenOptera will be $10 million in January 2000 and another $10 million on January 1, 2001. Bayer will also contribute cash to GenOptera in amounts necessary to fund its ongoing operating expenses.

On January 1, 2000, the Company, Bayer and GenOptera entered into an exclusive eight-year research collaboration agreement which superceded the 1998 agreement discussed above. The Company will provide GenOptera with significantly expanded research services focused on developing insecticides and nematicides for crop protection. Under the terms of the collaboration agreement, GenOptera will pay the Company a $10 million license fee and a $10 million research commitment fee. One-half of these fees was received in January 2000, with the remaining amounts to be received in January 2001. Additionally, GenOptera will also pay the Company approximately $10 million in annual research funding. The Company can earn additional payments under the collaboration agreement upon the achievement of certain milestones. The Company can also earn royalties on the future sale by Bayer of pesticide products incorporating compounds developed under the agreement. The agreement also provides Bayer an exclusive royalty-free option to use certain technology developed under the agreement in the development of fungicides and herbicides. To the extent permitted under the collaboration agreement, if the Company were to develop and sell certain human health or agrochemical products which incorporate compounds developed under the agreement, it would be obligated to pay royalties to GenOptera. No such activities are expected for the foreseeable future.

Revenues recognized under these agreements approximated $2.3 million and $4.3 million during the years ended December 31, 1998 and 1999, respectively.

During 2000 and beyond, the Company will recognize license, contract research and milestone payments received from GenOptera as revenues over the term of the agreement and also record research and development expenses under this collaboration, all as described in Note 1.

Artemis Pharmaceuticals

In June 1998, the Company purchased a minority interest in Artemis Pharmaceuticals GmbH, a genetics company located in Cologne, Germany. The Company also entered into certain non-exclusive license agreements providing Artemis with access to the Company's technologies. In September 1998, the Company entered into a five-year cooperation agreement with Artemis under which the Company agreed to share technology and business opportunities as they arise. While either party may terminate this agreement at any time, the Company believes that it provides a

significant opportunity to access complementary genetic research. The Company has no financial obligation or current intention to fund Artemis. As of December 31, 1999, the Company owns 24% of the outstanding equity of Artemis. As a result of recording our portion of the 1998 Artemis loss, the carrying value of this investment was zero at December 31, 1998 and 1999.

Pharmacia & Upjohn

In February 1999, the Company entered into a five-year research collaboration agreement with Pharmacia & Upjohn AB ("Pharmacia & Upjohn") focused on the identification of novel targets that may be useful in the development of pharmaceutical products in the areas of Alzheimer's disease and metabolic syndrome. Pharmacia & Upjohn agreed to pay the Company a $5 million non-refundable license fee which is being recognized as revenue over the term of the agreement. Under the terms of the agreement, as expanded and amended in October 1999, the Company will also receive future research funding during the first three years of the agreement. The Company can also earn additional amounts under the agreement upon the achievement of certain milestones. The Company can also earn royalties on the future sales by Pharmacia & Upjohn of human therapeutic products incorporating compounds developed under the agreement. Revenues recognized under this agreement approximated $5.6 million during the year ended December 31, 1999.

In connection with entering into this agreement, Pharmacia & Upjohn also purchased 2,500,000 shares of Series D Preferred Stock at $3.00 per share, resulting in net cash proceeds to the Company of $7.5 million. Further, Pharmacia & Upjohn loaned the Company $7.5 million in exchange for a non-interest bearing convertible promissory note (see Note 6).

Bristol-Myers Squibb

In September 1999, the Company entered into a three-year research and technology transfer agreement with Bristol-Myers Squibb Company ("Bristol-Myers Squibb") to identify the mechanisms of action of compounds delivered to the Company by Bristol-Myers Squibb. Bristol-Myers Squibb agreed to pay the Company a $250,000 technology access fee which is being recognized as revenue over the term of the agreement. Under the terms of the agreement, the Company will receive research funding ranging from $1.3 million in the first year to as much as $2.5 million in later years. The Company can also earn additional amounts under the agreement upon the achievement of certain milestones. The Company can also earn royalties on the future sale by Bristol-Myers Squibb of human products incorporating compounds developed under the agreement. The agreement also includes technology transfer and licensing terms which call for Bristol-Myers Squibb and the Company to license and share certain core technologies in genomics and lead optimization. Revenues recognized under this agreement approximated $372,000 during the year ended December 31, 1999.

Note 3 Related Party Receivables

The Company had outstanding loans aggregating $458,000 and $619,000 to certain officers and employees of the Company at December 31, 1998 and 1999, respectively. The notes are collateralized and bear interest at rates ranging from 3.77% to 6.13% and have maturities through March 2003. The principal plus accrued interest will be forgiven annually over three to four years from the employees' date of employment with the Company. If an employee leaves the Company, all unpaid and unforgiven principal and interest will be due and payable within 60 days.

Note 4 Property and Equipment

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

	December 31,	
	1998	1999
Laboratory equipment	$ 1,588	$ 4,301
Computer equipment and software	1,667	2,837
Furniture and fixtures	525	1,018
Leasehold improvements	1,820	2,537
Equipment under capital leases	2,773	2,773
Construction in-progress	--	827
	8,373	14,293
Less accumulated depreciation and amortization	(2,629)	(4,795)
	$ 5,744	$ 9,498

Depreciation and amortization expense for the years ended December 31, 1997, 1998 and 1999 included $460,000, $704,000 and $652,000, respectively, related to equipment under capital leases. Accumulated depreciation and amortization for equipment under capital leases was $1.5 million and $2.2 million at December 31, 1998 and 1999, respectively. The equipment under capital leases collateralizes the related lease obligations.

Note 5 Notes Payable

In July 1998, the Company entered into a $5.0 million equipment and tenant improvements lending agreement. As of December 31, 1999, there was approximately $3.9 million outstanding under the lending agreement. The Company's ability to borrow additional amounts expired in January 2000. Borrowings under the lending agreement bear interest at 7.0% per annum and are collateralized by the financed equipment. Principal and interest are payable monthly over 42 months, and the Company is required to make a final balloon payment equal to 10% of the original principal amount of each drawdown.

In connection with the acquisition of MetaXen (see Note 12), the Company assumed a loan agreement which provided for the financing of equipment purchases. Borrowings under the agreement are collateralized by the assets financed and are subject to repayment over thirty-six to forty-eight months, depending on the type of asset financed. Borrowings under the agreement bear interest at the U.S. Treasury note rate plus a number of basis points determined by the type of asset financed (6.80% to 7.44% at December 31, 1999). As of December 31, 1999, there was approximately $937,000 outstanding under this loan agreement.

Future principal payments of notes payable at December 31, 1999 are as follows (in thousands):

Year ending December 31,	
2000	$ 1,554
2001	1,664
2002	1,209
2003	426
	4,853
Less current portion	(1,554)
	$ 3,299

Note 6 Convertible Promissory Note

In February 1999, the Company issued a $7.5 million convertible promissory note to Pharmacia & Upjohn in connection with a collaboration agreement (see Note 2). The non-interest bearing note automatically converts in March 2002, unless converted earlier at the option of Pharmacia & Upjohn. The note must be converted into shares of the Company's common stock during the two-year period following the Company's initial public offering at a price per share equal to 120% of the price of common stock sold in the initial public offering, the time of such conversion to be determined by Pharmacia & Upjohn. If the Company has not completed an initial public offering by March 2002, the note will be converted into a number of shares of convertible preferred stock equal to $7.5 million divided by the most recent price per share of such convertible preferred stock. The note contains certain covenants including restrictions on mergers and disposition of assets.

Note 7 Mandatorily Redeemable Convertible Preferred Stock

The Company has authorized 35,000,000 shares of preferred stock, designated in series. A summary of mandatorily redeemable convertible preferred stock ("preferred stock") is as follows:

			December 31,	
			1998	1999
	Shares Designated	Liquidation Preference Per Share	Issued and Outstanding	Issued and Outstanding
Series A	5,817,464	$ 0.70	5,328,571	5,328,571
Series B	13,000,000	1.00	12,300,000	12,300,000
Series C	7,875,000	2.00	7,875,000	7,875,000
Series D	7,500,000	3.00	2,119,539	5,000,000
	34,192,464		27,623,110	30,503,571

The preferred stock has the following characteristics:

Conversion

Each share of Series A, B, C and D preferred stock is convertible at any time at the option of the holder into shares of common stock based upon a one to 0.75 conversion ratio. All Series A, B, C and D preferred stock will automatically convert to common stock upon the earlier of (1) the closing of an initial public offering of the Company's common stock resulting in net proceeds of at least $15 million and a per share price of not less than $5.00, or (2) the consent of the holders of at least 66 2/3% in voting power of the then outstanding shares of Series A, B, C and D preferred stock.

Dividends

Holders of the Series D preferred stock are entitled to receive dividends when and if declared by the Board of Directors.

Holders of the Series B and C preferred stock are entitled to receive dividends when and if declared by the Board of Directors, provided however, that no dividend shall be declared on the Series B or C preferred stock unless the holders of the Series D preferred stock shall have first received, or the Company shall simultaneously declare and pay, an equal dividend on each outstanding share of Series D preferred stock.

Holders of the Series A preferred stock are entitled to receive dividends when and if declared by the Board of Directors, provided however that with the exception of the declaration and payment of the Special Series A Dividend (as defined below), no dividend shall be declared or paid on the Series A preferred stock unless the Company shall simultaneously declare and pay an equal dividend on each outstanding share of Series B, C and D preferred stock. Through December 31, 1999, no dividends have been declared or paid by the Company.

Holders of Series A preferred stock are entitled to receive a dividend of one twentieth (1/20th) of one share of common stock (the "Special Series A Dividend") under certain circumstances. If the consummation of either (1) the consolidation, merger, liquidation or sale of all or substantially all of the assets of the Company, or (2) the closing of an initial public offering of the Company's common stock at a price at or above the Per Share Threshold Amount ($3.00 at December 31, 1999), as defined, occurs on or before March 31, 2000, then the Special Series A Dividend shall be payable to holders of Series A preferred stock immediately prior to such event.

Mandatory Redemption

On March 31, 2002, 2003 and 2004, each holder of Series A, B and C preferred stock and on March 13, 2002, 2003 and 2004 each holder of Series D preferred stock shall have the right to require the Company to redeem up to the number of shares of such preferred stock held by each shareholder multiplied by a percentage (33-1/3%, 50% and 100% at each respective redemption date) at a per share price of $3.00 for Series D preferred stock, $2.00 for Series C preferred stock, $1.00 for Series B preferred stock and $0.70 for Series A preferred stock, plus all declared but unpaid dividends.

Liquidation Preference

In the event of any liquidation, dissolution, or winding up of the affairs of the Company, the holders of Series D preferred stock will be entitled to receive in preference to the holders of the Series C, B and A preferred stock and all classes of common stock an amount equal to $3.00 per share, subject to certain adjustments, plus any accrued but unpaid dividends. The holders of Series C preferred stock shall receive in preference to the holders of the Series B and A preferred stock and all classes of common stock an amount equal to $2.00 per share, subject to certain adjustments, plus any accrued and unpaid dividends. The holders of Series B preferred stock shall receive, in preference to the holders of the Series A preferred stock and all classes of common stock an amount equal to $1.00 per share, subject to certain adjustments, plus any accrued but unpaid dividends. The holders of Series A preferred stock shall receive, prior and in preference to any other series of preferred stock (other than the Series D, C and B preferred stock) and all classes of common stock, an amount equal to $0.70 per share, subject to certain adjustments, plus any accrued but unpaid dividends.

Voting Rights

Each holder of Series A, B, C and D preferred stock is entitled to the number of votes equal to the number of shares of common stock into which such holder's shares are convertible.

Amended and Restated Securityholders' Agreement

In January 1999, the Company and the Series A, Series B, Series C and Series D preferred stockholders entered into an amended and restated securityholders' agreement. The agreement

provides that in the event of an underwritten public offering, the Company will use its best efforts to cause the underwriters to reserve up to 10% of the shares included in the public offering for purchase by individuals who hold Series C preferred stock and do not hold shares of any other class of our capital stock.

Note 8 Common Stock and Warrants

Stock Repurchase Agreements

In January 1995, the Company sold to certain founders and members of its Scientific Advisory Board (the "SAB") and to a consultant 1,327,500 shares of common stock at a price of $0.001 per share. In June 1995, 1,200,000 of these shares held by three founders of the Company were converted into 526,819 shares of Class B common stock. Simultaneously, these founders entered into Restated Stock Purchase and Repurchase Agreements (the "Restated Agreements"). In April 1999, 526,819 shares of Class B common stock were converted into 1,200,000 shares of common stock pursuant to the terms of the Restated Agreements.

Under the terms of the 1997 Equity Incentive Plan (the "1997 Plan"), options are exercisable when granted and such shares are subject to repurchase upon termination of employment. Repurchase rights lapse over the vesting periods which are generally three to four years. Should the employment of the holders of common stock subject to repurchase terminate prior to full vesting of the outstanding shares, the Company may repurchase all unvested shares at a price per share equal to the original exercise price. At December 31, 1999, 1,629,785 shares were subject to such repurchase terms.

Warrants

During 1995, the Company issued warrants to purchase 69,642 shares of the Company's common stock at an exercise price of $0.93 per share to two shareholders of the Company. During January 2000, warrants to purchase 16,071 shares were exercised. The warrants expire in January 2005. The fair value of these warrants was determined using the Black-Scholes option pricing model and was not material, accordingly, no value was ascribed to them for financial reporting purposes.

In 1995, the Company also issued warrants to purchase 188,214 shares of the Company's Series A preferred stock at an exercise price of $0.70 per share in connection with a line of credit agreement. The warrants were immediately exercisable upon issuance and expire ten years from the date of issuance or five years from the date of an initial public offering, whichever is longer. The fair value of these warrants was determined using the Black-Scholes option pricing model and was not material, accordingly, no value has been ascribed to them for financial reporting purposes.

In January 1996, the Company issued warrants to purchase 357,143 shares of Series B preferred stock, at an exercise price of $0.85 per share, to a lender. The warrants expire ten years from the date of issue or five years from the effective date of an initial public offering, whichever is longer. The fair value of these warrants was determined using the Black-Scholes option pricing model and was not material, accordingly, no value was ascribed to them for financial reporting purposes.

In September 1997, the Company issued warrants to purchase 63,750 shares of common stock at an exercise price of $2.67 per share as part of a $2 million equipment lease financing arrangement. These warrants expire upon the earlier of September 2007 or five years from the

effective date of an initial public offering. The fair value of these warrants was determined using the Black-Scholes option pricing model and was not material, accordingly, no value has been ascribed to them for financial reporting purposes.

In May 1999, the Company issued warrants to purchase 112,500 shares of common stock at an exercise price of $4.00 per share in connection with a building lease. The Company determined the fair value of these warrants using the Black-Scholes option pricing model with the following assumptions: expected life of five years; a weighted average risk-free rate of 6.1%; expected dividend yield of zero; volatility of 70% and a deemed value of the common stock of $5.71 per share. The fair value of the warrants of $391,000 has been capitalized and will be amortized as rent expense over the term of the lease.

All such warrants are currently exercisable.

Reserved Shares

At December 31, 1999, the Company has reserved 30,295,798 shares of common stock for future issuance upon the conversion of its preferred stock, and the convertible promissory note, as well as for use in the Company's stock plans and exercise of outstanding warrants.

Note 9 Employee Benefit Plans

In January 1995, the Company adopted the 1994 Employee, Director and Consultant Stock Option Plan (the "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 SAB. In September 1997, the Company adopted the 1997 Plan. The 1997 Plan amends and supercedes the 1994 Plan. At December 31, 1999, the total number of shares which may be issued under the 1997 Plan, as amended, was 9,142,000. During January 2000, the Company approved a 2,000,000 share increase to the authorized shares available for issuance under the 1997 Plan. The Board of Directors is responsible for administration of the Company's stock plans and determines the term of each option, exercise price and the vesting terms. The Company may not grant an employee incentive stock options that are exercisable during any one year with an estimated fair value in excess of $100,000. Incentive stock options may be granted at an exercise price per share at least equal to the estimated fair value per underlying common share on the date of grant (not less than 110% of the estimated fair value in the case of holders of more than 10% of the Company's voting stock). Options granted under the 1997 Plan are exercisable when granted and generally expire ten years from the date of grant (five years for incentive stock options granted to holders of more than 10% of the Company's voting stock).

A summary of all option activity is presented below:

	Shares	Weighted-Average Exercise Price
Options outstanding at December 31, 1996	1,924,365	$ 0.06
Granted	2,092,215	0.21
Exercised	(246,695)	0.03
Cancelled	(48,363)	0.03
Options outstanding at December 31, 1997	3,721,522	0.12
Granted	1,949,255	0.27
Exercised	(2,514,898)	0.13
Cancelled	(354,702)	0.26
Options outstanding at December 31, 1998	2,801,177	0.25
Granted	2,892,202	0.32
Exercised	(1,057,300)	0.26
Cancelled	(169,552)	0.27
Options outstanding at December 31, 1999	4,466,527	0.29

The following table summarizes information about stock options outstanding at December 31, 1999:

Options Outstanding and Exercisable			
Exercise Prices	Number	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price
$ 0.01	29,625	6.34	$ 0.01
0.13	107,261	7.02	0.13
0.27	3,776,256	8.81	0.27
0.40	473,150	9.81	0.40
0.80	42,735	9.94	0.80
1.33	37,500	9.96	1.33
	4,466,527	8.95	0.29

At December 31, 1999, 1,629,785 shares of common stock purchased under the 1994 and 1997 Plans were subject to repurchase by the Company at a weighted average price of $0.27 per share.

Had compensation cost been determined based on the fair value of the options at the grant date consistent with the provisions of SFAS No. 123, the Company's pro forma net loss would have been as follows:

	Year Ended December 31,		
	1997	1998	1999
Net loss:			
As reported	$(11,496)	$(15,666)	$(18,721)
Pro forma	(11,505)	(15,701)	(18,776)
Net loss per share (basic and diluted):			
As reported	$ (8.76)	$ (3.83)	$ (3.47)
Pro forma	(8.77)	(3.84)	(3.48)

Since options vest over several years and additional option grants are expected to be made in future years, the pro forma impact on the results of operations for the three years ended December 31, 1999 is not representative of the pro forma effects on the results of operations for future periods.

The fair value of each option grant is estimated on the date of grant using the minimum value method with the following assumptions for grants in 1997, 1998 and 1999: 0% dividend yield for all years; risk-free interest rates of 6.18% for 1997, 5.82% for 1998 and 5.59% for 1999 and expected lives of 5 years for all years presented.

Deferred Stock Compensation

During the period from January 1, 1997 through December 31, 1999, the Company recorded $18.4 million of deferred stock compensation in accordance with APB 25, SFAS 123 and Emerging Issues Task Force 96-18, related to stock options granted to consultants and employees. For options granted to consultants, the Company determined the fair value of the options using the Black-Scholes option pricing model with the following assumptions: expected lives of four years; a weighted average risk-free rate of 5.75%; expected dividend yield of zero percent; volatility of 70% and deemed values of common stock between $0.40 and $8.35 per share. Stock compensation expense is being recognized in accordance with FIN 28 over the vesting periods of the related options, generally four years. The Company recognized stock compensation expense of $25,000, $725,000 and $3.5 million for the years ended December 31, 1997, 1998 and 1999, respectively.

2000 Equity Incentive Plan

In January 2000, the Company adopted, subject to stockholder approval, the 2000 Equity Incentive Plan. A total of 3,000,000 shares of common stock have been reserved for future issuance under this plan.

2000 Non-Employee Directors' Stock Option Plan

In January 2000, the Company adopted, subject to stockholder approval, the 2000 Non-Employees Directors' Stock Option Plan. This plan provides for the automatic grant of options to purchase shares of common stock to non-employee directors. A total of 500,000 shares of common stock were initially authorized for issuance under this plan.

2000 Employee Stock Purchase Plan

In January 2000, the Company adopted, subject to stockholder approval, the 2000 Employee Stock Purchase Plan. A total of 300,000 shares of common stock were initially authorized for issuance under this plan.

Note 10 Income Taxes

The Company's deferred tax assets consist of the following (in thousands):

	December 31	
	1998	1999
Net operating loss carryforwards	$ 8,248	$ 12,430
Capitalized start-up and organizational costs	2,546	2,154
Tax credit carryforwards	1,483	2,071
Capitalized research and development costs	2,239	1,966
Other	(842)	(240)
Total deferred tax assets	(13,674)	(18,381)
Valuation allowance	13,674	18,381
Net deferred tax assets	$ --	$ --

The valuation allowance increased by $4.7 million and $5.7 million during the years ended December 31, 1999 and 1998, respectively.

The Company has not recorded any provision or benefit for income taxes as it continues to record operating losses. The Company has provided a full valuation allowance for the deferred tax assets at December 31, 1999 since the realization of these amounts is not considered more likely than not by management.

At December 31, 1999, the Company had federal and state net operating loss carryforwards of approximately $33.9 million and $25.6 million, respectively, which expire at various dates beginning in the year 2005. Under the Internal Revenue Code, certain substantial changes in the Company's ownership could result in an annual limitation on the amount of net operating loss carryforwards which can be utilized in future years to offset future taxable income.

Note 11 Commitments

Leases

The Company leases office and research space and certain equipment under operating and capital leases that expire at various dates through the year 2017. Certain operating leases contain renewal provisions and require the Company to pay other expenses. Future minimum lease payments under operating and capital leases are as follows (in thousands):

Year ending December 31,	Operating Leases	Capital Leases
2000	$ 3,061	$ 793
2001	2,531	235
2002	2,489	--
2003	2,566	--
2004	2,621	--
Thereafter	23,778	--
	37,046	1,028
Less amount representing interest	--	(64)
Present value of minimum lease payments	$37,046	964
Less current portion		(735)
Long-term portion		$ 229

Rent expense under noncancellable operating leases was $882,000, $920,000 and $1.5 million for the years ended December 31, 1997, 1998 and 1999, respectively.

The Company entered into a line of credit agreement (the "Agreement") during 1995. The term of each borrowing under the Agreement ranges from thirty-six to forty-eight months and bears interest at rates ranging from 9.5% to 11.0% depending on the type of equipment purchased under the Agreement. At December 31, 1999, $125,000 was outstanding under the Agreement. In connection with the Agreement, the Company issued warrants to purchase 188,214 shares of the Company's Series A preferred stock at an exercise price of $0.70 per share (see Note 8).

In September 1997, the Company entered into a lease line of credit arrangement (the "Arrangement") which allows the Company to purchase $2.0 million of equipment. The term of each borrowing under the Arrangement is 42 months and each bears interest at a minimum of 9.0%. At December 31, 1999, $839,000 was outstanding under the Arrangement. In connection with the Arrangement, the Company granted warrants to purchase 63,750 shares of its common stock (see Note 8).

Licensing Agreements

The Company has entered into several licensing agreements with various universities and institutions under which it obtained exclusive rights to certain patent, patent applications, and other technology. Future payments pursuant to these agreements are as follows (in thousands):

Year ending December 31,	
2000	$1,573
2001	665
2002	657
2003	657
2004	441
	$3,993

In addition to the payments summarized above, the Company is 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. No such royalties or milestones have been paid through December 31, 1999.

Consulting agreements

The Company has entered into consulting agreements with certain members of the SAB. Total consulting expense incurred under these agreements during the years ended December 31, 1997, 1998 and 1999 was $236,000, $345,000 and $352,000, respectively.

Note 12 Acquisition

In July 1999, the Company acquired substantially all the assets of MetaXen, LLC ("MetaXen"), a biotechnology company focusing on molecular genetics. In addition to paying cash consideration of $870,000, the Company assumed a note payable relating to certain acquired assets with a principal balance due of $1.1 million (see Note 5). The Company also assumed responsibility for a facility sub-lease relating to the office and laboratory space occupied by MetaXen.

This transaction was recorded using the purchase method of accounting. The fair value of the assets purchased, and debt assumed, was determined by management to equal their respective historical net book values on the transaction date, as follows (in thousands):

Laboratory and computer equipment	$ 1,645
Leasehold improvements	175
Other tangible assets	155
Note payable	(1,105)
	$ 870

The following unaudited pro forma financial information presents the consolidated results of the Company as if the acquisition had occurred at the beginning of each period presented (in thousands, except per share data). This pro forma financial information is not intended to be indicative of future operating results.

	Year Ended December 31,	
	1998	1999
	(unaudited)	
Total revenues	$ 7,022	$ 12,807
Net loss	(19,129)	(20,328)
Net loss per share, basic and diluted	(4.68)	(3.77)

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Members of
MetaXen, LLC

In our opinion, the accompanying balance sheets and the related statements of operations, of members' equity (deficit) and of cash flows present fairly, in all material respects, the financial position of MetaXen, LLC (a majority owned subsidiary of Xenova UK Limited) at December 31, 1997 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audit of these statements in accordance with generally accepted auditing standards which 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, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has incurred net losses since inception which raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ PricewaterhouseCoopers LLP

San Jose, California
February 10, 1999

METAXEN, LLC
(A MAJORITY OWNED SUBSIDIARY OF XENOVA UK LIMITED)

BALANCE SHEETS

	December 31,		June 30,
	1997	1998	1999
			(unaudited)
ASSETS			
Current assets:			
Cash and cash equivalents	$ 124,000	$ 216,000	$ 30,000
Other current assets	130,000	121,000	135,000
Total current assets	254,000	337,000	165,000
Property and equipment, net	1,487,000	3,132,000	2,837,000
Other assets	160,000	320,000	320,000
	$1,901,000	$ 3,789,000	$ 3,322,000
LIABILITIES AND MEMBERS' EQUITY (DEFICIT)			
Current liabilities:			
Accounts payable	$ 306,000	$ 369,000	$ 263,000
Accrued expenses	244,000	1,415,000	1,227,000
Deferred revenue	--	502,000	379,000
Intercompany payable	3,000	227,000	1,965,000
Intercompany loan	--	3,035,000	3,084,000
Current portion of long-term liabilities	250,000	380,000	417,000
Total current liabilities	803,000	5,928,000	7,335,000
Long-term liabilities	707,000	788,000	548,000
Total liabilities	1,510,000	6,716,000	7,883,000
Commitments (Note 9)			
Members' equity (deficit):			
Preferred stock--Class A; 1,766,000 shares issued and outstanding at December 31, 1997 and 1998	391,000	(3,068,000)	(4,675,000)
Preferred stock--Class B; 120,000 shares issued and outstanding at December 31, 1997 and 1998	--	--	--
Preferred stock--Class C; 300,000 and 345,000 shares issued and outstanding at December 31, 1997 and 1998, respectively	--	141,000	114,000
Total members' equity (deficit)	391,000	(2,927,000)	(4,561,000)
	$1,901,000	$ 3,789,000	$ 3,322,000

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

METAXEN, LLC
(A MAJORITY OWNED SUBSIDIARY OF XENOVA UK LIMITED)

STATEMENTS OF OPERATIONS

	Year Ended December 31,		Six Months Ended June 30,	
	1997	1998	1998	1999
			(unaudited)	
Contract revenues	$ --	$ 4,750,000	$ 2,364,000	$ 2,297,000
Operating expenses:				
General and administrative	1,268,000	1,348,000	583,000	513,000
Research and development	2,937,000	6,626,000	2,774,000	3,328,000
Total operating expenses	4,205,000	7,974,000	3,357,000	3,841,000
Loss from operations	(4,205,000)	(3,224,000)	(993,000)	(1,544,000)
Interest income	46,000	35,000	16,000	9,000
Interest expense	(30,000)	(274,000)	(70,000)	(72,000)
Net loss	$(4,189,000)	$(3,463,000)	$(1,047,000)	$(1,607,000)

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

METAXEN, LLC
(A MAJORITY OWNED SUBSIDIARY OF XENOVA UK LIMITED)

STATEMENTS OF MEMBERS' EQUITY (DEFICIT)
FOR THE PERIOD FROM INCEPTION (AUGUST 1996) THROUGH DECEMBER 31, 1998

	Series A Preferred Stock		Series B Preferred Stock		Series C Preferred Stock		
	Shares	Amount	Shares	Amount	Shares	Amount	Total
Balance at December 31, 1996	280,000	$ 364,000	120,000	$216,000	320,000	$ 2,000	$ 582,000
Issuance of Class A Preferred Stock at $2.50 per share	1,200,000	3,000,000	--	--	--	--	3,000,000
Issuance of Class A Preferred Stock at $3.50 per share	286,000	1,000,000	--	--	--	--	1,000,000
Repurchase of Class C Preferred Stock at $0.10 per share	--	--	--	--	(20,000)	(2,000)	(2,000)
Net loss	--	(3,973,000)	--	(216,000)	--	--	(4,189,000)
Balance at December 31, 1997	1,766,000	391,000	120,000	--	300,000	--	391,000
Issuance of Class C Preferred Stock at $0.005 per share	--	--	--	--	20,000	--	--
Issuance of Class C Preferred Stock at $0.10 per share	--	--	--	--	45,000	5,000	5,000
Stock compensation expense	--	--	--	--	--	141,000	141,000
Repurchase of Class C Preferred Stock at $0.005 per share	--	--	--	--	(10,000)	--	--
Repurchase of Class C Preferred Stock at $0.10 per share	--	--	--	--	(10,000)	(1,000)	(1,000)
Net loss	--	(3,459,000)	--	--	--	(4,000)	(3,463,000)
Balance at December 31, 1998	1,766,000	(3,068,000)	120,000	--	345,000	141,000	(2,927,000)
Stock compensation expense (unaudited)	--	--	--	--	--	(27,000)	(27,000)
Net loss (unaudited)	--	(1,607,000)	--	--	--	--	(1,607,000)
Balance at June 30, 1999 (unaudited)	1,766,000	$(4,675,000)	120,000	$ --	345,000	$114,000	$(4,561,000)

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

METAXEN, LLC
(A MAJORITY OWNED SUBSIDIARY OF XENOVA UK LIMITED)

STATEMENTS OF CASH FLOWS

	Year Ended December 31,		Six Months Ended June 30,	
	1997	1998	1998	1999
			(unaudited)	
Cash flow used in operating activities:				
Net loss	$(4,189,000)	$(3,463,000)	$(1,047,000)	$(1,607,000)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	314,000	659,000	266,000	317,000
Loss on disposal of property and equipment	--	104,000	--	--
Stock compensation	--	141,000	--	(27,000)
Changes in assets and liabilities:				
Other current assets	(95,000)	9,000	(47,000)	(14,000)
Other assets	(160,000)	(160,000)	(160,000)	--
Accounts payable	236,000	63,000	(182,000)	(106,000)
Accrued expenses	212,000	1,171,000	--	(188,000)
Deferred revenue	--	502,000	366,000	(123,000)
Intercompany payable	--	224,000	--	1,738,000
Net cash used in operating activities	(3,682,000)	(750,000)	(804,000)	(10,000)
Cash flow used in investing activities:				
Purchases of property and equipment	(1,731,000)	(2,408,000)	(376,000)	(22,000)
Cash flow provided by financing activities:				
Proceeds from issuance of Class A Preferred Stock	4,000,000	--	(1,000)	--
Proceeds from issuance of Class C Preferred Stock	--	5,000	--	--
Repurchase of Class C Preferred Stock	(2,000)	(1,000)	--	--
Proceeds from equipment line of credit	1,000,000	254,000	--	--
Repayments under equipment line of credit	(43,000)	(43,000)	(110,000)	(203,000)
Increase in intercompany loan	--	3,035,000	2,100,000	49,000
Net cash provided by (used in) financing activities	4,955,000	3,250,000	1,989,000	(154,000)
Net increase (decrease) in cash and cash equivalents	(458,000)	92,000	809,000	(186,000)
Cash and cash equivalents at beginning of period	582,000	124,000	124,000	216,000
Cash and cash equivalents at end of period	$ 124,000	$ 216,000	$ 933,000	$ 30,000

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

METAXEN, LLC
(A MAJORITY OWNED SUBSIDIARY OF XENOVA UK LIMITED)

NOTES TO FINANCIAL STATEMENTS

Note 1--The Company and Significant Accounting Policies:

Nature of business

MetaXen, LLC (the "Company") was incorporated in Delaware in August 1996 for the purpose of performing research and development in the fields of biotechnology and molecular genetics and to develop pharmaceutical products and procedures on its own account and in collaboration with Xenova UK Limited, a wholly owned subsidiary of Xenova Group plc (collectively referred to as "Xenova" or the "Parent Company"). The Company is a majority owned subsidiary of Xenova. The Company emerged from the development stage during 1997.

The Company was formed as a result of a merger in September 1996 between RGH Founders, LLC, a Delaware corporation incorporated in August 1996, and MetaXen, LLC, a Delaware corporation incorporated in September 1996 ("Merger Corp."). At that time, Xenova exchanged its premerger interests in Merger Corp. for 280,000 shares of Class A Preferred Stock in the Company; MJR Holdings, Inc. exchanged its premerger interests in Merger Corp. for 100,000 shares of Class B Preferred Stock in the Company. Also at this time, Ross Holdings, Inc., Giebel Holdings, Inc. and Hartmanis Holdings, Inc. exchanged their interests in RGH Founders, LLC for 200,000, 100,000 and 20,000 shares of the Company's Class C Preferred Stock, respectively. Upon the merger, the Company assumed the assets and liabilities of Merger Corp. and RGH Founders, LLC. Merger Corp. and RGH Founders, LLC were both nominally capitalized at that time and there was no gain or loss arising from the merger. These financial statements include the results of RGH Founders, LLC and Merger Corp. since their inception.

Need for additional financing

The Company has incurred a cumulative net loss of $8,072,000 since inception and expects to incur additional losses in the future which raise substantial doubt about the Company's ability to continue as a going concern. Xenova has committed to provide sufficient funds to support the operations of MetaXen until the earlier of 1) such time as Xenova Group plc has less then a 50% controlling interest in MetaXen or 2) March 31, 1999. Therefore, in order to continue operating and fully implement its business plan, the Company will need to raise additional debt or equity financing. There can be no assurance that such additional funds will be available to the Company, or if available, that it will be on reasonable terms. The inability of the Company to obtain additional financing beyond March 1999 will have a material adverse impact on the Company's operations.

The Company funded its operations through June 1999 by amounts received under a research and license agreement and additional amounts received from Xenova.

Cash and cash equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

Property and equipment

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation and amortization are computed on a straight-line basis over the lesser of the estimated useful lives of the assets, which range from three to seven years, or the lease terms.

Revenue recognition

Revenue recognized under research and development contracts is recorded as earned pursuant to the terms of the contracts. Nonrefundable contract fees for which no further performance obligations exist are recognized when the payments are received or when collection is assured. In return for such payments, contract partners may receive certain marketing and manufacturing rights, products for clinical use and testing, and/or research and development services.

Research and development expenses

Research and development costs are expensed as incurred.

Stock-based compensation

The Company has adopted the pro forma disclosure requirements of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). As permitted, the Company continues to recognize employee stock-based compensation under the intrinsic value method of accounting pursuant to Accounting Principles Board Opinion No. 25.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could subsequently differ from those estimates.

Note 2--Property and Equipment:

Property and equipment consists of the following:

	December 31,	
	1997	1998
Lab equipment	$ 818,000	$ 1,305,000
Computer equipment	449,000	676,000
Furniture and equipment	184,000	357,000
Leasehold improvements	353,000	1,366,000
	1,804,000	3,704,000
Less accumulated depreciation and amortization	(317,000)	(572,000)
	$ 1,487,000	$ 3,132,000

Depreciation and amortization expense was $659,000 and $314,000 for the years ended December 31, 1998 and 1997, respectively.

Note 3--Other Assets:

At December 31, 1998, other assets of $320,000 consisted of a certificate of deposit restricted as to withdrawal to secure an irrevocable letter of credit issued in connection with the Company's non-cancellable facility operating lease.

Note 4--Income Taxes:

No provision or benefit for federal income taxes is reported in the financial statements because, as a limited liability company, the tax effects of the Company's results accrue to its Members.

Note 5--Debt:

In July 1997, the Company entered into a loan agreement which provides for the financing of up to $1,500,000 of equipment purchases made through December 31, 1998. Borrowings under this agreement are secured by the assets financed and are to be repaid over thirty-six to forty-eight months, depending on the type of asset financed. Borrowings under this agreement bear interest at the U.S. Treasury note rate plus a number of basis points determined by the type of asset financed (9.22% to 11.09% at December 31, 1998).

Future payments under this loan are as follows:

Year Ending December 31,	
1999	$ 500,000
2000	500,000
2001	367,000
2002	148,000
	1,515,000
Less interest	(347,000)
	1,168,000
Less current portion	(380,000)
Long-term portion	$ 788,000

Note 6--Members' Equity:

The rights and preferences of the preferred stock are described below.

Allocations and distributions

In the event of cash distributions, amounts will first be distributed to the holders of Class A and Class B Preferred Stock pro rata in accordance with the balances in their respective Member equity accounts. Any amounts in excess of the amounts in their Member equity accounts will be distributed (i) 80% to the holders of Class A Preferred Stock; and (ii) 20% to the holders of Class B and Class C Preferred Stock, pro rata in accordance with the number of such shares held by such holders. No distributions have been made from inception through December 31, 1998.

Net losses of the Company are first allocated (i) 80% to the holders of Class A Preferred Stock; and (ii) 20% to the holders of the Class B and C Preferred Stock, to the extent that cumulative net profits (if any) allocated to the holders of Class B and C Preferred Stock in prior years exceeds the cumulative net losses allocated to such holders in prior years. Any remaining net losses of the Company are then allocated (i) to the holders of Class B Preferred Stock to the extent that this would not cause such holders to have a deficit in their Member equity at the end of the year; then (ii) to the holders of Class A Preferred Stock to the extent that this would not cause such holders to have a

deficit in their Members equity account at the end of the year; and then (a) 80% to the holders of Class A Preferred Stock; and (b) 20% to the holders of Class B and C Preferred Stock. However, in the event of the members having received a distribution of the type described below in connection with a winding up of the Company, the Member equity accounts of the holders of Class B and C Preferred Stock and Common Stock shall be adjusted to reflect the aggregate net loss that would have been allocated to such holders if the holders of Common Stock had participated with the holders of Class B and C Preferred Stock under (b) above from the date of the acquisition of such Common Stock.

Net profits of the Company are first allocated to the holders of Class A, B and C Preferred Stock to the extent that cumulative net losses allocated to such holders in prior years exceed the cumulative net profits allocated to such holders in prior years. Any remaining net profits are then allocated (i) to the holders of Class A Preferred Stock to the extent that cumulative net losses allocated to such holders in provision (ii) on the allocation of losses above exceed cumulative net profits allocated under this provision; then (ii) to the holders of Class B Preferred Stock to the extent that cumulative net losses allocated to such holders in provision (i) on the allocation of losses above exceed cumulative net profits allocated under this provision; and then (a) 80% to the holders of Class A Preferred Stock; and (b) 20% to the holders of Class B and C Preferred Stock. However, in the event of the members having received a distribution of the type described below in connection with a winding up of the Company, the Member equity accounts of the holders of Class B and C Preferred Stock and Common Stock shall be adjusted to reflect the aggregate net profit that would have been allocated to such holders if the holders of Common Stock had participated with the holders of Class B and C Preferred Stock under (b) above from the date of the acquisition of such Common Stock. Furthermore, in the event of the Members receiving a distribution of the type described below describing distributions upon the winding up of the Company, the holders of Common Stock shall be allocated the portion of net profit associated with the remaining distributable assets distributed to the holders of such Common Stock.

In the event of there being distributable assets upon the winding up of the Company, these assets will be distributed (i) to the holders of Class A and B Preferred Stock pro rata in accordance with the balances in their respective Member equity accounts for the return of their respective contributions; (ii) to all members of the Company pro rata in accordance with their respective Member equity accounts after giving effect to (i) above but without allocating any net profit resulting from the liquidation of the Company's assets and the dissolution of the Company; (iii) to the holders of Class A Preferred Stock to the extent of 80% of the remaining distributable assets; and (iv) to the holders of Class B and C Preferred Stock and Common Stock pro rata in accordance with the number of such shares then held by such holders.

Class A Preferred Stock

Holders of Class A Preferred Stock are entitled to one vote per share and are entitled to elect two-thirds of the members of the Board of Directors.

Class B Preferred Stock

Holders of Class B Preferred Stock are entitled to one vote per share and are entitled to elect one-third of the number of members constituting the Board of Directors subject to certain approvals from the holders of the Class A Preferred Stock.

At any time following September 4, 2000 and prior to the close of business on the 30th day thereafter, the holders of Class B Preferred Stock may exchange their shares for ordinary shares of Xenova Group plc. The applicable exchange ratio depends upon the Company and Xenova having achieved various milestones.

At any time prior to the close of business on the 60th day following September 4, 2000, Xenova Group plc may exchange all of the then outstanding Class B Preferred Stock for ordinary shares of Xenova Group plc. The applicable exchange ratio depends upon the Company and Xenova having achieved various milestones.

At any time prior to September 4, 2000, subject to the achievement of specified milestones, the holders (other than Xenova Group plc and its affiliates) of not less than one-third of the then outstanding shares and options and warrants to purchase any class of stock may exchange the portion requested for shares and options, respectively, of Xenova Group plc at the then applicable exchange ratio. The applicable exchange ratio depends upon the Company and Xenova having achieved various milestones.

Class C Preferred Stock

The holders of Class C Preferred Stock do not have any voting rights but have the same exchange rights and obligations as the holders of Class B Preferred Stock.

In the event that a holder of Class C Preferred Stock (i) terminates his or her employment with the Company in certain circumstances; or (ii) in the case of any person acquiring Class C Preferred Stock prior to commencing employment with the Company, where the person failed to execute an employment agreement and commence employment with the Company prior to September 4, 1997, the Company has the option to repurchase all or a portion of that person's Class C Preferred Stock. The portion of the person's Class C Preferred Stock that the Company may purchase depends upon the length of time that has passed since the September 1996 merger.

During 1998, the Company recorded $141,000 of stock compensation expense for the excess deemed fair value over the issuance price of stock sold to employees.

Class D Preferred Stock

At December 31, 1998, the Company had not designated or issued any Class D Preferred Stock. The holders of Class D Preferred Stock would be entitled to a percentage, prorata and in accordance with the number of shares then held by such holders, of all cash profit or loss distributions which is equal to the product of 0.000015 and the number of Class D Preferred Shares outstanding at such time.

Class E Preferred Stock

At December 31, 1998, the Company had not designated or issued any shares of Class E Preferred Stock. The holders of Class E Preferred Stock would be entitled to a percentage, prorata and in accordance with the number of shares then held by such holders, of all cash profit or loss distributions which is equal to the product of 0.0000775 and the number of Class E Preferred Shares outstanding at such time.

Stock Warrants

In May 1997, the Company entered into a building lease agreement (the "Lease Agreement"). As part of the Lease Agreement, the Company granted the lessor warrants on November 5, 1997 to purchase 100,000 shares of the Company's Class D Preferred Stock with an exercise price of $6.38 per share, which equalled the fair market value of the Xenova common stock plus $2.00 per share, as of the date of the issuance of such warrants. The warrants are exercisable from the date of issuance through October 2002.

In July 1997, the Company entered into a loan agreement which provides for the financing of certain equipment purchases (see Note 5). As part of the agreement, the Company granted the lender warrants on July 31, 1997 to purchase 14,516 shares of the Company's Class E Preferred Stock with an exercise price of $7.75 per share. The exercise price of $7.75 is based on the sum of the Common Stock price of Xenova Group plc as of June 17, 1997 plus $2.00 per share. The warrants are exercisable from the date of issuance through June 2002.

A nominal value was ascribed to the warrants outlined above.

Common Stock

At December 31, 1998, the Company had not issued any shares of Common Stock. The Common Stock does not have any voting rights. The shares of Common Stock are subject to the same exchange rights and obligations as the Class B Preferred Stock but such shares will be exchanged for Xenova Group plc shares on a one-for-one basis.

Note 7--Stock Option Plan:

In December 1996 the Company adopted the 1996 Equity Incentive Plan (the "1996 Plan"). The Company has reserved 300,000 shares of Common Stock for issuance under the 1996 Plan relating to nonqualified options to be granted to officers and employees. The exercise price, vesting requirements and maximum term of each option issued under the 1996 Plan are determined by the Company's Board of Directors.

Activity under the 1996 Plan is summarized as follows:

	Options Available for Grant	Options Outstanding	Exercise Price
Balance at December 31, 1996.....	300,000	--	--
Granted.....	(216,000)	216,000	$2.88-$5.81
Balance at December 31, 1997.....	84,000	216,000	2.88-5.81
Granted.....	(94,000)	94,000	2.69-2.75
Cancelled.....	92,500	(92,500)	2.88-5.81
Balance at December 31, 1998.....	82,500	217,500	2.69-5.81

The following table summarizes information about options outstanding under the 1996 Plan as of December 31, 1998:

Options Outstanding			
Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price
$2.69-2.88	166,500	4.2 years	$2.80
3.63	20,000	3.0 years	3.63
4.38	16,000	3.6 years	4.38
5.81	15,000	3.3 years	5.81
	217,500		3.20

The Company believes that had employee stock-based compensation for options granted under the 1996 Plan been determined based on the fair value at the grant date using the minimum value model as prescribed by SFAS 123, there would have been no material difference between the Company's pro forma net loss for the years ended December 31, 1998 and 1997 and the actual net loss recorded in the accompanying statement of operations. The fair value of each option was estimated on the grant date using the minimum value method with the following assumptions: annual dividend yield of 0.0%, risk-free annual interest rate of 5.82% to 6.57% and an expected option term of four years.

Note 8--Research and License Agreement:

The Company and Xenova signed a research and license agreement with Eli Lilly and Company ("Eli Lilly") on February 16, 1998. The Company and Xenova are providing research services to Eli Lilly in the form of screening certain compounds for accelerated drug discovery and development. Eli Lilly will have certain license rights to any compounds resulting from efforts completed under the agreement. The Company and Xenova receive amounts quarterly under the agreement which approximate cost reimbursement for amounts incurred pursuant to the agreement. Milestone payments can also be earned by the Company and Xenova, as defined in the agreement. For the year ended December 31, 1998, the Company recorded total contract revenues of $4,750,000, consisting of a $1,000,000 non-refundable license fee and $3,750,000 of research fees. Costs incurred by the Company under the agreement in 1998 approximated $4,409,000.

Note 9--Commitments:

The Company leases its facility under a non-cancellable operating lease which expires in September 2002. The Company subleases certain space in its current facility to other tenants.

Rent expense for the years ended December 31, 1998 and 1997 was $762,000 and $377,000, respectively. The Company recognizes rent expense on a straight line basis over the lease period.

Future minimum lease payments under the non-cancellable operating lease and minimum sublease rental receipts under non-cancellable operating sub-leases are as follows:

Year Ending December 31,	Operating Lease	Sublease Income
1999	$ 1,966,000	$ 633,000
2000	1,997,000	429,000
2001	1,843,000	--
2002	1,814,000	--
2003	1,783,000	--
	$ 9,403,000	$ 1,062,000

Note 10--Related Party Transactions:

On September 4, 1996, the Company entered into a research and development collaboration agreement with Xenova. The agreement specifies the rights of both parties to intellectual property developed under the agreement. The agreement will continue to be in force until the earlier of (i) the date that Xenova provides the Company with notice that it will cease to provide funding for the operations of the Company; (ii) the dissolution of the Company; or (iii) the date of exchange of all shares of Class B and C Preferred Stock and Common Stock of the Company for shares of Xenova common stock.

On December 17, 1997, the Company entered into a loan agreement with Xenova. Under this agreement, Xenova agreed to make available to the Company a loan facility of $1.1 million or such other amounts as the parties may agree to in writing from time to time. The loan bears interest at the UK LIBOR plus 1%, compounded quarterly. The loan will mature one year from the date on which Xenova advances amounts to the Company or such other date as the parties hereto may agree to in writing from time to time. On January 2, 1998, Xenova advanced $1.1 million to the Company under this loan agreement.

During 1998 the loan agreement was amended and the total amount available was increased to $2.92 million, all of which was borrowed and outstanding at December 31, 1998. Interest due on the loan as of December 31, 1998 amounted to $115,000.

EXELIXIS, INC.

UNAUDITED PRO FORMA COMBINED FINANCIAL STATEMENT

On July 11, 1999, the Company acquired substantially all of the assets of MetaXen, LLC ("MetaXen"), a biotechnology company focused on molecular genetics, in a transaction accounted for using the purchase method of accounting. Under the purchase method of accounting, the aggregate purchase price is allocated to the tangible and identifiable intangible assets acquired and debt assumed on the basis of their fair values on the acquisition date. The fair value of the assets purchased, and debt assumed, was determined by management to equal their respective historical net book values on the transaction date. The unaudited pro forma combined statement of operations is based on the individual statements of operations of the Company and MetaXen for the year ended December 31, 1999. The operations of MetaXen have been included in the unaudited pro forma combined statement of operations as though the acquisition had been consummated on January 1, 1999.

The pro forma information has been prepared in accordance with the rules and regulations of the Securities and Exchange Commission and is provided for illustrative purposes only. The pro forma information does not purport to be indicative of the results that actually would have occurred had the combination been effected on the date indicated above. The unaudited pro forma financial statement, including the notes thereto, are qualified in their entirety by reference to, and should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the financial statements and notes thereto, which are included elsewhere herein.

EXELIXIS, INC.

UNAUDITED PRO FORMA COMBINED STATEMENT OF OPERATIONS
(in thousands, except per share data)

	Year Ended December 31, 1999		
	As Reported	MetaXen	Pro Forma
Revenues:			
License	$ 1,046	$ --	$ 1,046
Contract	9,464	2,297	11,761
Total revenues	10,510	2,297	12,807
Operating expenses:			
Research and development	21,653	3,328	24,981
General and administrative	7,624	513	8,137
Total operating expenses	29,277	3,841	33,118
Loss from operations	(18,767)	(1,544)	(20,311)
Interest and other income	571	9	580
Interest expense	(525)	(72)	(597)
Net loss	$(18,721)	$(1,607)	$(20,328)
Basic and diluted net loss per share	$ (3.47)		$ (3.77)
Shares used in computing basic and diluted net loss per share	5,389		5,389

EXELIXIS, INC.

NOTES TO UNAUDITED PRO FORMA COMBINED FINANCIAL STATEMENT
(UNAUDITED)

Note 1 Basis of Presentation:

On July 11, 1999, the Company acquired substantially all the assets of MetaXen, LLC ("MetaXen"), a biotechnology company focused on molecular genetics. In addition to paying cash consideration of $870,000, the Company assumed a note payable relating to certain acquired assets with a principle balance due of $1.1 million. The Company also assumed responsibility for a facility sub-lease relating to the office and laboratory space occupied by MetaXen.

This transaction was recorded using the purchase method of accounting. The allocation of the aggregate purchase price to the tangible and identifiable intangible assets acquired and liabilities assumed in connection with this acquisition was based on estimated fair values as determined by management. The purchase price allocation is summarized below (in thousands):

Laboratory and computer equipment	$ 1,645
Leasehold improvements	175
Other tangible assets	155
Note payable	(1,105)
	$ 870

Pro forma adjustments relating to interest income and interest expense were not material to the unaudited pro forma combined financial statement.

Note 2 Net Loss Per Share:

Basic and diluted net loss per share and shares used in computing basic and diluted net loss per share for the year ended December 31, 1999 are based upon the Company's historical weighted average common shares outstanding. Common stock issuable upon the exercise of the stock options and warrants, and shares issuable upon the conversion of preferred stock and note payable have been excluded from the computation of basic and diluted net loss per share as their effect would be anti-dilutive.

No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this Prospectus. You must not rely on any unauthorized information or representations. This Prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this Prospectus is current only as of its date.

TABLE OF CONTENTS

Through and including , 2000 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

9,100,000 Shares

Exelixis, Inc.

Common Stock

[LOGO OF EXELIXIS]

Goldman, Sachs & Co.

Credit Suisse First Boston

SG Cowen

Representatives of the Underwriters

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than the underwriting discounts payable by us, in connection with the sale of common stock being registered. All amounts are estimates except the SEC registration fee, the NASDAQ filing fee and the Nasdaq National Market listing fee.

SEC registration fee	$ 30,391
NASDAQ filing fee	10,500
Nasdaq National Market listing fee	95,000
Blue Sky Fees and expenses	5,000
Transfer Agent and registrar fees	10,000
Accounting fees and expenses	350,000
Legal fees and expenses	500,000
Printing and engraving costs	345,000
Miscellaneous expenses	54,109
Total	$1,400,000

Item 14. Indemnification of Directors and Officers

As permitted by Delaware law, our amended and restated certificate of incorporation provides that no director of ours will be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability:

- for any breach of duty of loyalty to us or to our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- for unlawful payment of dividends or unlawful stock repurchases or redemptions under Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation further provides that we must indemnify our directors and executive officers and may indemnify our other officers and employees and agents to the fullest extent permitted by Delaware law. We believe that indemnification under our amended and restated certificate of incorporation covers negligence and gross negligence on the part of indemnified parties.

We have entered into indemnification agreements with each of our directors and certain officers. These agreements, among other things, require us to indemnify each director and officer for certain expenses including attorneys' fees, judgments, fines and settlement amounts incurred by any such person in any action or proceeding, including any action by or in the right of Exelixis, Inc., arising out of the person's services as our director or officer, any subsidiary of ours or any other company or enterprise to which the person provides services at our request.

The underwriting agreement (see Exhibit 1.1) will provide for indemnification by the underwriters of Exelixis, Inc., our directors, our officers who sign the registration statement, and our controlling persons for some liabilities, including liabilities arising under the Securities Act.

Item 15. Recent Sales of Unregistered Securities

Since January 1, 1997, Exelixis, Inc. has sold and issued the following unregistered securities:

(1) From January 1997 through March 2000, Exelixis has granted stock options to purchase 8,341,130 shares of common stock, at a weighted average exercise price of $0.79, to employees, consultants and directors. Of these stock options, 724,790 shares have been cancelled or have lapsed without being exercised, 6,551,814 shares have been exercised for common stock and 1,064,526 shares remain outstanding.

(2) In April 1997, Exelixis issued an aggregate of 7,875,000 shares of Series C preferred stock to 41 accredited investors at $2.00 per share, for an aggregate purchase price of $15,750,000. Shares of Series C preferred stock are convertible into shares of common stock at the rate of 0.75 of a share of common stock for each share of Series C preferred stock outstanding.

(3) In September 1997, Exelixis issued one warrant to purchase 63,750 shares of common stock to one purchaser at an exercise price of $2.67 per share.

(4) From August 1998 to June 1999, Exelixis issued an aggregate of 2,500,000 shares of Series D preferred stock to 11 accredited investors at $3.00 per share, for an aggregate purchase price of $7.5 million. In this period, Exelixis issued an additional 2,500,000 shares of Series D preferred stock to Pharmacia & Upjohn, Inc. at $3.00 per share, for an aggregate purchase price of $7.5 million pursuant to the terms of a development agreement dated February 26, 1999. Shares of Series D preferred stock are convertible at the rate of 0.75 of a share of common stock for each share of Series D preferred stock outstanding.

(5) In November 1999 Exelixis issued three warrants to purchase an aggregate of 112,500 shares of common stock to three purchasers at an exercise price of $4.00 per share.

Item 16. (A) Exhibits and Financial Statement Schedules

1.1+ Form of Underwriting Agreement.
3.1+ Restated Certificate of Incorporation of Registrant, dated January 25, 1999.
3.2+ Certificate of Amendment of the Restated Certificate of Incorporation of Registrant, dated February 2, 2000.
3.3+ Certificate of Amendment of the Amended and Restated Certificate of Incorporation of Registrant, dated April 5, 2000.
3.4+ Form of Restated Certificate of Incorporation of Registrant to be filed upon the closing of the offering made in connection with this Registration Statement.
3.5+ Amended and Restated Bylaws of Registrant to be filed upon the closing of the offering made in connection with this Registration Statement.
4.1+ Specimen Common Stock Certificate.
4.2+ Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999 among Registrant and Certain Stockholders of Registrant.
4.3+ Warrant, dated August 17, 1998, to Purchase 167,728 shares of Series A Preferred Stock in favor of Comdisco, Inc. (125,796 post-split shares).
4.4+ Warrant, dated August 17, 1998, to Purchase 20,486 shares of Series A Preferred Stock in favor of Greg Stento (15,365 post-split shares).
4.5+ Warrant, dated January 24, 1996, to Purchase 357,143 shares of Series B Convertible Stock in favor of MMC/GATX Partnership No. 1 (267,857 post-split shares).

4.6+	Warrant, dated September 25, 1997, to Purchase 85,000 shares of Common Stock in favor of MMC/GATX Partnership No. 1 (63,750 post-split shares).
4.7+	Warrant, dated November 15, 1999, to Purchase 12,000 shares of Common Stock in favor of Bristow Investments, L.P. (9,000 post-split shares).
4.8+	Warrant, dated November 15,1999, to Purchase 135,000 shares of Common Stock in favor of Slough Estates USA, Inc. (101,250 post-split shares).
4.9+	Warrant, dated November 15, 1999, to Purchase 3,000 shares of Common Stock in favor of Laurence and Magdalena Shushan FamilyTrust (2,250 post-split shares).
5.1+	Opinion of Cooley Godward LLP.
10.1+	Form of Indemnity Agreement.
10.2+	1994 Employee, Director and Consultant Stock Plan.
10.3+	1997 Equity Incentive Plan.
10.4+	2000 Equity Incentive Plan.
10.5+	2000 Non-Employee Directors' Stock Option Plan.
10.6+	2000 Employee Stock Purchase Plan.
10.7+*	Collaboration Agreement, dated December 16, 1999, between Registrant, Bayer Corporation and GenOptera LLC.
10.8+*	Operating Agreement, dated December 15, 1999, between Registrant, Bayer Corporation and GenOptera LLC.
10.9+	Cooperation Agreement, dated September 15, 1998, between Registrant and Artemis Pharmaceuticals, GmbH.
10.10+	Sublease Agreement, dated June 1, 1997, between Arris Pharmaceutical Corporation and Registrant.
10.11+	Lease, dated May 12, 1999, between Registrant and Britannia Pointe Grand Limited Partnership.
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10.13+*	Research Collaboration and Technological Transfer Agreement, dated September 14, 1999, between Registrant and Bristol-Myers Squibb.
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10.17+	Employment Agreement, dated September 13, 1996, between Registrant and George Scangos, Ph.D.
10.18+	Employment Agreement, dated April 14, 1997, between Registrant and Geoffrey Duyk, M.D., Ph.D.
10.19+	Employment Agreement, dated October 19, 1999, between Registrant and Glen Y. Sato, Chief Financial Officer and Vice President of Legal Affairs.
23.1*	Consent of Independent Accountants (Exelixis).
23.2*	Consent of Independent Accountants (MetaXen).
23.3+	Consent of Cooley Godward LLP (included in Exhibit 5.1).

24.1+ Power of Attorney (contained on signature page).
27.1+ Financial Data Schedule.

- ---------
+ Previously filed.

* Filed herewith.
+ Confidential treatment requested for certain portions of this exhibit.

(b) Financial Statement Schedules

All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable, and therefore have been omitted.

Item 17. Undertakings

The registrant hereby undertakes to provide to the Underwriters at the closing specified in the Underwriting Agreement certificates in such denominations and registered in such names as required by the Underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of Prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has caused this Amendment No. 5 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the County of South San Francisco, State of California on the 7th day of April, 2000.

Exelixis, Inc.

By: /s/ George A. Scangos, Ph.D
George A. Scangos, Ph.D
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No. 5 to Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ George A. Scangos, Ph.D. George A. Scangos, Ph.D.	President, Chief Executive Officer and Director (principal executive officer)	April 7, 2000
/s/ Glen Y. Sato Glen Y. Sato	Chief Financial Officer (principal financial and accounting officer)	April 7, 2000
* Stelios Papadopoulos, Ph.D.	Chairman of the Board of Directors	April 7, 2000
* Charles Cohen, Ph.D.	Director	April 7, 2000
* Jurgen Drews, M.D.	Director	April 7, 2000
* Geoffrey Duyk, M.D., Ph.D.	Director	April 7, 2000
* Jason S. Fisherman, M.D.	Director	April 7, 2000
* Jean-Francois Formela, M.D.	Director	April 7, 2000

Signature	Title	Date
*	Director	April 7, 2000
Edmund Olivier		
*	Director	April 7, 2000
Lance Willsey, M. D.		
*	Director	April 7, 2000
Peter Stadler, Ph.D.		

*By: /s/ Glen Y. Sato
Attorney-in-fact

Exhibit Index

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24.1+	Power of Attorney (contained on signature page).
27.1+	Financial Data Schedule.

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\+ Previously filed.

* Filed herewith.

\+ Confidential treatment requested for certain portions of this exhibit.

Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

Exhibit 10.7

COLLABORATION AGREEMENT

This Collaboration Agreement (the "Agreement") is made and entered into as of January 1, 2000 (the "Effective Date") by and among Exelixis Pharmaceuticals, Inc., a Delaware corporation having its principal place of business in South San Francisco, California ("Exelixis"), Bayer Corporation, an Indiana corporation having its principal place of business in Pittsburgh, Pennsylvania ("Bayer"), and GenOptera LLC, a Delaware limited liability company having its principal place of business in South San Francisco, California (the "LLC"). Each of Exelixis, Bayer and the LLC may be referred to herein individually as a "Party" or collectively as the "Parties."

Background

A. Exelixis has technology, materials, and expertise relating to the identification of proteins and nucleic acids involved in intracellular pathways or networks in insects and nematodes and to the development of high-throughput assays that can identify compounds having potential utility in inhibiting or enhancing the activity of such pathway proteins or nucleic acids.

B. Bayer has an extensive library of small molecules, and has substantial experience in the research (including target research), development (including assay development), and commercialization of pesticides for use in the markets for crop and plant protection and non-human animal health (including companion animal care).

C. Exelixis and Bayer A.G., an Affiliate of Bayer, have been working together in the field of pesticide research under an existing Collaboration Agreement (the "Original Agreement") entered into as of May 1, 1998 (the "Original Agreement Date") and terminated as of the Effective Date by a separate agreement between Exelixis and Bayer A.G. Exelixis and Bayer have now decided to organize the LLC to continue and expand the research performed under the Original Agreement, and to make the collaboration between Exelixis and Bayer exclusive within the field of insecticides and nematicides, as and to the extent further defined herein.

Now, Therefore, in consideration of the foregoing and the covenants and promises contained in this Agreement, the Parties agree as follows:

1. Definitions

As used herein, the following capitalized terms shall have the following meanings (with terms defined in the singular having the same meanings when used in the plural):

1.1 "A List Reserved Target" has the meaning set forth in Section 6.1.

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1.2 "Affiliate" means a Person who controls, is controlled by or is under common control with (a) the referenced Party or (b) another Person. For purposes of this definition, (1) the word "control" (including, with correlative meaning, the terms "controlled by" or "is under common control with") means the power to direct or cause the direction of the management and policies of the relevant Person, or the ownership of at least fifty percent (50%) of the voting stock or voting power of such Person if it is a legal entity, and (2) Bayer and Bayer AG are Affiliates of each other, the LLC shall not be considered an Affiliate of either Bayer or Exelixis, and neither Bayer nor Exelixis shall be considered an Affiliate of the LLC.

1.3 "Annual FTE Rate" means the amount to be paid over a 12-month period by the LLC to Exelixis to support one FTE for such period. The Annual FTE Rate will be [*] for the first Contract Year. For each subsequent Contract Year, this rate will be [*].

1.4 "Approval Application" means the appropriate application(s), together with all documents, data and information concerning a Product required to be included with such application, that is necessary to obtain Regulatory Approval to manufacture, use, import, distribute, market and/or sell a Product for use in the Field of Use in a particular country.

1.5 "B List Reserved Target" has the meaning set forth in Section 6.1.

1.6 "Bayer Assay" means, with respect to a particular Target, an in vitro or in vivo assay (other than an LLC Assay) developed by or on behalf of Bayer as provided in Sections 2.11(b), 3.2, 4.3(b), 5.3 and 6.2(b) that can measure whether a particular molecule or compound inhibits or antagonizes (or, if appropriate, agonizes or enhances) the function of the Target.

1.7 "Bayer Compounds" are compounds, excluding the Bayer Pesticides and any and all compounds that Bayer and/or an Affiliate of Bayer was marketing or developing on the Original Agreement Date, to which Bayer has access and which it has the right to test and that Bayer A.G. tested under the Original Agreement or that Bayer tests under this Agreement.

1.8 "Bayer Know-How" means Information Controlled by Bayer or any Affiliate of Bayer that is necessary or useful for conducting the LLC's obligations under the Research Plan, or for the discovery, preparation or use of Targets or LLC Assays, or for the development or use of the Sequence Library or Sequence Database and that is disclosed to the LLC and/or Exelixis under this Agreement and/or the Original Agreement. Bayer Know-How excludes the Bayer Patents.

1.9 "Bayer Patents" means all Patents Controlled by Bayer or any Affiliate of Bayer, covering inventions made prior to the end of the Research Term, including those made prior to the Effective Date, that claim or cover a Bayer Pesticide or its use, the discovery, manufacture or use of a Target or LLC Assay, the development or use of the Sequence Library or Sequence Database, or the discovery, manufacture or use of a Collaboration Compound or Product; and include Joint Patents in which Bayer has an ownership interest.

1.10 "Bayer Pesticide" means any compound Controlled by Bayer that has been shown to have potential utility in pest control as an insecticide, arachnicide and/or nematicide, but the target for such activity was not known as of the Original Agreement Date.

1.11 "Bayer Product" means a product that contains a Collaboration Compound.

1.12 "Candidate Target" means (a) a Target identified, mapped, cloned, and validated in the course of the Target Identification Program or (b) a Sequence-Based Target that is identical with a Target described in subsection (a) of this Section 1.12.

1.13 "Chemical Development Program" means a chemical research program conducted to find a compound with commercial value when formulated into a product. For clarity, a Chemical Development Program includes, without limitation, the synthesis of derivatives, modifications and analogues whether made through medicinal chemistry, the study of structure-activity relationships, combinatorial chemistry or a structure-based design program.

1.14 "Chief Executive Officer" means the Chief Executive Officer of the LLC.

1.15 "Cognate Target" means any Candidate Target, (i) the function of which a particular Bayer Pesticide agonizes, antagonizes, enhances or counteracts to achieve the insecticide or nematicide (as applicable) effect, which function was not known to Bayer, Exelixis or an Affiliate of either of them as of the Original Agreement Date and was determined as a result of the investigation of the mechanism of action of a Bayer Pesticide through work conducted by the LLC or Exelixis, or (ii) [*].

1.16 "Collaboration Compound" means

(a) a compound (other than an Excluded Compound), having a molecular weight below [*], that:

(i) agonizes, antagonizes, enhances or inhibits the function of a Target, wherein such activity was discovered by or on behalf of Bayer or its Affiliate or licensee by screening the compound in a Selected Assay for the Target or in a Bayer Assay for the Target, within [*] after the first use of such Selected Assay or Bayer Assay by Bayer or its Affiliate or licensee; or

(ii) agonizes, antagonizes, enhances or inhibits the function of a Target, wherein such activity was discovered by a material use by or on behalf of Bayer or its Affiliate or licensee of the Exelixis Know-How, Exelixis Patents, LLC Know-How or LLC Patents (other than Selected Assays or Bayer Assays), within [*] after the Effective Date or if later by [*]; or

(iii) is a compound synthesized in connection with a Chemical Development Program based on or arising from a compound (including, without limitation, derivatives of an Excluded Compound) that meets the criteria in Section 1.16(a)(i) or 1.16(a)(ii) and that is shown to agonize, antagonize, enhance or inhibit the function of a Target; or

(iv) is identified by Bayer or its Affiliate or licensee (other than the LLC) as provided in Section 2.4(c) within [*] after the first use by Bayer or its Affiliate or licensee of an assay or Target described in Section 2.4(c); or

(b) is a [*] useful in the Field of Use and that is discovered by or on behalf of Bayer or its Affiliate or licensee under this Agreement and/or was discovered by or on behalf of Bayer AG or its licensee under the Original Agreement.

The definition of "Collaboration Compound" does not include any compound identified and developed without any use of a Selected Assay, Target or Confidential Information of the LLC or Exelixis. References in this Section 1.16 to a "licensee" of Bayer shall include sublicensees but shall exclude the LLC in those cases where the compound satisfies the definition of an LLC Compound.

1.17 "Confidential Information" means with respect to a Party, Information that is owned or Controlled by such Party, its Affiliates or sublicensees, including information of Third Parties known to such Party by reason of any collaboration with such Third Party or under any confidentiality agreement with such Third Party, that is disclosed by such Party to the one or both of the other Parties hereto pursuant to this Agreement, and that is identified by the disclosing Party in writing, or is acknowledged by the receiving Party in writing, to be confidential to the disclosing Party or to a Third Party at the time of disclosure to the receiving Party if disclosed in tangible form, or is confirmed by the disclosing Party to the receiving Party as confidential within thirty (30) days after disclosure if initially disclosed orally by the disclosing Party. Confidential Information will not include any information which:

(a) Already Known Without Breach. Was already known to the receiving Party, without breach of any obligation of confidentiality by any Party, at the time of disclosure by the disclosing Party;

(b) Generally Available Or In Public Domain Without Breach. Was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party by the disclosing Party, or became generally available to the public or otherwise part of the public domain after its disclosure to the receiving Party by the disclosing Party, in each case without breach of any obligation of confidentiality by the receiving Party or subsequently becomes part of the public domain without breach of any obligation of confidentiality by the receiving Party;

(c) Freely Disclosed By Certain Third Parties. Was disclosed to the receiving Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the disclosing Party not to disclose such information to others;

(d) Freely Disclosed By Disclosing Party To Others. Is disclosed by the disclosing Party to others without an obligation of confidentiality;

(e) Required To Be Disclosed. Is required to be disclosed pursuant to law, subject, except for disclosure of financial information to the extent required by securities laws to be disclosed, to the protective provisions set forth in Section 18.6 of the Operating Agreement; or

(f) Independently Developed. The receiving Party can document was subsequently and independently developed by employees or others on behalf of the receiving

Party without use of any Confidential Information disclosed to the receiving Party or such others by the disclosing Party.

1.18 "Contract Year" means a 12-month period of time commencing on the Effective Date or any anniversary of the Effective Date, and designated by a number one larger than the number of full 12-month periods since the Effective Date at the commencement of such period of time.

1.19 "Control" means, with respect to any compound, material, Information or intellectual property right (including without limitation those relating to an LLC Assay, Bayer Assay, Exelixis Assay, Bayer Pesticide, Bayer Compound, Collaboration Compound, Exelixis Agrochemical Compound, Product or Target), possession by a Party of the ability to grant access, a license, or a sublicense 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.

1.20 "Core Improvements" means any and all improvements to Exelixis Core Technology made by FTEs, any entity other than Bayer or any individual other than a Bayer employee under this Agreement after the Effective Date. The JSC will propose and the LLC will decide whether inventions made by FTEs, any entity other than Bayer or any individual other than a Bayer employee are Core Improvements or not. In case of disagreement within the JSC, an external expert appointed by the LLC shall make such proposal.

1.21 "Dedicated FTE" means any FTE who, at the time in question, performs work solely for the LLC.

1.22 "Development" means conducting in vitro and/or in vivo investigations and trials on a Collaboration Compound for use in the Field of Use, starting with Bayer's decision to enter the F\\2\\-Phase as to such Collaboration Compound.

1.23 "Dollars" or "$" means United States dollars.

1.24 "Excluded Compound" means any compound owned or Controlled by Bayer that, prior to any use or screening of such compound in a Selected Assay or Bayer Assay or in any material use under this Agreement or the Original Agreement of Exelixis Know-How, Exelixis Patents, LLC Know-How or LLC Patents, is known to Bayer, and has been shown by or on behalf of Bayer or its Affiliate to have [*] activity, in testing such as microscreening or in actual data from greenhouse or field experiments typically used by Bayer to determine whether a compound has [*] activity.

1.25 "Exelixis Agrochemical Compound" means a compound (including early stage compounds such as hits and leads) having a molecular weight below [*] that has activity in the Field of Use and that:

(a) agonizes, antagonizes, enhances or inhibits the function of a Selected Target identified in the Target Identification Project or present in the Sequence Database,

wherein such activity was discovered by or on behalf of Exelixis or its Affiliate or collaborator by screening the compound in an LLC Assay for the Target (if permitted by the LLC under Section 4.6(a)) within [*] after the first use of such LLC Assay by Exelixis or its Affiliate or collaborator; or

(b) agonizes, antagonizes, enhances or inhibits the function of an Unselected Non-Cognate Target, wherein such activity was discovered by or on behalf of Exelixis or its Affiliate or collaborator by screening the compound in an Exelixis Assay for such Target (if permitted by the LLC under Section 4.3(a)) within [*] after the first use of such Exelixis Assay by Exelixis or its Affiliate or collaborator; or

(c) is a compound synthesized in connection with a Chemical Development Program based on or arising from a compound that meets the criteria in Section 1.25(a) or (b) and that is shown to agonize, antagonize, enhance or inhibit the function of a Selected Target identified in the Target Identification Project or present in the Sequence Database or an Unselected Non-Cognate Target, respectively.

The definition of "Exelixis Agrochemical Compound" does not include any compound identified and developed without any use of an LLC Assay, Exelixis Assay, Selected Target or Unselected Non-Cognate Target.

1.26 "Exelixis Agrochemical Product" means a product that is commercialized by Exelixis or by a licensee of Exelixis (other than Bayer) in the Field of Use and that contains an Exelixis Agrochemical Compound.

1.27 "Exelixis Assay" means, with respect to a particular Target, an in vitro or in vivo assay developed by or on behalf of Exelixis that can measure whether a particular molecule or compound inhibits or antagonizes (or, if appropriate, agonizes or enhances) the function of the Target.

1.28 "Exelixis Core Technology" means the [*] used by Exelixis (whether owned by Exelixis or used by it under license from Third Parties) generally in its business. The JSC will consider in good faith and propose modifications of this definition after the Effective Date and the LLC will decide whether to make such modifications. In case of disagreement within the JSC, an external expert appointed by the LLC shall make such proposal.

1.29 "Exelixis Human Health Compound" means a compound having a molecular weight below [*] that has activity outside the Field of Use and that agonizes, antagonizes, enhances or inhibits the function of a Candidate Target or a Sequence-Based Target, wherein such activity was discovered by or on behalf of Exelixis or its Affiliate or collaborator by screening the compound in an LLC Assay or an Exelixis Assay for the Candidate Target or the Sequence-Based Target, within [*] after first use of such assay by Exelixis or its Affiliate or collaborator.

1.30 "Exelixis Human Health Product" means any product commercialized by Exelixis or a licensee of Exelixis (other than Bayer) outside the Field of Use that contains an Exelixis Human Health Compound.

1.31 "Exelixis Know-How" means Information Controlled by Exelixis or any Affiliate of Exelixis that (a) is necessary or useful for performing an LLC Assay or Bayer Assay or otherwise for discovering a Collaboration Compound and is disclosed to the LLC and/or Bayer under this Agreement and/or the Original Agreement, or (b) is derived from the FlyTag database. Exelixis Know-How excludes the Exelixis Patents.

1.32 "Exelixis Patents" means all Patents Controlled by Exelixis or any Affiliate of Exelixis, covering inventions made prior to the end of the Research Term, including those made prior to the Effective Date, that (a) claim or cover the manufacture or use of an LLC Assay or Target, or the discovery of a Collaboration Compound, or (b) are derived from the FlyTag database; and include Joint Patents in which Exelixis has an ownership interest.

1.33 "Field of Use" means any use [*].

1.34 "Force Majeure Event" means, as to a Party, an event or condition having a material adverse effect upon such Party due to circumstances beyond such Party's reasonable control and that by the exercise of commercially reasonable due diligence it is unable to prevent. Circumstances beyond the reasonable control of a Party include, but are not limited to, fire, strikes, insurrections, riots, embargoes, shortages, war-time rationing or preferences, delays in transportation, inability to obtain supplies of raw materials or requirements or regulations of any government or any other civil or military authority in the relevant jurisdiction.

1.35 "F\\2\\-Phase" means the stage of research and development of a Collaboration Compound for use in the Field of Use where Bayer selects the Collaboration Compound for formal development work to generate the data needed for registration, such as toxicological, environmental and ecobiological data, metabolism studies, and residue studies.

1.36 "Full Time Employee" or "FTE" means the equivalent of one employee of Exelixis, working full time for one work year.

1.37 "Independent Research" means:

(a) with respect to Exelixis, work performed by employees or consultants of Exelixis other than Dedicated FTEs or persons while acting as Shared FTEs that does not utilize Confidential Information of another Party (other than that Confidential Information of the LLC permitted to be used in Section 11.3(c)); or

(b) with respect to Bayer, work performed by employees or consultants of Bayer that does not utilize Confidential Information of another Party (other than that Confidential Information of the LLC permitted to be used in Section 11.2(c)).

1.38 "Information" means information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation inventions, practices, methods, techniques, specifications, formulations, formulae, knowledge, know-how, skill, experience, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures, and patent and other legal information or descriptions.

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1.39 "Joint Invention" means all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, jointly conceived by employees of or consultants to two or more of the Parties in the course of work performed pursuant to this Agreement after the Effective Date and reduced to practice during the Research Term or within [*] thereafter.

1.40 "Joint Patent" means any Patent claiming a Joint Invention.

1.41 "JSC" means the Joint Scientific Committee of the LLC, as further defined in the Operating Agreement.

1.42 "LLC Assay" means, with respect to a particular Selected Target, an in vitro or in vivo assay developed by the LLC in the course of the Research or by a Third Party subcontracted by the LLC pursuant to Section 3.3, including the required reagents for performing such assay that are not otherwise readily available, that is suitable for [*] and that can measure whether a particular molecule or compound inhibits or antagonizes (or, if appropriate, agonizes or enhances) the function of the Selected Target.

1.43 "LLC Compound" means a compound (including early stage compounds such as hits and leads) having a molecular weight below [*] that:

(a) agonizes, antagonizes, enhances or inhibits the function of a Target, wherein such activity was discovered by or on behalf of the LLC or its Affiliate or sublicensee by screening the compound in an LLC Assay for the Target;

(b) is a compound synthesized in connection with a Chemical Development Program based on or arising from a compound that meets the criteria in subsection (a) and that is shown to agonize, antagonize, enhance or inhibit the function of a Target; or

(c) is identified by the LLC or its Affiliate or licensee as provided in Section 2.4(c) within [*] after the first use by the LLC or its Affiliate or licensee of an assay or target described in Section 2.4(c).

The Parties understand and agree that the definition of "LLC Compound" does not include any compound identified and developed without any use of an LLC Assay, Selected Assay, Target or Confidential Information of Exelixis or Bayer.

1.44 "LLC Know-How" means Information Controlled by the LLC or any Affiliate of the LLC that (a) concerns a Target or is necessary or useful for performing an LLC Assay, Exelixis Assay or Bayer Assay or otherwise for discovering a Collaboration Compound, Exelixis Agrochemical Compound or Exelixis Human Health Compound, or the manufacture, use or sale of a Product, and is disclosed to Exelixis and/or Bayer under this Agreement, or (b) is derived from the Sequence Library or Sequence Database. LLC Know-How excludes the LLC Patents.

1.45 "LLC Patents" means all Patents Controlled by the LLC or any Affiliate of the LLC, covering inventions made prior to the end of the Research Term, that (a) claim or cover the discovery, manufacture or use of a Target, LLC Assay, Exelixis Assay or Bayer Assay, or the

discovery of a Collaboration Compound, Exelixis Agrochemical Compound or Exelixis Human Health Compound, or the manufacture, use or sale of a Product, or (b) are derived from the Sequence Library or Sequence Database; and include Joint Patents in which the LLC has an ownership interest.

1.46 "Management Committee" shall mean the Management Committee of the LLC, as further defined in the Operating Agreement.

1.47 "Net Sales" means the total amount invoiced or otherwise charged by Bayer or Exelixis or their respective Affiliates or sublicensees, as applicable, on account of the sale of a Product to a Third Party, less the following deductions to the extent actually incurred and invoiced or charged to the purchaser based upon the sale of such Product: (a) credits, allowances, discounts and rebates to, and chargebacks from the account of, such Third Party for spoiled, damaged, out-dated and returned Product; (b) actual freight and insurance costs incurred in transporting such Product; (c) sales, value-added and other direct taxes incurred; and (d) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of such Product. In calculating the Net Sales of a Product, any rebates, discounts, commissions, costs, expenses or payments other than those expressly provided above in this Section 1.47 shall not be deducted from the amount invoiced or otherwise charged on account of sale of such Product.

1.48 "Non-Cognate Target" means any Candidate Target or Sequence-Based Target that is not a Cognate Target.

1.49 "Operating Agreement" means the Operating Agreement of the LLC of even date herewith.

1.50 "Patent" means (a) all patent applications heretofore or hereafter filed or having legal force in any country; (b) all unexpired patents that have issued or in the future issue therefrom, including without limitation utility, model and design patents and certificates of invention; and (c) all divisionals, continuations, continuations-in-part, reissues, reexaminations, renewals, extensions (including supplemental protection certificates), additions, registrations or confirmations to or of any such patent applications and patents.

1.51 "Person" means a natural person, corporation, partnership (whether general or limited), a limited liability company, or any trust, estate, association, custodian, nominee or any other individual or entity in its own or representative capacity, and in each case, as to a legal entity, whether formed under the laws of the United States or of any state thereof or of any non-United States jurisdiction.

1.52 "Product" means a Bayer Product, Exelixis Agrochemical Product, or Exelixis Human Health Product.

1.53 "Putative Related Family Member" means an Unselected Non-Cognate Target that is identified in accordance with Section 4.4(a).

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

1.55 "Related Family Member" means, with respect to a particular Selected Target, a Putative Related Family Member that the Parties determine, as set forth in Section 4.4(b), to be [*].

1.56 "Research" means the research efforts conducted by a Party or the Parties pursuant to this Agreement during the Research Term, together with the research efforts conducted by Exelixis and/or Bayer A.G. under the Original Agreement during the term of the Original Agreement. Research includes work performed under the Target Identification Project and the Sequencing Project and such other research activities as specified by the LLC.

1.57 "Research Field" means research directed only towards the discovery and testing of insecticides (including compounds acting against other invertebrate animals) and nematicides for crop protection, [*].

1.58 "Research Orthologue" means, with respect to a first gene or protein that was discovered in the course of the Collaboration and naturally occurs in a particular species, a second gene or protein that naturally occurs in a different species, was identified by a Party in the course of work other than Independent Research, and has sufficient sequence homology or evidence of functional equivalence to be considered the counterpart of such first gene or protein.

1.59 "Research Plan" means a detailed plan for research under this Agreement as recommended by the JSC and approved by the LLC from time to time during the Research Term.

1.60 "Research Term" means the period commencing on the Effective Date and ending on the date specified in Section 2.1(b) unless earlier terminated pursuant to Section 14.3.

1.61 "Reserved Target" means any target designated as set forth in Section 6.1.

1.62 "Selected Assay" means an LLC Assay for which Bayer commences screening for Collaboration Compounds within the period set forth in Section 3.3.

1.63 "Selected Cognate Target" means a Cognate Target that the LLC has selected for LLC Assay development as provided in Section 3.1 or that Bayer has selected for Bayer Assay development as provided in Section 3.2 or 5.3.

1.64 "Selected Non-Cognate Target" means: (a) a Non-Cognate Target that the LLC has selected for LLC Assay development as provided in Section 3.1 or 4.3(a) or that Bayer has selected for Bayer Assay development as provided in Section 3.2 or 4.3(a), or (b) a Target that Bayer has selected for Bayer Assay or LLC Assay development as provided in Section 2.11.

1.65 "Selected Target" means a Selected Cognate Target, Selected Non-Cognate Target or Selected A List Reserved Target.

1.66 "Sequence-Based Target" means a Target contained in the Sequence Database.

1.67 "Sequence Database" means the compilation of the readable sequence data from a Sequence Library.

1.68 "Sequence Library" means an arrayed, normalized cDNA or genomic library created from samples provided by Bayer from an arthropod or helminth species selected by Bayer.

1.69 "Sequencing Project" means the research project described in Section 2.4.

1.70 "Shared FTE" means an FTE furnished by, and comprised of, the collective services of persons who perform work for the LLC and also work on other Exelixis projects, both internal and in collaboration with Third Parties.

1.71 "Target" means (a) a gene or gene product or portion thereof that is identified in the course of the Research, (b) a gene or gene product or portion thereof Controlled by Exelixis that it licenses to the LLC for Research in the Research Field, (c) a gene or gene product obtained by Bayer or the LLC using sequence information provided by Exelixis pursuant to this Agreement or the Original Agreement, or (d) a Research Orthologue of a gene, gene product or portion thereof that meets the criteria set forth in Section 1.71(a), (b) or (c). For clarity, Section 1.71(a) includes Sequence-Based Targets, Candidate Targets and A List Reserved Targets. The Parties understand and agree that any gene or gene product or portion thereof that is discovered through Independent Research is not a Target.

1.72 "Target Identification Project" means that research project described in Section 2.3 and Articles 3, 4 and 5 regarding identification of Cognate Targets and/or Non-Cognate Targets and development of LLC Assays.

1.73 "Third Party" means any entity or individual other than the Parties and other than the Affiliates of the Parties.

1.74 "Unselected Assay" means an LLC Assay which Bayer fails to select or for which Bayer fails to commence screening for Collaboration Compounds within the period set forth in Section 3.3.

1.75 "Unselected Cognate Target" means a Cognate Target that both the LLC and Bayer failed to select as provided in Section 3.1, 3.2 or 5.3.

1.76 "Unselected Non-Cognate Target" means a Non-Cognate Target that both the LLC and Bayer failed to select as provided in Section 3.1, 3.2 or 4.3.

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2. Collaborative Research

2.1 Overview of Research Projects.

(a) Under the terms of the Original Agreement, Exelixis has already performed Research on the Target Identification Project and the Sequencing Project. During the Research Term, the LLC shall undertake the Research, to be conducted on a cooperative and collaborative basis with Exelixis and Bayer in accordance with a new Research Plan agreed upon by the Parties. To the extent consistent with the resources of the LLC provided under this Agreement or otherwise available to the LLC, the LLC may establish Research projects in addition to the Target Identification Project and the Sequencing Project for the Parties to conduct within the Research Field.

(b) Unless terminated pursuant to Section 14.7, the Research Term will initially last eight (8) years from the Effective Date, and it will automatically be extended beyond the eighth anniversary of the Effective Date, in one year increments, unless Exelixis or Bayer gives written notice, at least [*] prior to the eighth or any subsequent anniversary of the Effective Date, of its intent to terminate the Research Term.

2.2 Research Plan. The Research shall be conducted in accordance with a Research Plan approved by the LLC based on the recommendation of the JSC. The initial Research Plan under this Agreement shall be recommended by the JSC at its first meeting after the Effective Date, and shall include the continuation of the Research underway as of the Effective Date with appropriate additions and modifications arising from the increased level of Research effort arising from this Agreement. Prior to the first meeting of the JSC, the Research Plan shall be determined by the LLC. Any changes to the Research Plan will require the recommendation of the JSC or, if a decision of the JSC cannot be reached, the approval of such change by the LLC. If the revised Research Plan requires a personnel change of [*] or more of the FTEs working in a particular discipline, then such Research Plan shall provide for a reasonable time for Exelixis to implement such change. If the revised Research Plan requires Exelixis to purchase or lease more than [*] of equipment or to acquire licenses that were not already budgeted for purchase, lease or license at such time, then such change shall require the consent of Exelixis unless the LLC agrees (i) to purchase such additional capital equipment and/or to acquire such additional licenses, as assets of the LLC, or (ii) to pay for such purchase or lease expenses in excess of [*], which agreement in either case will require that Bayer also agree with the LLC in writing to fund such amounts as an increase in LLC operating expenses.

2.3 Target Identification Project. The goal of the Target Identification Project is to discover, isolate and validate Cognate Targets and Non-Cognate Targets and to develop appropriate LLC Assays directed at such Cognate Targets and Non-Cognate Targets and useful for the identification of novel insecticides and nematicides. The research carried out by the LLC under the Target Identification Project and each Party's rights with respect to the data, Targets and LLC Assays that arise from the Target Identification Project are set forth below and in Articles 3, 4 and 5 .

(a) Research Performed Prior to the Effective Date. Exelixis has already performed substantial Research in the Target Identification Project under the Original Agreement. Commencing on the Effective Date, the LLC shall assume responsibility for all

Research then in progress and shall begin new Research in accordance with the Research Plan. The rights and obligations with respects to all data, Targets and LLC Assays arising in the course of the Research shall be the same regardless of whether the underlying work was performed by Exelixis or Bayer A.G. under the Original Agreement, by the Parties under this Agreement, or a combination of both. In this regard:

(i) The LLC shall have the right to decide, pursuant to Section 3.1, whether the LLC will develop an LLC Assay for any Candidate Target for which Exelixis provided to Bayer A.G. the information set forth in Section 3.1 prior to the Effective Date and for which Bayer A.G. did not, prior to the Effective Date, select such Candidate Target as a Selected Target. For any such Candidate Target which was provided prior to the Effective Date, the rights of Bayer set forth in Section 3.2 shall come into effect on [*], and the rights of the Parties set forth in Sections 4.3 and 5.3 shall come into effect on [*] if Bayer fails to select such Candidate Target or designate such Candidate Target as a Putative Related Family Member by such date.

(ii) Any assays in development as of the Effective Date which are delivered to Bayer pursuant to this Agreement after the Effective Date shall be deemed to be LLC Assays, subject to the rights of the LLC and Exelixis set forth in Sections 4.6 and 5.5.

(b) Target Identification. In the event that the Research Plan calls for the LLC to perform target identification research upon a Bayer Pesticide other than those Bayer Pesticides upon which research was conducted by Exelixis prior to the Effective Date, the LLC shall request and Bayer shall provide to the LLC within sixty (60) days after of such request, a reasonable amount of each such Bayer Pesticide. The LLC will study the feasibility of isolating [*] that are resistant to the Bayer Pesticides, or using other research capabilities of Exelixis to identify Targets. Based on these feasibility studies Bayer shall prioritize those Bayer Pesticides upon which the LLC shall perform further work under the Research to identify Candidate Targets (as defined below). For each of these selected Bayer Pesticides, the LLC will endeavor to: (i) isolate [*], as appropriate, that are resistant to the Bayer Pesticide, or apply other Exelixis discovery capabilities as appropriate; (ii) map and clone the genes responsible for the resistance in such [*]; and (iii) identify and validate genes encoding Targets that may be useful for the identification of Collaboration Compounds. Each Target for which the LLC has successfully completed steps (i), (ii), and (iii) above shall be deemed a "Candidate Target." The JSC shall recommend to the LLC and the LLC shall decide whether each Candidate Target identified is a Cognate Target or Non-Cognate Target.

2.4 Sequencing Project. Under the Original Agreement, Exelixis and Bayer AG commenced a Sequencing Project (formerly known as an "EST Library Project") intended to create an expressed sequence tag ("EST") library for an [*] species of interest and a database comprising sequenced ESTs from said species. During the Research Term, the LLC shall continue the Sequencing Project in accordance with the Research Plan and this Section 2.4. The Research Plan may be amended by the written agreement of the LLC and Exelixis, to expand the Sequencing Project to include one or more additional sequencing projects to be performed by Shared FTEs, including but not limited to genomic sequencing projects.

(a) For each project in the Sequencing Project, Bayer AG has selected or Bayer will select an [*] species with relevance to Bayer's crop protection business. For each species that Bayer AG did not provide Exelixis with whole organism and tissue samples from such species, Bayer shall provide such materials to the LLC. Using these whole organism and tissue samples, Shared FTEs will create a Sequence Library. Shared FTEs will perform [*] sequencing upon the number of clones from the Sequence Library specified in the Research Plan and approved by Exelixis and compile the readable sequence data from such Sequence Library (approximately [*] of the sequencing lanes are expected by the Parties to be readable, but such expectation is not binding) into a Sequence Database specifically arising from the Research.

(b) Shared FTEs or Dedicated FTEs will perform cross-species comparisons between the Sequence Database and proprietary Exelixis sequence banks and between the Sequence Database and publicly available databases, with the intention of identifying gene fragments or Targets with potential utility in the Research Field. The LLC will provide Bayer and Exelixis access to the Sequence Database and any information relating to the such targets or otherwise derived from such comparisons. The Sequence Database and sequence-derived information will be supplied to Bayer and Exelixis in the computer-readable format agreed upon under the Original Agreement.

(c) Bayer may identify and validate Sequence-Based Targets without selecting such Targets. Bayer shall select a Sequence-Based Target prior to conducting further Research and Development work using such a Sequence-Based Target. Upon selection, a Sequence-Based Target shall become a Selected Non-Cognate Target and any compounds identified by use of such Target or LLC Assays or Bayer Assays based on such Target will be Collaboration Compounds subject to all milestone and premium fee obligations outlined in Sections 9.3 and 9.4 [*].

(d) The LLC will allocate from the Research commitment set forth in Section 2.5 sufficient FTEs to perform the sequencing dictated by the Research Plan and not exceeding Exelixis' uncommitted sequencing capacities. The JSC will attempt in good faith to project sequencing needs [*] in advance.

(e) The LLC may, upon the allocation of sufficient FTEs from the Research commitment set forth in Section 2.5, expand the Sequencing Project to include more than one [*] species (not exceeding Exelixis' uncommitted sequencing capacities). Bayer shall retain the right to select any additional species and the Parties' rights and obligations with respect to the additional Sequence Libraries and Sequence Databases shall be the same as for the initial Sequence Library and Sequence Database.

2.5 Research Commitment; FTEs.

(a) In the first Contract Year, the LLC shall provide Exelixis with [*] in Research funding and shall carry forward [*] for Research funding for the subsequent Contract Year. At least [*] in advance of the commencement of each Contract Year after the first Contract Year, Exelixis shall provide the LLC with a written calculation of the Annual FTE Rate for the following Contract Year in accordance with Section 1.3. If such Annual FTE Rate exceeds [*], the LLC shall provide Exelixis, at least [*] in advance of the commencement of

such Contract Year, written notice of whether the LLC commits to provide sufficient Research funding (which shall include any carry-forward described in this Section 2.5(a)) in the subsequent Contract Year to support [*] FTEs at such Annual FTE Rate. If the LLC does not provide such commitment, then the LLC shall specify such lesser amount of research funding which it commits to provide in the forthcoming Contract Year, which amount shall not be less than [*] plus any carry-forward described in this Section 2.5(a). The number of FTEs which are funded during any given Calendar Year, which shall equal the sum of such level of funding specified by the LLC plus any carry-forward described in Section 2.5(b) divided by the Annual FTE Rate in effect for such Calendar Year (with any partial number being rounded down), is referred to in this Section 2.5 and Section 9.2 as the "Specified FTEs." The amount of Research funding provided to Exelixis by the LLC in each Contract Year after the first Contract Year shall equal the result of the following calculation: multiply the number of Specified FTEs by the Annual FTE Rate for such Calendar Year and deduct from the product of such multiplication the amount of any Exelixis carry-forward described in Section 2.5(b).

(b) During each Contract Year in which the number of Specified FTEs (as defined in Section 2.5(a)) equals [*], Exelixis shall provide [*] FTEs for the Research, [*] of which shall be Dedicated FTEs and [*] of which shall be Shared FTEs initially. During any Contract Year in which the number of Specified FTEs does not equal [*], Exelixis shall provide such number of Specified FTEs, with any reduction in FTEs below [*] or increase above [*] to be effected pro rata between Dedicated FTEs and Shared FTEs in the ratio agreed upon in the Research Plan. If Exelixis is unable to provide the number of Specified FTEs for a particular Contract Year, then the excess of the level of funding provided by the LLC during such Contract Year, divided by the product the Annual FTE Rate for such Calendar Year times the number of FTEs actually provided by Exelixis in such Contract Year, shall be carried forward by Exelixis and used to pay for FTEs in the following Contract Year as provided in Section 2.5(a).

(c) None of the Dedicated FTEs or Shared FTEs which the LLC is committed to fund under Section 2.5(b) may be allocated by the LLC to (a) collaborations between the LLC and Third Parties, (b) projects that involve the use of LLC Assay(s) for screening purposes (except for implementation of LLC Assays at Bayer's HTS facility) or (c) development of LLC Compounds. Prior to any amendment of the Research Plan to provide for the performance of such tasks by the LLC, the LLC shall, with the written approval of Bayer, increase the number of FTEs for which it provides research funding under this Agreement in order to allocate sufficient new FTEs, funded by the LLC, to perform such tasks. At any time during the Research Term, the LLC, with the separate prior written consent of Exelixis, may increase the number of Specified FTEs funded by the LLC under this Agreement.

(d) The Exelixis employees who provide FTE services to the LLC under this Agreement shall remain employees of Exelixis, and Exelixis shall be solely responsible for their recruiting, evaluation, compensation, management and termination. Exelixis shall indemnify Bayer and the LLC and their Affiliates for any claims arising from such employment relationship, as set forth in Article 13.

2.6 Records. The LLC shall maintain records of all work conducted under the Research and all results, data and developments made pursuant to its efforts under the Research. Exelixis shall cause all of its employees performing work on behalf of the LLC to maintain

records of such Research and of other activities in accordance with the practices used by Exelixis in its independent research activities, with work on behalf of the LLC to be maintained in independent laboratory notebooks. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of the Research and other activities in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Exelixis and Bayer shall each have the right to review and copy such records of the LLC at reasonable times to the extent necessary for Bayer and Exelixis to each conduct its Research or perform other obligations under this Agreement, subject to the confidentiality provisions set forth in Article 18 of the Operating Agreement. Bayer or the LLC shall be entitled to review at its expense the laboratory note books maintained by Exelixis for the Shared FTEs, subject to appropriate confidentiality provisions, for the purpose of determining ownership of intellectual property. If Exelixis cites confidentiality concerns, Bayer or the LLC shall be entitled to hire an independent auditor at its expense to review the laboratory note books maintained by Exelixis for the Shared FTEs, subject to appropriate confidentiality provisions, for the purpose of determining own ership of intellectual property.

2.7 Quarterly Reports. Within [*] after the end of each calendar quarter during the term of this Agreement, Exelixis and Bayer shall provide the LLC with a written progress report summarizing the work performed in relation to the goals of the Research projects and the Research Plan and provide such other information required by the Research Plan or reasonably requested by another Party. The LLC shall produce an omnibus report that includes the Information provided by Exelixis and Bayer as well as the corresponding Information regarding the LLC's work. The LLC's obligation under this Section 2.7 shall commence on the Effective Date. Bayer's obligation to provide quarterly reports pursuant to this Section 2.7 will commence in the calendar quarter in which any employee, agent or representative of Bayer first performs Research. Exelixis' obligation to provide quarterly reports pursuant to this Section 2.7 will commence in the calendar quarter in which any employee, agent or representative of Exelixis, other than a Dedicated FTE or an employee acting as a Shared FTE, first performs Research.

2.8 Additional Research Projects. In addition to the Target Identification Project and Sequencing Project, the LLC may, in its discretion, identify and direct additional Research projects within the Research Field to the extent resources are available, provided such Research projects are not precluded by another agreement binding upon one of the Parties. Such projects shall be conducted under the guidance of the JSC and the LLC as provided in Article 2. The LLC shall allocate sufficient additional FTEs, as set forth in Section 2.5, to perform such agreed additional Research projects.

2.9 LLC Research Employees. As of the Effective Date, it is not contemplated that the LLC will employ its own research scientists. In the event the LLC determines that the LLC shall hire its own research employees, the Parties shall review this Agreement for the purpose of agreeing on amendments, if any, which may be necessary or appropriate to account for such hiring while still preserving the originally contemplated allocation of rights as among the Parties.

2.10 Targets Supplied by Exelixis. To the extent that it is able to do so, Exelixis will make available to Bayer sequence information and database annotation regarding Targets Exelixis has discovered independently or through its other collaborations. Bayer may pursue

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such Targets by selecting them as set forth in Section 2.11, in which case they shall be deemed Selected Non-Cognate Targets.

2.11 Targets Separately Selected by Bayer.

(a) With the exception of Reserved Targets (which are addressed in Article 6), this Section 2.11 sets forth Bayer's rights to pursue Targets not identified in the Target Identification Project. Such Targets shall include (i) Sequence-Based Targets, (ii) Targets obtained from sequences in any database provided by Exelixis hereunder, and (iii) Targets provided by Exelixis pursuant to Section 2.10. Upon selection by Bayer as set forth in Section 2.11(b) or 2.11(c), a Target described in this Section 2.11(a) shall become a Selected Non-Cognate Target unless such Target is identical to a Cognate Target, in which case such Target shall become a Selected Cognate Target.

(b) Bayer may develop a Bayer Assay against a Target described in Section 2.11(a) at its own expense at any time, provided that Bayer first selects such Target as a Selected Non-Cognate Target by written notification to the LLC and [*]. The LLC shall not receive any compensation under [*], but the LLC shall receive all other compensation under Sections 9.3 and 9.4 which is due with respect to any resulting Collaboration Compounds and/or Bayer Products.

(c) In lieu of developing a Bayer Assay directed against a Target described in Section 2.11(a), Bayer may select, by written notification to the LLC, such Target as a Selected Non-Cognate Target for which the LLC will develop an LLC Assay, provided that the LLC has sufficient resources to perform such work. Bayer shall make all payments under Section 9.3 and 9.4 due with respect to such Selected Non-Cognate Target and any resulting Collaboration Compounds and/or Bayer Products.

3. Target and Assay Selection

3.1 Target Selection by the LLC. The LLC may select any Candidate Target that the LLC identifies as a Selected Target and direct the LLC to develop one or more appropriate LLC Assays. Any such selection by the LLC shall be confirmed in writing delivered to each of the Parties (which may be in the form of the minutes of a meeting of the Management Committee). If the LLC does not select any particular Candidate Target as a Selected Target within [*] following the date that the relevant LLC Know-How and Exelixis Know-How relating to such Candidate Target is provided to the LLC, then Bayer shall have the rights set forth in Section 3.2 to select such Candidate Target.

3.2 Target Selection by Bayer. Bayer shall have [*] after the failure of the LLC to timely select a Candidate Target as a Selected Target to select, by written notification to the LLC, such Candidate Target as a Selected Target and to commence development, at Bayer's expense, of a Bayer Assay directed at such Candidate Target. The LLC shall not receive any compensation under [*], but the LLC shall receive all other compensation under Sections 9.3 and 9.4 which is due with respect to any resulting Collaboration Compounds and/or Bayer Products. If Bayer does not select such Candidate Target and commence such assay

development within such [*] period, then the Parties shall have the rights set forth in Sections 4.3 and 5.3.

3.3 LLC Assay Development and Selection. For each Selected Target selected by LLC under Section 3.1 or selected by Bayer under Section 2.11(c) or 6.2(b) for development of an LLC Assay, the LLC will work to develop an LLC Assay that is configured to screen Bayer Compounds in order to identify Collaboration Compounds that inhibit or antagonize (or, if appropriate, agonize or enhance) the function of such Selected Target. The LLC may subcontract the development of LLC Assay(s) for one or more Selected Targets. Upon completion of the LLC Assay development in a format configured for [*] and as further specified in Exhibit A hereto or as otherwise specified by Bayer in writing, the LLC shall present the LLC Assay and all data regarding the applicable Selected Target to Bayer. Bayer shall have [*] after the date of the LLC's presentation in order to commence using such LLC Assay at Bayer's expense to screen for Collaboration Compounds. If Bayer does not commence such screening activity within [*] and Bayer provides the JSC, prior to the end of the [*] period, with a written request for a [*] extension of the period, the LLC shall decide, on a case-by-case basis, whether to grant Bayer such extension. If Bayer commences such screening activity within such [*] period or any such extension thereof, then such LLC Assay shall then be deemed a "Selected Assay." If Bayer does not commence such screening activity within such [*] period and any extension thereof, then such LLC Assay shall be deemed an "Unselected Assay" and so identified in the LLC's books and records, and the LLC and Exelixis shall have the rights set forth in Sections 4.6 and 5.5 with respect to such Unselected Assay.

3.4 Selected Assays. The LLC will deliver to Bayer the format for each Selected Assay and will provide to Bayer [*] of any proprietary reagents developed by the LLC for the Selected Assay for Bayer's use to conduct screening of Bayer Compounds in the Selected Assay. The LLC may allocate FTEs, out of the resources available to conduct Research, to conduct work under the Research Plan to prepare such [*] of reagents to be provided to Bayer, and to the extent that the LLC must expend additional effort or cost beyond such allocation of FTEs in order to provide Bayer with such proprietary reagents, Bayer shall pay the LLC such actual costs and expenses of the LLC to complete such efforts.

3.5 Screening by Bayer. For each Selected Assay or Bayer Assay, Bayer will screen Bayer Compounds at Bayer's sole discretion and expense in the Selected Assay or Bayer Assay for the purpose of identifying Collaboration Compounds active in such Selected Assay or Bayer Assay. For each Collaboration Compound identified in such initial screening, Bayer will then conduct such further work at its expense as it considers advisable in order to identify additional Collaboration Compounds that may have higher activity or superior quality, e. g. selectivity or stability.

3.6 Retained Rights of Exelixis. Except for the options granted in Section 8.9 to Bayer, Exelixis shall retain the exclusive right to use all Non-Cognate Targets, Cognate Targets and A List Reserved Targets outside of the Field of Use. When Exelixis makes a Non-Cognate Target, Cognate Target or Reserved Target available to a Third Party as permitted above, Exelixis shall not disclose to such Third Party any [*], except as otherwise permitted elsewhere in this Agreement.

4. Non-Cognate Targets

4.1 The Parties' Rights Regarding Non-Cognate Targets Selected by the LLC. Bayer and the LLC shall have co-exclusive rights to pursue each Selected Non-Cognate Target in the Research Field. Such co-exclusive right shall not include any sublicensing rights for the LLC (except for LLC Assay development purposes). Subject to Section 8.10(c), Bayer shall have the exclusive right to pursue each Selected Non-Cognate Target in the Field of Use outside the Research Field. Subject to Bayer's option set forth in Section 8.9(b), Exelixis shall have the exclusive right to pursue each Selected Non-Cognate Target outside the Field of Use and may develop an Exelixis Assay directed at a Selected Non-Cognate Target for such purpose.

4.2 The Parties' Rights Regarding Non-Cognate Targets Selected by Bayer. Subject to Section 8.10(c), Bayer shall have exclusive rights to pursue in the Field of Use each Non-Cognate Target it selects. Subject to Bayer's option set forth in Section 8.9(b), Exelixis shall have the exclusive right to pursue each such Selected Non-Cognate Target outside the Field of Use and may develop an Exelixis Assay directed at a Selected Non-Cognate Target for such purpose.

4.3 Unselected Non-Cognate Targets.

(a) After the failure of Bayer to timely select a Non-Cognate Target as a Selected Non-Cognate Target pursuant to Section 3.2, any Party may submit a written request to the LLC for the right to pursue such Unselected Non-Cognate Target in the Field of Use. The LLC shall grant such request unless the LLC has already granted such a request to another Party or licensed such Target to a Third Party for use in the Research Field or, in response to such a request by Exelixis, Bayer commits to promptly commence development of a Bayer Assay directed at such Unselected Non-Cognate Target (in which case such Target shall then be a Selected Non-Cognate Target). After the granting of such a request, the requesting Party may pursue such Unselected Non-Cognate Target within the Field of Use internally or in collaboration with a Third Party. In the event that Exelixis is the requesting Party, Exelixis shall obtain Bayer's written consent prior to the establishment of any collaboration in the Research Field involving such Unselected Non-Cognate Target and any collaboration in the Field of Use involving such Unselected Non-Cognate Target wherein [*]. Exelixis may enter into collaborations in the Field of Use involving such Unselected Non-Cognate Target without the prior approval of Bayer, provided that [*]. Exelixis shall not have the right to grant a Third Party a license to pursue any Unselected Non-Cognate Target in the Research Field except as part of a collaboration with Exelixis permitted in this Section 4.3 and Section 8.10(a). Exelixis shall have the right to grant licenses to compounds identified with apparent activity against such Unselected Non-Cognate Targets, provided, however, that any such compounds that are Exelixis Agrochemical Compounds shall be subject to the rights of Bayer set forth in Section 8.3.

(b) The LLC shall have the right to pursue each Unselected Non-Cognate Target within the Field of Use (unless such right is granted to Exelixis pursuant to this Section 4.3). Exelixis shall have the exclusive right to pursue each Unselected Non-Cognate Target outside the Field of Use. Bayer and Exelixis shall have co-exclusive rights to pursue each Unselected Non-Cognate Target in the field of animal health [*]. Exelixis may develop an Exelixis Assay directed at an Unselected Non-Cognate Target.

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4.4 Related Family Members.

(a) If Exelixis wishes to select an Unselected Non-Cognate Target, it shall discuss with the JSC whether such Unselected Non-Cognate Target [*]. If [*] exists the Unselected Non-Cognate Target shall be deemed a "Putative Related Family Member." Neither the LLC nor Exelixis may pursue within the Field of Use any Putative Related Family Member.

(b) The Parties will work together to determine [*] of the Putative Family Related Member and such Selected Target, and in the course of such work, Exelixis or Bayer will supply to the other, within [*] after the other Party's reasonable request, the relevant requested biological material for testing. Bayer will [*], determine whether [*], and measure the [*]. If the Putative Related Family Member is [*] to such Selected Target and [*], then the Putative Related Family Member is a Related Family Member and Exelixis shall be prohibited from working upon it within the Field of Use. If Bayer subsequently has an HTS assay formatted with respect to such Related Family Member, then Bayer shall retroactively pay [*] for such Related Family Member and all future milestones and royalties shall be due for such Related Family Member, which shall be deemed a separate Selected Target. All Putative Related Family Members that do not become Related Family Members within [*] of designation as a Putative Related Family Members will cease to be Putative Related Family Members and the rights of the Parties set forth in Section 4.3 shall apply to such Targets.

4.5 The Parties' Rights Regarding Selected Assays. Subject to the exceptions set forth in this Section 4.5, Bayer shall have exclusive rights to pursue in the Field of Use each Selected Non-Cognate Target that is the basis for a Selected Assay, such Selected Assay and all Research Orthologues of such Selected Non-Cognate Target. Bayer may approve, in its sole discretion, a request by the LLC to grant it co-exclusive rights in the Field of Use outside the Research Field to pursue a Selected Non-Cognate Target that is the basis for a Selected Assay, such Selected Assay and all Research Orthologues of such Selected Non-Cognate Target. Exelixis shall have the exclusive right to pursue outside the Field of Use each Selected Non-Cognate Target that is the basis for a Selected Assay, such Selected Assay and all Research Orthologues of such Selected Non-Cognate Target. Exelixis may develop an Exelixis Assay directed at a Selected Non-Cognate Target for such purpose. Bayer's rights shall be exclusive within the Research Field and within the Field of Use until the later of (a) [*], or (b) [*]. Bayer may obtain a single [*] extension of the period of exclusivity for a particular Selected Assay by, within [*] prior to the expiration of the initial exclusivity period, submitting a written extension request to the LLC and making a payment of [*] to the LLC within thirty (30) days after the LLC grants such request in writing. The LLC shall grant such request if Bayer provides the LLC with (i) [*] and (ii) [*].

4.6 Unselected Assays.

(a) If Bayer fails to commence using an LLC Assay directed to a Selected Non-Cognate Target to screen for Collaboration Compounds within the period set forth in Section 3.3, then any Party may submit a written request to the LLC for the right to screen such LLC Assay in the Field of Use. The LLC shall grant such request unless the LLC has already (a) commenced use of such LLC Assay for screening purposes in the Research Field (in which case the LLC must have allocated additional FTEs pursuant to Section 2.5 to perform such work), (b)

granted a license to perform such screening available to a Third Party (subject to Bayer approval), (c) granted such a request to another Party or (d) in response to such a request by Exelixis, Bayer commits to promptly use the LLC Assay to screen Bayer Compounds (in which case such assay shall then be a Selected Assay). After the granting of such a request, the requesting Party may perform such screening within the Field of Use internally or in collaboration with a Third Party. In the event that Exelixis is the requesting Party, Exelixis shall obtain Bayer's written consent prior to the establishment of any collaboration in the Research Field involving such LLC Assay. Exelixis may enter into collaborations in the Field of Use outside the Research Field involving such LLC Assay without the prior approval of Bayer. Exelixis shall not have the right to grant a Third Party a license to perform such screening except on behalf of Exelixis, but shall have the right to grant licenses to compounds identified through screening performed by or on behalf of Exelixis, subject to the rights of Bayer set forth in Section 8.3. Compounds discovered through Exelixis' permitted use of an LLC Assay in the Field of Use may be Exelixis Agrochemical Compounds.

(b) The LLC shall have the right to use each LLC Assay that is not a Selected Assay to screen for compounds with apparent activity inside the Research Field (unless such right is granted to Exelixis pursuant to this Section 4.6) and all such compounds shall be LLC Compounds. Exelixis shall have the exclusive right to use each such LLC Assay to screen for compounds with apparent activity outside the Field of Use.

5. Cognate Targets

5.1 The Parties' Rights Regarding Cognate Targets Selected by the LLC . Bayer and the LLC shall have co-exclusive rights to pursue each Selected Cognate Target in the Research Field (in the case of the LLC, excluding the right to sublicense except for LLC Assay development purposes). Bayer shall have the exclusive right to pursue each Selected Cognate Target in the Field of Use outside the Research Field. Subject to Bayer's option set forth in Section 8.9(b), Exelixis shall have the exclusive right to pursue each Selected Cognate Target outside the Field of Use and may develop an Exelixis Assay directed at a Selected Cognate Target for such purpose.

5.2 The Parties' Rights Regarding Cognate Targets Selected by Bayer. Bayer shall have exclusive rights to pursue in the Field of Use each Cognate Target it selects. Subject to Bayer's option set forth in Section 8.9(b), Exelixis shall have the exclusive right to pursue each such Selected Cognate Target outside the Field of Use and may develop an Exelixis Assay directed at a Selected Cognate Target for such purpose.

5.3 Unselected Cognate Targets. After the failure of Bayer to timely select a Cognate Target as a Selected Cognate Target pursuant to Section 3.2, either Bayer or the LLC may select such Cognate Target as a Selected Cognate Target at any time, provided that such Cognate Target has not already been selected by either Bayer or the LLC and that the LLC has not already licensed, with the prior approval of Bayer, such Target to a Third Party for use in the Research Field. Exelixis shall have the exclusive right to pursue each such Unselected Cognate Target outside the Field of Use. Exelixis may develop an Exelixis Assay directed at such a Target.

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5.4 The Parties' Rights Regarding Selected Assays. Subject to the exceptions set forth in this Section 5.4, Bayer shall have exclusive rights to pursue in the Field of Use each Selected Cognate Target that is the basis for a Selected Assay, such Selected Assay and all Research Orthologues of such Selected Cognate Target. Bayer may approve, in its sole discretion, a request by the LLC to grant it co-exclusive rights in the Field of Use outside the Research Field to pursue a Selected Cognate Target that is the basis for a Selected Assay, such Selected Assay and all Research Orthologues of such Selected Cognate Target. Exelixis shall have the exclusive right to pursue outside the Field of Use each Selected Cognate Target that is the basis for a Selected Assay, such Selected Assay and all Research Orthologues of such Selected Cognate Target. Exelixis may develop an Exelixis Assay directed at a Selected Cognate Target for such purpose.

5.5 Unselected Assays.

(a) If Bayer fails to commence using such LLC Assay to screen for Collaboration Compounds within the period set forth in Section 3.3, then either Bayer may select such LLC Assay as a Selected Assay at any time, provided that the LLC has not already commenced screening of such LLC Assay in the Research Field (in which case the LLC must have allocated additional FTEs pursuant to Section 2.5 to perform such work) or already licensed to a Third Party the right to screen such LLC Assay in the Research Field, subject to Bayer approval. Exelixis shall have the exclusive right to use each such LLC Assay to screen for compounds with apparent activity outside the Field of Use.

(b) The LLC shall have the right to use each LLC Assay that is not a Selected Assay to screen for compounds with apparent activity inside the Research Field (unless such right is granted to Exelixis pursuant to this Section 5.5) or within the Field of Use (and all such compounds shall be LLC Compounds), Exelixis shall have the right to use each such LLC Assay to screen for compounds with apparent activity outside the Field of Use.

6. Reserved Targets

6.1 Designation of Reserved Targets.

(a) During the Research Term, Bayer may designate as a Reserved Target any [*], provided that the number of Reserved Targets at any one time never exceeds [*] and the cumulative number of Reserved Targets never exceeds [*]. A Reserved Target will be classified as an A List Reserved Target if it is present in (i) [*] or (ii) [*] and such target was either (A) [*] or (B) [*]. All Reserved Targets that do not qualify as A List Reserved Targets shall be classified as B List Reserved Targets. The Parties understand and agree that Exelixis does not want to know the identities of the B List Reserved Targets. Thus, Bayer will not reveal the identity of any B List Reserved Target to Exelixis or any member of the LLC other than the CEO, and the CEO shall be contractually prohibited from disclosing such Information to Exelixis or any Dedicated FTE or Shared FTE.

(b) Within [*], Bayer will submit to Exelixis and the LLC a written list which identifies each A List Reserved Target and which indicates the number of B List Reserved

Targets but does not disclose their identities. Bayer shall simultaneously provide to the CEO a separate written list that identifies each B List Reserved Target.

(c) During the Research Term, Bayer may designate new Reserved Targets by written notification to Exelixis and the LLC, provided that the limitations set forth in Section 6.1(a) regarding the number of Reserved Targets are not exceeded. Bayer shall disclose the identity of each new A List Reserved Target and the number of new B List Reserved Targets in such notification and shall simultaneously submit to the CEO a written list that identifies each new B List Reserved Target.

(d) During the Research Term, Bayer may remove particular Reserved Targets from the list by notifying the LLC and the CEO in writing of such intent. Upon receipt of such notification, each such Reserved Target shall cease to be a Reserved Target.

6.2 A List Reserved Targets.

(a) Bayer may perform preliminary research in the Field of Use upon A List Reserved Targets but may not screen assays based on such Targets or identify compounds with activity against such Targets prior to selecting the relevant A List Reserved Target as a Selected A List Reserved Target. Prior to Bayer's selection of an A List Reserved Target as a Selected A List Reserved Target, the LLC shall, at the request of Bayer and the allocation of sufficient resources, perform research upon one or more such A List Reserved Targets, provided such research is limited to the collection of data for the support of patent claims directed at such A List Reserved Targets. During the period after the designation of a target as an A List Reserved Target and before Bayer's selection of such Target as a Selected A List Reserved Target, Bayer shall have exclusive rights (subject to the LLC's right to perform the aforementioned work at the request of Bayer) to pursue such Targets in the Field of Use and Exelixis has exclusive rights (subject to the option set forth in Section 8.9(b)) to pursue such Targets outside the Field of Use.

(b) Within [*] after its designation of a target as an A List Reserved Target, Bayer may select any such Target as a Selected A List Reserved Target upon written notification to the LLC. Such notification shall specify whether an assay based on such Selected A List Reserved Target shall be developed by the LLC (in which case it will be an LLC Assay) or by Bayer (in which case it will be a Bayer Assay). Within [*] after the selection of an A List Reserved Target, Bayer shall [*].

(c) The Parties' rights and obligations with respect to Selected A List Reserved Targets are the same as for Selected Cognate Targets: if the LLC is developing an LLC Assay based on a particular Selected A List Reserved Target, then Section 5.1 shall apply to such Selected A List Reserved Target; if Bayer is developing a Bayer Assay based on a particular Selected A List Reserved Target, then Section 5.2 shall apply. All milestone and premium fee obligations set forth in Section 9.3 and 9.4 shall apply to such Targets and their related assays and compounds ([*]).

(d) The Parties' rights and obligations with respect to A List Reserved Targets that have not been selected [*] after designation are the same as for Unselected Cognate Targets. If Bayer removes an A List Reserved Target from the list of Reserved Targets, then the

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Parties' rights and obligations with respect to such Target shall be the same as for an Unselected Non-Cognate Target. In addition, Bayer shall have the option set forth in Section 8.9(b) with respect to such Targets.

6.3 B List Reserved Targets. Bayer may work upon B List Reserved Targets independently, with Third Parties, or with Exelixis or the LLC under a separate agreement. In the event that a B List Reserved Target is identified in the course of the Target Identification Program, the CEO shall promptly instruct the LLC to stop work on such B List Reserved Target. If Bayer subsequently removes a B List Reserved Target from the list of Reserved Targets, then the CEO shall inform the LLC that it may, if it so desires, resume work on such Target.

7. Product Development

7.1 Development of Collaboration Compounds. Bayer shall have the sole right and responsibility to conduct Development of Collaboration Compounds, either itself or through its Affiliates or licensees on its behalf and at its expense, with the right to file Approval Applications for obtaining and maintaining Regulatory Approval of Products as soon as reasonably practicable. Upon deciding to commence Development on a Collaboration Compound, Bayer shall notify the LLC in writing of such decision. If requested by Bayer in writing, the LLC shall provide Bayer reasonable assistance, at Bayer's expense, in conducting such Development efforts.

7.2 Development Expenses. Bayer shall bear all the costs and expenses incurred by Bayer or its Affiliates relating to the Development of Collaboration Compounds undertaken under this Agreement and to the procurement of such Regulatory Approval of Products.

7.3 Reports. Bayer shall maintain records of all Development activities and all results of any trials, studies and other investigations conducted by or on behalf of Bayer under this Agreement. At least twice a year, Bayer shall provide the LLC written reports summarizing the Development status or otherwise respond informally and reasonably promptly upon the LLC's reasonable written request.

7.4 Development of LLC Compounds. The LLC may develop LLC Compounds in the Research Field and pursue Regulatory Approval for products containing such LLC Compounds, provided the LLC allocates FTEs in addition to the original [*] FTEs, and/or funds for Third Party services, to perform such work. Bayer shall have the option set forth in Section 8.4 with respect to such LLC Compounds.

7.5 Development of Exelixis Compounds And Products. Exelixis shall bear all costs and expenses incurred by it in connection with the discovery and development of compounds and products arising from its use of LLC Know-How and LLC Patents to discover compounds and develop products outside of its activities on behalf of the LLC. Bayer shall have the option set forth in Section 8.3 with respect to those compounds that are Exelixis Agrochemical Compounds.

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8. Exclusivity; Further Bayer and Exelixis Rights

8.1 Exelixis Exclusivity. During the Research Term, Exelixis shall not knowingly conduct or finance research in the Research Field except pursuant to this Agreement or otherwise as set forth in this Article 8. The Parties recognize that the nature of the Exelixis technology may make it difficult for Exelixis, acting in good faith, to know whether the results of its activities undertaken on behalf of Third Parties may be directed towards the Research Field. However, if in the course of performing work for any Third Party, Exelixis determines in good faith that its activities appear to be directed towards the Research Field, Exelixis shall refrain from any further work which appears to be so directed. The foregoing restriction on work within the Research Field includes that prohibition that Exelixis shall not knowingly engage in mechanism of action studies on behalf of Third Parties within the Research Field.

8.2 Exelixis Independent Research Directed At [*]. [*] Exelixis may desire to initiate, on its own and not with a Third Party, a research project involving [*]. In such case it shall disclose to the LLC its planned activities and its reasons for believing that such work is worthwhile. If within [*] after the submission of a written proposal for such independent project to the LLC by Exelixis, the LLC does not elect in writing to Exelixis to include such project within the Research, then Exelixis may pursue such work on its own behalf, at its own expense and without collaboration with Third Parties (other than Exelixis consultants under customary consulting arrangements). Exelixis shall report to the LLC on a quarterly basis regarding its work under any such independent project. At [*], Exelixis may submit to the LLC a written report of its results to that point and request a determination as to whether the LLC desires to bring such project into the Research. If the LLC elects by written notice to Exelixis to bring such project within the Research, then the Parties shall negotiate at arm's length mutually acceptable terms and conditions for such project to be brought into the Research, the LLC shall allocate a sufficient number of FTEs in addition to those previously allocated to the Collaboration to continue the project with reasonable diligence, and the work shall thereafter be conducted as part of the Research. If the LLC does not elect to include such work within the Research, then Exelixis shall be free to pursue it thereafter, alone or with Third Parties.

8.3 Exelixis Agrochemical Compounds. Prior to offering any Third Party the opportunity to acquire a license to research and develop an Exelixis Agrochemical Compound and/or commercialize an Exelixis Agrochemical Product, Exelixis shall provide Bayer with the opportunity to consider whether Bayer or an Affiliate of Bayer wishes to acquire a license in the Research Field or the Field of Use to the Exelixis Agrochemical Compound and any current or future Exelixis Agrochemical Products incorporating such Compound (except for those Exelixis Agrochemical Products for which Bayer has been offered but failed to exercise its option to license under this Section 8.3). When presenting Bayer the opportunity for any such license, Exelixis will provide Bayer in writing with information regarding [*]. The first time that Exelixis offers Bayer the opportunity to license in the Research Field or Field of Use an Exelixis Agrochemical Compound active against a particular Target, Exelixis shall also offer Bayer the opportunity to [*]. Subsequent offers to Bayer shall include those rights set forth in the previous sentence that, at the time of such offers, have not been exclusively licensed to a Third Party. Bayer shall have [*] after such offer in which to inform Exelixis in writing that Bayer or an Affiliate of Bayer is interested in acquiring such a license. If Bayer indicates such interest within the [*] period, then Exelixis and Bayer or Bayer's relevant Affiliate shall negotiate in good faith for up to [*] to reach agreement on the terms of a license agreement which shall be set forth in an executed license agreement. If Bayer fails to notify Exelixis of its interest or Exelixis and Bayer fail to execute a license agreement within the applicable period, then Bayer

or its relevant Affiliate shall provide to Exelixis all information and data collected or generated by Bayer or its relevant Affiliate with respect to such Exelixis Agrochemical Compound and Bayer shall have no rights with respect to such Exelixis Agrochemical Compound or Exelixis Agrochemical Product and Exelixis shall have unrestricted rights to develop said Exelixis Agrochemical Compound and commercialize such Exelixis Agrochemical Product, without compensation to Bayer or the LLC other than that set forth in Section 9.4(b), either independently or in collaboration with one or more Third Parties, [*]. This Section 8.3 shall expire [*].

8.4 LLC Compounds. Prior to offering any Third Party the opportunity to acquire a license to develop an LLC Compound in the Research Field and/or commercialize a product containing such LLC Compound in the Field of Use, the LLC shall provide Bayer with written notice of its intention to do so and all of the information then available to the LLC with respect to such LLC Compounds. When presenting Bayer the opportunity for any such license, the LLC will provide Bayer in writing with information regarding [*]. The first time that the LLC offers Bayer the opportunity to license within the Field of Use any LLC Compound active against a particular Target, the LLC shall also offer Bayer the opportunity to [*]. Subsequent offers to Bayer shall include those rights set forth in the previous sentence that, at the time of such offers, have not been exclusively licensed to a Third Party. Bayer shall have [*] after such offer in which to inform the LLC in writing that Bayer or an Affiliate of Bayer is interested in acquiring such a license. Thereafter, the LLC and Bayer (or such Bayer Affiliate) shall negotiate in good faith for up to [*] to reach agreement on the terms of a license agreement which shall be set forth in either an executed license agreement or an executed legally binding heads of agreement. If Bayer fails to notify the LLC of its interest or the LLC and Bayer (or such Bayer Affiliate) fail to execute a license agreement within the applicable period, then Bayer (or such Bayer Affiliate) shall have no rights with respect to such LLC Compound or product containing such LLC Compound and the LLC shall have unrestricted rights to develop such LLC Compound in the Research Field and commercialize such product containing such LLC Compound in the Field of Use either independently or in collaboration with one or more Third Parties. This Section 8.4 shall expire [*].

8.5 Exelixis Independent Research Collaborations [*]. Except as provided in the penultimate sentence of this Section 8.5, before Exelixis [*] whereby Exelixis would collaborate exclusively with such Third Party during the Research Term in an area that is [*], Exelixis shall notify Bayer and the LLC in writing in reasonable detail of any such opportunity and provide Bayer and the LLC with the same type and quality of information it would make available to such Third Party with respect to such opportunity. Bayer and the LLC shall thereafter have a [*] period in which to notify Exelixis in writing that Bayer or the LLC wishes to pursue such opportunity. The first such Party, if any, as between Bayer and the LLC, to provide Exelixis with timely notification of its interest in the opportunity shall have an additional [*] period in which to negotiate with Exelixis for and execute a binding agreement with Exelixis setting forth the terms of a collaboration encompassing the subject matter described by Exelixis in the information provided to Bayer and the LLC prior to the start of the [*] notice period. During the periods set forth above in this Section 8.5, Exelixis may [*] but may not [*], and may not [*]. If both Bayer and the LLC fail to notify Exelixis of its interest within the [*] period or Exelixis or any notifying Party fails to execute a license agreement within the [*]

period, then neither Bayer nor the LLC shall have any rights with respect to such opportunity and Exelixis shall have unrestricted rights (except as set forth in Section 8.6) to pursue such collaborations with one or more Third Parties, without compensation to Bayer or the LLC, except as set forth in Sections 9.4(b) and (c). The option set forth in this Section 8.5 does not pertain to [*]. This Section 8.5 does not obligate Exelixis to enter into a collaboration with Bayer or the LLC that, in the sole discretion of Exelixis, Exelixis decides is not in its best interests.

8.6 Exelixis Negative Covenant. Exelixis hereby covenants that it shall not commercialize in the Research Field an Exelixis Agrochemical Product for which it has an obligation under Section 8.3 to provide Bayer an opportunity to consider acquiring a license, unless it has fulfilled its obligations under Section 8.3. In addition, Exelixis shall [*].

8.7 Bayer Undertaking Regarding [*]. [*], if Bayer elects to conduct or finance any work at a for-profit organization that is [*], then Bayer shall first offer to the LLC in writing the opportunity to perform such work. If (i) the LLC fails to notify Bayer within [*] following such offer that the LLC is interested in performing such work, (ii) the LLC fails, after timely notice, to [*] or (iii) Bayer and the LLC fail to execute within [*] after the LLC's timely notice a written agreement for the LLC to perform such work, then Bayer may conduct or finance such work at a Third Party for-profit organization. Except as provided in this Section 8.7, Bayer shall retain complete freedom of operation to conduct research and development activities [*].

8.8 Collaboration Compounds. Prior to offering any Third Party the opportunity to acquire a license to develop a Collaboration Compound upon which Bayer has ceased Development, Bayer shall provide Exelixis with the opportunity in writing to consider whether Exelixis wishes to acquire a license to such Collaboration Compound. Bayer shall [*]. Exelixis shall have [*] following its receipt of such writing in which to inform Bayer in writing that it is interested in acquiring a license to such Collaboration Compound. Thereafter, Exelixis and Bayer shall have [*] in which to negotiate and execute a license agreement enabling Exelixis to further develop such Collaboration Compound and to make, have made, import, sell and offer to sell products incorporating such Collaboration Compound. This Section 8.8 does not obligate Bayer to enter into a license agreement with Exelixis that, in the sole discretion of Bayer, Bayer decides is not in its best interests. This Section 8.8 shall expire [*].

8.9 Options for Pharmaceutical Collaborations

(a) Exelixis hereby grants Bayer a royalty-free option to collaborate with Exelixis regarding the use of Cognate Targets, Non-Cognate Targets, and A List Reserved Targets that have human orthologues and LLC Assays based on such Targets for pharmacological research and development under still to be negotiated and agreed upon terms and provisions, provided that Bayer has a pharmaceutical division or Affiliate at the time of exercise of the option and further provided that Exelixis does not then have a pre-existing obligation that would prevent it from collaborating with Bayer with respect to such Target and such disease area.

(b) Exelixis hereby grants Bayer a royalty-free option to establish a pharmaceutical collaboration with Exelixis regarding a Selected Cognate Target, Selected Non-Cognate Target, or A List Reserved Target that has a human orthologue, provided that Bayer has a pharmaceutical division or Affiliate at the time of exercise of the option. If Bayer wishes to exercise this option, it shall notify Exelixis in writing within (i) [*], (ii) [*], or (iii) [*]. Such notification shall identify the Selected Cognate Target, Selected Non-Cognate Target or A List Reserved Target and the disease area in which it is interested in collaborating with Exelixis. Provided Exelixis does not then have a pre-existing obligation that would prevent it from collaborating with Bayer with respect to such Target and such disease area, Exelixis and Bayer shall have [*] (or longer upon mutual agreement) following receipt of such notification to negotiate and enter into a collaboration agreement regarding such Target and such disease area. During the [*] period Exelixis will not [*].

8.10 Use of Targets in the Field of Animal Health.

(a) Exelixis and Bayer shall have co-exclusive rights with the right to sublicense as permitted under Section 4.3 to pursue Unselected Non-Cognate Targets in the field of animal health (which is part of the Field of Use). Exelixis and Bayer may also perform Independent Research upon such Targets.

(b) Bayer shall have exclusive rights (with the right to sublicense) to pursue Cognate Targets, and A List Reserved Targets, in the field of animal health (which is part of Field of Use). Exelixis may perform research in the field of animal health upon such Targets as follows: Exelixis shall not begin work on any genetic entry point that, at such time, is a Cognate Target, or an A List Reserved Target. If Exelixis discovers a Target during research that is at such time a Cognate Target or an A List Reserved Target, it can reveal the identity of such Target to its Third Party collaborator but cannot perform further work upon such Target in the field of animal health.

(c) Commencing [*] after the delivery of an LLC Assay directed at a Selected Non-Cognate Target, Exelixis shall have the right (with the right to sublicense as permitted under Section 4.3) to pursue such Selected Non-Cognate Target in the field of animal health (which is part of the Field of Use), provided that Bayer is not then developing an animal health product based on such Target and further provided that any Exelixis collaboration with a Third Party regarding such Selected Non-Cognate Target is subject to approval by Bayer if [*], and [*]. Exelixis and Bayer may also perform Independent Research upon such Targets.

8.11 Independent Research. Subject to Sections 8.1, 8.2, 8.5, 8.7 or as otherwise set out in this Agreement, Bayer, Exelixis and the LLC may each perform Independent Research during the Research Term.

9. Payments

9.1 License Fee And Research Commitment Fee. The LLC shall pay Exelixis a license fee of $10,000,000 and a separate research commitment fee of $10,000,000 (for aggregate payments under this Section 9.1 of $20,000,000). Exelixis shall invoice the LLC (and send a copy of the first such invoice to Bayer) for one-half of each amount on the Effective Date

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and the first anniversary of the Effective Date, and the LLC shall make such payment within [*] thereafter.

9.2 Research Funding. From the Effective Date until the end of the Research Term, Exelixis will invoice the LLC (and send a copy of the first such invoice to Bayer) for and the LLC will make within [*] thereafter quarterly advance payments to Exelixis sufficient to pay for the number of Specified FTEs (as defined in Section 2.5(a)) then performing Research under this Agreement multiplied by the then current Annual FTE Rate. In any event, for each calendar quarter, the amount of research funding provided by the LLC to Exelixis shall be not less than one-quarter of the amount calculated in Section 2.5(a) and shall only exceed [*] in the event that the LLC commits to provide more than [*] in Research funding in the applicable Contract Year as set forth in Section 2.5(a).

9.3 Milestone Payments. Commencing on the Effective Date, Bayer shall pay the LLC the following amounts within [*] after the LLC's invoice following the occurrence of each of the events specified below:

(a) [*] upon (i) [*], (ii) [*] or (iii) [*];

(b) [*] upon [*];

(c) [*] upon [*]; and

(d) [*] upon [*].

9.4 Premium Fee Payments.

(a) Bayer Products. Bayer shall pay the LLC a running premium fee of [*] on the aggregate Net Sales of Bayer Products in addition to amounts payable above. For each Bayer Product, Bayer's obligations to pay premium fees will expire on a country-by-country basis on the later of: (i) [*] or (ii) [*]. After the expiration of Bayer's premium fee obligation hereunder on a Bayer Product in a particular country, the license set forth in Section 11.5 with respect to such Bayer Product in such country shall continue in force perpetually with no further premium fee or other payment obligations.

(b) Exelixis Agrochemical Products. Exelixis shall pay the LLC a running premium fee of: [*] from such Exelixis Agrochemical Product. Exelixis' obligations to pay premium fees will expire on a country-by-country basis on the later of: (A) [*] or (B) [*]. After the expiration of Exelixis' premium fee obligation hereunder on an Exelixis Agrochemical Product in a particular country, the license set forth in Section 11.3 with respect to such Exelixis Agrochemical Product in such country shall continue in force perpetually, with no further premium fee or other payment obligations.

(c) Exelixis Human Health Products. Exelixis shall pay the LLC a running premium fee of the lesser of [*] on the aggregate Net Sales of each Exelixis Human Health Product or [*] of Exelixis' sublicensing income from such Exelixis Human Health Product. Exelixis' obligations to pay premium fees will expire, on a country-by-country basis on the later

of: (i) [*] or (ii) [*]. After the expiration of Exelixis' premium fee obligation on an Exelixis Human Health Product in a particular country, the license set forth in Section 11.3 with respect to such Exelixis Human Health Product in such country shall continue in force perpetually, with no further premium fee or other payment obligations.

(d) Combination Products. If a Product contains a Collaboration Compound, an Exelixis Human Health Compound or Exelixis Agrochemical Compound combined as a single product with one or more other active ingredients (a "Combination Product"), then Net Sales of such Combination Product for premium fee purposes under Section 9.4 shall be calculated as follows: the Net Sales of the Combination Product shall be calculated in accordance with the definition of Net Sales under Section 1.47, and then such Net Sales shall be adjusted on a country-by-country basis as follows:

(i) The Net Sales of such Combination Product shall be multiplied by the fraction A/(A+B), where A is [*]; or

(ii) If the [*] is not available on an independent basis, the Net Sales of such Combination Product shall be multiplied by a percentage, determined by mutual agreement of the Parties, which represents [*].

(iii) In the case a synergistic effect of at least [*] times results from the combination of active ingredients in the sold Combination Products based on evidence on the active ingredients, the Party paying premium fees for such Product shall give the Party or Parties to whom premium fees are due notice thereof. The relevant Parties shall promptly after such notice meet to negotiate and agree in good faith upon a commercially reasonable adjustment of Net Sales for such Combination Product. Such adjustment shall be based on a reasonable measure, as agreed by the relevant Parties in good faith, of the economic value of the contribution of the Collaboration Compound, Exelixis Human Health Compound or Exelixis Agrochemical Compound as compared to the economic value of the contribution of the other active ingredient(s) in such Combination Product.

9.5 Reports on Payments. After the first commercial sale of a Product on which payments are to be made by Bayer or Exelixis hereunder, the Party with a payment obligation shall make quarterly written reports to the other Parties within [*] after the end of each calendar quarter, stating in each such report, separately for each selling Party and each of its Affiliates and sublicensees, the number, description, and aggregate Net Sales, by country, of each Product sold during the calendar quarter upon which a payment is to be made under Section 9.4 above. Subject to any reductions permitted pursuant to the express terms of this Agreement, concurrently with the making of such reports, the Party with the payment obligation shall deliver such payment to the Party or Parties entitled to such payment.

9.6 Payment Method. All payments due under this Agreement shall be noncreditable and nonrefundable, except as to errors, and as to any amounts disputed in good faith and determined not to have been due or agreed by the relevant Parties not to be due, and shall be made by bank wire transfer in immediately available funds to an account designated by the LLC. All payments hereunder shall be made in United States dollars.

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9.7 Place of Payments and Currency Conversions. If any currency conversion is required in connection with the calculation of payments hereunder, such conversion shall be made using the selling exchange rate for conversion of the Wall Street Journal for the last business day of the calendar quarter to which such payment pertains. If at any time legal restrictions prevent the prompt remittance of any payments owed on Net Sales in any jurisdiction, Bayer or Exelixis may make such payments by depositing the amount thereof on local currency in a bank account or other depository in such country in the name of the LLC. Bayer or Exelixis shall promptly notify the LLC in writing, of the circumstances leading to such deposit and, at the LLC's request, cooperate with the LLC to repatriate such amounts.

9.8 Records; Inspection.

(a) Bayer and Exelixis and their Affiliates and sublicensees 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 at the principal place of business of such Party, as the case may be, for at least [*] years following the end of the calendar quarter to which they pertain.

(b) Such records will be open for inspection during such [*] year period by a public accounting firm to whom Bayer or Exelixis, as applicable, has no reasonable objection, solely for the purpose of verifying payment statements hereunder. Such inspections may be made not more than once each calendar year, at reasonable times and on reasonable prior written notice. Inspections conducted under this Section 9.8 shall be at the expense of the requesting Party, unless a variation or error producing an increase exceeding five percent (5%) of the amount stated for any period covered by the inspection is established in the course of any such inspection, whereupon all costs relating to the inspection for such period and the full amount of any unpaid amounts that are so discovered will be paid promptly by Bayer or Exelixis, as applicable.

(c) All information concerning payments and reports, and all information learned by a Party in the course of any audit or inspection shall be subject to the confidentiality provisions set forth in Article 18 of the Operating Agreement. The public accounting firm employees shall sign customary confidentiality agreement as a condition precedent to their inspection and shall report to the LLC only that information which would be contained in a properly prepared payment report by Bayer or Exelixis, as applicable.

(d) Upon request and subject to confidentiality, any Party shall provide a written explanation of the discovery and development of any compound that the requesting Party reasonably suspects may be a Collaboration Compound, Exelixis Agrochemical Compound or Exelixis Human Health Compound. If the Parties cannot agree within [*], the requesting Party shall: (i) engage an independent, mutually acceptable technical consultant within [*] who is bound by an appropriate confidentiality agreement to review the source documents for such discovery and development and determine whether the compound is royalty-bearing to the LLC, (ii) in the event that no mutually agreeable technical consultant is found, each Party may engage its own technical consultant within such [*] period and those two consultants shall pick within [*] days thereafter a third consultant to perform the review and make such determination, or (iii)

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be deemed to have agreed that the compound in question is not royalty-bearing to the LLC. The Party whose view is contrary to the decision of the consultant shall bear the cost of such review.

9.9 Withholding Taxes.

(a) Any Party with a premium fee payment obligation under this Agreement shall have the right to deduct from the premium fee payments the tax which a receiving Party is liable to pay thereon under the tax law of the country from which such payment is being made. The party receiving such payment shall immediately be sent a tax receipt certifying the payments of the tax, so that such receiving Party may use it for claiming a credit on the tax payable by it in its own country. No deduction shall be made if the receiving Party furnishes a document from the tax authorities of the country from which such payment is being made by the time of the payment of the premium fees certifying that the premium fees are exempt from withholding.

(b) German value added tax (VAT) will be administered by Bayer for the LLC. The LLC will not invoice any VAT to Bayer.

(c) Each Party undertakes to cooperate with the other Parties to achieve lawful tax arrangements which are most favorable for all Parties, without prejudice to the rights or treatment of any one Party.

9.10 Subscription Fees. Commencing on the Effective Date, LLC may license the Sequence Database to Third Parties.

9.11 Relationship To Licenses. The premium fee payments provided for herein are in consideration of the various services, covenants, allocations of rights, and grants of licenses set forth in this Agreement. Such premium fees shall be paid regardless of whether the recipient of such payment then possesses intellectual property which covers the Product which is the subject of the premium fee payment, and similarly, such payments shall expire at the end of the term set forth in Section 9.4(a), 9.4(b), or 9.4(c), respectively, even if the Party previously receiving such payments continues to hold intellectual property which covers such Product.

9.12 Late Payment Penalty. Any payment due under this Article 9 that is not paid by [*] after the payment's due date shall accrue interest, which must be paid by the Party with the payment obligation to the recipient Party, on a daily basis at a rate equal to [*] (or the maximum amount permitted by law, if less), from the date first owed until paid.

10. Inventions and Patents

10.1 Ownership of Research Intellectual Property.

(a) Bayer shall own the entire right, title and interest in and to any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, made solely by Bayer and its employees or agents and arising from work performed pursuant to this Agreement after the Effective Date, and Patents covering such intellectual property.

(b) The LLC shall own the entire right, title and interest in and to any and all inventions, developments, results, know-how and other Information (other than Core Improvements), and all intellectual property relating thereto, made solely by the Dedicated FTEs and Shared FTEs and arising from work performed pursuant to this Agreement after the Effective Date, and Patents covering such intellectual property.

(c) Exelixis shall own the entire right, title and interest in and to any and all inventions, developments, results, know-how and other Information, and all intellectual property (including Patents) relating thereto, and made solely by employees or agents of Exelixis other than Dedicated and Shared FTEs and arising from work performed pursuant to this Agreement after the Effective Date, and Patents covering such intellectual property.

(d) Exelixis shall own the entire right, title and interest in and to any and all inventions, developments, results, know-how and other Information relating to Core Improvements, and all intellectual property relating thereto, and Patents covering such intellectual property.

(e) Subject to the provisions of Section 10.3(d), the Joint Inventions and Joint Patents shall be jointly owned by the Parties that made, whether directly or through their employees or agents (which, in the case of the LLC, shall be the Dedicated FTEs and the Shared FTEs), such Joint Inventions and Joint Patents. Each inventing Party shall each own an undivided one-half or one-third (if the number of inventing Parties is two or three, respectively) interest in and to such Joint Inventions or Joint Patents. Each joint owner shall have the right to grant licenses under or to assign its interest in, such Joint Patents, only to the extent as provided for in this Agreement or as otherwise agreed in writing by the other joint owner(s). Each Party shall have the right to grant licenses under its interest in any Joint Patent to the other Parties and their Affiliates. Bayer may freely grant a license to Bayer AG or an Affiliate of Bayer under or assign to Bayer AG or an Affiliate of Bayer, Bayer's ownership interest in any Joint Patent. All questions concerning inventions and/or inventorship and/or the construction of or effect of Patents shall be decided in accordance with the laws relating to inventorship and other relevant laws of the country in which the particular Patent has been filed or granted, as the case may be.

(f) The Sequence Library and the Sequence Database will be owned exclusively by the LLC, subject to the licenses granted herein to Exelixis and Bayer.

10.2 Disclosure of Patentable Inventions. In addition to the disclosures required under Sections 2.6 and 7.3, each Party shall submit a written report to the other Parties within [*] after the end of each quarter describing any invention arising during the prior quarter in the course of the Research done during the Research Term which it believes may be patentable. The LLC and Exelixis shall provide Bayer with drafts of any patent application which discloses an LLC Assay or Target prior to filing, allowing adequate time for review and comment by Bayer if possible; provided, however, that the LLC and/or Exelixis shall not delay the filing of any patent application pursuant to Section 10.3 below.

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10.3 Patent Prosecution and Maintenance; Abandonment.

(a) Exelixis Patents.

(i) Exelixis shall retain control over, and shall bear all expenses related to, the filing, prosecution, and maintenance of all Exelixis Patents; except as set forth in Section 10.3(a)(ii).

(ii) If Exelixis elects to cease prosecution of or not maintain any Exelixis Patent that [*], Exelixis shall notify [*] in writing not less than [*] before any relevant deadline. [*] shall have the right to assume control over the prosecution or maintenance of such Exelixis Patent, provided that [*] shall bear all expenses related thereto; but title to any such Exelixis Patent shall remain in Exelixis.

(b) LLC Patents.

(i) The LLC shall retain control over, and shall bear all expenses related to, the filing, prosecution, and maintenance of all LLC Patents, except as set forth in Section 10.3(b)(ii).

(ii) If the LLC elects to cease prosecution of or not maintain any LLC Patent, the LLC shall notify Bayer and Exelixis in writing not less than [*] before any relevant deadline. If Bayer gives notice to Exelixis within [*] of notification from the LLC, Bayer shall have the right to assume control over the prosecution or maintenance of such LLC Patent, provided that Bayer shall bear all expenses related thereto; but title to any such LLC Patent shall remain in the LLC. If Bayer does not give such notice, Exelixis shall have the right to assume control over the prosecution or maintenance of such LLC Patent, provided that Exelixis shall bear all expenses related thereto; but title to any such application or patent shall remain in the LLC.

(c) Bayer Patents. Bayer shall retain control over, and shall bear all expenses related to, the filing, prosecution and maintenance of all Bayer Patents.

(d) Joint Patents.

(i) Control. The Parties or Party at the time owning any Joint Patent shall jointly or solely, as applicable, control the filing, prosecution, and maintenance of such Joint Patent.

(ii) Expenses and Relinquishment of Ownership.

(1) Bayer shall bear all expenses related to the filing, prosecution, and maintenance of all Joint Patents at the time jointly owned by Bayer. If Bayer elects to not pay any expense related to such Joint Patent, Bayer shall notify the other joint owner(s) of such Joint Patent in writing not less than two (2) months before any relevant deadline, and such notification shall constitute a relinquishment by Bayer of its ownership interest in such Joint Patent, which shall thereafter be jointly or solely owned by the remaining joint owner(s).

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(2) The LLC shall bear all expenses related to the filing, prosecution, and maintenance of all Joint Patents at the time jointly owned by the LLC and not jointly owned by Bayer. If the LLC elects to not pay any expense related to such Joint Patent, the LLC shall notify Exelixis in writing not less than one (1) month before any relevant deadline, and such notification shall constitute a relinquishment by the LLC of its ownership interest in such Joint Patent, which shall thereafter be solely owned by Exelixis.

(3) Each of the LLC and Exelixis shall bear all expenses related to the filing, prosecution, and maintenance of all Joint Patents of which it is then a sole owner.

10.4 Confidential Treatment. All information disclosed under Sections 10.2 and 10.3 shall be treated as confidential and subject to the terms set forth in Article 18 of the Operating Agreement.

11. Licenses

11.1 LLC Research License.

(a) Bayer hereby grants the LLC a fully paid-up, nonexclusive, worldwide license, with the right to sublicense only for LLC Assay development purposes, under all relevant Bayer Know-How and Bayer Patents to conduct its Research activities within the Research Field under this Agreement, including without limitation making and using making and using the Bayer Pesticides and the LLC Assays for Research purposes and making the Sequence Library. Such license shall expire at the end of the Research Term unless it is continued pursuant to Section 14.5. This license does not grant the LLC any commercialization rights, i.e. to make or use Bayer Compounds or Collaboration Compounds.

(b) Exelixis hereby grants the LLC a fully paid-up, worldwide license, with the right to sublicense only for LLC Assay development purposes, under all relevant Exelixis Patents and Exelixis Know-How to perform Research activities within the Research Field under this Agreement. Such license shall be exclusive, but shall expire at the end of the Research Term unless such license is continued thereafter on a non-exclusive basis pursuant to Section 14.4.

11.2 Bayer Research License.

(a) Exelixis hereby grants the LLC a non-exclusive, fully paid-up, worldwide license (with the right to sublicense only to Bayer) under all relevant Exelixis Know-How and Exelixis Patents that are necessary to enable Bayer to conduct Bayer's permitted Research and Development activities hereunder in the Field of Use to identify and select Collaboration Compounds, including the right to make and use the Selected Assays within the Field of Use for the sole purpose of identifying Collaboration Compounds. Subject to Section 4.5, the LLC may not sublicense to Bayer the right: (i) to make or use Targets pursued by the LLC or Exelixis or a licensee of either of them, pursuant to Section 4.3 or 5.3, (ii) to make or use an LLC Assay that is not a Selected Assay, (iii) to use a Selected Assay outside of the Field of Use, or (iv) except with the written consent of Exelixis, any right to practice Third Party technology which has been licensed to Exelixis.

(b) Except to the extent of the limitations set forth in the final sentence of Section 11.2(a), the LLC hereby grants Bayer a fully paid-up, worldwide sublicense under the license set forth in Section 11.2(a).

(c) The LLC hereby grants Bayer a non-exclusive, fully paid-up, worldwide license under all relevant LLC Know-How and LLC Patents to enable Bayer to conduct Bayer's Research and Development activities hereunder in the Field of Use to identify and select Collaboration Compounds, including the right to make and use the Selected Assays for the sole purpose of identifying Collaboration Compounds. Subject to Section 4.5, this license does not grant Bayer the right: (i) to make or use Targets pursued by the LLC or Exelixis or a licensee of either of them, pursuant to the Section 4.3 or 5.3, (ii) to make or use an LLC Assay that is not a Selected Assay, or (iii) to use a Selected Assay outside of the Field of Use. Bayer may use the following Confidential Information of the LLC use in its Independent Research in any field, provided that Bayer does not [*] using such Confidential Information: [*]. Bayer may petition the LLC at any time during the term of this Agreement to add certain Confidential Information of the LLC to the foregoing list. Such addition shall only be made upon the mutual written agreement of all of the Parties.

(d) Bayer may not sublicense its rights under the license and sublicense granted in this Section 11.2, except to Affiliates or Third Party contractors performing such Research and Development activities solely on Bayer's behalf.

11.3 Licenses to Exelixis.

(a) Bayer hereby grants to the LLC a fully paid-up, worldwide non-exclusive license, with the right to sublicense only to Exelixis, under all relevant Bayer Know-How and Bayer Patents that arise from work performed under this Agreement solely for Exelixis to conduct its permitted activities in research, development and commercialization (other than Independent Research) in the Field of Use and outside the Field of Use under this Agreement. This license does not grant Exelixis any rights to make or use Bayer Pesticides, Bayer Compounds, Collaboration Compounds or LLC Compounds.

(b) The LLC hereby grants Exelixis a fully paid-up, worldwide exclusive sublicense under the license granted in Section 11.3(a), solely for Exelixis to conduct its permitted activities in research, development and commercialization (other than Independent Research) in the Field of Use and outside the Field of Use under this Agreement. Exelixis may grant sublicenses under this sublicense only to permitted Third Party collaborators of Exelixis and only for the purposes of collaboratively pursuing Exelixis' permitted research, development and commercialization activities in the Field of Use and outside the Field of Use under this Agreement. This license does not grant Exelixis any rights to make or use Bayer Pesticides, Bayer Compounds, Collaboration Compounds or LLC Compounds.

(c) Except to the extent of the of the exclusivity specified in this Agreement, the LLC hereby grants Exelixis a fully paid-up, worldwide license, with the right to sublicense, under all relevant LLC Patents and the LLC Know-How to perform research, development and commercialization activities outside the Research Field. Such license shall be exclusive except as to Bayer's and the LLC's permitted uses of Selected Assays, Bayer Assays and LLC Assays

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under this Agreement. Such license shall not convey any rights to make, use or sell Bayer Pesticides, Bayer Compounds, Collaboration Compounds or LLC Compounds. Exelixis may use the following Confidential Information of the LLC in Exelixis' Independent Research in any field, provided that Exelixis does not [*] using any of the following LLC Confidential Information: [*]. Exelixis may petition the LLC at any time during the term of this Agreement to add certain Confidential Information of the LLC to the foregoing list. Such addition shall only be made upon the mutual written agreement of all of the Parties.

(d) The LLC hereby grants Exelixis an exclusive, fully worldwide license, with the right to sublicense, under all relevant LLC Patents and LLC Know-How to perform Research, Development and commercialization activities in the Research Field as permitted under Sections 4.3 and 4.6.

11.4 Development License.

(a) Exelixis hereby grants the LLC a worldwide, exclusive license (with the right to sublicense only to Bayer) under all relevant Exelixis Know-How and Exelixis Patents for Bayer to conduct Development of Collaboration Compounds.

(b) The LLC hereby grants Bayer a worldwide, exclusive sublicense under the license set forth in Section 11.4(a) (with the right for Bayer further to sublicense) for Bayer to conduct Development of Collaboration Compounds.

(c) The LLC hereby grants to Bayer a worldwide, exclusive license (with the right to sublicense) under all relevant LLC Know-How and LLC Patents to conduct Development of Collaboration Compounds.

(d) Bayer may not sublicense its rights under the license and sublicense granted in Section 11.4(b) except to Affiliates or Third Party contractors performing such Development activities solely on Bayer's behalf.

11.5 Commercialization License.

(a) The LLC hereby grants Bayer and its Affiliates a worldwide, exclusive license (with the right to sublicense) under all relevant LLC Know-How and LLC Patents, to the extent required for Bayer, its Affiliates and sublicensees to make, have made, use, have used, import, have imported, offer to sell, sell and have sold Bayer Products in the Field of Use.

(b) Exelixis hereby grants Bayer and its Affiliates a worldwide, exclusive license (with the right to sublicense) under all relevant Exelixis Know-How and Exelixis Patents, to the extent required for Bayer, its Affiliates and sublicensees to make, have made, use, have used, import, have imported, offer to sell, sell and have sold Bayer Products in the Field of Use.

11.6 Joint Patents. Each Party shall have a worldwide, co-exclusive right to practice the Joint Patents in which it has an ownership interest arising from the work under this Agreement without any duty to account. Except for licensing rights and assignment rights expressly granted herein, such right shall not include a right to grant sublicenses or assignments

of ownership interest (other than from Bayer to Bayer AG or a Bayer Affiliate), except with the mutual consent of all of the owners.

11.7 Sublicenses of Third Party Technology. To the extent that any of the licenses granted herein include sublicenses of technology licensed from a Third Party to a Party, each such sublicense is subject to the terms of the license agreement between such Party and such Third Party.

11.8 Negative Covenant. Each Party agrees that it will not practice technology licensed to it under this Agreement outside the scope of the licenses granted herein. Except as specifically provided herein, no Party grants to the other Parties any license, express or implied, to any technology, know-how, inventions, improvements, trade secrets or materials that it possesses. Upon the termination of the Research, neither party shall have any implied license to any technology, know-how, inventions, improvements, trade secrets or materials of the other Party except as specifically provided herein.

11.9 Certain Commitments As To Licenses. Each Party will use its respective commercially reasonable diligent efforts during the Research Term (which efforts will not, absent express prior written agreement of the relevant Party hereto, require any Party to pay additional money, whether by increased royalty rates or other payments, or grant additional rights, to any Third Party) as follows:

(a) Bayer Commitments. On the part of Bayer, to provide, with respect to licenses as to which Bayer or its Affiliates become licensees after the Effective Date within the Research Field, and/or within such areas outside of the Research Field in which the LLC has, pursuant to Section 2.4 of the Operating Agreement, designated to be of interest to the LLC, for such license rights to be sublicensed to the LLC, with or without a further right of the LLC to sublicense them to Exelixis; and

(b) Exelixis Commitments. On the part of Exelixis, to provide, with respect to licenses as to which Exelixis or its Affiliates become licensees after the Effective Date within the Research Field, and/or within such areas outside of the Research Field in which the LLC has, pursuant to Section 2.4 of the Operating Agreement, designated to be of interest to the LLC, for such license rights to be sublicensed to the LLC, with or without a further right of the LLC to sublicense them to the Bayer; and

(c) LLC Commitments. On the part of the LLC, provide, with respect to licenses, other than from Bayer or Exelixis, as to which the LLC becomes a licensee after the Effective Date within the Research Field, and/or within such areas outside of the Research Field in which the LLC has, pursuant to Section 2.4 of the Operating Agreement, designated to be of interest to the LLC, for such license rights to be sublicensed by the LLC to Bayer and Exelixis.

12. Enforcement of Patent Rights

12.1 General. Each Party will provide notice to the other Parties of any infringement of an Exelixis Patent, LLC Patent, Bayer Patent, or Joint Patent. In any action to enforce any of such Patents against alleged infringement, the Party or Parties prosecuting such action shall bear

all costs and expenses thereof, and the other Parties will provide reasonable assistance, if requested, in such action at the expense of the Party or Parties prosecuting such action.

12.2 Exelixis Patents. Exelixis shall have the first right, but not the obligation, to enforce the Exelixis Patents (other than the Joint Patents) against any infringer. Any amounts recovered by Exelixis from an infringer of such Patents shall be retained by Exelixis. If Exelixis does not exercise such right within [*] after notice of infringement of an Exelixis Patent (other than a Joint Patent) [*], then [*] has the right to enforce such Exelixis Patent in the name of Exelixis. Any amounts recovered by [*] from an infringer of such Exelixis Patent shall first be applied to reimburse [*] costs and expenses of the action, and any remaining amounts shall be treated as revenue of [*].

12.3 LLC Patents. The LLC shall have the first right, but not the obligation, to enforce the LLC Patents (other than the Joint Patents) against any infringer. If the LLC does not exercise such right within [*] after notice of infringement of an LLC Patent, then Exelixis and Bayer shall each have the right, but not the obligation, to enforce such LLC Patent in the name of the LLC, and shall agree on which of them shall enforce such LLC Patent. Any amounts recovered by an enforcing Party from an infringer of such LLC Patent shall first be applied to reimburse such enforcing Party's costs and expenses of the action, and any remaining amounts shall be treated as revenue of [*].

12.4 Bayer Patents. Bayer shall have the sole right, but not the obligation, to enforce the Bayer Patents (other than the Joint Patents) against any infringer. Any amounts recovered by Bayer from an infringer of such Patents shall be retained by Bayer.

12.5 Joint Patents.

(a) In the case of a Joint Patent that is at the time jointly owned by two or more Parties, each then jointly owning Party shall have the right, but not the obligation, to enforce such Joint Patent in the name of the then joint owners, and the then jointly owning Parties shall agree on which of them shall enforce such Joint Patent. Any amounts recovered by an enforcing Party from an infringer of such Joint Patent shall first be applied to reimburse such enforcing Party's costs and expenses of the action, and any remaining amounts shall be divided equally among those Parties that had agreed to accept the obligation of enforcement.

(b) In the case of a Joint Patent that has become solely owned by a Party, that Party shall have the right, but not the obligation, to enforce such Patent against any infringer. Any amounts recovered by such Party from an infringer of such Patent shall be retained by such Party.

13. Indemnification

13.1 Collaboration Compounds and Products. Subject to compliance with Section 13.3, Bayer shall indemnify, defend and hold harmless Exelixis, its Affiliates, the LLC and their respective agents and employees, from and against any and all losses, liabilities, damages, costs, fees and expenses, including reasonable legal costs and attorneys' fees ("Losses") resulting from a Third Party claim, suit or action concerning and to the extent attributable to a Collaboration

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Compound, a Bayer Product or the permitted use of a Bayer Pesticide, but excluding any Losses resulting from the gross negligence or intentionally wrongful act or omission of the LLC, Exelixis, its Affiliates or sublicensees or any of their employees or agents.

13.2 Exelixis Products and Personnel. Subject to compliance with Section 13.3, Exelixis shall indemnify, defend and hold harmless Bayer, its Affiliates, the LLC and their respective agents and employees, from and against any and all losses, liabilities, damages, costs, fees and expenses, including reasonable legal costs and attorneys' fees ("Losses") resulting from (a) a Third Party claim, suit or action concerning and to the extent attributable to an Exelixis Agrochemical Compound, Exelixis Human Health Compound or a Product containing such a Compound, and (b) a Third Party claim, suit or action arising from Exelixis' employment relationship with personnel providing FTE services under this Agreement (including without limitation claims based on personal injury or unlawful discharge), but in each case excluding any Losses resulting from the gross negligence or intentionally wrongful act or omission of the LLC, Bayer, its Affiliates or sublicensees or any of their employees or agents.

13.3 Indemnity Procedure. In the event a Party is seeking indemnification under Section 13.1 or 13.2, the Party seeking indemnification shall inform the indemnifying Party in writing of a claim as soon as reasonably practicable after it receives notice of the claim, shall permit the indemnifying Party to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration), and, at the expense of the indemnifying Party, shall cooperate as reasonably requested in the defense of the claim. Each indemnified Party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying Party if representation of the indemnified Party by the counsel retained by the indemnifying Party would be inappropriate due to actual or potential differing interests among the Parties. The indemnifying Party may not settle such action or claim, or otherwise consent to an adverse judgment in such action or claim, that diminishes the rights or interests of an indemnified Party without the express written consent of such indemnified Party.

14. Term of Agreement And Termination

14.1 Term. This Agreement shall expire upon the latest of: (a) the end of Research Term, (b) the expiration of all payment obligations of Bayer and Exelixis hereunder, and (c) the expiration of all LLC Patents. Sections 10.1 and 11.6, Articles 13, 14, 15 and 16, and the commercialization licenses set forth in Sections 11.3 and 11.5 shall survive such expiration.

14.2 Termination of Research Term. Upon the termination of the Research Term pursuant to Section 2.1 or 14.7, the licenses granted to the LLC under Section 11.1 shall terminate. If such termination of the Research Term was due to dissolution of the LLC, then Exelixis shall use all unspent research payments as of the effective date of such termination to wind down the LLC's Research efforts in an orderly manner with Bayer deemed to have granted an appropriate license to allow Exelixis to perform such wind down activities. If such termination of the Research Term was not due to dissolution of the LLC, then Bayer and the LLC shall have the right to cause Exelixis to perform continuing research (i.e. Target identification and LLC Assay development) pursuant to a Research Plan mutually agreed by Bayer and Exelixis for a period of one (1) year beyond the end of the Research Term to complete the development of LLC programs under way at the end of the Research Term. If Bayer and the LLC exercise the aforementioned right, they shall be deemed to have granted appropriate

licenses to Exelixis under the Bayer Know-How, Bayer Patents, LLC Know-How and LLC Patents to enable Exelixis to perform such continuing research; such licenses shall expire at the end of such one-year period. The number of FTEs to be supported during such one-year period shall be mutually agreed by Bayer and Exelixis, and Bayer shall pay Exelixis for such work at the Annual FTE Rate then in effect. Thereafter, such research shall cease, Bayer's payment obligations under Section 9.2 shall cease, provided that Bayer shall make all such payments which had accrued prior to the date of such termination, and each Party's rights and obligations under this Agreement (other than those limited to the Research Term) with respect to Targets, LLC Assays, Bayer Assays, LLC Compounds, Collaboration Compounds, Exelixis Agrochemical Compounds, Exelixis Human Health Compounds, Products and Exelixis' rights outside the Research Field shall continue as specified in this Agreement. This Agreement shall continue in effect until the date set forth in Section 14.1 or until terminated pursuant to Section 14.3.

14.3 Material Breach.

(a) If any Party believes that another Party is in material breach of this Agreement, such Party (the "Non-Breaching Party") shall give notice of such alleged breach to each Party which it believes to be in material breach (the "Breaching Party"), with a concurrent notice to the other Party. Such notice shall state with specificity the nature of the breach. If the Breaching Party either cures such breach within sixty (60) days of such notice or, if it is not possible to cure such breach within such sixty (60) day period, the Breaching Party commences diligent, good faith efforts to cure such breach during such sixty (60) day period and continues using such efforts for a prompt and successful cure of the breach, then the Non-Breaching Party shall have no further remedy except the right to recover money damages, if any, through arbitration pursuant to Article 17 of the Operating Agreement and to protect its rights in Confidential Information and intellectual property, either through arbitration or judicial relief.

(b) If the Breaching Party does not cure the alleged breach as provided in Section 14.3(a), the Non-Breaching Party shall have the right to commence an arbitration pursuant to Article 17 of the Operating Agreement to either (i) seek specific performance of this Agreement and/or recover money damages, or (ii) seek to terminate this Agreement and exercise the rights of a non-defaulting Party set forth in Section 14.2(c) or 14.2(d) of the Operating Agreement (termination and dissolution of the LLC or purchase of the interest of the Defaulting Party). If the arbitrator determines that a material breach of this Agreement has occurred, the arbitrator shall order specific performance and/or the payment of money damages, unless the arbitrator determines either that such relief would be inadequate to compensate the Non-Breaching Party for the harm resulting from the breach or that in view of the circumstances then prevailing, the Breaching Party cannot provide adequate assurances that if this Agreement and the LLC were to continue, the Non-Breaching Party would in the future receive the benefits of its bargain set forth herein and therein. If the arbitrator makes a determination that specific performance and/or money damages would be inadequate or that the Breaching Party cannot provide such adequate assurances, then the Non-Breaching Party may terminate this Agreement and make either of the elections set forth in Section 14.2(c) or 14.2(d) of the Operating Agreement.

14.4 Acquisition Of The LLC By Bayer. Under certain circumstances set forth in Article 13 of the Operating Agreement, Bayer has the right to purchase Exelixis' ownership

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interest in the LLC. In the event Bayer concludes such a transaction, the following terms and conditions shall apply. In any appraisal of the value of the LLC for purposes of establishing the price of any such transaction, the appraiser shall value the LLC on the basis that the terms and conditions set forth in this Section 14.4 shall be in effect as of the closing of such acquisition.

(a) Bayer's acquisition of Exelixis' ownership interest in the LLC shall terminate any right of Exelixis to receive a portion of the premium fees payable by Bayer under Section 9.4(a). However, the premium fee obligations of Exelixis set forth in Sections 9.4(b) and 9.4(c) shall continue in effect.

(b) Exelixis shall provide continuing Research services to the LLC for a period of twelve (12) months following the closing of Bayer's acquisition of Exelixis' interest in the LLC, provided that (i) such work is limited to a continuation of projects underway at the time of such closing, or related work agreed to by Exelixis, (ii) Bayer or the LLC pays Exelixis for its FTEs engaged in such transitional work at the Annual FTE Rate then in effect, and (iii) the level of FTE effort devoted by Exelixis to the LLC research shall wind down in an orderly manner mutually agreed in writing by Bayer and Exelixis.

(c) The ownership and license rights applicable to all Assays, Compounds, Products, and Targets in existence immediately prior to the closing of such transaction shall continue without modification, except that the license granted to the LLC in Section 11.1(b): (i) shall continue on an exclusive basis for twelve (12) months following the closing of such transaction, following which it shall continue perpetually on a nonexclusive basis, subject to the modification set forth in the following sentence, and (ii) may be sublicensed by the LLC to Bayer and its Affiliates (but not to any Third Party). At the end of the exclusive period described in the preceding clause (i), the license from Exelixis to the LLC shall be modified to exclude any license under Third Party technology licensed to Exelixis and sublicensed to the LLC pursuant to Section 11.1(b). Rights with respect to Targets, assays, compounds and products arising from the activities of the Parties under this Agreement shall not be affected by reason of the acquisition by Bayer, except to the extent that the Research Term shall then be deemed to have ended as of such closing and, accordingly, the duration of certain provisions of this Agreement will be affected.

(d) Exelixis shall cooperate reasonably in enabling Bayer and the LLC to replicate the ability to use the Exelixis technology which was used by the Dedicated FTEs and Shared FTEs in the performance of Research on behalf of the LLC in the twelve (12) months prior to the closing of the acquisition by Bayer. Bayer or the LLC shall bear all costs associated with such replication of technology and shall reimburse Exelixis for any costs incurred by Exelixis in that regard (with internal resources to be reimbursed at the Annual FTE Rate then in effect and out-of-pocket costs which exceed the customary inclusions within the Annual FTE Rate to be reimbursed at cost). This Section 14.4(d) shall not require Exelixis to transfer or sublicense to the LLC any licenses to practice Third Party technology, but Exelixis shall (i) cooperate with the LLC in approaching any such Third Parties from which Exelixis has licensed technology used in the Research to seek licenses directly from such Third Party to the LLC, and (ii) in those cases, if any, where Exelixis holds an exclusive license with a right of sublicense, Exelixis shall negotiate in good faith to grant such a sublicense to the LLC on a basis which generates no net profit to Exelixis and imposes no net cost on Exelixis by reason of such sublicense or as a result of the LLC's use of such sublicensed technology. By way of example, under this Section 14.4(d),

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Exelixis shall cooperate with the LLC in enabling the LLC to purchase equipment and supplies from Exelixis' vendors, shall share with Exelixis reasonable quantities of specialty chemicals not readily available from vendors (with reimbursement of the manufacturing cost of such chemicals), and shall demonstrate to LLC personnel the use of Exelixis technology.

14.5 Acquisition Of The LLC By Exelixis. Under certain circumstances set forth in Article 13 of the Operating Agreement, Exelixis has the right to purchase Bayer's ownership interest in the LLC. In the event Exelixis concludes such a transaction, the following terms and conditions shall apply. In any appraisal of the value of the LLC for purposes of establishing the price of any such transaction, the appraiser shall value the LLC on the basis that the terms and conditions set forth in this Section 14.5 shall be in effect as of the closing of such acquisition.

(a) Exelixis' acquisition of Bayer's ownership interest in the LLC shall terminate any right of Bayer to receive a portion of the premium fees payable by Exelixis under Sections 9.4(b) and 9.4(c). The premium fee obligations of Bayer set forth in Section 9.4(a) shall continue in effect but shall be reduced to a rate of [*].

(b) Exelixis shall provide continuing Research services to the LLC for the benefit of Bayer for a period of up to twelve (12) months following the closing of Exelixis' acquisition of Bayer's interest in the LLC, provided that (i) such work is limited to a completion of any LLC Assays already under development at the time of such closing, (ii) Bayer or the LLC pays Exelixis for its FTEs engaged in such transitional work at the Annual FTE Rate then in effect, and (iii) the level of FTE efforts devoted by Exelixis to the LLC research shall wind down in orderly manner mutually agreed in writing by Bayer and Exelixis.

(c) The ownership and license rights applicable to all Assays, Compounds, Products, and Targets in existence immediately prior to the closing of such transaction shall continue without modification, except that the license granted to the LLC in Section 11.1(a): (i) shall continue perpetually on a nonexclusive basis, subject to the modification set forth in the following sentence, and (ii) may be sublicensed by the LLC to Exelixis and its Affiliates (but not to any Third Party). The license from Bayer to the LLC shall be modified to exclude any license under Third Party technology licensed to Bayer and sublicensed to the LLC pursuant to Section 11.1(a) and the right to use the Bayer Pesticides. Rights with respect to Targets, assays, compounds and products arising from the activities of the Parties under this Agreement shall not be affected by reason of the acquisition by Exelixis, except to the extent that the Research Term shall then be deemed to have ended as of such closing and, accordingly, the duration of certain provisions of this Agreement will be affected.

14.6 Acquisition Of The LLC By A Third Party. The Operating Agreement requires the approval of Exelixis and Bayer prior to the merger or acquisition of the LLC by a Third Party. In the event of such a merger or acquisition, Exelixis, Bayer and the acquiring Third Party may mutually agree to amend this Agreement. If no such mutual agreement is reached, the Research Term will terminate upon the closing of such merger or acquisition.

14.7 Termination and Dissolution of the LLC. Under certain circumstances set forth in Section 12.1 of the Operating Agreement, Exelixis or Bayer has the right to terminate and dissolve the LLC. In the event that such termination and dissolution occurs, the Research Term

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shall terminate and the terms set forth in Section 14.2 of this Agreement and 12.5 of the Operating Agreement shall apply.

15. Representations & Warranties

15.1 Representations and Warranties of Exelixis.

(a) Exelixis is duly organized and validly existing and in good standing under the laws of Delaware and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

(b) Exelixis is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder.

(c) As of the Effective Date, Exelixis [*].

(d) Subsequent to the Effective Date, [*].

(e) Exelixis [*]. Exelixis has the rights necessary to grant the licenses from Exelixis to LLC which are set forth in this agreement.

(f) Exelixis has determined that as of the Effective Date the value of the exclusive licenses acquired by Exelixis under this Agreement and the Operating Agreement does not exceed [*].

15.2 Representations and Warranties of Bayer.

(a) Bayer is duly organized, validly existing and in good standing under the laws of Indiana and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.

(b) Bayer is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder.

(c) Bayer has the rights necessary to grant the licenses from Bayer to LLC which are set forth in this agreement.

(d) Bayer ha s the rights necessary to grant the licenses set forth herein to (i) [*] and (ii) [*].

(e) Bayer has [*].

(f) Bayer has determined that as of the Effective Date the value of the exclusive licenses acquired by Bayer under this Agreement and the Operating Agreement does not exceed [*].

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16. Miscellaneous

16.1 Dispute Resolution. The dispute resolution procedures set forth in Article 17 of the Operating Agreement shall apply to all disputes between the Parties under this Agreement.

16.2 Confidentiality. The confidentiality provisions set forth in Article 18 of the Operating Agreement shall apply to all Confidential Information disclosed by one Party to another Party under this Agreement.

16.3 Performance By Affiliates. The Parties recognize that portion of this Agreement may be performed by Affiliates of Bayer or Exelixis, and that Products may be commercialized by such Affiliates under appropriate agreements. Each of Bayer and Exelixis hereby guarantees that any of its Affiliates which participates in the performance of this Agreement or the commercialization of Products will comply with the terms and conditions of this Agreement. In the event of any dispute between Bayer or Exelixis and an Affiliate of such other Party arising from or related to this Agreement, such dispute may be brought directly against such other Party under this Agreement without any obligation to first seek to resolve such dispute or exhaust remedies with respect to such Affiliate.

16.4 Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED IN ARTICLE 13, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. For clarification, the foregoing sentence shall not be interpreted to limit or to expand the express rights specifically granted in the sections of this Agreement, including without limitation Article 12.

16.5 Entire Agreement; Amendment. This Agreement, together with Exhibit A (which the Parties shall agree upon [*] and shall append to this Agreement), sets forth the agreement among the Parties with respect to the specific subject matter hereof, and, except as otherwise set forth herein, supersedes and terminates all prior representations, agreements and understandings among the Parties regarding the subject matter hereof. No alteration, amendment, change or addition to this Agreement will be binding upon the Parties unless in writing and signed by an authorized signatory of each Party.

16.6 Assignment. Subject to the terms of the Operating Agreement, no Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties, except that (a) a Party may make such an assignment without the other Parties' consent to an Affiliate or to a successor to all or substantially all of the related business assets of such Party relating to this Agreement, whether by way of a merger, sale of stock, sale of assets or other similar transaction; and (b) each of Bayer and Exelixis may contract to Third Parties any of its marketing and sales rights with respect to Products, and such contracts shall not be considered assignment of rights and obligations as provided above.

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16.7 Notices. All notices, requests, consents and other communications hereunder to any Party will be deemed to be sufficient if contained in a written instrument delivered in person, including delivery by recognized express courier, fees prepaid, or sent by facsimile transmission or duly sent by first class registered or certified mail, return receipt requested, postage prepaid, in each case addressed as set forth below, or to such other address as may hereinafter be designated in writing by the recipient to the sender pursuant to this Section 16.7. All such notices, requests, consents and other communications will be deemed to have been received in the case of personal delivery, including delivery by express courier, on the date of such delivery; in the case of facsimile transmission, on the date of transmission; and in the case of mailing, on the third day after deposit in the U.S. mail, proper postage prepaid.

If to Exelixis: Exelixis Pharmaceuticals, Inc.
260 Littlefield Avenue
South San Francisco, CA 94080
Attention: Chief Executive Officer
Facsimile: 650-825-2205

With a copy to: Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Robert L. Jones
Facsimile: 650-857-0663

If to Bayer: Bayer Corporation
8400 Hawthorne Road
Kansas City, MO 64120-0013
Attention: William G. Ferguson, Vice President and
Assistant General Counsel
Facsimile: 816-242-2739

With a copy to: Heller Ehrman White & McAuliffe
525 University Avenue
Palo Alto, CA 94301
Attention: Bruce W. Jenett
Facsimile: 650-324-0638

If to the LLC: GenOptera LLC
c/o Exelixis Pharmaceuticals, Inc.
260 Littlefield Avenue
South San Francisco, CA 94080
Attention: Chief Executive Officer of GenOptera LLC
Facsimile: 650-825-2205

16.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provisions will be enforced to the maximum extent possible under applicable law and the remainder of such provisions will be excluded from

this Agreement, and the balance of this Agreement will be interpreted as if such provisions or portion(s) thereof were so excluded and will continue to be enforceable in accordance with its terms.

16.9 Force Majeure Events. Except as otherwise provided herein, no Party will be in breach of this Agreement, or liable to the other Parties, for any loss, damage, detention, delay or failure of performance to the extent such loss, damage, detention, delay or failure is caused by a Force Majeure Event provided that the Party claiming excuse uses its commercially reasonable efforts to overcome the same. In the event of a Force Majeure Event, the obligations of the affected Party will be suspended as long as such Force Majeure Event continues.

16.10 Hardship. If, during the period of this Agreement, performance of this Agreement should lead to unreasonable hardship for one Party taking the interests of all Parties into account, the Parties will endeavor to agree in good faith to amend this Agreement in view of such circumstance.

16.11 Electronic Data Interchange. If the Parties elect to facilitate their activities hereunder by electronically sending and receiving data in agreed formats (also referred to in general usage as Electronic Data Interchange or EDI) in substitution for conventional paper-based documents, the terms and conditions of this Agreement will apply to such EDI activities and communications as if such EDI communication, and as if such communication were sent by facsimile.

16.12 Counting Of Time. Whenever days are to be counted under this Agreement, the first day will not be counted and the last day will be counted, such that if a notice is delivered on a Monday to one Party, for example, with a five (5) day reply period hereunder, the reply must be sent to the sending Party (not received by such sending Party) by such recipient member no later than 11:59 a.m. local time for the sender, on the Saturday next following such Monday.

16.13 Certain Third Parties. Except with respect to the rights of certain Persons to be indemnified pursuant to Article 13 of this Agreement, which Persons are intended as third party beneficiaries of their respective rights be indemnified as set forth therein, able to enforce their respective rights to such indemnification as if they were a party hereto, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

16.14 No Grant Of Rights. Except as specifically stated herein, no Party grants to any other Party hereto any rights or license to any intellectual property rights or other rights of the first Party.

16.15 Captions. The captions to Sections of this Agreement have been inserted for identification and reference purposes only and will not be used to construe or interpret this Agreement.

16.16 Costs And Attorneys' Fees. Except as otherwise provided in Article 11 of the Operating Agreement, including the definition of "Damages" under Section 1.21 of the

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Operating Agreement, if any action, suit or other proceeding is instituted concerning or arising out of this Agreement or any transaction contemplated hereunder, the prevailing Party will recover all of such Party's reasonable fees and costs of attorneys incurred in each such action, suit or other proceeding, including any and all appeals or petitions therefrom.

16.17 Expenses. Except as otherwise provided in this Agreement (a) all expenses incurred by a Party in connection with its obligations under this Agreement will be borne solely by such Party, and (b) each Party will be responsible for appointing its own employees, agents and representatives, who will be compensated by such Party.

16.18 Non-Waiver. The failure of a Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

16.19 Disclaimer of Agency. This Agreement will not render any Party the legal representative or agent of another, nor will any Party have the right or authority to assume, create, or incur any Third Party liability or obligation of any kind, express or implied, against or in the name of or on behalf of another except as expressly set forth in this Agreement or except as may be expressly agreed in advance in writing by the Party to be bound.

16.20 Further Assurances. The Parties will execute and deliver any further instruments or documents and perform any additional acts that are or may become necessary to carry out the purposes and intent of this Agreement.

16.21 Binding Effect. This Agreement will be binding on and inures to the benefit of each Party and its respective transferees, successors, assigns and legal representatives.

16.22 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be an original and all of which will constitute together the same document. This Agreement, which Bayer and Exelixis executed on December 15, 1999, shall become effective upon execution by the LLC.

16.23 Governing Law. The law of the State of California, excluding that body of law known as conflict of laws, will be the applicable substantive law for all matters involving this Agreement, except those governed by federal law, which will apply to such other matters.

16.24 Official Language. The official text of this Agreement and any appendices, Exhibits hereto, will be made, written and interpreted in English. Any notices, accounts, reports, documents, disclosures of information or statements required by or made under this Agreement, whether during its term or upon expiration or termination thereof, will be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference will be made only to this Agreement as written in English and not to any other translation into any other language.

16.25 Internal Section References. All references in this document to Sections are to Sections hereof except as otherwise indicated.

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[REST OF PAGE INTENTIONALLY LEFT BLANK]

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In Witness Whereof, the Parties hereto have duly executed this Agreement as of the date first above written.

Exelixis Pharmaceuticals, Inc.	Bayer Corporation
By: /s/ George Scangos	By: /s/ Emil E. Lansu
Name: George Scangos	Name: Emil E. Lansu
Title: President & CEO	Title: Executive Vice President

GenOptera LLC

By: /s/ Frank F. Reuscher

Name: Frank F. Reuscher

Title: Chief Executive Officer

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Exhibit A

[*]

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COLLABORATION AGREEMENT
AMONG

EXELIXIS PHARMACEUTICALS, INC.,

BAYER CORPORATION, AND

GENOPTERA LLC

DATED AS OF JANUARY 1, 2000

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EXHIBIT 10.8

LLC OPERATING AGREEMENT

GENOPTERA LLC

This Operating Agreement (the "Agreement"), is entered into as of December __, 15, 1999 (the "Effective Date"), by and among Bayer Corporation, an Indiana corporation ("Bayer") and Exelixis Pharmaceuticals, Inc., a Delaware corporation ("Exelixis"), as the initial members (the "Members") of OpteraGenOptera LLC, a Delaware limited liability company (the "LLC") to be formed by Bayer and Exelixis on or before January 1, 2000; immediately upon its formation, the LLC will execute and deliver a counterpart copy hereof and thereupon will become a party hereto. Terms not otherwise defined in this Agreement will have the meanings set forth for such terms in Article I hereof.

RECITALS

WHEREAS, the Members will have formed the LLC, on or before January 1, 2000, as provided in Section 2.1 hereof, to identify and validate biochemical targets useful within the Field of Use, and to format high throughput screening assays based upon such targets, in each case within the Field of Use, and in each case based initially upon certain technology of Exelixis and Bayer AG which was used in connection with, and certain technology developed under, the Original Collaboration Agreement, and such other matters as the Members may agree in writing with each other from time to time, as an amendment hereto; and

WHEREAS, simultaneously with their execution and delivery hereof, Bayer and Exelixis also have executed and delivered the LLC Collaboration Agreement, which also will be effective as of January 1, 2000; and

WHEREAS, the Members and the LLC desire to enter into this Agreement, to set forth the respective ownership interests of the Members in the LLC and the principles by which the LLC will be operated and governed;

NOW, THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

The following terms will have the meanings set forth below for purposes of this Agreement:

1.1 Accounting Period" means, for each Fiscal Year, the period beginning on January 1 and ending on December 31, provided that (a) the first Accounting Period will commence on the date of formation of the LLC and if the LLC is formed in 1999 will end on December 31,

1999, and if the LLC is formed in 2000 will end on December 31, 2000, and (b) a new Accounting Period will commence on any date on which a Substitute Member is admitted to the LLC.

1.2 "Act" means the Delaware Limited Liability Company Act.

1.3 "Adjusted Capital Account" means, with respect to any Member, the balance in the capital account of such Member, increased by the amount of such Member's share, determined in accordance with Treasury Regulations Section 1.704-2(g), of "partnership minimum gain," within the meaning of Treasury Regulations Section 1.704-2(d), and such Member's share, determined in accordance with Treasury Regulations Section 1.704-2(i), of "partner nonrecourse debt minimum gain," within the meaning of Treasury Regulations Section 1.704-2(i).

1.4 "Affiliate" means a Person who controls, is controlled by or is under common control with (a) the referenced Member or (b) another Person. For purposes of this definition (1) the word "control" (including, with correlative meaning, the terms "controlled by" or "is under common control with") means the power to direct or cause the direction of the management and policies of the relevant Person, or the ownership of at least fifty percent (50%) of the aggregate stock or voting power of all classes of stock and/or other voting securities of such Person if it is a legal entity, and (2) Bayer and Bayer AG are Affiliates of each other, and (3) for purposes of this Agreement, the LLC is not an Affiliate of Bayer or of Exelixis, nor is either of Bayer or Exelixis an Affiliate of the LLC, and (4) Bayer and Bayer AG, on the one hand, and Exelixis, on the other hand, are not, merely by virtue of this Agreement or the LLC Collaboration Agreement, deemed to be Affiliates of each other.

1.5 "Agreement" means this Operating Agreement as it may be amended from time to time.

1.6 "Appraiser" means an independent investment bank, accounting firm or other entity which has no material relationship with either Member or any of their Affiliates or the LLC, and who is experienced in appraising and determining the fair market value of agriculture-based, genetic screening-based or other technology-based companies. For purposes of this Agreement, a "material relationship" is defined as any relationship, including holding more than one percent (1%) of the stock of the relevant Person, or having a senior executive (any LLC officer or similar position) of such bank, firm or other entity, who is also serving or has served, during the two (2) years immediately preceding such Appraiser's selection, as an employee, LLC officer or Director, or similar position, of such relevant Person, or which bank, firm, entity or senior executive is consulting with or for such relevant Person on any ongoing retained basis, or in a non-ongoing retention or engagement during the two (2) years immediately preceding such Appraiser's selection.

1.7 "Auction" and "Auctioneer" will have the meanings set forth for such terms in Section 13.5 hereof.

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1.8 "Bayer AG" means a corporation organized under the laws of Germany, which is the parent corporation of Bayer.

1.9 "Bankruptcy" means, with respect to any Person, that a petition has been filed by or against such Person as a "debtor" and the adjudication of such Person as a bankrupt under the provisions of the bankruptcy laws of the United States have commenced, or that such Person has made an assignment for the benefit of its creditors generally or a receiver has been appointed for substantially all of the property and assets of such Person, unless the same has been vacated, set aside or stayed within sixty (60) days after such filing.

1.10 "Buyout" means the purchase by one Member of all of the Membership Interest of the other Member pursuant to the provisions of Article XIII hereof.

1.11 "Capital Account" means, for each Member, a separate account maintained by the LLC in accordance with the following provisions:

(a) Increases. The Capital Account of each Member will be increased by:

(i) Money and Property Contributed. The amount of money and the agreed fair market value of any property contributed to the LLC by such Member, or paid by such Member for the benefit of the LLC pursuant to this Agreement (net of any liabilities secured by such property that the LLC is considered to assume or hold subject to for purposes of Section 752 of the Code), in each case as a Capital Contribution by such Member,

(ii) Share of Net Income, Etc. Such Member's share of Net Income (or items thereof) and other items of LLC income and gain allocated to it pursuant to this Agreement, and

(iii) Certain Assumption of Liabilities. The amount of liabilities of the LLC assumed by such Member, to the extent not taken into account under Section 1.11(a)(i) hereof, and any other amounts required by Treasury Regulations Section 1.704-1(b), if the Management Committee determines that such increase is consistent with the economic arrangement among such Members as expressed in this Agreement; and

(b) Decreases. The Capital Account of each Member will be decreased by:

(i) Money And Property Distributed. The amount of money and the agreed fair market value of any property distributed by the LLC to such Member pursuant to the provisions of this Agreement (net of any liabilities secured by such property that such Member is considered to assume or hold subject to for purposes of Section 752 of the Code),

(ii) Share of Net Loss, Etc. Such Member's share of Net Loss (or items thereof) and other items of LLC loss and deduction allocated to it pursuant to this Agreement, and

(iii) Certain Assumption of Liabilities. The amount of liabilities of such Member assumed by the LLC (to the extent not taken into account under Section 1.11(a)(i)

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hereof) and any other amounts required by Treasury Regulations Section 1.704-1(b), if the Management Committee determines that such decrease is consistent with the economic arrangement among such Members as expressed in this Agreement.

1.12 "Capital Contribution" of a Member means the contribution by such Member to the LLC pursuant to Article IV hereof.

1.13 "Carrying Value" means, with respect to any LLC asset, such asset's adjusted basis for federal income tax purposes, except as follows:

(a) Initial Carrying Value of Contributed Asset. The initial Carrying Value of any asset contributed by a Member to the LLC will be the fair market value of the asset upon contribution, as agreed upon in writing by the contributing Member and the LLC.

(b) Adjustments Upon Certain Acquisitions And Distributions. In the discretion of the Management Committee, or upon the written request of either Member to the Management Committee, with a copy to the other Member, the Carrying Values of all LLC assets may be adjusted to equal their respective fair market values, as determined by the Management Committee, and the resulting unrecognized gain or loss allocated to the Capital Accounts of the Members as though such assets had been sold for their respective fair market values as of the following times: (i) the acquisition of an additional interest in the LLC by any Member in exchange for more than a de minimis Capital Contribution; and (ii) the distribution by the LLC to a Member of more than a de minimis amount of LLC assets, unless all Members receive simultaneous distributions of either undivided interests in the distributed property or identical LLC assets in proportion to their interests in the LLC.

(c) Certain Adjustments to Equal Fair Market Value On Liquidation or Termination of LLC. The Carrying Values of all LLC assets will be adjusted to equal their respective fair market values, as determined by the Management Committee, and the resulting unrecognized gain or loss allocated to the Capital Accounts of such Members as though such assets had been sold for their respective fair market values as of the following times: (i) the date the LLC is liquidated within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and (ii) the termination of the LLC pursuant to the provisions of this Agreement.

(d) Certain Increases or Decreases. The Carrying Values of LLC assets will be increased or decreased to the extent required under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) if the adjusted tax basis of such LLC assets is adjusted pursuant to Code Sections 732, 734 or 743.

(e) Adjustment To Equal Fair Market Value On Distribution. The Carrying Value of an LLC asset that is distributed (whether in liquidation of the LLC or otherwise) to one or more Members will be adjusted to equal its fair market value, as determined by the Management Committee, and the resulting unrecognized gain or loss allocated to the Capital Accounts of such Members as though such asset had been sold for such fair market value.

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(f) Adjustment For Depreciation, Etc. The Carrying Value of an LLC asset will be adjusted by the depreciation, amortization or other cost recovery deductions, if any, taken into account by the LLC with respect to such asset in computing Net Profit or Net Loss.

1.14 "Certificate of Formation" means the Certificate of formation of the LLC.

1.15 "Changed Circumstance" means any of the following:

(a) Continuing Force Majeure Event. A Continuing Force Majeure Event occurs with respect to a Member.

(b) Exelixis-Specific Matters. Any or all of the following will be a Changed Circumstance with respect only to Exelixis:

(i) Certain Sales of Assets. Subject to the last sentence of this Section 1.15(b)(i), the sale, lease, conveyance or other disposition of eighty percent (80%) or more of the net value, as determined using United States generally accepted accounting principles, of the assets of Exelixis, as an entirety or substantially as an entirety, to any other Person or to any "group," within the meaning of Section 10(d)(3) of the Exchange Act, that includes such Person, and in each case other than Bayer or Bayer AG, in one or a series of transactions. For purposes of this Section 1.15(b)(i), any transaction as a result of which the holders of all classes of stock and/or other voting securities of Exelixis immediately prior to such transaction own, directly or indirectly, at least fifty percent (50%) of the aggregate voting stock or voting power of all classes of stock and/or other voting securities of the transferee Person immediately after such transaction, will not constitute a Changed Circumstance as to Exelixis, unless, and until the date upon which, Bayer gives Exelixis written notice, which notice Bayer must give within thirty (30) days after Bayer has received from Exelixis, under Section 13.2(a)(i) hereof, a Proposed Changed Circumstances Notice of such event, or has received from Exelixis, under Section 13.2(a)(ii) hereof, a Final Notice of such proposed event, that one or more of the transferee or proposed transferee Person(s) and/or the Affiliate(s) of such Person(s), as relevant, is (or are), in the good faith judgment of Bayer, a party objectionable to Bayer.

(ii) Certain Changes of Control. Subject to the provisions of Section 1.15(b)(ii)(A) and (B) hereof, any transaction or series of transactions (as a result of a tender offer, merger, consolidation or otherwise) that involves a transfer of securities of Exelixis, if as a result of such transfer any Person, including a "group," within the meaning of Section 10(d)(3) of the Exchange Act, that includes such Person, and in each case other than Bayer or Bayer AG, acquires "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of fifty percent (50%) or more of the aggregate stock and/or other voting securities of Exelixis, and such Person or "group" did not, immediately before such transaction, hold directly or indirectly, fifty percent (50%) or more of the aggregate stock or voting power of all classes of stock and/or other voting securities of Exelixis. For purposes of this Section 1.15(b)(ii):

(A) Requirement Of Certain Notice By Bayer. Such event will not constitute a Changed Circumstance as to Exelixis unless, and until the date upon which, Bayer gives written notice to the Management Committee and to Exelixis, which notice Bayer must give within thirty (30) days after Bayer has received from Exelixis, under Section 13.2(a)(i) hereof, a

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Proposed Changed Circumstances Notice of such event, or has received from Exelixis, under Section 13.2(a)(ii) hereof, a Final Notice of such proposed event, that, in the good faith judgment of Bayer, such event does or would materially adversely impact the business, operations and/or financial potential of the LLC, and/or that one or more of the Persons, including their Affiliates, as relevant, to whom such equity is transferred, or to whom such equity is proposed to be transferred, is (or are), in the good faith judgment of Bayer, a party objectionable to Bayer; and

(B) Certain Equity Financings By Exelixis. The closing of any equity financing of Exelixis after the Effective Date, by the issuance by Exelixis of its own securities (including without limitation stock of Exelixis and/or securities, such as options, warrants or convertible promissory notes, exercisable for or convertible by their terms into stock of Exelixis), will not constitute a Changed Circumstance as to Exelixis unless, and until the date upon which, Bayer gives Exelixis written notice, which notice Bayer must give within thirty (30) days after Bayer has received from Exelixis, under Section 13.2(a)(i) hereof, a Proposed Changed Circumstances Notice of such event, or has received from Exelixis, under Section 13.2(a)(ii) hereof, a Final Notice of such proposed event, that the Person(s), including a "group," within the meaning of Section 10(d)(3) of the Exchange Act, that includes such Person(s), and in each case other than Bayer or Bayer AG, , to whom such equity is issued is (or are), in the good faith judgment of Bayer, a party objectionable to Bayer.

(iii) Certain Resignations or Terminations, Etc. Subject to the provisions of Section 1.15(b)(iii)(D) hereof, the resignation, termination, demotion, death or disability of, cumulatively, two (2) or more Key Exelixis Individuals, as follows:

(A) Resignation. The resignation, at any time prior to the third anniversary of the Effective Date, by a Key Exelixis Individual from all employment and consultancy relationships with Exelixis and all of its Affiliates. For purposes of this Agreement, a Key Exelixis Individual will be deemed to have resigned from all employment and consultancy relationships with Exelixis and all of its Affiliates on the date after which such individual is neither an employee nor serving as a consultant under a written agreement with Exelixis or such Affiliate which requires that such individual render services actively, and not merely be available on a standby-by or retained on-call basis, for at least one-half of such individual's full working time.

(B) Termination. The termination, with or without cause, at any time prior to the third anniversary of the Effective Date, by a Key Exelixis Individual, from all employment and consultancy relationships with Exelixis and all of its Affiliates, whether by death, disability or otherwise.

(C) Disability or Demotion Without Resignation or Termination. At any time prior to the third anniversary of the Effective Date, the disability of a Key Exelixis Individual (if there is no termination or resignation by such individual nor by Exelixis as a result of such disability), to the extent that, or any demotion of such Key Exelixis Individual to a position of authority and/or title with Exelixis and/or its Affiliates that, in either case, in the good faith judgment of Bayer after consultation with Exelixis, and as so notified in writing by Bayer to the Management Committee, does or would materially adversely impact the business, operations and/or financial potential of the LLC.

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(D) Exclusions; Consultation With Bayer, Bayer Approval of Certain Replacements. This Section 1.15(b)(iii) will not apply as to any Key Exelixis Individual who, immediately upon such termination or resignation with Exelixis and all of its Affiliates, commences full-time employment or full-time consultancy with Bayer, or Bayer AG, or with the LLC with Bayer's prior written consent thereto. This Section 1.15(b)(iii) also will not apply with respect to the termination, resignation, death, disability or demotion of any Key Exelixis Individual, whether or not an FTE, until the sixth-month anniversary of the date of such event, if the position held by such individual is filled by Exelixis within such six-month period, provided that:

(1) Consultation With Bayer. Exelixis will consult in good faith with Bayer as to the replacement for such individual.

(2) Bayer Approval of Certain Replacements. Bayer's approval, which approval Bayer will not unreasonably or untimely withhold, will in each case be required for the individual replacement selected by Exelixis for each of the positions of Agricultural Biotechnology Program Leader (or equivalent position) of Exelixis (occupied by John Margolis at the Effective Date), and Chief Information Officer (or equivalent position) of Exelixis (occupied by Christian Burks at the Effective Date). Furthermore, if any two (2) of the following positions becomes vacant within six (6) months of each other by the termination, resignation, death, disability or demotion of any Key Exelixis Individual, Bayer's approval, which approval Bayer will not unreasonably or untimely withhold, will be required for the individual replacement selected by Exelixis for each of such two (2) positions: (a) Chief Executive Officer of Exelixis (or President if there is then no Chief Executive Officer (occupied by George Scangos, as Chief Executive Officer, there being no President, at the Effective Date), (b) Chief Scientific Officer (or equivalent position) of Exelixis (occupied by Geoffrey Duyk at the Effective Date), (c) Agricultural Biotechnology Program Leader (or equivalent position) of Exelixis, and (d) Chief Information Officer (or equivalent position) of Exelixis. The six-month period referred to in this Section 1.15(b)(iii)(D)(2) will commence on the date of, as relevant, the termination, resignation, death, disability or demotion of the first of the two (2) Key Exelixis Individuals in question.

(c) Bayer Specific Matters. Either or both of the following will be a Changed Circumstance with respect only to Bayer, provided that, for purposes of this Section 1.15(c), the term "insecticide" means chemical and/or biological agents and/or compounds intended for use against invertebrate animals:

(i) Certain Sales Of Assets. Subject to the last sentence of this Section 1.15(c)(i), the sale, lease, conveyance or other disposition, in one or a series of transactions to any other Person or "group," within the meaning of Section 10(d)(3) of the Exchange Act, that includes such Person, and in each case other than Exelixis or Bayer AG, of eighty percent (80%) or more of the net value, as determined under United States generally accepted accounting principles, of those assets of Bayer constituting at the time in question Bayer's insecticide business (as the term "insecticide" is defined in the first paragraph of Section 1.15(c) hereof), or of eighty percent (80%) or more of the net value, as determined under United States generally accepted accounting principles, of the overall assets of Bayer if Bayer has not previously sold, leased, conveyed or otherwise disposed of eighty percent (80%) or more of the net value of its insecticide business. For purposes of this Section 1.15(c)(i), any transaction as a result of which the holders of all classes of stock and/or other voting securities of Bayer immediately prior to such transaction own, directly or indirectly, at least fifty percent (50%) of the aggregate voting stock or voting power of all classes of stock and/or other voting securities of the transferee Person immediately after such transaction, will not constitute a Changed Circumstance as to Bayer.

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(ii) Certain Changes Of Control. Subject to the provisions of Section 1.15(c)(ii)(A) and (B) hereof, any transaction or series of transactions (as a result of a tender offer, merger, consolidation or otherwise) that involves a transfer of securities of Bayer (or, if Bayer's insecticide business then is being conducted in a separate legal entity that is at the time an Affiliate of Bayer, then involving a transfer of securities of such entity), if as a result of such transfer any Person, including a "group," within the meaning of Section 10(d)(3) of the Exchange Act, that includes such Person, and in each case other than Exelixis or Bayer AG, acquires "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of fifty percent (50%) or more of the aggregate stock and/or other voting securities of Bayer or of such separate legal entity, and such Person or "group" did not, immediately before such transaction, hold directly or indirectly, fifty percent (50%) or more of the aggregate stock or voting power of all classes of stock and/or other voting securities of Bayer or of such separate legal entity, as relevant. For purposes of this Section 1.15(b)(ii):

(A) Requirement Of Certain Notice By Exelixis. Such event will not constitute a Changed Circumstance as to Bayer unless, and until the date upon which, Exelixis gives written notice to the Management Committee and to Bayer that, in the good faith judgment of Exelixis, such event does or would materially adversely impact the business, operations and/or financial potential of the LLC, which notice Exelixis must give within thirty (30) days after Exelixis has received from Bayer, under Section 13.2(a)(i) hereof, a Proposed Changed Circumstances Notice of such event, or has received from Bayer, under Section 13.2(a)(ii) hereof, a Final Notice of such proposed event.

(B) Certain Conditions. Such event will constitute a Changed Circumstance as to Bayer only (1) if at the time in question Bayer's insecticide business is being conducted in whole or in material part by or within a separate legal entity other than Bayer or Bayer AG, and at least fifty percent (50%) of the aggregate stock or voting power of all classes of stock and/or other voting securities of such entity is held by Bayer or by Bayer AG immediately before the consummation of such transaction, or (2) if at the time Bayer's insecticide business is being conducted by Bayer, and if Bayer AG, immediately before the consummation of such transaction (a) does not own, directly or indirectly, at least fifty percent (50%) of the aggregate voting stock or voting power of all classes of stock and/or other voting securities of Bayer and (b) does not otherwise have the power to direct or cause the direction of the management and policies of the insecticide business of Bayer.

(d) LLC Lack Of Freedom To Operate. Subject to the last sentence of this Section 1.15(d), the sixth (6th) month anniversary of the delivery by Bayer to Exelixis of a "Lack Of Freedom To Operate Notice". A "Lack Of Freedom To Operate Notice" means Bayer's written notice that, in the good faith judgment of Bayer, after Bayer has consulted with Bayer's patent counsel and with Exelixis, and after Bayer's patent counsel has consulted with Exelixis' patent counsel, with respect thereto, there exist sufficient dominant patents, or other intellectual property rights, of any third party (other than an Affiliate of Bayer or an Affiliate of Exelixis), with respect to the subject and focus of the LLC Collaboration Agreement, and/or of the LLC, as to create a material risk of exposure of the LLC and/or of Bayer or its Affiliates to an action for infringement by such third party by reason of any intellectual property licensed to the LLC by Exelixis and/or by any intellectual property belonging to the LLC (apart from any such

intellectual property licensed to the LLC by Bayer or by any Bayer Affiliate), and to create a failure of the essential purpose of the LLC and of the LLC Collaboration Agreement if the LLC and the LLC Collaboration Agreement were to continue. Such event will not constitute a Changed Circumstance if, prior to such sixth (6th) month anniversary, Exelixis and/or the LLC have executed with such third party a license, or an agreement not to bring an action for infringement as to the relevant intellectual property, in either case in favor of the LLC, and in favor of Bayer and Exelixis and their respective Affiliates, with respect to the intellectual property rights or alleged intellectual property rights of such third party in question, meeting the criteria set forth in the next sentence. Such license (i) must be approved by the Management Committee, and by Exelixis if Exelixis is to be a party to the license, or is to be responsible for any payments thereunder, as is described in clause (ii) of this Section 1.15(d) immediately following, and (ii) may contain provision for the payment to the licensor of commercially reasonable license commitment or upfront fees, royalties or premium fees, provided that (A) if the potential infringement of such third party's right is determined by Bayer, after the consultation described in the first sentence of this Section 1.15(d), to derive primarily from intellectual property rights of Exelixis licensed to the LLC, then Exelixis alone will be responsible for payment of any such license or commitment fees, royalties or premium fees thereunder, and (B) if the potential infringement of such third party's right is determined by Bayer, after the consultation described in the first sentence hereof, to derive primarily from intellectual property rights of the LLC licensed in to the LLC, then the LLC will be responsible for payment of any such license or commitment fees, royalties or premium fees thereunder.

1.16 "Code" means the Internal Revenue Code of 1986, as amended.

1.17 "Collateral Agreements" means any license or other agreement to which
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the LLC is a party or by which it is bound, and any license or other agreement to which either or both Members are a party or by which either or both Members are bound and that relate to the LLC, other than (a) the LLC Collaboration Agreement, (b) this Agreement, and (c) any agreements between Bayer and Bayer AG.

1.18 "Commencement Date" means January 1, 2000, or such other date as the
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Members agree in writing as an amendment hereto

1.19 "Confidential Information" means, with respect to a party hereto,
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information that is owned or controlled by such party, its Affiliates or sublicensees, including information of third parties known to such party by reason of any collaboration with such third party or under any confidentiality agreement with such third party, that is disclosed by such party hereto, to one or both of the other parties hereto pursuant to this Agreement, and that is identified by the disclosing party in writing, or is acknowledged by the receiving party in writing, to be confidential to the disclosing party or to a third party at the time of disclosure to the receiving party if disclosed in tangible form, or is confirmed by the disclosing party to the receiving party as confidential within thirty (30) days after disclosure if initially disclosed orally by the disclosing party. Confidential Information will not include any information which:

(a) Already Known Without Breach. Was already known to the receiving party, without breach of any obligation of confidentiality by any party, at the time of disclosure by the disclosing party;

(b) Generally Available Or In Public Domain Without Breach. Was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving party by the disclosing party, or became generally available to the public or otherwise part of the public domain after its disclosure to the receiving party by the disclosing party, in each case without breach of any obligation of confidentiality by the receiving party;

(c) Freely Disclosed By Certain Third Parties. Was disclosed to the receiving party, other than under an obligation of confidentiality, by a third party who had no obligation to the disclosing party not to disclose such information to others;

(d) Freely Disclosed By Disclosing Party To Others. Is disclosed by the disclosing party to others without an obligation of confidentiality;

(e) Required To Be Disclosed. Is required to be disclosed pursuant to law, subject, except for disclosure of financial information to the extent required by securities laws to be disclosed, to the protective provisions set forth in Section 18.6 hereof; or

(f) Independently Developed. The receiving party can document was subsequently and independently developed by employees or others on behalf of the receiving party without use of any Confidential Information disclosed to the receiving party or such others by the disclosing party.

1.20 "Continuing Force Majeure Event" means a Force Majeure Event as to the Affected Member, which continues for at least [*], on a [*] anniversary calculation, after delivery of written notice to the Affected Member by the Non-Affected Member, with a copy to the Management Committee, reciting facts therein in reasonable detail regarding (a) the date upon which, in the good faith judgment and knowledge of the Non-Affected Member, such Force Majeure Event commenced for the Affected Member, (b) the general nature of such Force Majeure Event, and (c) that the Force Majeure Event (i) is having or would have, in the good faith judgment of the Non-Affected Member, a material adverse effect upon the Affected Member's ability to perform such Affected Member's obligations under this Agreement, the LLC Agreement, and/or the relevant Collateral Agreements, and (ii) does have or would have, in the good faith judgment of the Non-Affected Member, a material adverse effect on the business or operations of the LLC.

1.21 "Damages" means, subject to the provisions of Article XI hereof, all costs, liabilities, obligations, damages, fines, penalties, deficiencies, losses and judgments, including reasonable fees and costs of attorneys, accountants, and other customary and commercially reasonable advisors, in each case after the application of any amounts recoverable under insurance contracts or similar arrangements and from other third parties, by the Person claiming indemnity under this Agreement.

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1.22 "Deadlock" means the inability of the Members to resolve a dispute in accordance with the provisions of Section 17.1 hereof before arbitration under Section 17.2 hereof, including without limitation the failure of the Management Committee to timely agree on a budget and/or Strategic Plan for the LLC as provided in Section 8.8 hereof.

1.23 "Dissociated Member" means a Member who has suffered a Bankruptcy or Dissolution.

1.24 "Dissolution" of a Member means that such Member has terminated its existence, whether partnership or corporate, wound up its affairs and dissolved, provided that a change in the membership constitution of any Member that is a general partnership will not constitute "Dissolution" hereunder, whether or not such Member is deemed technically dissolved for partnership law purposes, for so long as the business of such Member is continued.

1.25 "Dissolution Event" as to a Member means:

(a) Attachment, Etc. Attachment, execution or other judicial seizure of all or any substantial part of a Member's assets, or of a Member's interest in the LLC, or any part thereof, and in each case remaining undismissed or undischarged for a period of [*] after the levy thereof, if the occurrence of such attachment, execution or other judicial seizure has, in the good faith judgment of the Non-Affected Member, communicated in writing by the Non-Affected Member to the Affected Member and to the Management Committee, a materially adverse effect upon the performance by such Affected Member of its obligations under this Agreement, the LLC Collaboration Agreement, and/or the relevant Collateral Agreements, provided that such attachment, execution or seizure will not constitute a Dissolution Event if the Affected Member posts a bond sufficient to fully satisfy the amount of such claim or judgment within [*] after the levy thereof and the LLC's assets, and/or, as relevant, such Affected Member's interest in the LLC, are thereby released from the lien of such attachment; and/or

(b) Bankruptcy or Dissolution Of A Member. The Bankruptcy or Dissolution of a Member.

1.26 "Event of Default" and "Affected Member" and "Non-Affected Member" and "Default Notice" will have the meanings set forth for such terms in Article XIV hereof.

1.27 "Excess Negative Balance" for purposes of Section 9.2 hereof, means the excess of the negative balance in a Member's Adjusted Capital Account (computed with any adjustments which are required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) over the amount such Member is obligated to restore to the LLC, computed under the principles of Treasury Regulations Section 1.704-1(b)(2)(ii)(c), inclusive of any addition to such restoration obligation pursuant to application of the provisions of Treasury Regulations Section 1.704-2.

1.28 "Exchange Act" means the Securities Exchange Act of 1934, as amended.

1.29 "Fair Market Value" means the fair market value of a Membership Interest as determined under Section 13.1 hereof.

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1.30 "Field of Use" will have the same meaning, at the time in question under this Agreement, as is given for such term at the time in question under the LLC Collaboration Agreement.

1.31 "Fiscal Year" means the period from January 1 to December 31 of each year, or as otherwise required by law or as otherwise determined by the Management Committee.

1.32 "Force Majeure Event" means, as to a Member, an event or condition having a material adverse effect upon such Member due to circumstances beyond such Member's reasonable control and that by the exercise of commercially reasonable due diligence it is unable to prevent. Circumstances beyond the reasonable control of a Member include, but are not limited to, fire, strikes, insurrections, riots, embargoes, shortages, war-time rationing or preferences, delays in transportation, inability to obtain supplies of raw materials or requirements or regulations of any government or any other civil or military authority in the relevant jurisdiction.

1.33 "FTE" means a full-time equivalent employee or consultant, as the case may be.

1.34 "FTE Amount" means the amount required to be paid by the LLC to Exelixis under the LLC Collaboration Agreement for the FTE's.

1.35 "JSC" means the Joint Scientific Committee, or its successor committee, established by the Members as provided in the Section 6.13(a) of this Agreement.

1.36 "Key Exelixis Individual" means, as relevant, the individual who at the time in question is filling the position of Chief Executive Officer (or President, if there is no Chief Executive Officer) of Exelixis (occupied by George Scangos as the Chief Executive Officer, there being no President, at the Effective Date), or of Chief Scientific Officer (or equivalent position) of Exelixis (occupied by Geoffrey Duyk at the Effective Date), or of Agricultural Biotechnology Program Leader (or equivalent position) of Exelixis (occupied by John Margolis at the Effective Date), or of Chief Information Officer (or equivalent position) of Exelixis (occupied by Christian Burks at the Effective Date).

1.37 "LLC Collaboration Agreement" means that certain LLC Collaboration Agreement of even date herewith among Bayer, Exelixis and the LLC, as it may be amended after the Effective Date in accordance with its terms.

1.38 "LLC Operating Expense Amounts" means (a) professionals' fees and costs incurred by the LLC (or, as to patent matters referred to in clause (i) immediately following, if so requested by the Management Committee in writing of Bayer, then professionals' fees and costs incurred by Bayer on behalf of the LLC) in the conduct of its business for (i) preparing, applying for, maintaining and defending and prosecuting alleged infringement of, LLC patents throughout the world as determined by the Management Committee, including FTE expenses (other than the FTE Amount) and out of pocket costs incurred by Exelixis in connection with such activities that in each case have been mutually agreed to by the LLC and Exelixis in writing, and (ii) the salary and benefits of any LLC officer or LLC employee (FTE's not being employees of the LLC)to the extent not paid directly by Bayer or by Exelixis, as relevant, to such individual, and (iii) amounts that are paid by Bayer pursuant to Section 2.10 hereof for insurance; and (b) amounts determined by the Management Committee as needed for the operations of the LLC, which have been (i) identified in any annual budget for the LLC, as it may have been amended, which has been

approved by the Management Committee as provided herein, or (ii) otherwise approved by the Management Committee as being required for the operations of the LLC, which will include all amounts, if any, determined by the Management Committee to be needed by the LLC for Research (as defined in the LLC Collaboration Agreement) funding beyond the minimum ten million dollars ($10,000,000.00) (or such then-current amount as may be provided in any amendment hereto) per calendar year required to be paid by the LLC to Exelixis under the LLC Collaboration Agreement for Research funding, to the extent that sufficient third-party funds described in Section 4.3(a) hereof (excluding premium fees from the Members and milestone payments from Bayer under the LLC Collaboration Agreement) are not available for such Research funding. In each case, LLC Operating Expense Amounts will not include (1) the minimum ten million dollars ($10,000,000.00) (or such then-current amount as may be provided in any amendment hereto), in the calendar year in question, of the additional Capital Contributions of Bayer called for under Section 4.2 hereof to be expended by the LLC under the LLC Collaboration Agreement to fund Research funding , nor (2) any premium fee payments to the LLC by Bayer or by Exelixis, nor (3) any milestone payments by Bayer to the LLC under the LLC Collaboration Agreement.

1.39 "Management Committee" means the Management Committee of the LLC.

1.40 "Member" means Bayer, or Exelixis, or any other Person who holds a Membership Interest in the LLC and who is admitted to the LLC as a Member in accordance with the provisions of this Agreement.

1.41 "Members" means both Members, or, when there are more than two, all Members.

1.42 "Member Representative" means each employee of or consultant to Bayer and each employee of or consultant to Exelixis selected to serve on the Management Committee as provided herein.

1.43 "Membership Interest" means the interest of a Member in the LLC.

1.44 "Net Income" or "Net Loss" means, respectively, the net book income or loss of the LLC for any relevant period. The net book income or loss of the LLC will be computed in accordance with federal income tax principles under the method of accounting elected by the LLC for federal income tax purposes, adjusted by:

(a) Tax-Exempt Income, Etc. Including as income or deductions, as appropriate, any tax-exempt income and related expenses that are neither properly included in the computation of taxable income nor capitalized for federal income tax purposes;

(b) LLC Organizational Expenses. Including as a deduction when paid or incurred (depending on the LLC's method of accounting) any amounts paid to organize the LLC except that amounts for which an election is properly made by the LLC under Code Section 709(b) will be accounted for as provided therein;

(c) Certain Losses On Sale Or Exchange Of Property. Including as a deduction any losses incurred by the LLC in connection with the sale or exchange of property

notwithstanding that such losses may be disallowed to the LLC for federal income tax purposes under the related party rules of the Code, including Code Sections 267(a)(1) or 707(b);

(d) Certain Gain Or Loss On Certain Dispositions. Calculating the gain or loss on disposition of LLC assets and the depreciation, amortization or other cost- recovery deductions, if any, with respect to LLC assets by reference to their Carrying Value rather than their adjusted tax basis; and

(e) Certain Exclusions. Excluding as an item of income, gain, loss or deduction any items allocated pursuant to Section 9.2 hereof or any gross income allocated under Section 9.1(b) hereof.

1.45 "Percentage Interest" means, as to the relevant Member, the interest of such Member in the LLC, which initially will be sixty percent (60%) for Bayer and forty percent (40%) for Exelixis, as such Percentage Interest may be automatically adjusted by application of Article XVI hereof.

1.46 "Person" means a natural person, corporation, partnership (whether general or limited), a limited liability company, or any trust, estate, association, custodian, nominee or any other individual or entity in its own or representative capacity, and in each case, as to a legal entity, whether formed under the laws of the United States or of any state thereof or of any non-United States jurisdiction.

1.47 "Original Collaboration Agreement" means that certain Collaboration Agreement dated as of May 1, 1998, as amended, by and between Exelixis and Bayer AG.

1.48 "Pro Rata Share" as to a Member's right of first offer under Article XVI hereof, means the Percentage Interest of such Member in the LLC, calculated without giving effect to the relevant offer by the LLC, multiplied times the percentage of interest, or units, or other securities, offered by the LLC.

1.49 "Regulatory Allocations" will have the meaning set forth for such term in Section 9.2(h) hereof.

1.50 "Research Field" will have the same meaning, at the time in question under this Agreement, as is given for such term at the time in question under the LLC Collaboration Agreement.

1.51 "SEC" means the Securities and Exchange Commission.

1.52 "Securities Act" means the Securities Act of 1933, as amended.

1.53 "Subscribing Members" will have the meaning for such term set forth in Section 16.1 hereof.

1.54 "Substantial Disagreement" means the failure of the Management Committee, and/or of the Members, if the Members' approval is required under this Agreement in addition to

Management Committee approval, to reach agreement, within the relevant time period required under this Agreement, on the operations of the LLC, including (a) the budget for the LLC, and/or the Strategic Plan for the LLC, and any respective amendment thereto, and/or (b) any other issue which has, or is likely to have, in either case in the good faith view of either Member as so communicated in writing to the Management Committee and to the other Member, a material adverse impact on the business or operations or financial potential of the LLC or of the notifying Member, including without limitation selection and commercialization of assays, targets, or the like, in each case involving, and only with respect to, the LLC. Any failure of the Management Committee or the Members to (1) approve a proposed modification of the Research Field or Field of Use, or (2) agree upon raising additional capital for the LLC, or (3) agree as to issuance of additional Membership Interests, or (4) agree as to admitting Substitute Members will not be a "Substantial Disagreement" nor subject to the provisions of Section 17.1 or 17.2 hereof. For purposes of Section 13.5 hereof, any dispute over the existence of a Force Majeure Event, or with respect to any written agreement to which the LLC is a party or by which it is bound, will not be a "Substantial Disagreement," the resolution of such disputes being governed solely by Sections 17.1 and 17.2 hereof.

1.55 "Substitute Member" means a Person who has, pursuant to this Agreement, been admitted to all the rights of membership in the LLC as a Member.

1.56 "Treasury Regulations" means regulations issued pursuant to the Code.

1.57 "Tax Matters Member" means Bayer.

1.58 "Unadjusted Excess Negative Balance," for purposes of Section 9.2 hereof, will have the same meaning as Excess Negative Balance, except that the Unadjusted Excess Negative Balance of a Member will be computed without effecting the reductions to such Member's Capital Account that are described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

ARTICLE II
FORMATION OF THE LLC AND RELATED MATTERS

2.1 Formation Of The LLC. The Members will have formed the LLC pursuant to the Act on or before January 1, 2000, to be in legal existence on January 1, 2000, by causing the Certificate of Formation to be filed in the Office of the Secretary of the LLC of State of Delaware, and by this Agreement intend to establish rules and regulations governing the LLC's ownership and control upon and after its creation. The LLC will not commence business prior to January 1, 2000 without the prior written consent of both Bayer and Exelixis.

2.2 Name And Principal Place Of Business Of The LLC. Unless and until amended in accordance with this Agreement and the Act, the name of the LLC will be OpteraGenOptera LLC. The principal place of business of the LLC will be located at the premises of Exelixis, at 260 Littlefield Avenue, South San Francisco, CA 94080, or such other place as the Management Committee from time to time determines.

2.3 Delaware Registered Office And Agent For Services Of Process. The LLC will maintain a Delaware registered office and agent for service of process as required by Section 104

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of the Act. The Delaware registered office and agent for service of process will be The Prentice-Hall Corporation System, Inc., 32 Loockerman Square, Suite L100, Dover, Delaware 19904, or such other place and person as the Management Committee may designate.

2.4 Purpose. The purpose of the LLC is to engage, subject to the other provisions of this Agreement, in any lawful act or activity for which a limited liability company may be organized under the Act, including without limitation, and to the extent permitted hereunder and thereunder, the entry by the LLC into and performance of its obligations under the LLC Collaboration Agreement and agreements with third parties and other documents and instruments, including without limitation those connected with collaborative and/or licensing relationships, for research and development within or outside of the Research Field, and/or commercialization, within or outside of the Field of Use, of intellectual property licensed to or to which the LLC otherwise has relevant rights, in each case relevant to the purpose, from time to time during the term hereof, of the LLC.

2.5 Term. The term of the LLC will commence upon the later to occur of (a) the filing of a Certificate of Formation for the LLC in the office of the Secretary of State of Delaware or (b) the execution of this Agreement by the two initial Members, and will continue in perpetuity unless terminated earlier as provided herein.

2.6 Review At End Of Research Term. The Members will meet to discuss in good faith the future of the LLC and their involvement therein no later than [*] prior to the end of the Research Term, as defined in and as determined under the LLC Collaboration Agreement.

2.7 Approval And Ratification Of LLC Collaboration Agreement and Collateral Agreements; Commitment To Perform Obligations. Bayer and Exelixis, as the intended initial Members, hereby approve and ratify, on behalf of the LLC, prospectively as of the Commencement Date, the execution and delivery by the Chief Executive Officer of the LLC, on behalf of the LLC, of, and the LLC's performance of its obligations under, the LLC Collaboration Agreement and such Collateral Agreements as are listed on Exhibit A attached hereto as existing at the Commencement Date, and as they may exist from time to time during the term of the LLC. The Members and the LLC hereby agree and commit to performing their respective obligations under those of the LLC Collaboration Agreement and such Collateral Agreements as they may exist at the Effective Date, or the Commencement Date, or may thereafter exist, in each case to which the Member(s) and/or the LLC is a party or by which it is or they are bound.

2.8 Management To Budget And Strategic Plan. Upon approval by the Management Committee of each of the LLC's annual budgets and Strategic Plans as provided in Section 8.8 hereof, the LLC will implement and will conduct its affairs in accordance with such relevant budget and Strategic Plan.

2.9 Bank Accounts. The LLC will, subject to the provisions of Section 4.5 hereof, maintain bank accounts in such banks as the Management Committee may designate exclusively for the deposit and disbursement of funds of the LLC. All funds received by the LLC will, subject to the provisions of Section 4.5 hereof, be promptly deposited in such accounts. The

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signatories on such account(s) will be determined from time to time by the Management Committee.

2.10 Insurance. The LLC will be insured on its own behalf with insurers who maintain an A.M. Best rating of "A" or better for all property, liability and workers' compensation insurance and such other insurance as is required under applicable mortgages, leases, agreements and other instruments and statutes, or as determined by the Management Committee and, as provided under Section 11.1(e) hereof, such insurance covering the Member Representatives, officers, employees, consultants and agents of the LLC, as the Management Committee determines to be appropriate or necessary. Bayer will use its good faith efforts to include the LLC, the Member Representatives, the members of the JSC, the officers of the LLC, and the employees of the LLC (if any), under Bayer's insurance programs if the coverage thereunder and premiums therefor would be less expensive than if the LLC obtained such insurance on its own, provided that if such inclusion results in any additional cost for premiums to Bayer from its insurers, the LLC will reimburse such excess as an expenses to Bayer as LLC Operating Expense Amounts pursuant to Section 10.1(b)(ii) hereof.

ARTICLE III
MEMBERSHIP

3.1 Members. The initial Members of the LLC will be Bayer and Exelixis. Additional Persons may be admitted to the LLC as a Member only upon the prior written consent of both Members and upon such terms and conditions as both of (or all of, if there are then more than two Members) Members and the LLC agree in writing with such additional Person as an amendment hereto.

3.2 Representations And Warranties. Each Member hereby severally represents and warrants to the LLC (with future Members so representing as of the date upon which they become a Member by execution and delivery of a counterpart copy hereof) and to the other Member (or other Members, if then more than two), as follows:

(a) Authorization. Such Member is a corporation, duly organized, validly existing, and in good standing under the law of its state of organization, and it has full power and authority to execute and enter into this Agreement and to perform its obligations hereunder, and all actions necessary for the due authorization, execution, delivery and performance by such Member of this Agreement have been duly taken;

(b) Compliance With Other Instruments. Such Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which such Member is a party or by which it is bound;

(c) Purchase Entirely For Own Account. Such Member is acquiring its Membership Interest in the LLC for such Member's own account for investment purposes only and not with a view to or for the resale, distribution, subdivision or fractionalization thereof and has no contract understanding, undertaking, agreement or arrangement of any kind with any

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Person to sell, transfer or pledge to any Person such Membership Interest or any part thereof nor does such Member have any plans to enter into any such agreement;

(d) Investment Experience. By reason of its business or financial experience, such Member has the capacity to protect its own interests in connection with the transactions contemplated hereunder, is able to bear the risks of an investment in the LLC, and at the present time could afford a complete loss of such investment;

(e) Disclosure Of Information. Such Member is aware of the LLC's business affairs and financial condition and has acquired sufficient information about the LLC to reach an informed and knowledgeable decision to acquire an interest in the LLC;

(f) Federal And State Securities Laws. If federal and state securities laws apply to the Membership Interests, such Member acknowledges that the Membership Interests have not been registered under the Securities Act or any state securities laws, inasmuch as they are being acquired in a transaction not involving a public offering, and under such laws, may not be resold or transferred by such Member without appropriate registration or the availability of an exemption from such requirements. In this connection, such Member represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

3.3 Resignation Or Withdrawal Of A Member. Except as specifically provided herein, neither Member may withdraw from membership in the LLC or withdraw such Member's interest in the capital of the LLC. A Dissociated Member or its legal representative will be entitled to participate in the winding up of the LLC to the same extent as the other Member.

3.4 Transfer Or Assignment Of Membership Interest; Admission Of Substitute Members. Neither Member may transfer, sell, encumber, mortgage, assign or otherwise dispose of any portion of its Membership Interest except on such terms, including any amendment hereto, as the other Member may agree in writing. Any purported transfer, sale, encumbrance, mortgage, assignment, or disposition of a Membership Interest in contravention of this Section 3.4 will be void and of no effect to, on or against the LLC, any Member, any creditor of the LLC or any claimant against the LLC. Notwithstanding any other provision of this Agreement, no Person will be admitted as a Substitute Member and admitted to all the rights of the Member that assigned its respective Membership Interest, without the prior written approval of both Members. If so admitted, the Substitute Member will have all the rights and powers of, and will be subject to all the restrictions and liabilities of, such Member who originally assigned the Membership Interest. The admission of a Substitute Member will not release either Member who previously assigned its Membership Interest from any liability of such assigning Member to the LLC that may have existed before such substitution. Consents required hereunder may be given in advance of any transfer by any writing signed by a Member. A Substitute Member, upon admission to the LLC, will be, and be deemed referred to herein as, a Member for all purposes thereafter.

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ARTICLE IV
CONTRIBUTIONS TO CAPITAL;
OUTSOURCED TREASURY OPERATIONS OF LLC

4.1 Initial Cash Contribution By Bayer. On the Commencement Date, Bayer will contribute to the LLC, as Bayer's initial Capital Contribution to the LLC to its Capital Account, a total of ten million dollars ($10,000,000.00) in cash on the Commencement Date.

4.2 Additional Cash Contributions.

(a) First Anniversary Cash Contribution By Bayer. If at the first anniversary of the Commencement Date (i) the LLC is still in existence, and (ii) neither Bayer nor Exelixis has terminated its participation as a Member in the LLC, then, on the first anniversary of the Commencement Date, Bayer will contribute an additional ten million dollars ($10,000,000.00) in cash to the LLC, as an additional Capital Contribution by Bayer to its Capital Account.

(b) FTE Amount Contribution By Bayer. Bayer will contribute to the LLC, in cash, in each case as a Capital Contribution by Bayer to its Capital Account additional to Bayer's Capital Contributions under Sections 4.1 and 4.2(a) hereof, at the times and in the amounts specified in the LLC Collaboration Agreement as in effect at the time in question, the FTE Amount, up to a maximum FTE Amount of ten million dollars ($10,000,000.00), (or such other amount as may then be required under this Agreement if amended after the Effective Date to so provide), for each successive twelve (12) month period from and after the Commencement Date.

(c) LLC Operating Expense Amounts. In addition, subject to the limitations set forth in Section 4.3 hereof, Bayer will pay in cash to the LLC, or to such third parties as the Chief Executive Officer of the LLC and/or Chief Financial Officer of the LLC of the LLC directs Bayer in writing, with each such payment by Bayer to the LLC or to such third party being a Capital Contribution by Bayer to its Capital Account under Sections 4.1 and 4.2(a) and (b) hereof, (i) upon at least ten (10) days' prior written notice by the Chief Executive Officer of the LLC and/or Chief Financial Officer of the LLC of the LLC to Bayer, with a copy to the Management Committee, [*] LLC Operating Expense Amounts set forth in the LLC's then-approved budget for such quarter, and (ii) upon at least thirty (30) days' prior written notice from the Chief Executive Officer of the LLC and/or Chief Financial Officer of the LLC of the LLC to Bayer, with a copy to the Management Committee, such other LLC Operating Expense Amounts as the Management Committee has determined are necessary to the operations of the LLC beyond such budget, either by amendment to a previously-approved budget as provided herein, or on an urgent need basis, as will be set forth in the relevant notice to Bayer. Any payments by Bayer directly of the salary or consulting fees, bonus (as provided within the LLC budget), expenses and benefits for any individual furnished by Bayer and serving as an LLC officer or other employee of the LLC, as provided under Section 7.4 hereof, whether paid directly by Bayer to such individual or paid by Bayer to the LLC as part of LLC Operating Expenses, will be considered as an additional Capital Contribution in cash by Bayer to its Capital Account, as part of the LLC Operating Expenses for purposes of distributions under Section 10.1(b)(iv)(A) hereof. Any payments by Exelixis directly (as provided within the LLC budget or otherwise as provided for in Section 7.4 hereof) of the salary or consulting fees,

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bonus, expenses and benefits for any individual furnished by Exelixis and serving as an LLC officer or other employee of the LLC, will be considered as a Capital Contribution in cash by Exelixis to its Capital Account, as will be considered as part of the LLC Operating Expenses for purposes of distributions under Section 10.1(b)(iv)(B) hereof.

4.3 Use Of Certain Funds For LLC Operating Expenses; Limitations On Bayer's Obligation To Make Capital Contributions To The LLC; Limitation On Capital Contributions By Exelixis. Notwithstanding the provisions of Section 4.2 hereof:

(a) Use Of Certain Funds For Operating Expenses. Except as may be otherwise determined from time to time by the Management Committee, the LLC may use, for payment of LLC Operating Expenses, prior to the LLC demanding funds from Bayer for LLC Operating Expenses under the provisions of Section 4.2(c) hereof, all amounts received by the LLC from third parties, including without limitation interest, license fees or other payments, that are not required, by their terms as received by the LLC from such third party or by law, to be held in escrow, as a creditable or refundable deposit, or otherwise required to be held against a future event. To the extent that such funds are so used, then the demand by the LLC to Bayer for LLC Operating Expense amounts occurring next after such use will be only for the amount then needed for LLC Operating Expenses after taking into account such use of such other funds.

(b) Limitations As To Bayer Payment To LLC Of LLC Operating Expense Amounts Arising From Existence Of Sufficient Other LLC Operating Funds. Bayer's obligation to pay any LLC Operating Expense Amounts to the LLC, as a Capital Contribution or otherwise, will be, at Bayer's sole election communicated in writing to Exelixis and to the Management Committee, suspended for so long as, and to the extent that, the FTE Amount equals or exceeds ten million dollars ($10,000,000.00) (or equals or exceeds such other minimum payment of the FTE Amount as is provided hereunder if this Agreement is amended to provide for such other minimum amount), and the LLC has, in the view of the Management Committee, sufficient cash, net of distributions required by this Agreement to be made, from third-party funds described in Section 4.3(a) hereof, to fund LLC Operating Expense Amounts. The Management Committee will review such funds-available issue on a regular basis at its meetings. The Management Committee will promptly communicate in writing to both Members the Management Committee's sufficient-funds conclusion, and the amounts expected to be needed from Bayer, if any, beyond such funds, for LLC Operating Expenses, during the eighteen (18) month period following such determination by the Management Committee.

(c) Certain Suspension Or Termination Of Bayer's Obligation To Pay LLC Operating Expense Amounts And FTE Amount To The LLC. Bayer's obligation to pay to the LLC any LLC Operating Expense Amounts and any FTE Amount will be, at Bayer's sole election communicated in writing to the Management Committee and to Exelixis, suspended for so long as Exelixis is a Affected Member hereunder, and/or if Exelixis has suffered a Dissolution Event, and/or for so long as there exists with respect to Exelixis a Continuing Force Majeure Event. Bayer's obligation to pay to the LLC any LLC Operating Expense Amounts and any FTE Amount will automatically terminate effective upon (i) the end of the Research Term under the LLC Collaboration Agreement if the Research Term is not renewed or otherwise extended by a

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writing signed by the LLC and Exelixis, or (ii) any termination, for whatever reason, of the LLC Collaboration Agreement.

(d) Limitations On Capital Contributions By Exelixis. Exelixis will not be required to make any cash or other Capital Contributions to the LLC, including without limitation any LLC Operating Expenses, without the prior written approval of both Members, provided that any payments by Exelixis of the salary or consulting fees, expenses, bonus and benefits for any individual furnished by Exelixis and serving as an LLC officer or other employee of the LLC, as provided under Section 7.4 hereof, whether paid directly by Exelixis to such individual or contributed by Exelixis to the LLC, will be considered as a Capital Contribution by Exelixis in cash to its Capital Account.

4.4 Nature Of Licenses, Milestone Payments And Premium Fees, And Of Certain Other Assets Assigned To The LLC. Licenses granted by Bayer and Exelixis to the LLC under the LLC Collaboration Agreement or otherwise are licenses only and are not, and are not intended by the parties to be, Capital Contributions by the licensor to the LLC. Milestone payments and premium fee payments made to the LLC pursuant to the LLC Collaboration Agreement will be income to the LLC and will not be, and are not intended by the paying party to be, Capital Contributions to the LLC by the paying party. The following are not intended to be and will not be, when so assigned, a Capital Contribution to the LLC by the assigning Member: (a) the rights of each Member in and to the EST Library and EST Database as defined in the LLC Collaboration Agreement, which have been generated under the Original Agreement and which are jointly owned by Bayer AG and Exelixis at the Effective Date (the interest of Bayer AG to be licensed or assigned to Bayer upon the Commencement Date), which rights automatically, and without further action by any party hereto, will be assigned to the LLC upon the Commencement Date (Bayer assigning its license interest received from Bayer AG), simultaneously upon termination of the Original Collaboration Agreement, pursuant to a certain Termination Agreement between Exelixis and Bayer AG, and (b) all intellectual property assigned by Bayer to the LLC under Section 10.1(g) of the LLC Collaboration Agreement relating to or arising from work performed on A List Reserved Targets, as specified in such Section 10.1(g).

4.5 Outsourced Treasury Operations Of LLC. Subject to the last sentence of this Section 4.5, financial management treasury functions of the LLC will be provided to the LLC by Bayer [*]. Cash of the LLC determined by the Chief Financial Officer of the LLC of the LLC not to be needed on a daily basis can be loaned by the LLC to Bayer as the Chief Financial Officer of the LLC believes appropriate, subject to such further direction, procedures or limitations upon the Chief Financial Officer of the LLC's powers and discretion as the Management Committee may communicate to the Chief Financial Officer of the LLC in writing from time to time. Bayer will pay interest to the LLC on all such amounts loaned to Bayer, on a daily basis at a rate equal to [*]. Monthly financial statements of the LLC as to such financial management functions will be prepared and distributed by Bayer, for and on behalf of the LLC, to the Management Committee, within fifteen (15) days after the end of each calendar month during the time Bayer is providing such operations to the LLC. Such financial statements and the records of such accounts, insofar as they relate to cash of the LLC so loaned to Bayer, will be subject to inspection and audit by the LLC, at its expense, or by Exelixis, at its expense, subject to such customary confidentiality agreements as Bayer may in good faith request of the

inspecting Person. Bayer may withdraw from performing such financial management functions at any time upon at least [*] prior written notice to the Management Committee, with a copy of such notice to Exelixis.

ARTICLE V
ACTION BY MEMBERS

5.1 Meetings Of Members. All meetings of Members for the election of the Management Committee will be held at such place as may be fixed from time to time in writing by the Management Committee in the notice to the Members of such meeting. Meetings of Members for any other purpose may be held at such time and place, within or without the State of California, as will be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in a meeting of Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at the meeting. The

5.2 Annual Meetings.

(a) Date And Time. Annual meetings of Members, commencing with the year 1999, will be held on such date and at such time as will be designated from time to time by the Management Committee and stated in the notice of the meeting, at which the Members will elect the Management Committee, and transact such other business as may properly be brought before the meeting.

(b) Notice Of Annual Meetings. Written notice of the annual meeting stating the place, date and hour of the meeting will be given to each Member at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

5.3 Special Meetings.

(a) Call Of Special Meetings. Special meetings of the Members, for any purpose, may be called by the Chief Executive Officer of the LLC, and will be called by the Chief Executive Officer of the LLC or Secretary of the LLC of the LLC at the request in writing of at least a majority of the then-authorized number of members of the Management Committee, or at the request in writing of either Member, and in each case a copy of such request will be given to the other Member. A request for a meeting of the Management Committee initiated by such majority of the Management Committee or by either Member will state the purpose of the proposed meeting. A special meeting of the Members for the election of a new Management Committee may be called by either Member, upon at least ninety (90) days prior written notice to the other Member and to the Management Committee.

(b) Notice Of Special Meetings. Written notice of a special meeting stating the place, date and hour of the meeting, and the purpose for which the meeting is called, will be given to each Member not less than ten (10) nor more than sixty (60) days before the date of the meeting.

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(c) Business To Be Conducted At Special Meeting. Business transacted at any special meeting of Members will be limited to the purposes stated in the notice of such meeting.

5.4 Member List. At the written request of either Member, the Secretary of the LLC will prepare and make, at least ten (10) days before each meeting of Members, a complete list of such Members at the meeting, showing the address of each Member and the Membership Interest registered in the name of each Member. The list may be examined by either Member, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days before the meeting. The list will also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Member who is present.

5.5 Quorum.

(a) Quorum. The presence of a majority of all of the Members, if there are more than two Members at the time in question, or the presence of both Members if there are only two Members at the time in question, or the presence of their proxies, as relevant, at a meeting of the Members, will constitute a quorum at all meetings of Members for the transaction of business except as otherwise provided by the Act.

(b) Lack Of Quorum; Adjournment. If a quorum is not present or represented at any meeting of Members, the Member present in person, or represented by proxy, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. Upon resumption of an adjourned meeting, any business may be transacted that might have been transacted before the meeting was adjourned. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, written notice of the adjourned meeting will be given to each Member.

5.6 Validity Of Proxies. No proxy will be voted after [*] after its date, unless such proxy expressly provides for a longer period. Except to the extent otherwise required by the Act, Members will vote as a single class.

5.7 Action Without Meeting. Except to the extent otherwise required by the Act, any action which may be taken by the Members at a meeting may be taken by unanimous written consent signed by both Members.

5.8 Member Vote Required. Except to the extent otherwise required by the Act or as otherwise set forth in this Agreement, any action or item requiring the approval of such Members, the consent of such Members, the affirmative vote of the Members or the like, will require the unanimous approval, consent, vote or the like of both Members.

ARTICLE VI
MANAGEMENT COMMITTEE AND JSC

6.1 Management By Management Committee. Except for matters for which the approval of the Members is required by the Act or this Agreement, and except to the extent

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managed by the officers of the LLC under the supervision of the Management Committee, the LLC will be managed and controlled by the Management Committee in accordance with the Act and with the terms of this Agreement. The Management Committee may exercise all powers of the LLC and may do all such lawful acts and things as are not by the Act, the Certificate of Formation, or this Agreement, directed or required to be exercised or done by the Members themselves. It is intended by the parties hereto that the powers and authority of the Management Committee will be substantially the same as the powers and authority of a Board of Directors of a corporation formed under the laws of the State of Delaware, provided that approval of the Management Committee or any committee thereof is subject to the sole discretion and judgment of the Member Representatives, acting in the interests of their respective appointing Members and not as fiduciaries of the LLC or of any Member.

6.2 Management Committee Number, Nominees, Vacancies.

(a) Number And Composition Of Management Committee. Unless otherwise agreed in writing by the Members as an amendment hereto, (a) the Management Committee will consist of five (5) Member Representatives, and (b) Bayer will appoint three (3) Member Representatives, one of whom, if Bayer so desires, may be the Chief Executive Officer of the LLC of the LLC, and Exelixis will appoint two (2) Member Representatives, one of whom initially, and for so long as the relevant individual is employed by or is a consultant to, Exelixis or its Affiliates, will be George Scangos or Geoffrey Duyk. Each Member Representative will be a senior LLC officer or senior representative of the relevant Member authorized to make decisions with respect to matters within the scope of the Management Committee's authority. The initial Member Representatives each will be selected and notified to the other Member in writing within thirty (30) days after the Commencement Date, as the initial Management Committee.

(b) Appointment, Removal And Replacement Of Member Representatives. Each Member will appoint, may remove (with or without cause), and may replace its Member Representatives during the existence of the LLC, at such Member's sole discretion, and any such appointments, removals and replacements will be notified in writing by the appointing, or removing or replacing, Member, to the other Member and to the Management Committee. No Member will have any authority to appoint, remove or replace Member Representatives for the other Member. If a Member Representative for any reason no longer is serving as any of an employee, LLC officer or Director or correlative position (as applicable) of, nor as a consultant to, the relevant Member or at least one of its Affiliates (the LLC not being deemed to be an Affiliate of either Member for this purpose) the relevant Member will promptly notify the other Member in writing, and such individual will be deemed to have resigned as a Member Representative as of the date of such complete cessation, and the relevant Member will as soon thereafter as possible appoint a new Member Representative to replace such departing individual.

(c) Alternates; Service Term. An alternate Member Representative, designated by a Member in writing to the other Member, may serve temporarily, for no longer than [*] from the date of appointment by such Member, in the absence of a permanent Member Representative previously designated by such Member. Individuals serving on the Management Committee will hold office until the next meeting, whether annual or special, of Members, at which the Management Committee is elected and such duly elected Member Representatives are

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qualified. Any Member Representative may resign at any time by giving written notice thereof to each Member and to the remaining Member Representatives.

6.3 Meetings Of The Management Committee; Quorum And Vote Required For Decisions; Observer Rights.

(a) Meetings of The Management Committee.

(i) Location. The Management Committee may hold meetings, both regular and special, either within or without the State of California.

(ii) Regular Meetings. Regular meetings of the Management Committee will be held upon at least thirty (30) days' written notice at times and places determined by the Management Committee, provided that the Management Committee will meet at least every six (6) months during the existence of the LLC, with at least one (1) of such meetings during the relevant twelve (12) month period being held in the San Francisco, California Bay Area for so long as (i) Exelixis is a Member and (ii) Exelixis' principal offices are located in the San Francisco, California Bay Area.

(iii) Special Meetings. Special meetings of the Management Committee may be called by the Chief Executive Officer of the LLC on at least four (4) days' prior written notice to each Member Representative by mail or at least forty-eight (48) hours' prior notice to each Member Representative, delivered either personally or by facsimile transmission. Special meetings of the Management Committee will be called by the Chief Executive Officer of the LLC if so requested in writing by either Member, which requesting Member will send a copy thereof to the other Member and to the Management Committee.

(iv) Waiver Of Or Consent To Notice. Notice of any meeting of the Management Committee or of any committee thereof need not be given to any Member Representative who, before or after the relevant meeting, signs a waiver of such notice or consents in writing to the holding of such meeting, or who attends such meeting without protest, prior to the commencement of such meeting, of lack of such notice.

(b) Quorum and Vote Required For Decisions.

(i) Quorum. At all meetings of the Management Committee, three (3) Member Representatives, one of whom must be a Member Representative appointed by Exelixis, will constitute a quorum for the transaction of business by the Management Committee. If a quorum is not present at any meeting of the Management Committee, the members of the Management Committee present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

(ii) Vote Required. Except as the Members may otherwise agree in writing as an amendment hereto, and except as may be otherwise required by law, all decisions required by law to be made, or chosen to be made, by the Management Committee will require the consent, whether at a duly called and held meeting or in writing, of at least a majority of the Member

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Representatives, or, if only a quorum is present, then of all such Member Representatives present; provided, however, that the consent, whether at a duly called and held meeting or in writing, of four (4) Member Representatives, or, if only a quorum is present, then of all such Member Representatives present, one (1) of whom in each case must be a Member Representative appointed by Exelixis, will be required for any decision under any of Sections 6.7(a)-(d), (f)-(l), (p), and (r) hereof.

(c) Observer Rights; Guests. Each Member may have one or more observers present as guests at any meeting of the Management Committee or committee thereof. Guests may be present, by invitation of the Management Committee, during all or any portion of any meeting of the Management Committee. The number of such observers and/or guests at a given meeting for a given Member will be determined in good faith by the Chief Executive Officer of the LLC. The Management Committee or the Chief Executive Officer of the LLC may require, as a condition of such observer's or guest's attendance at such meeting, the execution and delivery by such observer or guest of a customary confidentiality agreement with and in favor of the LLC. The Management Committee may exclude any observer or guest from any portion of the meeting deemed, by a majority of the Member Representatives present at the meeting, to be privileged, or otherwise inappropriate for discussion with such observer or guest present. The LLC's obligations under this Section 6.3(c) will terminate upon the earliest of the date of termination of the LLC or the date upon which there is only one (1) Member.

6.4 Committees Of The Management Committee.

(a) Creation Of And Membership On Committees. The Management Committee may designate one or more committees, which will have such name(s) as may be determined from time to time by the Management Committee. Each such committee will keep regular minutes of its meetings. Each such committees will have at least one (1) Member Representative of Bayer approved by Bayer and at least one (1) Member Representative of Exelixis approved by Exelixis except as the Members may otherwise agree in writing with each other as an amendment hereto. Subject to the representation of Bayer and Exelixis on any such committee as provided in the immediately preceding sentence, the Management Committee may designate members of the Management Committee as alternate members of any committee, who may replace any absent or disqualified members of the Committee at any meeting of such committee. Upon disqualification for any reason, removal, or resignation of a member of a committee, the Member whose Member Representative was so disqualified, removed, or who resigned, will promptly appoint another Member Representative to such committee as a replacement.

(b) Powers Of Committees; Decisions Of Committees. Any such committee, to the extent provided in the relevant resolution of the Management Committee, will have and may exercise all the powers and authority of the Management Committee in the management of the business and affairs of the LLC, provided that (i) all decisions of such committee will require the vote of at least a majority of the authorized number of Member Representatives on such committee, or, if Member Representatives appointed by Exelixis are not a majority of such Committee, then such greater number of committee member as will require the vote of at least one (1) Member Representative serving thereon who was appointed by Exelixis, in order for approval to be valid, and (ii) no such committee will have the power or authority to amend the

Certificate of Formation, adopt an agreement of merger or consolidation, or of the sale, lease or exchange of all or substantially all of the LLC's property and assets, dissolve the LLC or revoke a dissolution previously approved as provided in this Agreement, or amend this Agreement; and (iii) with respect to matters other than those described in clause (ii) of this Section 6.4(b), unless the relevant resolution of the Management Committee expressly so provides, such committee will not have the power or authority to do any other act which requires the consent of the Management Committee hereunder or by law.

6.5 Action Without Meeting; Conference Call Participation. Any action required or permitted to be taken at any meeting of the Management Committee or of any committee thereof may be taken without a meeting, if the number of Member Representatives required under hereunder for action by the Management Committee or by such committee, as the case may be, consent thereto in writing, and such writing is filed with the minutes of proceedings of the Management Committee or of such committee. Member Representatives serving on the Management Committee, or on any committee designated by the Management Committee, may participate in a meeting of the Management Committee or any such committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at the meeting.

6.6 Meeting Materials And Minutes. Materials to be considered at any meeting of the Management Committee or committee thereof will be distributed to the relevant Member Representatives at least five (5) days prior to the meeting, and draft minutes of each such meeting, and any written consents as to action by the Management Committee, will be distributed to the Members and to all Member Representatives within thirty (30) days after the date of the relevant meeting or the date of obtaining the required signatures on such consent, as applicable.

6.7 Matters Requiring Management Committee Approval. In addition to any approval that may be required by the Act or otherwise by law, and in addition to any approval thereof by the Members or the Chief Executive Officer of the LLC, the following will require approval by the Management Committee, subject to the voting requirements provided in Section 6.3(b) hereof as to Management Committee decisions:

(a) Amendment. Any amendment of the Certificate of Formation of the LLC or of this Agreement;

(b) Admission. Admission of an additional Member or a Substitute Member;

(c) Raising Additional Capital; Issuances Of Additional Membership Interests. Raising by the LLC of capital additional to that provided for under Article IV hereof, or the issuance by the LLC of additional Membership Interests;

(d) Certain Approvals As To Budget, Strategic Plan, Alteration of Primary Purpose Or Business Of the LLC Or Definition Of Field Of Use. Approval of (i) the LLC's budget on an annual basis, including without limitation, as will be set forth in such budget, the

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salaries or consulting fees, as relevant, bonus criteria and limits, if any, expenses policy, and benefits to be paid by the LLC (or by the relevant Member directly to its relevant then-serving personnel) to LLC officers and to any LLC employees (FTE's not being considered, for purposes of this Agreement or otherwise, LLC employees), and any material modification to such budget (any change in such relevant salary or consulting fees, bonus criteria and limits, expenses policy and/or benefits being considered to be a material modification), and (ii) the LLC's Strategic Plan and any material modification thereto, and (iii) any alteration of the primary purpose or business of the LLC, and (iv) any amendment to the LLC Collaboration Agreement, including without limitation any change therein of the definition of the Research Field or of the Field of Use, or (v) any amendment to any Collateral Agreement to which the LLC is a party; and which initially was required to be approved under this Section 6.7. The approval by the Management Committee of the Strategic Plan and/or or any budget or modification thereto will not be deemed to include therein an approval of any other matter, such as raising additional capital or the issuance of additional Membership Interests, which requires Management Committee approval under this Section 6.7, unless such matter is specifically and separately approved by the Management Committee as provided in this Section 6.7(d) and is subject to further approval by the Members as required under this Agreement.

(e) Appointment Of The Chief Executive Officer of the LLC, Chief Financial Officer of the LLC, Secretary of the LLC And Other Officers Of The LLC; Approval of Certain Salary And Related Matters. Appointment of the Chief Executive Officer of the LLC and Chief Financial Officer of the LLC, Secretary of the LLC, and of any other officers of the LLC desired by the Management Committee, and their respective replacements from time to time, and confirmation of the salaries or consulting fees, bonus limits and bonus amounts payable within such limits, expenses policy and benefits, in each case as represented in the then current-budget, for LLC officers and any LLC employees, to the extent not set by the Chief Executive Officer of the LLC, as provided under Section 7.4 hereof, under such budget.

(f) Certain Agreements. Any agreement committing the LLC to an obligation in excess of, or any single expenditure or related expenditures by the LLC in excess of, in each case, [*], or any group of unrelated expenditures in excess, in the aggregate, of [*], in each case that is not already identified in reasonable detail in an LLC budget as approved by the Management Committee, and any license from a third party described in Section 1.15(d) hereof.

(g) Certain Liens And Encumbrances. Creation of any lien or encumbrance on the assets of the LLC which lien or encumbrance is not specified in or referred to in reasonable detail in an approved LLC budget or approved amendment thereto.

(h) Dissolution Vote. A vote to dissolve the LLC.

(i) Sale of LLC Assets. The transfer, sale, exchange or other disposition of all, or substantially all, of the LLC's assets as part of a single transaction or plan.

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(j) Merger. The merger of the LLC with any other Person or any recapitalization of the LLC, including any reincorporation of the LLC into a jurisdiction other than Delaware.

(k) Certain Transactions. A transaction between the LLC and either Member, or with any Affiliate of either Member, including the execution or delivery of any binding agreement (i) between the LLC and either Member or any Affiliate of either Member for the provision of goods or services to the LLC, or (ii) between the LLC and any third party, including either Member or any Affiliate of either Member, with respect to research and/or development and/or commercialization, including any sales or marketing arrangements, relating to any intellectual property and/or technology of the LLC outside of the Research Field, including without limitation any license to or other grant of rights to, and any license or other grant of rights by, the LLC, other than under the LLC Collaboration Agreement.

(l) Certain Research And Development By LLC Outside Of The Research Field. Any research and/or development outside of the Research Field by the LLC, whether within the LLC or by a third party, other than Exelixis, for the benefit of the LLC, other than under the LLC Collaboration Agreement.

(m) Withholding Of Cash Available For Distribution. The withholding by the LLC of any cash that is available for distribution as such availability is determined by the Management Committee pursuant to Section 10.1(b) hereof, provided that such withholding will be subject to the provisions of Section 10.1(b) as to distributions that must be made by the LLC under certain circumstances.

(n) Compromise Or Return. A decision by the Management Committee to compromise the obligation of a Member to return money or property paid or distributed unlawfully from the LLC, or to compromise the obligation of a Member with respect to a Capital Contribution to the LLC as otherwise provided herein.

(o) Appointment of Independent Auditors. Appointment of a nationally-recognized firm of certified public accountants to serve as the LLC's independent auditors.

(p) Changes In The Duties Of LLC Officers. Any changes in the duties of any LLC officer other than any such change required by law as the LLC is so advised by its legal counsel.

(q) Research Plan. Approval of the Research Plan under the LLC Collaboration Agreement, and of any changes thereto in accordance with the provisions of the LLC Collaboration Agreement.

(r) Core Improvements and Exelixis Core Technology. Determinations by the LLC with respect to Core Improvements and Exelixis Core Technology pursuant to the LLC Collaboration Agreement, including Sections 1.20 and 1.28 thereof.

6.8 Delivery And Approval Of Annual Operating Plan And Budget And Three Year Strategic Plan. The Management Committee will prepare and deliver to each Member as

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soon as practicable after its preparation, and in any event no later than [*] before the close of each Fiscal Year of the LLC: (a) an annual operating plan, including a Research Plan, and budget for the LLC, prepared on a monthly basis, for the next Fiscal Year, and (b) a three (3) year strategic plan (the "Strategic Plan") for the LLC for next [*] Fiscal Years of the LLC, provided that the LLC's initial budget and Strategic Plan will be approved by the Management Committee and delivered to the Members no later than [*] after the Commencement Date. The Management Committee will also promptly furnish to each Member all amendments to the annual operating plan and budget and Strategic Plan, if any. Except for the initial operating plan and budget and Strategic Plan, to be delivered as provided in the first sentence of this Section 6.8, the Management Committee and the Members will agree upon each prospective operating plan and budget and Strategic Plan no later than [*] before the end of the relevant Fiscal Year in which they are delivered to the Members. Failure to so timely agree will be considered to be a "Substantial Disagreement" to be resolved as provided under Article XVII hereof, provided that approval of raising additional capital or issuing additional Membership Interests will be subject to the approval of the Members pursuant to Article III hereof.

6.9 Compensation And Reimbursement Of Member Representatives And Members Of The JSC. Each Member will pay all salary, and all consulting fees (as applicable), and all expenses, of its Member Representatives and of its members of the JSC, which payments will not, except as the Members may agree with each other in writing, be deemed to be a Capital Contribution to the LLC by the relevant Member.

6.10 No Exclusive Duty To LLC; No Rights To Participation Or Income. Neither the Management Committee nor any Member Representative, nor any LLC officer, will be required to manage the LLC as such individual's sole and exclusive function, and such individual, and either Member, may have other business interests and may engage in other activities in addition to those relating to the LLC, subject to the confidentiality obligations hereof, and not in violation of the obligations of the Members to each other under the LLC Collaboration Agreement and under applicable Collateral Agreements as they may then exist. Neither the LLC, nor the Management Committee, nor any Member Representative, nor any LLC officer, employee or agent of, or consultant to, the LLC, will have any right, by virtue of this Agreement, to share or participate in investments or activities of the LLC or of any Member or to any income or proceeds derived therefrom.

6.11 Amendment Of Certificate of Formation Or Agreement. The Management Committee will have the duty and authority to amend the Certificate of Formation or this Agreement as and to the extent necessary to reflect any and all changes or corrections necessary or appropriate as a result of any action taken in accordance with the terms of this Agreement by the Members or by the Management Committee.

6.12 Member Assistance To the Management Committee And Officers. Each Member will cooperate to a commercially reasonable extent with the Management Committee, and its committees, and the Management Committee's and such committees' authorized representatives, including without limitation the officers of the LLC, during regular business hours of the relevant Member, or such committee thereof, with respect to performance of the Management Committee's or such committees' or such LLC officer's obligations hereunder, subject to the

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confidentiality provisions of Article XVIII hereof, and to such other customary confidentiality agreements as the relevant Member may request.

6.13 Matters Involving The JSC.

(a) Composition Of The JSC.

(i) Number Of Member And Composition Of The JSC. The JSC will consist of six (6) members, three (3) appointed by Exelixis and three (3) appointed by Bayer. Each member of the JSC will be a senior LLC officer or senior representative of the relevant Member or one of its Affiliates, authorized to review and make recommendations to the Chief Executive LLC officer and to the Management Committee with respect to matters within the scope of the JSC's authority. The initial members of the JSC each will be selected and notified by each Member to the Management Committee, within thirty (30) days after the Commencement Date, as the initial JSC.

(ii) Appointment, Removal And Replacement Of Members Of The JSC. Each Member will appoint, may remove (with or without cause), and may replace its members of the JSC during the existence of the JSC, at such Member's sole discretion, and any such appointments, removals and replacements will be notified in writing by the appointing, or removing or replacing, Member, to the other members of the JSC and to the Management Committee. No Member will have any authority to appoint, remove or replace JSC members for the other Member. If a member of the JSC for any reason no longer is serving as any of an employee, LLC officer or Director or correlative position (as applicable) of, nor as a consultant to, the relevant Member or at least one of its Affiliates (the LLC not being deemed to be an Affiliate of either Member for this purpose), the relevant Member will promptly notify the other members of the JSC and the Management Committee in writing, and such individual will be deemed to have resigned as a member of the JSC as of the date of such complete cessation, and the relevant Member will as soon thereafter as possible appoint a new JSC member to replace such departing individual.

(iii) Alternates; Service Term. An alternate member of the JSC, designated by a Member in writing to the other members of the JSC and the Management Committee, may serve temporarily in the absence of a permanent member of the JSC previously designated by such Member. Individuals serving on the JSC will hold such position until the earliest of the date of their resignation or removal from the JSC, or their death. Any member of the JSC may resign at any time by giving written notice thereof to the Management Committee and to the remaining members of the JSC.

(b) Function Of The JSC; Meetings. The JSC will have solely an advisory role to the Chief Executive Officer of the LLC and to the Management Committee, and will provide such guidance as to scientific and technical matters involving the business of the LLC, including without limitation the Research Plan as defined under the LLC Collaboration Agreement, as the Chief Executive Officer of the LLC and/or the Management Committee may in good faith request orally or in writing, in reasonable detail, and upon reasonable notice. Neither the JSC nor any member thereof, acting as a member of the JSC, will have any authority

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on behalf of the LLC or either Member to execute any document or instrument, or take any other action, that would bind the LLC or either Member. The JSC will report to the Chief Executive Officer of the LLC and to the Management Committee, but will have no duty to report to, or to provide guidance or information to, either Member. The JSC will meet at such times and places, in person and/or by conference telephone call, as the members of the JSC agree, provided that the JSC will meet at least once during each calendar quarter during the Research Term, as defined in and as determined under the LLC Collaboration Agreement.

(c) Compensation And Reimbursement Of Members Of JSC. Each Member will pay all salary and all consulting fees (as applicable), expenses and benefits, of its members of the JSC.

(d) No Exclusive Duty To LLC; No Rights To Participation Or Income. No member of the JSC will be required to serve in such capacity as such individual's sole and exclusive function, and such individual may have other business interests and may engage in other activities in addition to those relating to the LLC, subject to the confidentiality obligations hereof, and under any separate written customary confidentiality agreements which the Chief Executive Officer of the LLC believes necessary or appropriate for such JSC member to sign. No member of the JSC will have any right, by virtue of this Agreement, to share or participate in investments or activities of the LLC or of any Member or to any income or proceeds derived therefrom.

(e) Changes in Size, Function And Powers; Termination, Of The JSC. Upon mutual written agreement of the Members from time to time during the existence of the JSC, the number of members of the JSC can be increased or decreased, the function and powers of the JSC may be amended, and the JSC may be terminated in its entirety. The JSC will terminate automatically (i) when the Research Term (as defined in the LLC Collaboration Agreement) ends unless the Members agree in writing to extend the existence of the JSC, or (ii) if Exelixis ceases to be a Member or its Membership Interest is purchased by Bayer as provided herein, unless Bayer and Exelixis then otherwise agree in writing.

ARTICLE VII
LLC OFFICERS, EMPLOYEES AND CONSULTANTS

7.1 Election Of Officers; Required Officers; Initial Officers. The officers of the LLC will be elected by the Management Committee and will include a Chief Executive Officer of the LLC and a Chief Financial Officer of the LLC (each of whom will be an individual nominated by Bayer and approved by the Management Committee), and a Secretary of the LLC. The Management Committee may create such other offices and elect such other officers therefor as they deem appropriate. Any number of offices may be held by one person, except that the Chief Executive Officer of the LLC and Chief Financial Officer of the LLC positions must be held by two separate individuals. Each individual who will serve as the initial Chief Executive Officer of the LLC, Chief Financial Officer of the LLC and Secretary of the LLC will be designated and appointed to serve as such no later than the Commencement Date, in writing by the Members to each other and to the Management Committee.

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7.2 Term Of Office; Duties. Each LLC officer will hold office for such term as will be determined from time to time by the Management Committee. The duties of any LLC officers other than the Chief Executive Officer of the LLC, Chief Financial Officer of the LLC and Secretary of the LLC, which are set forth herein, and any lawful duties of such three (3) officers beyond those specified herein, will be established from time to time by the Management Committee, or as to such officers, other than the Chief Executive Officer of the LLC, by the Chief Executive Officer of the LLC acting under specific authority granted by the Management Committee.

7.3 Reporting; Employee And Consultant Invention Assignment And Confidentiality Agreements.

(a) Reporting. The Chief Executive Officer of the LLC will report to the Management Committee. All other officers and employees of the LLC will report to the Chief Executive Officer of the LLC and to the Management Committee.

(b) Employee And Consultant Invention Assignment And Confidentiality Agreements. Each LLC officer and each LLC employee will, upon assuming office or beginning employment (whether full-time or part-time) with the LLC, execute and deliver a customary invention assignment and confidentiality agreement with the LLC, with provisions substantially similar to those contained in Article XVIII hereof, which agreements in each case will name Bayer and Exelixis and their respective Affiliates as intended third party beneficiaries thereof. Each consultant retained by the LLC (including any officer of the LLC who serves in such capacity as a consultant) also will execute and deliver to the LLC such customary consulting agreement as the Chief Executive Officer of the LLC (or the Management Committee, with respect to any service of the Chief Executive Officer of the LLC as a consultant to the LLC) requests, containing provisions substantially similar to those contained in Article XVIII hereof, which agreements in each case will name Bayer and Exelixis and their respective Affiliates as intended third party beneficiaries thereof. The confidentiality provisions of each such agreement between the LLC and any LLC officer, LLC employee or LLC consultant, also will provide that any Confidential Information of Exelixis or of any third-party collaborator with, or potential collaborator with, Exelixis, that is not specific to and intended by Exelixis to be used, lawfully, in the Research (as defined under the LLC Collaboration Agreement) or in the performance by Exelixis of its obligations under the LLC Collaboration Agreement, and that becomes known to such individual in the course of such individual's involvement with the LLC, will be subject to such confidentiality provisions of such agreement with the LLC and further will provide that such Confidential Information will not be disclosed by such individual to either Bayer or the LLC without the express prior written permission of the relevant third party.

7.4 Compensation Of LLC Officers And LLC Employees; Reimbursement. The salaries, bonuses and benefits, if any, and reimbursement of all LLC officers and agents of the LLC employees will be fixed by the Management Committee, or by the Chief Executive Officer of the LLC, if so authorized by the Management Committee, as to officers other than himself or herself, and will be as reflected in the LLC's then-current approved budget. The LLC will pay the salary or consulting fees of, and will furnish itself or through a third party or parties all benefits for, those

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officers of the LLC who are employees of or consultants to the LLC while they are so employed by the LLC, and of all other employees of and consultants to the LLC, who are not in each case otherwise furnished by Bayer or Exelixis. Each of Bayer and/or Exelixis, as the case may be, will pay the salary or consulting fee of, and any bonus amounts determined by the Management Committee to be payable to, and will reimburse the expense of, and will furnish itself or through a third party or parties all relevant benefits for, any employee of or consultant to such Member if and so long as such employee is so employed by, or serving as a consultant to, such Member and also then is serving as an LLC officer or otherwise as an employee of or consultant to the LLC, provided that all such salary or consulting fees, bonus amounts, expenses and benefits so paid by the relevant Member will be not greater than the relevant amounts therefor as reflected in the LLC budget as in effect most recently before such payment is made by the relevant Member.

7.5 Duties Of The Chief Executive Officer of the LLC. Unless the Management Committee determines otherwise, and so communicates in writing to the Chief Executive Officer of the LLC, the Chief Executive Officer of the LLC will be the principal officer of the LLC, and will preside as Chairperson at all meetings of the Members, and will be responsible for the following:

(a) Hiring And Termination Of Employees Of And Consultants To The LLC. The hiring and termination by the LLC of any employees of or consultants to the LLC (which will not include any FTE unless and until such FTE becomes an employee of or consultant to the LLC as provided in this Agreement), and the establishment of salaries and benefits therefor pursuant to an approved LLC budget.

(b) Oversight And Supervision Of LLC Collaboration Agreement, Implementation of Research Plan, And Approval Of Certain Changes In the Research Plan. General oversight and supervision of the LLC Collaboration Agreement, and implementation of the Research Plan (as defined in the LLC Collaboration Agreement), and approval of certain changes to the Research Plan that do not change or extend beyond the Research Field and do not materially adversely impact the budget for or progress of any Research Plan. Each such change when approved by the Chief Executive Officer of the LLC will be promptly communicated by the Chief Executive Officer of the LLC in writing to the JSC and to the Management Committee. Any increases in overall expenditures remaining under such Research Plan must be approved in accordance with Article VI hereof.

(c) Execution And Delivery Of Agreements, Etc. Execution and delivery of documents for, contracting for, negotiating on behalf of and binding, and otherwise representing, the interests of the LLC as authorized by the Management Committee in any job description created by, or any resolution passed by, the Management Committee, except where required or permitted by this Agreement or by law to be otherwise signed and executed by other or additional parties, and except where the signing and execution thereof has been expressly delegated by the Management Committee to some other LLC officer or agent of the LLC.

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(d) Other Specific Matters. Such other matters and actions as are specifically authorized in writing by the Management Committee prior to the taking of such action or as ratified by the Management Committee after the taking of such action.

7.6 Duties Of The Secretary of the LLC. The Secretary of the LLC will attend all meetings of the Members and will record all the proceedings of the meetings of such Members in a book to be kept for that purpose. The Secretary of the LLC will give, or cause to be given, on behalf of the LLC, written notice of all meetings of the Members and of the Management Committee and of committees thereof, and will perform such other duties as may be prescribed by the Management Committee or Chief Executive Officer of the LLC.

7.7 Duties Of The Chief Financial Officer of the LLC. The Chief Financial Officer of the LLC will perform or will supervise such functions with respect to financial and cash management for the LLC as are customary and as may be specified by the Chief Executive Officer of the LLC or the Management Committee to the Chief Financial Officer of the LLC.

7.8 Certain Standards Of Care. In discharging their respective duties, the Management Committee and each LLC officer will be fully protected in relying in good faith upon any such records and upon such information, opinions, reports or statements by any other person, as to matters the Management Committee or LLC officer reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the LLC, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the LLC or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid. Neither a Member, nor any Member Representative, nor any LLC officer, will be liable or obligated to the Members for any act or omission performed or omitted to be performed by such Member or such individual in good faith pursuant to authority granted to such Member or individual by this Agreement or the Act, which causes or results in any loss or damage to the LLC or the Members. Neither the Management Committee nor any LLC officer, in any way guarantee the return of a Member's capital or a profit for either Member from the operations of the LLC.

7.9 Resignation Of Officers; Removal. Any LLC officer may resign at any time by giving written notice thereof to each Member and to the Management Committee. Any LLC officer other than the Chief Executive Officer of the LLC may be removed and replaced, with or without cause, upon the decision of the Chief Executive Officer of the LLC or of at least a majority of the Member Representatives, provided that, so long as Bayer is providing financial management and treasury functions to the LLC under Section 4.5 hereof, the Chief Executive Officer of the LLC, and the Chief Financial Officer of the LLC, may only be removed or replaced by the Management Committee with Bayer's prior written approval.

7.10 Employees And Consultants; Certain Matters Relating To FTE'S.

(a) Employees And Consultants of LLC. The LLC may employ such employees and consultants as the Management Committee or the Chief Executive Officer of the LLC believes are necessary or appropriate in order for the LLC to conduct its business. Any

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employees of or consultants to the LLC will be paid directly by the LLC and furnished such benefits and other terms of employment or consultancy as the LLC, by the Chief Executive Officer of the LLC and Management Committee, believe necessary and appropriate as in the best interests of the LLC and the Members' interests therein.

(b) Certain Matters As To FTE's And Other Personnel. Any FTE's seconded full-time to the LLC by Exelixis (referred to in the LLC Collaboration Agreement as "Dedicated FTE's"), and any FTE's within Exelixis working part-time on behalf of the LLC (referred to in the LLC Collaboration Agreement as "Shared FTE's"), will, during the term of the LLC Collaboration Agreement, be and remain employees of Exelixis, and Exelixis will remain liable for salaries, benefits, including without limitation stock options and other equity awards as determined by Exelixis, and other matters and liabilities with respect thereto, and for termination or alteration of the terms of, their employment by Exelixis, provided that:

(i) Hiring Upon Certain Termination of LLC Collaboration Agreement or Buyout By Bayer of Exelixis' Membership Interest. If the LLC Collaboration Agreement is terminated by Bayer or by Exelixis, or if Bayer buys out the Membership Interest of Exelixis pursuant to the provisions of Article XIII of this Agreement, then the LLC and/or Bayer, as Bayer deems appropriate in its sole discretion, may offer employment or consultancy to, and may hire, any Dedicated FTE directly as an employees of or as a consultant to the LLC and/or Bayer, and

(ii) Hiring Of Non-Solicited Individuals Who Leave Exelixis. Subject to the provisions of Section 7.10(c) hereof, and to any lawful restraints, including those by contract, against such hiring, and to confidentiality obligations of the relevant individual, the LLC or Bayer may, during the term of this Agreement or thereafter, make offers to and hire as an employee or consultant, to work on Bayer or LLC matters, or both, any person who has voluntarily terminated such person's employment or consultancy with Exelixis, or whose employment has been terminated by Exelixis, and

(iii) Exelixis Rights To Hire. Subject to the provisions of Section 7.10(c) hereof, and to any lawful restraints, including those by contract, against such hiring, and to confidentiality obligations of the relevant individual, Exelixis may, during the term of this Agreement or thereafter, make offers to and hire as an employee or consultant, to work on Exelixis or LLC matters or both, any person who has voluntarily terminated such person's employment or consultancy with the LLC or Bayer or whose employment has been terminated by the LLC or Bayer.

(iv) Certain Information About FTE's; Bayer Right To Request Replacement of FTE's.

(A) Certain Information About FTE's. During the term of the LLC Collaboration Agreement, Exelixis will provide the LLC and Bayer in writing: (1) within fifteen (15) days after the end of each calendar quarter, (a) the names of the then-current FTE's as at the end of such quarter, broken out by Dedicated FTE's and Shared FTE's, and (b) a detailed statement of account that shows the time spent by the Shared FTE's and LLC project on

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which such time was spent during such preceding quarter, and (2) within five (5) days after cessation, for any reason, by any individual of such individual's service to the LLC as an a Dedicated FTE, notice of such cessation and a general description of the reason therefor. Exelixis will consult with the LLC and Bayer prior to Exelixis terminating an a Dedicated FTE as an employee of or consultant to Exelixis, as to reassigning an a Dedicated FTE to tasks other than under the LLC Collaboration Agreement, and as to hiring a replacement for a Dedicated FTE.

(B) Bayer Right To Request Replacement of FTE's. Bayer may,

a reasonable number of times during the term of the LLC Collaboration Agreement, request in writing to Exelixis that Exelixis replace a Dedicated FTE, or a Shared FTE (but not request that Exelixis terminate the employment by Exelixis of any Dedicated FTE or Shared FTE), if in the good faith judgment of Bayer, as so stated in such request, the continued involvement of such Dedicated FTE or Shared FTE the LLC or with work under the LLC Collaboration Agreement, is or would be detrimental to the best interests of the LLC or of Bayer. Upon such request, Exelixis will promptly take such corrective measures as Exelixis deems appropriate in its good faith judgment. If, after such corrective measures have been completed, Bayer still desires replacement of such individual, Bayer may repeat its request. Upon such repeated request, Exelixis will promptly replace such individual as an FTE with another person as a Dedicated FTE or Shared FTE, as the case may be, provided that Exelixis will determine, after consultation with Bayer and giving due regard to the business of the LLC, who the replacement will be. Exelixis will promptly hire a qualified new employee or retain a qualified new consultant to fulfill such replacement obligation if Exelixis cannot supply a suitable replacement from Exelixis' then-existing employees or consultants.

(v) Certain Information About Technical Personnel FTE's.

Exelixis will provide the LLC and Bayer in writing, within fifteen (15) days after the close of each calendar quarter during the term hereof, with the total number of FTE's serving as employees of or as consultants to Exelixis during such preceding quarter, who have technical qualifications at least to the level of a Shared FTE ("Technical Personnel FTE's"), but excluding all Dedicated FTE's and excluding the portion, out of total time spent by Shared FTE's during such quarter, that was spent on LLC matters during such quarter by Shared FTE's then working with the LLC.

(c) Nonsolicitation. During the term hereof and for a period of [*] thereafter, neither the LLC, nor any of its officers, nor either of the Members, nor any Member Representative or member of the JSC appointed by such Member, will solicit any employee of or consultant to either of the other parties hereto to terminate such employee's or consultant's relationship with such other party.

ARTICLE VIII
ACCOUNTING AND RECORDS

8.1 Financial And Tax Reporting. The LLC will prepare its financial statements in accordance with United States generally accepted accounting principles as from time to time in effect and will prepare its income tax information returns using such methods of accounting and

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tax year as the Tax Matters Member deems necessary or appropriate under the Code and Treasury Regulations.

8.2 Supervision; Inspection Of Books And Records. Proper and complete books of account and records of the business of the LLC (including those books and records identified in Section 18-305 of the Act) will be kept under the supervision of the Management Committee at the LLC's principal office and at such other place as designated by the Management Committee. The Management Committee will give written notice to each Member of any change in the location of the books and records. The books and records of the LLC will be open to inspection, audit and copying by any Member or its authorized representative, upon reasonable or prior written notice at any time during business hours for any purpose reasonably related to such Member's interest in the LLC. Any information so obtained or copied will be Confidential Information. Any such inspection and copying will be at the expense of the inspecting Member.

8.3 Reliance On Records And Books Of Account. Any Member or Member Representative or LLC officer, to the extent such LLC officer was acting in good faith in preparation thereof, will be fully protected in relying in good faith upon the records and books of account of the LLC and upon such information, opinions, reports or statements presented to the LLC by its Tax Matters Member, any of its Members, officers, employees or committees, or by any other person, as to matters the Tax Matters Member or other Member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the LLC, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the LLC or any other facts pertinent to the existence and amount of assets from which distributions to either or both Members from the LLC might properly be paid.

8.4 Tax Matters Member. Bayer will serve as the Tax Matters Member, which will be the "tax matters partner" within the meaning of Code Section 6231. The Tax Matters Member (or the other Member if it receives such notification) will provide notice to the other Member, as provided in Code Section 6223(g), of any administrative or judicial proceeding for the adjustment of LLC items and will keep the other Member reasonably and timely informed as to all material facts and developments about tax matters involving the LLC. The Tax Matters Member will ensure that the other Member is a notice partner as provided in Code Section 6223(b). The Tax Matters Member may hire tax counsel and accountants, at the expense of the LLC, in connection with any representation of the LLC.

8.5 Tax Returns.

(a) Filing. The Tax Matters Member will, as soon as practicable, but in no event later than seventy-five (75) days after the end of each Fiscal Year, cause the LLC to file a federal income tax information return and to transmit to each Member a schedule showing such Member's distributive share of the LLC's income, deductions and credits, and all other information necessary for such Members to timely file their federal income tax returns. The Tax Matters Member similarly will cause the LLC to file, and to provide information to such Members regarding, all appropriate state and local income tax returns.

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(b) Drafts And Certain Disputes. The Tax Matters Member will prepare or cause to be prepared, and will submit to the Members and to the Chief Executive Officer of the LLC, drafts of all LLC tax returns as soon as reasonably practical, and in any event no later than forty-five (45) days, in advance of the filing due date thereof to permit review by the Members and the LLC prior to filing. If either of the Members or the LLC disagrees with the proposed treatment of an item on the return prepared by or for the Tax Matters Member, the dispute will be resolved as provided in Section 17.3 hereof. If the dispute has not been resolved by the due date of the particular return, the Tax Matters Member will timely file the particular return and the content of the return as filed will be determined by the Tax Matters Member in its sole discretion. Upon resolution of the relevant dispute between the Members and the LLC, if such resolution provides for the reporting of any item which is inconsistent with the manner in which such item was reported on the return as filed by the Tax Matters Member, the Tax Matters Member will prepare and file an amended return using the agreed basis of reporting. The Tax Matters Member may file such requests for extensions of time to file any returns as it deems appropriate.

(c) Cooperation. Each Member and the LLC will maintain and provide to the Tax Matters Member all information necessary for the preparation and support of all LLC tax returns. Such information will be provided to the Tax Matters Member within a reasonable time after it is requested by the Tax Matters Partner, and in a commercially reasonable manner, by each Member and the LLC at their respective expense.

8.6 Annual Reports. The LLC will deliver to each Person (or such Person's legal representative) who was a Member during any part of the Fiscal Year in question, within ninety (90) days after the end of each Fiscal Year of the LLC: (a) a balance sheet for the LLC as of the close of the Fiscal Year and a profit and loss statement for the Fiscal Year then ended, all in reasonable detail, and (b) a report setting forth the Capital Accounts of each Member and a description of the manner of their calculation. The annual financial statements of the LLC will be audited and reported on as of the end of each Fiscal Year by a firm of independent certified public accountants selected by the Management Committee. The Chief Executive Officer of the LLC will be responsible for preparing or having prepared such reports, at the expense of the LLC, as may be reasonably requested by either Member.

8.7 Other Financial And Accounting Reports. In addition to the annual report described in Section 8.6 hereof, the LLC will prepare or cause to be prepared and delivered to the Members such other financial and accounting reports, within [*] after the end of each calendar quarter during the existence of the LLC, as the Management Committee deems appropriate or necessary, or as either Member requests in good faith in writing to the Management Committee, with a copy to the other Members.

8.8 Confidentiality. All information received pursuant to this Section 8 will be Confidential Information, subject to the exceptions therefor set forth in Section 1.20 hereof.

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ARTICLE IX
ALLOCATIONS

9.1 Allocation Of Net Income And Net Loss. For each Accounting Period:

(a) Deductions. All deductions of the LLC will be allocated to Bayer until the earlier of the time at which (x) Bayer has been allocated deductions and Net Loss equal to Bayer's cumulative Capital Contributions through the date of allocation or (y) taking into account planned distributions following the relevant year-end, the balances in Bayer's Capital Account and Exelixis' Capital Account are in proportion to their Percentage Interests.

(b) Allocations Of Net Income And Net Loss. Following the allocations provided in Section 9.1(a) hereof, Net Income and Net Loss will be allocated between Bayer and Exelixis in proportion to their Percentage Interests, except that the Members will first be allocated gross income until cumulative allocations of gross income equal cumulative periodic distributions made or planned to be made to them following the relevant year-end pursuant to Section 10(b)(i) hereof.

(c) Certain Allocations. It is agreed between the Members that Bayer is funding, to the extent of Bayer's Capital Contributions under Section 4.2 hereof and to the extent of its milestone payments under the LLC Collaboration Agreement, all expenditures for research and experimentation of the LLC, whether directly or as paid by the LLC to Exelixis under the LLC Collaboration Agreement, and that Bayer will be allocated all deductions for expenditures under Code Section 174 (and all associated credits under Section 41 of the Code) to the extent of the deductions funded through such Capital Contributions and milestone payments. All other expenditures under Code Section 174 (and associated credits) will be allocated in proportion to Percentage Interests of the Members.

9.2 Other Allocations; Qualified Income Offset; Minimum Gain Chargeback. Notwithstanding the provisions of Section 9.1 hereof, the following special allocations will be made in the order set forth herein. Terms appearing in quotation marks in this Section 9.2 have the meanings set forth in Treasury Regulations Section 1.704-2, and this Section 9.2 is intended to comply with such Treasury Regulations.

(a) Nonrecourse Deductions. All "nonrecourse deductions" will be allocated in proportion to the Member Percentage Interests from time to time.

(b) Partner Nonrecourse Deductions. All "partner nonrecourse deductions" will be specially allocated to those Members who bear the economic risk of loss with respect to the "partner nonrecourse debt" to which such "partner nonrecourse deductions" are attributable.

(c) Partnership Minimum Gain. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in "partnership minimum gain" during any Fiscal Year, each Member will be specially allocated items of LLC net income and net loss for such Fiscal Year (and, if necessary, future Fiscal Years) in an amount equal to such Member's share of the net decrease. This Section 9.2(c) is intended to comply with the

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"minimum gain chargeback" requirement in Treasury Regulations Section 1.704-2 and will be interpreted accordingly.

(d) Partner Nonrecourse Debt Minimum Gain. Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), if there is a net decrease in "partner nonrecourse debt minimum gain" attributable to a "partner nonrecourse debt" during any Fiscal Year, each Member who has a share of such "partner nonrecourse debt minimum gain" will be specially allocated items of income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that share. This Section 9.2(d) is intended to comply with the "minimum gain chargeback" requirements of Treasury Regulations Section 1.704-2 and will be interpreted accordingly.

(e) Certain Reallocations. If a Member's Adjusted Capital Account has an Unadjusted Excess Negative Balance at the end of any Fiscal Year, such Member will be reallocated items of income and gain for such Fiscal Year (and, if necessary, future Fiscal Years) in the amount necessary to eliminate such Unadjusted Excess Negative Balance as quickly as possible.

(f) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4) through (d)(6), items of LLC income and gain will be specially allocated to such Member any Excess Negative Balance in such Member's Capital Account created thereby as quickly as possible. This Section 9.2(f) is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and will be interpreted accordingly.

(g) Certain Limitations. A Member will not be allocated any item of LLC loss or deduction to the extent such allocation would cause such Member's Adjusted Capital Account to have an Excess Negative Balance.

(h) Certain Powers Of Tax Matters Partner. The allocations set forth in the preceding provisions of this Section 9.2 (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations will be offset with other Regulatory Allocations or with special allocations of other items of income, gain, loss or deduction pursuant to this Section 9.2(h). Therefore, notwithstanding any other provision of this Agreement (other than the provisions governing the Regulatory Allocations) the Tax Matters Member will make such offsetting special allocations of LLC income, gain, loss or deduction in whatever manner it determines appropriate, to the end that each Member's Adjusted Capital Account balance should equal the balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all LLC items were allocated pursuant to Section 9.1 hereof. In exercising its discretion under this Section 9.2(h), the Tax Matters Member will take into account future Regulatory Allocations under Sections 9.2(c) and (d) hereof that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.2(a) and (b) hereof.

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9.3 Special Tax Provisions.

(a) Membership Status. The Members intend that the LLC will be treated as a partnership for all federal income tax purposes and each Member agrees that it will not, on any federal, state, local or other tax return, take a position inconsistent with such intent.

(b) Tax Allocations. Except as otherwise provided in this Article VIII or required by the Code and Treasury Regulations, items of income, gain, loss or deduction recognized for income tax purposes will be allocated in the same manner that the corresponding items entering into the calculation of Net Income and Net Loss are allocated pursuant to this Agreement.

(c) Section 704(c) Adjustments. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, items of income, gain, loss and deduction with respect to an asset, if any, contributed to the capital of the LLC will, solely for tax purposes, be allocated between the Members so as to take account of any variation between the adjusted basis of such property to the LLC for federal income tax purposes and its fair market value upon contribution to the LLC, in the manner determined by the Tax Matters Member. If the Carrying Value of any asset is adjusted pursuant to the terms of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to such asset will take account of any variation between the adjusted basis of such asset to the LLC for federal income tax purposes and its Carrying Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder, in the manner determined by the Tax Matters Member.

(d) Section 754 Election. An election under Code Section 754 election may be made for the LLC at the written request of either Member, a copy of which the requesting Member will deliver to the Management Committee. In the event of an adjustment to the adjusted tax basis of any LLC asset under Code Section 734(b) or Code Section 743(b) pursuant to a Section 754 election, subsequent allocations of tax items will reflect such adjustment consistent with the Treasury Regulations promulgated under Code Sections 704, 734 and 743.

(e) Allocations Upon Transfers Of LLC Interests. If during an Accounting Period, a Member assigns or transfers its Membership Interest to another Person properly in accordance with the provisions of Section 3.4 hereof, items of Net Income and Net Loss, together with corresponding tax items, that otherwise would have been allocated to the transferring or assigning member with regard to such Accounting Period will be allocated between the transferring or assigning member and the transferee in accordance with their respective Membership Interest during the Accounting Period using any method permitted by Code Section 706 and selected by the Tax Matters Member.

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ARTICLE X
DISTRIBUTIONS; WITHHOLDING TAXES

10.1 Distributions To Members.

(a) General. Except as otherwise provided in this Article X, Members will share ratably all nonliquidating distributions from the LLC in proportion to their Percentage Interests

(b) Management Of LLC On Budget; Specific Required Distributions. The Management Committee will operate the LLC on a budget that will permit distribution in full of all premium fees the LLC receives from the Members and of the milestone payments received by the LLC from Bayer. Subject to the provisions set forth in Sections 10.1(b)(i) and 10.2 hereof, cash of the LLC will be distributed in the manner and order set forth below, within [*] after the end of the preceding fiscal year of the LLC, or promptly after the delivery to the LLC by its independent accounts of audited LLC financial statements for such immediately preceding year if such audited statements are delivered to the LLC by such accountants after such sixty day period has expired:

(i) Distributions To Members Of Premium Fee Income And Milestone Payment Income Of The LLC; Reserve. Nonliquidating distributions will first be made in cash promptly, and in any event within thirty (30) days, after the close of each calendar quarter during the term of the LLC: (A) to the Members, in accordance with their Percentage Interests, of all income of the LLC from premium fees received by the LLC during such preceding quarter from either Member under the LLC Collaboration Agreement or under any Collateral Agreements as they may then exist, provided that, if Exelixis does not, at the time of such distribution, hold exactly forty percent (40%) of the total Percentage Interests of the LLC then outstanding, Exelixis nevertheless will have distributed to it under this Section 10.1(b)(i), provided it still is a Member at the time of such distribution, an amount of such premium fee income of the LLC equal to that which would have been distributed to Exelixis had it held, at the time of such distribution, forty percent (40%) of the total Percentage Interests of the LLC then outstanding, and then (B) to Exelixis only, provided it still is a Member at the time of such distribution, all income received by the LLC during such preceding quarter as milestone payments from Bayer under the LLC Collaboration Agreement. The LLC will, after making such distribution of premium fee payments from the Members and of milestone payments from Bayer, make an adequate reserve for the anticipated payment by the LLC of the full FTE Amounts, and of other budgeted, and other then-anticipated but not budgeted, operating expenses and payments expected by the Management Committee to be required to be made by the LLC during the then-prospective [*] period (the "Reserve").

(ii) Certain Distributions To Bayer For Patent And Insurance Expenses. Commencing as to, and after the close of, the first fiscal year of the LLC (or as to fiscal year 2000, ending on December 31, 2000, if the LLC is created prior to January 1, 2000), to the extent that after making the distributions required to be made under Section 10.1(b)(i) hereof to the Members during the immediately preceding fiscal year, and if there is then still cash of the LLC available for distribution to the Members after making the Reserve required to

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be made under Section 10.1(b)(i) hereof, there will next be distributed to Bayer in cash, to the extent not then already distributed by the LLC to Bayer, an amount equal to all LLC Operating Expense Amounts actually paid by Bayer to or on behalf of the LLC during such immediately preceding fiscal year, as an additional Capital Contribution by Bayer, for expenditure by the LLC for patent prosecution, insurance and related matters for the LLC, provided that no distribution will be made to Bayer under this Section 10(b)(ii) with respect to such fiscal year unless the total amount of Capital Contribution to the LLC by Bayer during such fiscal year equaled or exceeded $10,000,000.00 (or such then-current amount as may be provided in any amendment hereto). The distribution to Bayer provided for under this Section 10(b)(ii) will be made within [*] after the end of each fiscal year of the LLC (commencing after the close of the relevant first fiscal year of the LLC as provided above in this Section 10(b)(i)), or promptly after the delivery to the LLC by its independent accounts of audited LLC financial statements for such fiscal year if such audited statements are delivered to the LLC by such accountants after such [*] period has expired.

(iii) Distributions To Members For Taxes. At the same time as the distribution to Bayer, if any, is made pursuant to Section 10.1(b)(ii) hereof, then to the extent that there is then still cash of the LLC available for distribution to the Members, after making the distributions described in Sections 10.1(b)(i) and (ii) hereof, and after making the Reserve required to be made under Section 10.1(b)(i) hereof, there will next be distributed to the Members in cash, if requested in writing by either Member, an amount, to each Member in proportion to its Percentage Interest, as is necessary, as determined by the Management Committee in good faith after consultation with each Member, to pay taxes owed by such Member on income (but not sales, VAT or ad valorem taxes) required to be paid by the Members solely by reason of being a Member of the LLC, to the extent that the amount of taxes owed by either Member is greater than the amount of cash already distributed to such Member by the LLC with respect to the period for which such tax is due.

(iv) Certain Distributions To Member(s) For Salary, Expenses, Bonuses And Benefits Of LLC Officers And LLC Employees. At the same time as the distributions, if any, are made to the Members pursuant to Sections 10.1(b)(ii) and (iii) hereof, then to the extent that there is still cash of the LLC available for distribution to the Members, after making such distributions, and after making the Reserve required to be made under Section 10.1(b)(i) hereof, then there will next be distributed in cash to Bayer (and to Exelixis on an equal ranking basis with Bayer, prorated between Bayer and Exelixis as to the respective amounts of salary or consulting fee amounts and expenses paid and reimbursed, and benefits paid, if during the fiscal year immediately preceding such distribution any employee of or consultant to Exelixis was serving as an LLC officer), provided that no distribution will be made to Bayer under this Section 10(b)(iii) with respect to any year unless the total amount of Capital Contribution to the LLC by Bayer during such fiscal year equaled or exceeded ten million dollars ($10,000,000.00) (or such then-current amount as may be provided in any amendment hereto):

(A) LLC Employee Salary And Consulting Fees And Related Amounts Paid By Bayer. All amounts of salary or consulting fee, as applicable, bonuses paid from the LLC (if any, and in each case as determined by the Management Committee pursuant to the then-current LLC budget), expenses and benefits, as applicable, actually paid by Bayer

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directly to those of its employees and consultants serving as officers or employees of or as consultants to the LLC, or paid by Bayer to the LLC during the immediately preceding year as an additional Capital Contribution, as part of the LLC Operating Expense Amounts for expenditure by the LLC for such payments of salary or consulting fee and benefits to such employees and consultants, prorated according to the amount of time, out of total work time, such individual spent during such year in service as LLC officer or employee of or consultant to the LLC, and

(B) LLC Employee Salary And Consulting Fees And Related Amounts Paid By Exelixis. As to Exelixis as relevant, the amounts actually paid by Exelixis during the immediately preceding year directly to such of its employees and consultants serving as officers of or employees of or consultants to the LLCLLC officer(s), of salary or consulting fee, as applicable, bonuses paid from the LLC (if any, and in each case as determined by the Management Committee pursuant to the then-current LLC budget), expenses, and benefits for such individual, prorated according to the amount of time, out of total work time, such individual spent during such year in service as LLC officer or employee of or consultant to the LLC.

(v) Distributions To Both Members. At the same time as the distributions, if any, are made to the Members pursuant to Sections 10.1(b)(ii)-(iv) hereof, then to the extent that there is still cash of the LLC available for distribution to the Members, after making such distributions, and after making the Reserve required to be made under Section 10.1(b)(i) hereof, then such cash will be distributed to the Members in accordance with their Percentage Interests.

10.2 Restriction On Distributions And Withdrawals.

(a) Limitations. The LLC will not make any distribution, other than of premium payment and milestone payment amounts as provided under Section 10.1(b)(i) hereof, unless immediately after giving effect to the distribution, all liabilities of the LLC, other than liabilities to Members on account of their interest in the LLC and liabilities as to which recourse of creditors is limited to specified property of the LLC, do not exceed the fair value of the LLC's assets; provided that (i) the fair value of any property that is subject to a liability as to which recourse of creditors is so limited will be included in the LLC assets only to the extent that the fair value of the property exceeds such liability, and (ii) if after making the distribution of premium payment and milestone payment amounts as provided under Section 10.1(b)(i) hereof, the amount of cash remaining in the LLC does not equal or exceed the required Reserve as determined by the Management Committee under Section 10.1(b)(i) hereof, then upon the written request of the Management Committee, Bayer will promptly make an additional Capital Contribution to the LLC in cash of an amount, as an LLC Operating Expense, that is so requested by the Management Committee, which amount will not be greater than the difference between the amount of cash then in the LLC and the amount of the Reserve.

(b) Liability For Certain Distributions. Except as otherwise required by law, no Member will be liable to the LLC for the amount of a distribution received provided that, at the time of the distribution, such Member did not know that the distribution was in violation of Section 10.2(a) hereof. A Member who receives a distribution in violation of Section 10.2(a)

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hereof, and who knows at the time of the distribution that the distribution violated such condition, will be liable to the LLC for the amount of such distribution.

10.3 Withholding Taxes. The LLC will at all times be entitled to make payments with respect to any Member in amounts required to discharge any obligation of the LLC to withhold or make payments to any governmental authority with respect to any federal, state, local or other jurisdictional tax liability of such Member arising as a result of such Member's Membership Interest in the LLC. To the extent each such payment satisfies an obligation of the LLC to withhold with respect to any distribution to a Member on which the LLC did not withhold or with respect to any Member's allocable share of the income of the LLC, each such payment will be deemed to be a loan by the LLC to such Member (which loan will be deemed to be immediately due and payable) and will not be deemed a distribution to such Member. The amount of such payments made with respect to such Member, plus interest, on each such amount from the date of each such payment until such amount is repaid to the LLC at an interest rate per annum equal to the reference rate, from time to time in effect, of CitiBank N.A., San Francisco, California, will be repaid to the LLC by (a) deduction from any cash distributions made to such Member pursuant to this Agreement; (b) deduction from any non-cash distributions made to such Member or (c) earlier payment by such Member to the LLC, in each case as determined by the Management Committee in its sole discretion. The Management Committee may, in its sole discretion, defer making distributions to any Member owing amounts to the LLC pursuant to this Section 10.3 until such amounts are paid to the LLC and the LLC may in addition exercise against such Member any other rights of a creditor with respect to such amounts due.

ARTICLE XI
INDEMNIFICATION AND LIMITATION OF LIABILITY

11.1 Indemnification.

(a) Indemnification By LLC Of Certain Indemnitees. To the fullest extent permitted by the Act and by law, the LLC, in accordance with this Section 11.1, will indemnify and hold harmless the Management Committee, the Member Representatives, each LLC officer, employee, consultant or agent of the LLC, and each Member and its Affiliates, and the partners, members, stockholders, as relevant, of each Member and its Affiliates, and the controlling persons, officers, Directors or equivalents, and employees and agents of each Member or Affiliate, as applicable, (collectively, the "Indemnitees"), any and all Damages arising from any and all claims, demands, actions, suits or proceedings (civil, criminal, administrative or investigative) in which the Indemnitee may be involved, as a party or otherwise, by reason of the Indemnitee's management of, or involvement in, the affairs of the LLC, or rendering of advice or consultation with respect thereto, or which otherwise relate to the LLC, its properties, business or affairs, if such Indemnitee acted in good faith and in a manner such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the LLC, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of such Indemnitee was unlawful. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, will not, of itself, create a presumption that such Indemnitee did not act in good faith and in a manner which such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the LLC or that such Indemnitee had

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reasonable cause to believe that such Indemnitee's conduct was unlawful (unless there has been a final adjudication in the proceeding that such Indemnitee did not act in good faith and in a manner which such Indemnitee reasonably believed to be in or not opposed to the best interests of the LLC; or that such Indemnitee did have reasonable cause to believe that such Indemnitee's conduct was unlawful).

(b) Certain Other Indemnification By LLC. The LLC may also indemnify and hold harmless, as an Indemnitee hereunder, any individual who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the LLC to procure a judgment in its favor by reason of the fact that such individual is or was a Member Representative, or an LLC officer, employee, consultant or agent of the LLC, against expenses actually or reasonably incurred by such individual in connection with the defense or settlement of such action, if such individual acted in good faith and in a manner such individual reasonably believed to be in, or not opposed to, the best interests of the LLC, except that indemnification will be made in respect of any claim, issue or matter as to which such individual will have been adjudged to be liable for misconduct in the performance of the Individual's duty to the LLC only to the extent that the court in which such action or suit was brought, or another court of appropriate jurisdiction, determines upon application that, despite the adjudication of liability, but in view of all circumstance of the case, such individual is fairly and reasonably entitled to indemnity for such expenses which such court will deem proper. To the extent that such individual has been successful on the merits or otherwise in defense of any proceedings referred to herein, or in defense of any claim, issue or matter therein, such individual will be indemnified by the LLC against expenses actually and reasonably incurred by such individual in connection therewith. Notwithstanding the foregoing, no individual will be entitled to indemnification hereunder for any conduct arising from the gross negligence or willful misconduct of such individual or reckless disregard in the performance by such individual of such individual's duties under this Agreement.

(c) Payment Or Advancement Of Certain Expenses. Expenses (including reasonable fees and costs of attorneys) incurred in defending any proceeding under Sections 11.1(a) or (b) hereof may be paid by the LLC in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the Indemnitee or Person to repay such amount if it will ultimately be determined that the Indemnitee or Person is not entitled to be indemnified by the LLC as authorized hereunder.

(d) No Exclusivity. The indemnification provided by this Section 11.1 will not be deemed to be exclusive of any other rights to which any Person may be entitled under any agreement, or as a matter of law, or otherwise, both as to action in a Person's official capacity and to action in any other capacity.

(e) Certain Insurance. Subject to the provisions of Section 2.10 hereof, the Management Committee will have power to purchase and maintain insurance on behalf of the LLC and at the expense of the LLC, against any liability asserted against or incurred by any Person entitled under this Section 11.1 to be indemnified in any such capacity whether or not the LLC would have the power to indemnify such Person against such liability under the provisions of this Agreement.

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11.2 Liability For Finder's Or Broker's Fees. Each Member will be responsible for paying any finder's or broker's fee and any other Damages owed any third party that such Member incurs or which is claimed by such third party against the other Member and/or LLC, based directly or indirectly on the negotiation of, or the entry by the parties hereto into, this Agreement, and will indemnify the LLC and the other Member, and the other Indemnitees, against any obligation to pay any such fee.

11.3 Liability In Event Of Default. The Affected Member will be liable to the LLC and to the Non-Affected Member, and to such other Indemnitees as are relevant, for any and all Damages suffered or incurred by the LLC or the Non-Affected Member or such other Indemnitee(s) as a result of such Event of Default.

11.4 Limitation Of Liability. Each Member's liability under this Article XI will be limited as set forth in the Act and other applicable law. Notwithstanding anything to the contrary herein contained (a) the debts, obligations and liabilities of the LLC will be solely the debts, obligations and liabilities of the LLC; and no Member or Member Representative or LLC officer or any other Indemnitee will be obligated personally for any such debt, obligation or liability of the LLC solely by reason of such Person, or such Person's related Indemnitee, being a Member or Member Representative or LLC officer, and the LLC will hold such Person, or such Person's related Indemnitee, harmless from any such debt, obligation or liability, and (b) as to any Member who has made a Capital Contribution to the LLC, such Member will not be liable, absent fraud, for any debts or losses of the LLC beyond the total amount of such Member's Capital Contribution.

ARTICLE XII
TERMINATION

12.1 Termination.

(a) Certain Events Not Leading To Termination. Except as provided under Section 14.3 of the LLC Collaboration Agreement, the LLC will not terminate solely due to any termination or expiration of the LLC Collaboration Agreement or of any Collateral Agreements unless both Members otherwise agree in writing.

(b) Termination By Mutual Agreement Or Ordered Dissolution Of LLC. The LLC will be terminated and dissolved, its assets disposed of and its affairs wound up upon the first to occur of the following:

(i) Affirmative Vote Of Members. The affirmative vote in writing of both Members to terminate and dissolve the LLC; or

(ii) Dissolution Of LLC By Court Order Or Authority. Any dissolution of the LLC ordered by a final binding judgment or order by a court of competent jurisdiction or by a regulatory authority, when such judgment or order is not voluntarily initiated by either Member (other than a voluntary initiation by such Member acting upon the advice of its outside legal counsel that the continuation of the LLC, or of such Member as a member of the LLC, would be unlawful), if there is no Buyout as provided in Section 13.5 hereof.

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(c) Termination of LLC By Notice From Non-Affected Member For Dissolution Event, Changed Circumstance, And/Or Event Of Default Affecting Other Member.

(i) Notice by the Affected Member of Certain Events. If any of the following events occurs as to a Member, the Affected Member will give written notice thereof to the Non-Affected Member, with a copy to the Management Committee, as promptly as possible after the coming into being of such event, specifying therein in reasonable detail the nature of such event and the date of its commencement; the Affected Member also will give written notice to the Non-Affected Member, with a copy to the Management Committee, as promptly as possible after the cure or cessation of such event, specifying the date upon which such cure or cessation occurred, the provisions of Section 13.2 hereof being applicable in the event of a notice by the Non-Affected Member as to a sale of assets of change of control Changed Circumstance:

(A) Dissolution Event. The occurrence of a Dissolution Event as to the Affected Member; or

(B) Event of Default. The existence of any uncured Event of Default by the Affected Member; or

(C) Changed Circumstance. The existence of a Changed Circumstance for such Affected Member.

(ii) Termination. Unless the Non-Affected Member has elected, pursuant to the provisions of Section 13.2(b) hereof to exercise its Buyout right, The the LLC will be terminated and dissolved if after receiving notice of an event under Section 12.1(c)(i) hereof from the Affected Member, the Non-Affected Member gives written notice of its election, based upon the occurrence or existence of such event, to terminate and dissolve the LLC (the Non-Affected Member's "Termination Notice"). Such Termination Notice (A) must be given no later than [*] after the date the Non-Affected Member receives the initial written notice from the Affected Member (or its trustee or relevant similar party) as to the occurrence of the relevant event if it is a Dissolution Event or an Event of Default or a Changed Circumstance other than a sale of assets or change of control Changed Circumstance (for which reference is made to Section 13.2 hereof), or, as applicable, (2) within the time period specified in Section 13.2(b) hereof if it is a sale of assets of change of control Changed Circumstance), and (or within such shorter period as set forth in Section 13.2(a)(2) hereof), (B) must be given to the Affected Member (and/or such Affected Member's trustee or similar third party in the event of Dissolution or Bankruptcy of the Affected Member), with a copy to the Management Committee, and (C) if such event is a Continuing Force Majeure Event, such notice must so state and must contain the other statements required under Section 1.20 hereof, and the [*] period provided in clause (A) of this Section 12.1(c)(ii) will commence after expiration of the [*] period set forth in Section 1.19 hereof, and. (D)Such Termination Notice must have been given by the Non-Affected Member to the Affected Member and the Management Committee before the Affected Member has delivered any written notice to the Non-Affected Member and the Management Committee that the relevant event has ceased to exist or has been fully cured.

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(d) Nature Of Rights Of Non-Affected Member. The right of the

Non-Affected Member under this Section 12.1 to give notice of its election to terminate and dissolve the LLC is independent of such Non-Affected Member's right to, in lieu of such election, exercise its Buyout rights under Article XIII hereof with respect to the Membership Interest of the Affected Member.

12.2 Authority To Wind Up. The Management Committee will have all

necessary power and authority required to marshal the assets of the LLC, to pay its creditors, to distribute assets and otherwise wind up the business and affairs of the LLC, including without limitation the authority to continue to conduct the business and affairs of the LLC insofar as such continued operation remains consistent, in the judgment of the Management Committee, with the orderly winding up of the LLC.

12.3 Winding Up And Certificate Of Cancellation. The winding up of the LLC

will be completed when all debts, liabilities and obligations of the LLC have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the LLC have been distributed to such Members. Upon the completion of winding up of the LLC, a Certificate of Cancellation will be filed by the Chief Executive Officer of the LLC with the Secretary of State of Delaware.

12.4 Refund Of Certain Amounts To Bayer; Distribution Of Assets.

(a) Refund Of Certain Amounts To Bayer. Upon dissolution and winding

up of the LLC, after all debts, liabilities and obligations of the LLC have been paid and discharged or reasonably adequate provision therefor has been made, any amounts of unexpended funds received by the LLC from Bayer as a Capital Contribution of Bayer that then remain as an asset of the LLC will be refunded to Bayer by the LLC prior to any distribution of assets of the LLC to either Member. Such refund will not be deemed to be a distribution to Bayer by the LLC, but upon such refund, Bayer's Capital Account will be reduced by the amount so refunded.

(b) Distribution Of Assets.

(i) General. Upon dissolution and winding up of the LLC, the

affairs of the LLC will be wound up by the Chief Executive Officer of the LLC and the LLC will be liquidated by the Management Committee. Unless the Members consent in writing to a distribution in kind of the assets of the LLC, and except as provided in Section 12.5 hereof, the assets of the LLC will be sold pursuant to such liquidation.. If both Members do not consent in writing to a distribution of LLC assets in kind, but the Management Committee determines that an immediate sale of all or certain of the LLC assets would be financially inadvisable for the LLC and the Members, the Management Committee may defer sale of the relevant LLC assets for a reasonable time; provided that the liquidation of the LLC will be completed within the time required by Treasury Regulations Section 1.704-1(b)(ii)(b)(2). Subject to the provisions of Section 12.5 hereof, (A) if any LLC assets are distributed in kind, they will be distributed on the basis of the fair market value thereof as determined by appraisal, as may be ordered by the Management Committee, the costs of which appraisal will be paid by the LLC, and will be deemed to have been sold at such fair market value for purposes of the allocations under Article

IX hereof, and (B) unless both Members otherwise agree in writing, if any LLC assets are to be distributed in kind, they will be distributed to such Members, as joint tenants, in undivided interests in proportion to distributions to which such Members are entitled under this Section 12.4. The LLC will terminate when all of its assets have been sold and/or distributed and all of its affairs have been wound up.

(ii) Order Of Distribution. Subject to the provisions of Section 12.5 hereof, the assets of the LLC, whether cash or in kind, will be distributed in accordance with the Act, A) first, in the amount of premium payments and milestone payments received by the LLC, but not previously distributed to the Members, to the Members, provided that the provisions of Section 10.1(b)(i) hereof with respect to calculation of the amount to be distributed to Exelixis will apply pursuant to the provisions of Section 12.5 hereof, (B) then to the creditors of the LLC in the order of priority provided by law, (C) then to the Members in accordance with the provisions of Section 12.5 hereof in the amount of third party revenue of the LLC not previously distributed to the Members by the LLC, and then (D) (A) first to creditors of the LLC in the order of priority provided by law, then (B) premium payments, milestone payments and third party revenue of the LLC not previously distributed to the Members will be distributed to the Members provided that the provisions of Section 10.1(b)(i) hereof with respect to calculation of the amount to be distributed to Exelixis will apply pursuant to the provisions of Section 12.5 hereof, and then (C) to the Members in proportion to their remaining Capital Accounts. Except as specifically provided otherwise herein, no Member will have any obligation at any time to repay or restore to the LLC all or any part of any distribution made to such Member from the LLC in accordance with this Section 12.4, nor to make any additional contribution of capital to the LLC.

12.5 Certain Matters With Respect To Intellectual Property Rights Of the LLC.

(a) Distribution In Kind To Members As Joint Owners. Except as may be otherwise provided in the LLC Collaboration Agreement or any Collateral Agreements as they may then exist, the intellectual property rights of the LLC (exclusive of intellectual property rights of any other Person licensed to the LLC and not assignable without the consent of such Person) developed or obtained by the LLC and existing on the date of termination of the LLC, will not be liquidated (other than the LLC's trade names, trademarks, service marks, emblems, logos, symbols and insignia and rights with respect thereto, including registrations and registration rights, all of which will be liquidated) but will instead be distributed in kind to the Members as joint owners who will each own an undivided joint interest therein with the rights described in Section 12.5(b) hereof.

(b) Respective Rights of Members In LLC Assets Distributed In Kind. Upon and after such distribution in kind, unless the Members agree otherwise in writing, or until one Member, if ever, upon or after such distribution purchases all of the other Member's jointly-owned rights therein, each Member, as a joint owner of such distributed intellectual property rights in accordance with Section 12.5(a) hereof, will have such rights with respect thereto as such Member had under the LLC Collaboration Agreement as in effect most recently before the date of such distribution in kind, and the right to grant licenses to third parties and to use and practice such rights without accounting to the other Member, subject in all cases to the first-referenced Member's compliance with the terms thereof.

(c) Adjustment Of Capital Accounts. The Capital Accounts of the Members will be adjusted in the manner required by Section 1.704-1(b)(2)(iv)(e)(1) of the Treasury Regulations to reflect the unrealized income, gain, loss and deduction inherent in such

distributed intellectual property rights. After such adjustment to the Capital Accounts of the Members have been made, all future distributions on liquidation of the LLC will take into account such distribution-in-kind of intellectual property to the Members.

(d) Payment Of Premium Fee Or Royalty Obligations, Or Milestone Payment Obligations. Except as may be otherwise provided under the LLC Collaboration Agreement or as otherwise agreed in writing by the Members, any premium fee or royalty obligations, and any milestone payment obligations, by either Member to the LLC will be paid thereafter directly by such Member to the other Member to the extent permitted by law. No distribution of intellectual property rights of the LLC as provided in this Section 12.5 will relieve either Member from its obligations hereunder, or under any other binding agreement to which such Member is a party or to which it is subject, to continue to pay premium fees, royalty payments, milestone payments or other running or periodic amounts, however denominated, thereunder according to the relevant terms of this Agreement or of such other agreements.

(e) Certain Assistance. If one Member seeks to sell or assign all or part of its jointly-owned interest in such distributed intellectual property to a third party or parties, in a jurisdiction in which such sale or assignment requires by law, as advised by the requesting Member's intellectual property counsel the consent or acknowledgment of the other Member as joint owner of such intellectual property, such other Member will execute and delivery such customary documents, at its own expense, to assist the selling or assigning Member to complete such sale or assignment, as the selling or assigning Member requests in good faith of such other Member.

(f) Effect On Licenses To Bayer Patents And Bayer Know-How, And On Exelixis Patents And Exelixis Know-How, In The Event Of Termination. In the event of termination pursuant to this Article XII, if the LLC Collaboration Agreement then is still in effect, the conditions, if any, relevant to such termination as may be specified in the LLC Collaboration Agreement, including Article XIV thereof, will apply.

ARTICLE XIII
BUYOUT BY A MEMBER OF THE MEMBERSHIP INTEREST OF THE OTHER MEMBER

13.1 Determination Of Fair Market Value. For purposes of this Agreement the "Affected Member" is the Member who suffers, or proposes to suffer (with respect to a Proposed Changed Circumstance Notice, as defined in Section 13.2(a)(i) hereof), a Changed Circumstance, or who suffers an Event of Default or Dissolution or Bankruptcy, as applicable, and the other Member is the "Non-Affected Member". For purposes of this Article XIII, Fair Market Value will be whatever it is agreed to be in writing between the Members no later than the earlier of (a) [*] after the date the Proposed Changed Circumstance Notice is given under Section 13.2(a)(i) hereof by the Affected Member to the Non-Affected Member, if such Proposed Changed Circumstance Notice contains the names of the relevant Person(s) therein which cause it to be deemed, under the provisions of Section 13.2(a)(i) hereof, to be a Final Notice or (b) [*] after the date the Final Notice is given, as required under Section 13.2(a)(ii) hereof, by the Affected Member to the Non-Affected Member as to the event relevant to such Affected Member.;

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provided that if the Members independently cannot agree on the Fair Market Value of the Affected Member's Membership Interest within such relevant [*] period, then the procedures set forth in Sections 13.1(a)-(h) hereof will apply to determine such Fair Market Value:

(a) Member Statements Of Fair Market Value. Each of the Affected Member and the Non-Affected Member will deliver to the other in writing, within [*] after the close of such initial [*] period, the delivering Member's statement as to the Fair Market Value of the Affected Member's Membership Interest.

(b) Procedure If Both Statements Are The Same. If the Fair Market Value stated in both Members' statements is the same, then such amount will be the Fair Market Value of the Affected Member's Membership Interest.

(c) Procedure If Statements Within [*] Range. If the Fair Market Value stated in one Member's written statement is higher than the Fair Market Value stated in the other Member's written statement, but is not greater than [*] of the lower statement, then Fair Market Value will be the average of the two statements.

(d) Procedure If Statements Outside Of [*] Range. If the Fair Market Value stated in one Member's written statement is greater than [*] of the Fair Market Value stated in the other Member's written statement, then Fair Market Value will be determined by an Appraiser selected by the mutual written agreement of the Members within [*] after the delivery by each Member to the other of their statements, provided that if the Members cannot agree on an Appraiser within such [*] period, then:

(i) Selection Of An Appraiser By Each Member. Each Member will, within [*] after the earlier of the date upon which the Members agree in writing that they cannot agree on such Appraiser, or such initial thirty days have expired, select an Appraiser;

(ii) Selection By Two Appraisers Of Third Appraiser. The Appraisers selected pursuant to Section 13.1(d)(i) hereof mutually will select a third Appraiser within [*] after their selection; and

(iii) Determination By Single Appraiser Of Fair Market Value. The third Appraiser so chosen will singly determine Fair Market Value by delivering his or her determination of Fair Market Value in writing to each Member as soon as possible after his or her selection, setting forth in such writing such bases and conclusions as such Appraiser deems appropriate and customary therefor. If the Fair Market Value as determined by such Appraiser is the average of the two Members' statements, then such average will be Fair Market Value. If the Fair Market Value as determined by such Appraiser is above the average of the two Members' statements, but not greater than the higher of the two Members' statements, then Fair Market value will be the average between such Appraiser's determination and such higher Member statement. If the Fair Market Value as determined by such Appraiser is below the average of the two Members' statements, but not less than the lower of the two Members' statements, then Fair Market value will be the average between such Appraiser's determination and such lower Member statement. If the Fair Market Value as determined by such Appraiser is

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greater than the higher of the two Members' statements, then Fair Market value will be such higher Member statement. If the Fair Market Value as determined by such Appraiser is lower than the lower of the two Members' statements, then Fair Market value will be such lower Member statement.

(e) Appraiser's Determination Binding Absent Demonstrable Factual Or Mathematical Error Or Fraud. Any determination by an Appraiser of Fair Market value as provided herein will be binding upon the Members and the LLC absent demonstrable mathematical or factual error, or fraud .

(f) Certain Governing Principles For Determination of Fair Market Value. Any determination of Fair Market Value pursuant to this Section 13.1 will take into consideration all relevant factors, including the conditions referred to in Section 13.6 hereof and any Event of Default if such purchase is being made by the Non-Affected Member under Section 13.3 hereof, and any Bankruptcy of a Member if such purchase is being made by the other Member under Section 13.4 hereof, but only in each case to the extent that such Event of Default or Bankruptcy reduces the value of the relevant Membership Interest, and will be calculated by multiplying (x) the price that a willing buyer will pay and a willing seller will accept for the purchase of all of the assets and business of the LLC as a going concern immediately prior to the transaction giving rise to the determination of Fair Market Value and without any discount for lack of liquidity or control and assuming that all agreements between the LLC and the Members that were in effect prior to such transaction would have continued in effect by (y) the Percentage Interest in the LLC being acquired.

(g) Fees And Costs Of Appraisers. Each Member will bear the fees and costs of any Appraiser that such Member selects as one of the two Appraisers selected to determine the third. The fees and costs of any third Appraiser selected pursuant to Section 13.1(d)(i)(B) hereof, will be borne one-half (1/2) by each Member. Each Member will bear its respective internal costs connected with any such appraisal, including those associated of its own determination for its statement of Fair Market Value.

(h) Cooperation. Each Member will cooperate in all commercially reasonable respects and in good faith in the appraisal process, including without limitation providing such information as is reasonably requested by the Appraiser(s), but provided that the furnishing of such information may, in the good faith judgment of the furnishing Member, be conditioned on such Appraiser(s) executing and delivering a customary confidentiality agreement with the furnishing Member with respect thereto.

13.2 Changed Circumstance Buyout And Notices With Respect Thereto.

(a) Proposed Changed Circumstances Notice By Affected Member; Final Notice By Affected Member Of Changed Circumstance; Non-Affected Member's Notice of Intention As To Buyout Rights And Termination Rights; Waiver.

(i) Proposed Changed Circumstances Notice By Affected Member.

If either Exelixis or Bayer proposes to enter into a transaction that would, if consummated, be a

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sale of assets or proposed change of control as described in Section 1.15(b)(i) or (ii) hereof as to Exelixis, or Section 1.15(c) hereof as to Bayer, then, within [*] after such Affected Member [*] with respect to such proposed event with any Person other than Bayer or its Affiliates, or the LLC, as to Exelixis, and other than Exelixis, or the LLC, or each other, with respect to Bayer and Bayer AG, the Affected Member will give the Non-Affected Member written notice (a "Proposed Changed Circumstances Notice") as to the general nature of the proposed event. The fact of the giving of which Proposed Changed Circumstances Notice and the contents thereof will be Confidential Information of the Affected Member. Such Proposed Changed Circumstances Notice need not specify the name of the other party or parties to such proposed transaction, and/or certain details related thereto, if such information is prohibited from disclosure under an executed written nondisclosure agreement between the Affected Member and such other party or parties. In addition, with respect to any matter relating to a Changed Circumstance described in, respectively, Sections 1.15(b)(i) or (ii) hereof, as to Exelixis, or Sections 1.15(c) hereof, as to Bayer, the Affected Member will promptly give written notice (which will be considered to be an amendment to the initially-given Proposed Changed Circumstances Notice) to the Non-Affected Member, with a copy to the Management Committee, of any material change, adverse or beneficial, with respect to such proposed Changed Circumstance, including without limitation (if terms were disclosed in a previously-delivered Proposed Changed Circumstances Notice) any change in the terms proposed with respect to such Changed Circumstance, and/or (if the names of other party or parties to the relevant proposed Changed Circumstance were disclosed in a previously-delivered Proposed Changed Circumstances Notice), any change in the name(s) of the other party or parties to such proposed Changed Circumstance. Such Proposed Changed Circumstances Notice will be deemed to be the Final Notice given for purposes of Section 13.1 hereof, and Section 13.2(a)(ii), (iii) or (iv) hereof, only if, (1) it is given with respect to the signing by the Affected Party of a binding agreement, including without limitation a letter of intent or heads of agreement which contains any binding provision apart from a binding obligation of confidentiality, and when,(2) it contains the name(s) of the other party or parties to such proposed transaction.

(ii) Final Notice By Affected Member Of Changed Circumstance. In addition to giving the Non-Affected Member a Proposed Changed Circumstances Notice , at any time, but no later than [*] after the occurrence or consummation of the relevant Changed Circumstance as to the Affected Member, such Affected Member will give written notice of such occurrence or consummation to the Non-Affected Member and the Management Committee, specifying in reasonable detail the nature of such Changed Circumstance (a "Final Notice"), and will specify therein the name(s) of the other party or parties to such proposed Changed Circumstance if such Changed Circumstance is a sale of assets or proposed change of control as described in Section 1.15(b)(i) or (ii) hereof as to Exelixis, or Section 1.15(c) hereof as to Bayer. In addition, the Affected Member will promptly give written notice (which will be considered to be an amendment to the initially-given Final Notice) to the Non-Affected Member, with a copy to the Management Committee, of any material change, adverse or beneficial, in such Changed Circumstance, including without limitation any change in the terms proposed for, and/or in the name(s) of the other party or parties to such proposed transaction, as to any matter relating to a Changed Circumstance described in, respectively, Sections 1.15(b)(i) or (ii) hereof, as to Exelixis, or Sections 1.15(c) hereof, as to Bayer. The giving of such Final

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Notice (including any updates as to subsequent developments), and the contents thereof, or portions thereof, will be Confidential Information of such Affected Member hereunder if the Affected Member so declares in such Final Notice, and/or may be subject to such confidentiality as to certain details thereof as may be required under any confidentiality agreement, with any other Person, other than Bayer or Bayer's Affiliates or the LLC, to which such Affected Member is a party or by which it is bound, or as otherwise may be required by law.

(iii) Non-Affected Member's Notice of Intention As To Buyout Rights And Termination Rights. Within [*] after the Non-Affected Member's receipt of a Proposed Changed Circumstances Notice from the Affected Member given under Section 13.2(a)(i) hereof which states the name(s) of the other party or parties to such proposed transaction as relevant (thus causing such Proposed Changed Circumstances Notice to be deemed to be a Final Notice), or, as relevant, within [*] after the Non-Affected Member's receipt of the Final Notice in the event of the consummation of the relevant sale of assets or change of control constituting the Changed Circumstance, the Non-Affected Member may, but is not required to, give written notice to the Affected Member, with a copy to the Management Committee, (a "Non-Affected Member's Notice of Intention") of such Non-Affected Member's intention to (A) exercise or to waive (specifying which it elects) such Non-Affected Member's Buyout rights under Section 13.2(b) hereof, or to (B) exercise or to waive (specifying which it elects) its termination rights under Section 12.1(c) hereof (in which case such Non-Affected Member's Notice of Intention will constitute its written notice of termination election under Section 12.1(c) hereof if the Non-Affected Member states therein its election to so terminate). Any such Non-Affected Member's Notice of Intention, if given, may be, by its terms, made contingent upon the actual consummation of the relevant Changed Circumstance, such that if such consummation does not occur, then such Non-Affected Member's Notice of Intention may be withdrawn and rescinded by the Non-Affected Member, without penalty, by written notice to the Affected Member, with a copy to the Management Committee, of such withdrawal and rescission. Such notice of withdrawal and rescission may be given at any time after the proposed consummation date if by the date of giving of such notice of withdrawal and rescission the Non-Affected Member has not consummated its Buyout rights or if by such date the LLC has not commenced liquidation and dissolution by reason of such termination election. The fact of the giving of any Non-Affected Member's Notice of Intention, and the contents thereof, will be Confidential Information of the Non-Affected Member.

(iv) Waiver By Affected Member Of Buyout Or Termination Right As To Certain Changed Circumstances. Subject to the last sentence of this Section 13.2(a)(iv), the right of the Non-Affected Member to exercise its Buyout rights under Section 13.2(b) hereof, or to terminate the LLC under Section 12.1(c) hereof, will be deemed to be irrevocably waived by the Non-Affected Member as to the matter(s) described in the relevant Final Notice under Section 13.2(a)(ii) hereof (or deemed Final Notice under Section 13.2(a)(i) hereof) from the Affected Member as to the relevant Changed Circumstance if, the Non-Affected Member either (A) affirmatively and specifically waives its Buyout or termination right hereunder, in writing to the Affected Member, with a copy to the Management Committee, or (B) fails, within the relevant [*] period specified under Section 13.2(a)(i) or (ii) hereof, to give written notice to the Affected Member, with a copy to the Management Committee, as to such Non-Affected Member's intention to exercise its Buyout or termination rights hereunder. The Non-Affected

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Member will not be deemed to have waived its Buyout rights or termination rights hereunder if with the [*] period provided for giving by such Non-Affected Member of its Non-Affected Member's Notice of Intention under Section 13.2(a)(iii) hereof, or within twenty (20) days after it has given any such Non-Affected Member's Notice of Intention, the Affected Member, as required by Section 13.2(a)(i) or (ii) hereof, as relevant, gives the Non-Affected Member written notice of any material change in a Changed Circumstance, (in which case the notice election and waiver provisions of this Article XIII applicable to the Non-Affected Member will again apply, and will run from the date of such written notice by the Affected Member of such material change in the relevant Changed Circumstance).

(b) Purchase Right Of Non-Affected Member. Upon the occurrence of a Changed Circumstance, provided the Non-Affected Member receiving the Proposed Changed Circumstance Notice or Final Notice, as the case may be, relating thereto has not previously given the Affected Member a Non-Affected Member's Notice of Intention demanding dissolution of the LLC or has not waived or been deemed to waive, under Section 13.2(a)(iv) hereof, such Changed Circumstance, the Non-Affected Member may, as hereinafter provided, purchase all but not less than all of the Membership Interest of the Affected Member for Fair Market Value. Within [*] after the determination of Fair Market Value pursuant to Section 13.1 hereof, the Non-Affected Member will either submit an irrevocable written offer to the Affected Member with a copy to the Management Committee, to purchase such Affected Member's Membership Interest for Fair Market Value for cash or such other consideration as the Members agree in writing, or will notify the Affected Member in writing, with a copy to the Management Committee, that no offer will be made. If an offer is made, the closing of the transaction will occur within [*] after the date of such written offer, but such period will automatically be extended as necessary to give effect to any delay days caused by obtaining any required regulatory approvals. The purchase price for such Affected Member's Membership Interest will be paid by the Affected Member in cash or such other consideration as the selling Member and the purchasing Member may agree in writing. If no offer is timely made by the Non-Affected Member under this Section 13.2(b), then the provisions of this Agreement, including those of Articles XII and XV hereof, will apply.

(c) Effect On Licenses In The Event Of Changed Circumstances Buyout. In the event of a Changed Circumstances Buyout pursuant to Section 12.2(b) hereof, the conditions, if any, relevant thereto as may be specified in the LLC Collaboration Agreement, will apply, and are incorporated herein by reference only to the extent necessary for each application.

13.3 Default Buyout. In the event of an uncured Event of Default, provided the Non-Affected Member has not previously given to the Affected Member written notice demanding dissolution of the LLC, the Non-Affected Member may, as hereinafter provided, purchase all but not less than all of the Affected Member's Membership Interest for Fair Market Value. Within [*] after the determination of Fair Market Value, the Non-Affected Member will either submit an irrevocable written offer to the Affected Member, with a copy to the Management Committee, or will notify the Affected Member in writing, with a copy to the Management Committee, that no offer will be made. If an offer is made, the closing of the transaction will occur within [*] after the date of such written offer, but giving effect to any delay days caused by obtaining appropriate

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regulatory approvals. The purchase price for such Membership Interest will be paid in cash or such other consideration as the selling Member and the purchasing Member may agree in writing. If no offer is timely made by the Non-Affected Member under this Section 13.3, then the provisions of this Agreement, including those of Articles XII and XV hereof, will apply.

13.4 Buyout Upon Bankruptcy Or Dissolution Of A Member. Upon obtaining actual knowledge of the Bankruptcy or Dissolution of a Member, the other Member will have the right, by giving written notice thereof to the bankrupt Member, or trustee therefor , and to the Management Committee, to purchase or cause its designee to purchase the Membership Interest of such Affected Member for Fair Market Value. Within [*] after the determination of Fair Market Value, the Non-Affected Member will either submit an irrevocable written offer to the Affected Member, or such Affected Member's trustee, with a copy to the Management Committee, to purchase such Affected Member's Membership Interest for Fair Market Value, or will notify the Affected Member in writing, with a copy to the Management Committee, that no offer will be made. If an offer is made, the closing of the transaction will occur within [*] after the date of such written offer, but giving effect to any delay days caused by obtaining appropriate regulatory approvals. The purchase price for such Membership Interest will be paid in cash or such other consideration as the selling Member (or the trustee of the selling Member) and the purchasing Member may agree in writing. If no offer is timely made by the Non-Affected Member under this Section 13.4 then the provisions of this Agreement, including those under Articles XII and XV hereof, will apply.

13.5 Auction Buyout Upon Deadlock On Substantial Disagreement After Fourth Anniversary Of Commencement Date, Or Upon Dissolution Of LLC Due To Judicial Or Regulatory Decision, Or Upon Delivery Of Lack Of Freedom To Operate Notice. If (1) the Members reach Deadlock on a Substantial Disagreement (but not as to Deadlock as to any other dispute), at any time after the fourth (4th) anniversary of the Commencement Date, or (2) dissolution of the LLC is ordered by a final judgment by a court of competent jurisdiction or by the nonappealable order or decision of a regulatory authority, which dissolution does not arise by reason of action taken by either Member, or (3) on the sixth (6th) month anniversary of the delivery by Bayer to Exelixis of a Lack Of Freedom To Operate Notice under Section 1.15(d) hereof, the license(s) described in Section 1.15(d) hereof have not the come into being and if Bayer and Exelixis have not agreed otherwise in writing that such state of matters does not constitute a Changed Circumstance as described in such Section 1.15(d) hereof, or (4) if Exelixis does not increase the number of its Technical Personnel FTE's within the time period set forth in Section 1.15(e) hereof, and if both Members wish to purchase the Membership Interest of the other Member, then either Member may purchase the Membership Interest from the other, in either case in accordance with the following procedures:

(a) Appraisal Of Fair Market Value. The Fair Market Value of each Member's Membership Interest (which together will constitute one hundred percent (100%) of the Fair Market Value of the LLC) will be determined and reported to the Members in writing by an Appraiser selected using the procedure set forth in Section 13.1(d) hereof, and provided that the provisions of Sections 13.1(e)-(g) hereof also will apply to the actions and results of such Appraiser's determination.

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(b) Purchase By One Member Or The Other's Membership Interest

Voluntarily If Fair Market Value Is Agreed. If, upon receiving the Appraiser's determination of the Fair Market Value of each other's Membership Interest, one Member wishes to sell and the other to buy at such Fair Market Value, such Member will so notify the other Member in writing and within sixty (60) days after its receipt of such determination, and they will consummate such transaction as soon as possible on such terms as they agree in writing.

(c) Auctioneer. If the Members do not agree on the Fair Market Value of each other's Membership Interest within such 60-day period, then the "Auctioneer" will be the Appraiser selected pursuant to Section 13.1 hereof, whether by mutual written agreement of the Members or as selected by their two independent third party Appraisers.

(d) Fees And Expenses Of Auctioneer. The fees and expenses of the Auctioneer, for acting as such, will be paid one-half (1/2) each by the Members.

(e) Auction and Auction Process; Conduct of Auction; Closing of Purchase Of Relevant Membership Interest.

(i) Auction And Auction Process. The Auctioneer will conduct an auction (the "Auction"), under the procedure as hereinafter provided, commencing on the fourth (4th) day following the date of the Auctioneer's selection, to determine, as hereinafter provided, which Member will, as will be determined by the Auctioneer as provided herein, purchase the other Member's Membership Interest. The Auction will be conducted by the Auctioneer in an even-handed, equitable and impartial manner in accordance with the provisions of this Section 13.5 and in accordance with any further provisions specified in writing to the Members by the Auctioneer (subject to the last clause of this sentence as to agreement by the Members), which in each case which are consistent with and do not contravene the provisions of this Section 13.5, provided that the Members may mutually agree in writing to any lawful procedures with respect to the Auction, which writing will be binding on the Auctioneer and the Members, will constitute an amendment hereto, and will be controlling over any procedures specified by the Auctioneer.

(ii) Bid Process; Bids Based Upon Percentage Interest To Which Bid Relates; Non-Accepted Bids; Determination of Winning Bid; Purchase and Closing.

(A) Bid Process. Bayer will make the first bid in the Auction by submitting its bid for Exelixis' Membership Interest in writing to the Auctioneer, which first bid must be made within five (5) days after the Auctioneer's selection, and must be at least equal to the Fair Market Value of Exelixis' Membership Interest as determined by the Appraiser, after which the Members will alternate in submitting bids in writing to the Auctioneer for each other's Membership Interest. The Auctioneer will promptly notify each Member in writing of the Auctioneer's receipt of a bid and the amount of such bid, after which the Member who had not made the previous bid will have five (5) days to submit its bid to the Auctioneer.

(B) Bids Based Upon Percentage Interest To Which Bid Relates.

Each bid by the relevant Member will be based upon the relative Percentage Interest

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that is held by the other Member, such that, if the Percentage Interests of Bayer and Exelixis were the same at the time of the Auction as they are at the Commencement Date, then any bid by Bayer for Exelixis' interest will be based upon Exelixis' forty percent (40%) interest in the LLC, and any bid by Exelixis will be based upon Bayer's sixty percent (60%) interest in the LLC.

(C) Non-Accepted (Invalid) Bids. Any bid submitted to the Auctioneer (other than with respect to the first bid by Bayer in the Auction process) that does not exceed the immediately preceding bid of the same bidding Member by at least five percent (5%) of such bidder's last bid for the other Member's Membership Interest will be considered an invalid bid and will not be accepted by the Auctioneer.

(D) Determination By Auctioneer of Winning Bid; Notification. If a Member does not submit a bid (or an invalid bid is submitted as specified in Section 13.5(c)(ii)(C) hereof, and no subsequent valid bid is submitted) in such five-day period or at such time as a Member states in writing to the Auctioneer that such Member is unwilling to submit any further bids, the Auctioneer will declare the Auction completed and will notify the Members and the Management Committee promptly in writing that it is completed. Upon such completion of the Auction process, the Auctioneer will determine, in such Auctioneer's sole good faith discretion, which determination will be binding upon the Members absent demonstrable mathematical or factual error, or fraud, which Member's final bid in the Auction process is more fair to the other Member, taking into account the relative Percentage Interests of the Members, than the other Member's bid. The Auctioneer will notify the Members in writing as to the Auctioneer's decision, within three (3) days after the Auctioneer's decision, specifying the winning bidder Member and the amount of the winning bid as so determined by the Auctioneer.

(iii) Purchase By Winning Bidding Member Of Other Member's Membership Interest. The winning bidding Member will purchase the other Member's Membership Interest at the price submitted by such winning bidding Member in its winning bid.

(iv) Closing. The purchase by the winning bid Member from the other Member, at the price specified in such high bid, and for cash or such other consideration as the Members agree in writing, will occur within ninety (90) days after the date the winning bid is declared by the Auctioneer, but giving effect to any delay days caused by obtaining appropriate regulatory approvals.

13.6 Arbitration Upon Deadlock On Substantial Disagreement Prior To Fourth Anniversary Of Commencement Date. If there exists Deadlock on a Substantial Disagreement prior to the [*] anniversary of the Commencement Date, the Deadlock will be resolved by arbitration pursuant to the provisions of Section 17.2 hereof, and neither Member will have the right under this Article XIII to buy out the other Member's Membership Interest solely by reason of such Deadlock on Substantial Disagreement.

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ARTICLE XIV
DEFAULT

14.1 Events Of Default. An "Event of Default" will be considered to have occurred with respect to a Member (which Member will be considered for purposes of this Agreement as the Affected Member with respect to such Event of Default) if:

(a) Failure To Make Capital Contribution. Such Affected Member fails to make a Capital Contribution required of it pursuant to Article IV hereof and such failure continues for [*] after such Affected Member has been given written notice thereof by the Non-Affected Member or by the Management Committee; and/or

(b) Insufficient Technical Personnel FTE's Of Exelixis. If at the close of any calendar quarter during the term hereof, (i) Exelixis had serving as full-time employees or as full-time consultants to Exelixis during such quarter a total of less than [*] Technical Personnel FTE's (as defined in Section 7.10(b)(v) hereof), and (ii) if within [*] after delivery to Bayer by the LLC of the report as to Technical Personnel FTE's for such quarter required under Section 7.10(b)(v) hereof, Bayer gives written notice to Exelixis that, in the good faith judgment of Bayer, Exelixis has insufficient Technical Personnel FTE's to warrant continuing the LLC, and (iii) Exelixis does not increase the number of Technical Personnel FTE's to at least [*] within [*] after delivery of such notice by Bayer; and/or

(c) Certain Other Failures. Such Affected Member fails to perform or violates any other material term or condition of this Agreement and such failure or violation continues for [*] or more days after such Affected Member has been given written notice thereof by the Non-Affected Member or by the Management Committee; provided that nothing herein will limit the Affected Member's obligation to pay damages for such breach during such cure period; and/or

(d) Certain Actions. Such Affected Member otherwise causes the dissolution of the LLC in contravention of the terms of this Agreement; and/or

(e) Material Breach of Collaboration Agreement. Such Affected Member fails to cure a breach of the LLC Collaboration Agreement (as defined in Section 14.3 thereof) and the Non-Affected Member exercises its rights pursuant to Section 14.2(c) or (d) of this Agreement; and

(f) Notice By Non-Affected Member. Written notice has been given to the Affected Member by the Non-Affected Member, with a copy of the Management Committee, reciting facts therein in reasonable detail regarding (i) the date upon which, in the good faith judgment and knowledge of the Non-Affected Member, such Event of Default occurred for the Affected Member, (ii) the general nature of such Event of Default and (iii) that the Event of Default (A) is having or would have, in the good faith judgment of the Non-Affected Member, a material adverse effect upon the Affected Member's ability to perform such Affected Member's obligations under this Agreement, the LLC Collaboration Agreement, and/or the relevant

Collateral Agreements, and (B) which does have or would have, in the good faith judgment of the Non-Affected Member, a material adverse effect on the business or operations of the LLC.

14.2 Remedies of Default. Except as limited by Section 14.1(c) of this Agreement and by Section 14.3(b) of the LLC Collaboration Agreement, upon the occurrence of, and during the continuance of, an Event of Default, the Non-Affected Member may elect any or all of the following remedies:

(a) Injunctive Relief. The Non-Affected Member may seek to enjoin such default or to obtain specific performance of the Affected Member's obligations; or

(b) Withhold Payments To The LLC. The Non-Affected Member then may withhold payments otherwise required hereunder to be made to the LLC; or

(c) Termination And Dissolution Of LLC. The Non-Affected Member may elect to terminate and dissolve the LLC as provided in Section 12.1(b)(iii)(C) hereof, in which event the affairs of the LLC will be wound up as provided in Article XII hereof; or

(d) Purchase Of Membership Interest. The Non-Affected Member may elect to purchase the Affected Member's entire Membership Interest pursuant to Section 13.3 hereof.

14.3 Election Of Remedies. The election of a remedy specified under Section 14.2(a) hereof by the Non-Affected Member will be made by giving written notice (a "Default Notice") to the Affected Member, with a copy to the Management Committee, at any time that the Event of Default has occurred and is continuing. If an election by the Non-Affected Member is made pursuant to Section 14.2(a) hereof to seek an injunction, specific performance or other equitable relief, and a final judgment in such action is rendered denying such equitable remedy, then the Non-Affected Member may elect to pursue the remedy specified in Section 14.2(a) hereof to the extent such remedy is available unless, prior to the giving of such notice, the Affected Member has cured the relevant Event of Default in full or the final judgment denying equitable relief specifically held that there was no Event of Default by the Affected Member. The election of any remedy by the Non-Affected Member pursuant to Section 14.2 hereof and to this Section 14.3 will not for any purpose be deemed to be a waiver by the Non-Affected Member of any other remedy available to the Non-Affected Member under applicable law.

ARTICLE XV
EFFECT OF CERTAIN EVENTS

15.1 Certain Changed Circumstance Applicable To Either Member. If a Changed Circumstance occurs with respect to either Member during the term of the LLC, then unless otherwise agreed in writing by the Members, LLC Collaboration Agreement and the Collateral Agreements as they may then exist will, unless and to the extent that they otherwise so provide, remain in full force and effect.

15.2 Certain Changed Circumstance Applicable To Exelixis. If a Changed Circumstance occurs with respect to Exelixis, and if Bayer, in its sole discretion, does not timely elect to terminate the LLC under Section 12.1 hereof, then:

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(a) Continuation Of LLC. The LLC will continue in existence; and

(b) Continuation Of Certain Agreements. The LLC Collaboration Agreement and the Collateral Agreements as they may then exist will, to the extent they so provide, remain in full force and effect; and

(c) Continuation Of Assay Development Within LLC. Assay development within the LLC will continue until the end of the Research Term, as defined in the LLC Collaboration Agreement; and

(d) Updates Of HelioTag. Bayer and the LLC will continue to get updates of HelioTag (as it may be renamed after the Commencement Date) from Exelixis in the manner delivered prior to such event; and

(e) Continuation Of LLC And Of Percentage Interests. If Bayer does not purchase Exelixis' Membership Interest as provided under Article XIII hereof, the Members will retain their respective Membership Interests and Percentage Interests; and

(f) Certain Conditions Applicable To Exelixis During Interim Period. If pursuant to Section 13.2(a)(iii) hereof Bayer not has waived, or been deemed to have waived, its Buyout right, then for the period between the date of such notice from Exelixis to Bayer as to such Changed Circumstance and the earliest of (1) the date of the Buyout by Bayer of Exelixis' Membership Interest, (2) the termination of the LLC pursuant to the terms hereof, or (3) the closing of the transaction involving Exelixis which gave rise to the Changed Circumstance, as relevant:

(i) Independent Member Representatives And Members Of The JSC. Exelixis must immediately appoint and have serving during such period as its Member Representatives and as its members of the JSC individuals who are independent of Exelixis, and

(ii) Exelixis Access To Certain Information. Exelixis will have access to data and intellectual property that is generated by the LLC with respect to research and development upon such terms as the Management Committee determines in good faith, but will continue to get such financial information as is provided under Section 8.6 hereof.

(iii) Certain Resumption Of Rights Of Exelixis. If pursuant to Section 13.2(a)(iii) hereof Bayer does not waive, or is not deemed thereunder to waive, its Buyout right, but does not thereafter timely exercise its Buyout right, or if before Bayer exercises such Buyout right such Changed Circumstance ceases to exist, the cessation of which Exelixis will immediately notify Bayer in writing, with a copy to the Management Committee, then Exelixis' rights as to whom it may appoint as Member Representatives and members of the JSC, and its other rights hereunder, including its rights to any information of the LLC, will resume as in effect immediately prior to such Changed Circumstance coming into being.

15.3 Certain Changed Circumstance Applicable To Bayer. If a Changed Circumstance occurs with respect to Bayer, and if Exelixis, in its sole discretion, does not timely elect to terminate the LLC as provided in Section 12.1 hereof, then:

(a) Continuation Of LLC. The LLC will continue in existence; and

(b) Continuation Of Certain Agreements. The LLC Collaboration Agreement and the Collateral Agreements as they may then exist will, to the extent they so provide, remain in full force and effect; and

(c) Continuation Of Assay Development Within LLC. Assay development within the LLC will continue until the end of the Research Term, as defined in the LLC Collaboration Agreement; and

(d) Updates Of HelioTag. The LLC will continue to get updates of HelioTag (as it may be renamed after the Commencement Date) from Exelixis in the manner delivered prior to such event; and

(e) Continuation Of LLC And Of Percentage Interests. If Exelixis does not purchase Bayer's Membership Interest as provided under Article XIII hereof, the Members will retain their respective Membership Interests and Percentage Interests; and

(f) Certain Conditions Applicable To Bayer During Interim Period. If pursuant to Section 13.2(a)(iii) hereof Exelixis not has waived, or been deemed to have waived, its Buyout right, then for the period between the date of such notice from Bayer to Exelixis as to such Changed Circumstance and the earliest of (1) the date of the Buyout by Exelixis of Bayer's Membership Interest, or (2) the termination of the LLC pursuant to the terms hereof, or (3) the closing of the transaction involving Bayer which gave rise to the Changed Circumstance, as relevant:

(i) Independent Member Representatives And Members Of The JSC. Bayer must immediately appoint and have serving during such period as its Member Representatives and as its members of the JSC individuals who are independent of Bayer, and

(ii) Bayer Access To Certain Information. Bayer will have access to data and intellectual property that is generated by the LLC with respect to research and development upon such terms as the Management Committee determines in good faith, but will continue to get such financial information as is provided under Section 8.6 hereof.

(iii) Certain Resumption Of Rights Of Bayer. If pursuant to Section 13.2(a)(iii) hereof Exelixis does not waive, or is not deemed thereunder to waive, its Buyout right, but does not thereafter timely exercise its Buyout right, or if before Exelixis exercises such Buyout right such Changed Circumstance ceases to exist, the cessation of which Bayer will immediately notify Exelixis in writing, with a copy to the Management Committee, then Bayer's rights as to whom it may appoint as Member Representatives and members of the JSC, and its other rights hereunder, including its rights to any information of the LLC, will resume as in effect immediately prior to such Changed Circumstance coming into being.

ARTICLE XVI
RIGHT OF FIRST OFFER

16.1 Exercise Of Rights; Adjustment Of Percentage Interests.

(a) Notice Of Proposed Issuance of Additional Membership Interests Or Other Interests. If the LLC proposes to issue any additional Membership Interests or any other interests in the LLC, including without limitation any equity security of the LLC, and including therein without limitation convertible promissory notes, warrants or options to purchase an interest in the LLC, and such proposal has been approved by the Management Committee, the LLC will give each Member prior written notice of the LLC's intention, describing the additional Membership Interests or other interests in the LLC, the price and the general terms and conditions upon which the LLC proposes to issue such additional Membership Interests or other interests in the LLC and the anticipated effect on such Member's Percentage Interest.

(b) Exercise Of Right By Members. Each Member will have [*] after the giving of such notice, and [*] after the giving of any notice of a material change in such offering (which change notice the LLC promptly will deliver to each Member), to elect by giving written notice thereof to the Management Committee, to purchase, for the price and upon the terms and conditions specified in the LLC's notice, up to the total of additional Membership Interests or other interests in the LLC offered, in each case with a right of oversubscription for each Member, the amount of which oversubscription to be specified in such written notice to the LLC.

(c) Procedure In The Event Of Oversubscription By Members. If both Members subscribe (the "Subscribing Members") for more than the total of additional Membership Interests or other interests in the LLC Offered (whether such total is all of such additional Membership Interests or other interests in the LLC, then the Subscribing Members, together, will be entitled to purchase only their respective Pro Rata Share, up to the total of additional Membership Interests or other interests in the LLC offered.

(d) Automatic Adjustment Of Percentage Interests. The Percentage Interests of the Members will automatically, without any executed amendment hereto being requested, be adjusted, from and after the issuance of such additional Membership Interests, to reflect the result of such issuance.

16.2 Issuance Of New Securities To Other Persons. If the Members do not together or singly purchase all of the Membership Interests or other interests in the LLC so offered, then the LLC will, if both Members have so agreed in writing, have [*] following exercise by the Members of their rights of first offer hereunder to sell to other Persons the additional Membership Interests or other interests in the LLC in respect of which the rights of purchase of the Members were not exercised, at a price and upon general terms and conditions no more favorable to the purchasers thereof than specified in the LLC's notice to the Members pursuant to Section 16.1 hereof. If the LLC has not sold the additional Membership Interests or other interests in the LLC within such [*], the LLC will not thereafter issue or sell any additional

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Membership Interests or other interests in the LLC without first offering such securities to the Members, in the manner provided in this Section 16.2.

16.3 Termination Of Rights Of First Offer. The rights of first offer established by this Section 16 will terminate as to all Members upon the termination of the LLC.

ARTICLE XVII
DISPUTE RESOLUTION

17.1 Procedure Before Arbitration. Any dispute between the Members other than a dispute over a tax reporting matter, which will be resolved as provided in Section 17.3 hereof, and other than a dispute involving intellectual property of either Member or of the LLC, for which judicial resolution will be available to any party, but otherwise including without limitation a Substantial Disagreement and in each case involving, and only with respect to, the LLC, will be attempted to be resolved by the Members in accordance with the following procedure before the provisions of Section 17.2 hereof will apply:

(a) Notice. One Member will notify the other Member in writing of the nature of the dispute in reasonable detail, with a copy to the Management Committee. If the Members cannot resolve such dispute within [*] after such notice is given, they will, by the end of such [*], agree on the issues giving rise to the dispute and will submit the matter, and such agreed issues, in writing to their respective Chief Executive Officer or equivalent.

(b) Appointment Of Senior Executives. Within [*] after their receipt of such notice of the dispute, the respective Chief Executive Officer of each Member (or a senior executive of the relevant Member (or, as to Bayer, at its election, a senior executive of Bayer AG) notified as such in writing promptly by such Member to the other Member), each will appoint a single delegate from among their respective senior executives who will have full power and authority to resolve the dispute. The respective delegates will then have a period of an additional [*] after the expiration of such initial [*] period within which to meet and attempt to resolve the dispute. If the senior executives cannot resolve the dispute within such time period, then the Chief Executive Officers of the Members (or their respective pre-specified senior executives, as relevant), will meet to attempt to resolve the dispute.

(c) Deadlock. If the dispute has not been resolved within [*] after the date of the original notice from one Member to the other of the dispute given as provided in Section 17.1(a) hereof, then either Member may certify to the other in writing, with a copy to the Management Committee, at any time within [*] after the expiration of such [*] period that the Members have reached Deadlock.

(d) Purchase Of Membership Interest Upon Deadlock After Fourth Anniversary Of Commencement Date. If either Member certifies to the other in writing that Deadlock has been reached with respect to a Substantial Disagreement after the fourth anniversary of the Commencement Date, then the LLC Collaboration Agreement will continue, but either Member may then offer to purchase the Membership Interest of the other in accordance with the provisions of Section 13.5 hereof. If the relevant Member declines in

writing to, or does not timely, pursue such purchase process, then the matter will be resolved by arbitration as provided in Section 17.2 hereof.

(e) Procedure For Resolution If Deadlock For Other Than Substantial Disagreement, Or Deadlock On Substantial Disagreement Prior To [*] Anniversary. If either Member certifies to the other in writing that Deadlock has been reached with respect to a dispute other than one involving a Substantial Disagreement, or that Deadlock has been reached, prior to the [*] anniversary of the Commencement Date, with respect to a Substantial Disagreement then the parties agree that the LLC Collaboration Agreement will continue, but the matter will be resolved by arbitration as provided in Section 17.2 hereof.

17.2 Resolution By Arbitration.

(a) General. Except with respect to any dispute involving the Confidential Information or intellectual property of either party, for which the parties hereto may seek judicial relief, any dispute between or among any of the parties to this Agreement that arises out of or relates to this Agreement, including a Substantial Disagreement, will, after the procedures described in Section 17.1 have been followed to their conclusion, be finally settled by binding arbitration in accordance with the Rules of the International Chamber of Commerce (the "ICC"). Any disputes between the parties with respect to arbitration procedures will be resolved by arbitration under this Section 17.2. The arbitration will take place in New York, New York. The parties will, before the hearing of any dispute by such arbitrators, make discovery and disclosure of all materials relevant to the subject matter of such dispute, including the taking of depositions at times and places mutually agreeable to the parties, subject to such reasonable and customary further nondisclosure agreements or agreements relating to attorney-client privilege as either party may reasonably and in good faith request of the other in connection with such discovery and disclosure. Subject to such protective measures, the parties will make available to the arbitrators and to each other and their relevant professional advisors, access to materials in written, electronically stored, or other form, including access by computer over secured links, as the requesting arbitrator or party reasonably and in good faith requests. Neither party will be required to furnish such access in any medium other than that in which the relevant material is stored at the time of such request. The parties hereby agree to exclude any application or appeal to the courts in connection with any question of law arising in the course of the referral to arbitration or out of the award. Each of the parties will appoint one arbitrator and the two so nominated will, in turn, choose a third arbitrator. if the arbitrators chosen by the parties cannot agree on the choice of the third arbitrator within a period of thirty (30) days after their nomination, then the third arbitrator will be appointed by the ICC. The language of the arbitration will be English.

(b) Applicable Law. The law of the State of California, excluding that body of law known as conflict of laws, will be the applicable substantive law for all matters except those governed by the Act and by federal law, which will apply to such other matters. The applicable procedural law will be the law of the place of arbitration.

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(c) Arbitrator Decisions. The arbitrators will decide in accordance with the terms of this Agreement and will take into account any appropriate trade usages applicable to the transaction. The arbitrators will state in writing the reasons upon which the award is based.

(d) Award Of Arbitrators. The award of the arbitrators will be final and binding upon the parties, and may, at the arbitrators' discretion, include costs of the arbitration, reasonable fees and costs of attorneys, experts and other witnesses. Judgment upon the award may be entered in any court having jurisdiction. An application may be made to any such court for judicial acceptance of the award and an order of enforcement.

17.3 Resolution Of Certain Disputes Over Tax Matters. If either of the Members or the LLC disagrees with the proposed treatment of an item on the return prepared by or for the Tax Matters Member, the Members and the LLC will promptly seek to resolve the disagreement through good faith discussions. If the dispute cannot be so resolved, the Members and the LLC will engage the services of a mutually agreed nationally recognized law firm or accounting firm (which may be any law firm or accounting firm then retained by the LLC, or by either Member, otherwise for general or specific matters) to resolve the matter. The decision of such law firm or accounting firm on such matter, absent demonstrable factual error or mathematical error, or fraud, will be binding on the Members and the LLC. Such firm's fees and costs will be borne one-third by each Member and one-third by the LLC.

ARTICLE XVIII
CONFIDENTIALITY

18.1 Obligations Of Confidentiality. The provisions of this Article XVIII will apply to all Confidential Information disclosed by one party hereto to one or more of the other parties hereto, whether prior to or after the Commencement Date, and which is not otherwise the subject of a written nondisclosure agreement between the relevant parties. Each party hereto (a) will hold the other parties' Confidential Information in strict confidence, (b) will not disclose such Confidential Information to any third parties and will take all reasonable steps to prevent such disclosure, which steps will include at least those taken by such relevant other party to protect such other party's own confidential information of like kind, and (c) will not use any Confidential Information of the other party for any purpose except for the business of the LLC or as specifically permitted by the LLC Collaboration Agreement. Each receiving party may disclose the disclosing party's Confidential Information to the receiving party's responsible employees and consultants who have a bona fide need to know, but only to the extent necessary to carry out the purposes of the LLC. Each receiving party will instruct all such employees and consultants not to disclose such Confidential Information to third parties, including other consultants, without the prior written permission of the disclosing party.

18.2 Certain Confidential Information. The existence of this Agreement and its terms, and the existence and terms of the LLC Collaboration Agreement and the Collateral Agreements as they may then exist are Confidential Information of each party hereto.

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18.3 Return Of Confidential Information. Upon the disclosing party's request, the receiving party will promptly return to the disclosing party all tangible items containing or consisting of the disclosing party's Confidential Information and all copies thereof

18.4 No Other Rights. Nothing contained in this Agreement will be construed as granting any rights to the receiving party, by license or otherwise, to any of the disclosing party's Confidential Information except as specified in this Agreement

18.5 Acknowledgment. Each Member and the LLC acknowledge that the unauthorized disclosure or use of the disclosing party's Confidential Information would cause irreparable harm and significant injury to the disclosing party, the degree of which may be difficult to ascertain. Accordingly, each Member agrees that the disclosing party will have the right to seek an immediate injunction enjoining any breach of this Agreement by the receiving party or its employees or consultants, as well as the right to pursue any and all other rights and remedies available at law or in equity for such breach.

18.6 Disclosure Required By Law. If the receiving party (or its Affiliates) is required, whether by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, by any competent government authority, including pursuant to any applicable rule of any stock exchange, self-regulatory organization or other government agency, including without limitation such disclosure in connection with any public offering of securities by either Member or their relevant Affiliates, to disclose any Confidential Information of the disclosing party, the receiving party will promptly notify the disclosing party in writing, in reasonable detail, of such request or requirement and will cooperate with the disclosing party in seeking appropriate protective arrangements requested by the disclosing party. If, in the absence of a protective order or the receipt of a waiver in writing by the disclosing party of such protective order, the receiving party (or any of its Affiliates) is in the written opinion of the receiving party's counsel compelled to disclose the Confidential Information, the receiving party (or its Affiliates) may disclose only so much of the Confidential Information to the party compelling disclosure as is required by law. The receiving party will exercise (and will cause its Affiliates to exercise) commercially reasonable best efforts to obtain appropriate protective arrangements or other reliable assurance that confidential treatment will be accorded to Confidential Information of the disclosing party in the event of such required disclosure.

18.7 Public Announcements. During the term of this Agreement, neither the LLC nor either Member will (except as may otherwise be required by law as described in, and subject to the provisions of, Section 18.6 hereof) issue any press release or other public announcement or disclosure, with respect to this Agreement or any of the Collateral Agreements as they may then exist, or any of the transactions contemplated hereby or thereby, nor any material development relating to any of the foregoing, without the prior written consent of both Members.

18.8 Survival Of Confidentiality Obligations. The provisions set forth in this Article XVIII will survive any expiration or termination of this Agreement, for a period of [*] after the effective date of such expiration or termination.

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ARTICLE XIX
MISCELLANEOUS

19.1 Further Assurances. The parties hereto will execute and deliver any further instruments or documents and perform any additional acts that are or may become necessary to effectuate and carry on the LLC created by this Agreement and to carry out the purposes and intent of this Agreement.

19.2 Binding Effect. Subject to the restrictions on transfer set forth in Section 3.4 hereof, this Agreement will be binding on and inures to the benefit of the Members and their respective transferees, successors, assigns and legal representatives.

19.3 Entire Agreement; Amendment; Incorporation Of Exhibits By Reference. This Agreement sets forth the agreement between the Members (or among the Members if there are more than two (2) Members) with respect to the specific subject matter hereof, and, except as otherwise set forth herein, supersedes and terminates all prior representations, agreements and understandings between the Members (or among the Members if there are more than two (2) Members) regarding the subject matter hereof. No alteration, amendment, change or addition to this Agreement will be binding upon the Members or the LLC unless in writing and signed by an authorized signatory of each Member, in which case such amendment also will be binding upon the LLC. Each Exhibit hereto is incorporated herein by reference.

19.4 Assignment. Neither Member (nor any Member if there are more than two (2) Members) may assign or transfer this Agreement or any of such Member's rights or obligations hereunder without the prior written consent of the other Member.

19.5 Notices. All notices, requests, consents and other communications hereunder to any party will be deemed to be sufficient if contained in a written instrument delivered in person, including delivery by recognized express courier, fees prepaid, or sent by facsimile transmission or duly sent by first class registered or certified mail, return receipt requested, postage prepaid, in each case addressed as set forth below, or to such other address as may hereinafter be designated in writing by the recipient to the sender pursuant to this Section 19.5. All such notices, requests, consents and other communications will be deemed to have been received in the case of personal delivery, including delivery by express courier, on the date of such delivery; in the case of facsimile transmission, on the date of transmission; and in the case of mailing, on the third day after deposit in the U.S. mail, proper postage prepaid. All notices to the Management Committee will be given to each Member Representative then serving, at such address for such Member Representative as is shown at the relevant time in the records of the LLC.

If to Exelixis: Exelixis Pharmaceuticals, Inc.
Attention: Chief Executive Officer
260 Littlefield Avenue
South San Francisco, CA 94080
Facsimile: 650-825-2205

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With a copy to: Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Robert L. Jones
Facsimile: 650-857-0663

If to Bayer: Bayer Corporation
Attention: William G. Ferguson, Vice President and
Assistant General Counsel
8400 Hawthorne Road
Kansas City, MO 64120-0013 l
Facsimile: 816-242-2739

With a copy to: Heller Ehrman White & McAuliffe
Attention: Bruce W. Jenett
525 University Avenue
Palo Alto, CA 94301
Facsimile: 650-324-0638

If to the LLC: GenOptera LLC
Attention: Chief Executive Officer
c/o Exelixis Pharmaceuticals, Inc.
260 Littlefield Avenue
South San Francisco, CA 94080
Facsimile: 650-825-2205

19.6 Electronic Data Interchange. If both Members and/or the LLC elect to facilitate their activities hereunder by electronically sending and receiving data in agreed formats (also referred to in general usage as Electronic Data Interchange or EDI) in substitution for conventional paper-based documents, the terms and conditions of this Agreement will apply to such EDI activities and communications as if such EDI communication , and as if such communication were sent by facsimile.

19.7 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provisions will be enforced to the maximum extent possible under applicable law and the remainder of such provisions) will be excluded from this Agreement, and the balance of this Agreement will be interpreted as if such provisions) or portion(s) thereof were so excluded and will continue to be enforceable in accordance with its terms.

19.8 Counting Of Time. Whenever days are to be counted under this Agreement, the first day will not be counted and the day will be counted, such that if a notice is delivered on a Monday to one Member, for example, with a five (5) day reply period hereunder, the reply must

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be given to the sending Member (not received by such sending Member) by such recipient member no later than 11:59 a.m. local time for the sender, on the Saturday next following such Monday.

19.9 Force Majeure Events. Except as otherwise provided herein, no Member will be in breach of this Agreement, or liable to the other Member, or to the LLC, for any loss, damage, detention, delay or failure of performance to the extent such loss, damage, detention, delay or failure is caused by a Force Majeure Event provided that the party claiming excuse uses its commercially reasonable efforts to overcome the same. In the event of a Force Majeure Event, the obligations of the Affected Member will be suspended as long as such Force Majeure Event continues, but such suspension will have no effect upon the rights of the Members to terminate the LLC, as provided in Section 12.1(c)(iii) hereof, or of one Member to purchase the Membership Interest of the other Member as provided in Section 13.2 hereof, in the event of a Continuing Force Majeure Event.

19.10 Hardship If, during the period of this Agreement, performance of this Agreement should lead to unreasonable hardship for one or other Member taking the interests of both Members into account, both Members will endeavor to agree in good faith to amend this Agreement in view of such circumstance.

19.11 Non-Waiver. The failure of a Member in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

19.12 Disclaimer Of Agency; No Right Of Members To Commit Or Bind LLC. This Agreement will not render either Member the legal representative or agent of another, nor will either Member have the right or authority to assume, create, or incur any third party liability or obligation of any kind, express or implied, against or in the name of or on behalf of another except as expressly set forth in this Agreement or except as may be expressly agreed in advance in writing by the Member to be bound. Except as expressly provided herein, or except as expressly consented to in writing by the other Member in advance of such commitment, no Member will have the right to commit or bind the LLC.

19.13 Certain Third Parties. Except with respect to the rights of certain Persons to be indemnified pursuant to Article XI of this Agreement, which Persons are intended as third party beneficiaries of their respective rights be indemnified as set forth therein, able to enforce their respective rights to such indemnification as if they were a party hereto, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

19.14 No Grant Of Rights. Except as specifically stated herein, neither Member, nor the LLC, grants to any other party hereto and rights or license to any intellectual property rights or other rights of the first party.

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19.15 Expenses. Except as otherwise provided in this Agreement (a) all expenses incurred by a Member in connection with its obligations under this Agreement will be borne solely by such Member, and (b) each Member will be responsible for appointing its own employees, agents and representatives, who will be compensated by such Member.

19.16 Captions. The captions to Sections of this Agreement have been inserted for identification and reference purposes only and will not be used to construe or interpret this Agreement.

19.17 Costs And Attorneys' Fees. Except as otherwise provided in Article XI hereof, including therein the definition of "Damages" under Section 1.21 hereof, if any action, suit or other proceeding is instituted concerning or arising out of this Agreement or any transaction contemplated hereunder, the prevailing party will recover all of such party's reasonable fees and costs of attorneys incurred in each such action, suit or other proceeding, including any and all appeals or petitions therefrom.

19.18 Governing Law. The law of the State of California, excluding that body of law known as conflict of laws, will be the applicable substantive law for all matters involving this Agreement, except those governed by the Act and by federal law, which will apply to such other matters.

19.19 Waiver Of Action For Partition. Each Member hereby irrevocably waives during the term of the LLC any right that such Member may have to maintain any action for partition with respect to the property of the LLC.

19.20 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be an original and both of which will constitute together the same document.

19.21 Official Language. The official text of this Agreement and any appendices, Exhibits and Schedules hereto, will be made, written and interpreted in English. Any notices, accounts, reports, documents, disclosures of information or statements required by or made under this Agreement, whether during its term or upon expiration or termination thereof, will be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference will be made only to this Agreement as written in English and not to any other translation into any other language.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BAYER CORPORATION	EXELIXIS PHARMACEUTICALS, INC.
By: /s/ Emil E. Lansu	By: /s/ George Scangos
Name: Emil E. Lansu	Name: George Scangos
Title: Executive Vice President	Title: President & CEO
Date signed: December 16, 1999	Date signed: December 16, 1999

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GENOPTERA LLC
By: /s/ Frank F. Reuscher

Name: Frank F. Reuscher
Title: Chief Executive Officer
Date signed: December 15, 1999

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EXHIBIT A

LIST OF COLLATERAL AGREEMENTS

[NONE AT THE EFFECTIVE DATE]

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EXHIBIT 10.13

RESEARCH COLLABORATION AND

TECHNOLOGY TRANSFER AGREEMENT

BETWEEN

EXELIXIS PHARMACEUTICALS, INC.

AND

BRISTOL-MYERS SQUIBB COMPANY

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

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RESEARCH COLLABORATION AND TECHNOLOGY TRANSFER AGREEMENT

This Research Collaboration and Technology Transfer Agreement (the "Agreement") is made and entered into as of September 14, 1999 (the "Effective Date") by and between Exelixis Pharmaceuticals, Inc., a Delaware corporation having its principal place of business at 260 Littlefield Avenue, South San Francisco, California, USA 94080 ("Exelixis"), and Bristol-Myers Squibb Company, a Delaware corporation having its principal place of business at Route 206 and Province Line Road, Princeton, NJ 08543 ("BMS"). Exelixis and BMS are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recitals

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

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

C. BMS and Exelixis desire to establish a research collaboration to apply such Exelixis technology and expertise to the identification and characterization of targets that mediate the effect of test compounds in model organisms, and to provide for the development and commercialization, based on such research, of novel prophylactic, therapeutic and diagnostic products or new indications or expanded labeling for existing products.

D. BMS and Exelixis desire to establish a technology sharing program in which BMS will transfer to Exelixis its proprietary technology that relates to its high throughput lead optimization technology, and Exelixis will transfer to BMS its proprietary technology that relates to genetics and molecular biology in C. elegans and Drosophila, as more fully set forth below.

Now, Therefore, the Parties agree as follows:

1. Definitions

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

1.1 "Abandoned Target" means (a) any Candidate Target or Disclosed Target that is not selected by BMS as a Selected Target, Pursued Disclosed Target or Product Target within the applicable time period set forth in Section 4.8, except as otherwise provided in Section 4.8(a)(v)

or (b)(v), or (b) any Selected Target or Pursued Disclosed Target that is abandoned by BMS pursuant to Section 4.11.

1.2 "Affiliate" means, with respect to a particular Party, another Person that controls, is controlled by or is under common control with such Party. For the purposes of the definition in this Section 1.2, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

1.3 "Analogue" means a BMS Compound that is structurally and functionally similar to a particular BMS Compound and is provided to Exelixis by BMS pursuant to Section 4.3 as a substitute for such BMS Compound.

1.4 "Annual FTE Rate" means the amount to be paid over one (1) year by BMS to Exelixis to support one (1) FTE. The Annual FTE Rate will be [*] per year until the second anniversary of the Effective Date. Starting on the second anniversary of the Effective Date and continuing on each subsequent anniversary (if any) during the Research Term, this rate will be adjusted for Research support provided by BMS hereunder after such date by the percentage change, if any, in the Consumer Price Index described below as of the first day of the calendar month on or immediately preceding such adjustment date as compared to the index applicable to the most recent adjustment prior adjustment date (August 1, 1999 shall be the reference date for the first adjustment). The index source will be the Consumer Price Index for All Urban Consumers - San Francisco Area, published by the Bureau of Labor Statistics of the United States Department of Labor (or successor agency). Should an index covering the San Francisco area not then be available, then the national index will be used as the reference.

1.5 "Back-Up Compound" means, with respect to a particular Collaboration Compound or Licensed Product (the "Parent"), any other Collaboration Compound or Licensed Product that is intended to directly inhibit, directly activate or otherwise directly modulate the same Mammalian Target as such Parent, and that is developed by or on behalf of BMS or its Affiliate or sublicensee as a potential replacement for the Parent in the event that development of the Parent does not result in Regulatory Approval for the Parent or, in the case of a Collaboration Compound, Regulatory Approval for a Compound Product comprising or incorporating such Collaboration Compound. For clarity, it is understood that the term "Back-Up Compound" shall not include new formulations, presentations, salts, or modes of delivery of the Collaboration Compound or other active ingredient contained in the Parent.

1.6 "Biotherapeutic Product" means (a) any therapeutic or prophylactic product for treatment or prevention of diseases or conditions in humans that comprises or incorporates (i) an antibody against a Mammalian Target, or (ii) an antisense compound based upon a Mammalian Target sequence, or (b) a gene therapy product based upon the sequence of a Mammalian Target.

1.7 "BMS Compound" is a molecule that is provided to Exelixis by BMS under a code name pursuant to Section 4.1 or 4.3, such that BMS does not disclose the identity or structure of such molecule to Exelixis. It is understood that "BMS Compounds" may include

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compounds in the public domain or which are proprietary to third parties, in addition to BMS proprietary compounds.

1.8 "BMS Core Technology" means the proprietary BMS know-how, Patents, BMS Software, drawings, blueprints, materials and Information described on Exhibit B hereto (and any copyrights covering any of the foregoing know-how, software or other works included on Exhibit B) and including all Improvement Inventions to the foregoing that are Controlled by BMS or its Affiliate, the Bristol-Myers Squibb Pharmaceutical Research Institute, during the Research Term. "BMS Software" shall mean all software in any stage of development, whether in object or source code, and all documentation relating thereto provided by BMS, and including all copies, compilations, adaptations, translations, and derivative works thereof made by or on behalf of BMS or its Affiliate, the Bristol-Myers Squibb Pharmaceutical Research Institute. For purposes of the foregoing, "derivative works" means any computer program that may be developed containing any part of the software, regardless of the form of the resulting code, the media it is carried on, or its intended use. For sake of clarity, "BMS Core Technology" excludes all trademarks.

1.9 "BMS Product" means a product, other than a Licensed Product, that contains a BMS Compound that is Controlled by BMS or its Affiliates and is subject to development or has already received Regulatory Approval at the time BMS provides such BMS Compound to Exelixis.

1.10 "Candidate Target" means any Target (other than a Disclosed Target) for which (a) there is sufficient (as determined by the JSC) [*], and (b) Exelixis has conducted a [*] mammalian orthologues.

1.11 "Collaboration" means all the research- or development-related activities either (a) performed by or on behalf of Exelixis or BMS pursuant to the Mode of Action Program under this Agreement, or (b) conducted by or on behalf of BMS or its Affiliate during the Research Term based in material part upon Exelixis-generated Research Results disclosed to BMS hereunder.

1.12 "Collaboration Compound" means any molecule that (a) has a molecular weight less than or equal to [*]; (b) has the ability to inhibit, activate or otherwise modulate the activity of a Mammalian Target (other than a Confirmed Target) or its encoded protein; and (c) such ability is identified by or on behalf of BMS or its Affiliate or sublicensee through the use to any material extent of a Mammalian Target (other than a Confirmed Target) or any information relating to a Mammalian Target (other than a Confirmed Target) developed by or on behalf of BMS or its Affiliate or sublicensee by material use of such Mammalian Target, the DNA sequence relating thereto, or any other Research Results disclosed to BMS hereunder that (i) directly relate to such Mammalian Target (other than a Confirmed Target) or the Target to which such Mammalian Target is related, and (ii) Remain Confidential at the time of such use, provided that the foregoing definition is subject to the limitations in Section 4.15.

1.13 "Compound Class" means any compound having the same active substructure (or active substructures, if more than one exist) of the BMS Compound used in identifying a giving Target.

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1.14 "Compound Product" means any therapeutic or prophylactic product for treatment of humans that comprises or incorporates a Collaboration Compound, including any formulation or mode of delivery thereof.

1.15 "Conceptual Target" means:

(a) a mammalian orthologue of a Selected Target, which orthologue (i) is identified by or on behalf of Exelixis pursuant to its work under the Mode of Action Program or by or on behalf of BMS or its Affiliate or sublicensee through the material use of such Selected Target or DNA sequence information relating thereto, or any other Research Results that Remain Confidential at the time of such use by BMS, and (ii) is, at the time of identification by BMS or at the time of communication of same by Exelixis to BMS (if identified by Exelixis), [*] BMS Compound [*]; or

(b) a Related Target that, at the time of identification of such Related Target by BMS, is [*] BMS Compound [*] Selected Target or Pursued Disclosed Target [*] Related Target [*] Related Target [*].

Examples of "Conceptual Targets" are set forth in Exhibit A attached to this Agreement.

1.16 "Confirmed Target" means a mammalian orthologue of a Selected Target, which orthologue (a) is identified by or on behalf of Exelixis pursuant to its work under the Mode of Action Program [*] Candidate Target [*] BMS Compound [*] BMS Compound [*].

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

1.18 "Core Technology Patents" means, with respect to a particular Party, those Patents covering the composition of matter or use of such Party's Core Technology, or any part or aspect thereof.

1.19 "Diagnostic Product" means a product that facilitates identification of patients having a particular disease or having a predisposition to a particular disease, and/or monitors the prognosis or progression of a disease in a patient, by the detection of either (i) sequence differences in different alleles of a Mammalian Target, or (ii) the presence or absence of a certain Mammalian Target, or (iii) the presence or absence of the protein product of a certain Mammalian Target.

1.20 "Diligent Efforts" means the carrying out of obligations or tasks in a 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.

1.21 "Disclosed Target" means any [*] to BMS.

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1.22 "Exelixis Core Technology" means the proprietary Exelixis know-how, Patents, software, the FlyTag Database, materials and Information described on Exhibit C hereto (and any copyrights covering any of the foregoing know-how, software or other works included on Exhibit C) and including all Improvement Inventions to the foregoing owned or Controlled by Exelixis and its Affiliates during the Research Term (but excluding any improvements or additions to the FlyTag Database made after the Effective Date other than corrections of errors in the sequence information that are made or determined by Exelixis). For sake of clarity, "Exelixis Core Technology" excludes all trademarks.

1.23 "Field" means the treatment, prophylaxis and diagnosis of disease in humans.

1.24 "FlyTag Database" means the sequence data within the database maintained by Exelixis under the name "FlyTag" as of the Effective Date in the form previously released by Exelixis to a contractual partner, as further described in Exhibit C.

1.25 "FTE" means the equivalent of one researcher working full time (but including standard vacation) for or on behalf of Exelixis (or BMS, as applicable) for a twelve (12)-month period.

1.26 "Gene Product" means any therapeutic or prophylactic product for treatment of humans that comprises or incorporates the gene product of a Mammalian Target or a mutein or fusion protein based thereon.

1.27 "Improvement Inventions" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, that are made or authored during the Research Term solely by employees or agents of a Party or jointly by employees or agents of both Parties, are improvements to or modifications of the Exelixis Core Technology or the BMS Core Technology, and are Controlled by the applicable Party.

1.28 "IND" means an Investigational New Drug Application filed with the United States Food and Drug Administration, or its foreign equivalent in any country.

1.29 "Independent Research" means any and all research that is conducted by Exelixis outside the scope of this Agreement either independently or pursuant to an agreement with a Third Party, but provided that such research: (a) is not in conflict with Articles 6 and 7, (unless otherwise permitted by Sections 6.3 and 6.4), and (b) does not use any Confidential Information of BMS or, except where expressly permitted hereunder, any Research Results relating directly to Selected Targets, Pursued Disclosed Targets, or Mammalian Targets. For clarity, it is understood that research using any Information that Exelixis generates without reliance on the Research Results or BMS Confidential Information (including Information licensed to Exelixis by a Third Party or that is publicly available), even if such Information is similar or identical to the Research Results, shall be deemed Independent Research.

1.30 "Information" means inventions, information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, databases, inventions, practices, methods, techniques, specifications, formulations, formulae, knowledge, know-how, skill, experience, test data including pharmacological, biological,

chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures, and patent and other legal information or descriptions.

1.31 "Joint Inventions" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, that are made jointly by employees or agents of both Parties pursuant to work conducted in the Collaboration.

1.32 "Joint Management Team" or "JMT" means the committee described in Section 2.2.

1.33 "Joint Patents" means all Patents and other intellectual property rights claiming or covering or appurtenant to Joint Inventions.

1.34 "Joint Scientific Committee" or "JSC" means the committee described in Section 2.3.

1.35 "Known" means, as used in the phrase "Known to be a target for drug discovery for the disease area of interest," that BMS can demonstrate that, at the applicable time:

(a) [*], or

(b) based on information that was publicly available at such applicable time, [*].

1.36 "Known Target" means: (a) a Pre-Associated Target; (b) a Conceptual Target; (c) a Mammalian Disclosed Target; or (d) a Transition Target [*] Confirmed Targets are excluded from the definition of "Known Target."

1.37 "Licensed Product" means any Compound Product, Safety Product, Gene Product, Biotherapeutic Product, Diagnostic Product or Pharmacogenomics Product.

1.38 "Major Market" means the United States, Canada, the United Kingdom, Japan, France, Germany, Italy or Spain.

1.39 "Mammalian Disclosed Target" is a mammalian orthologue of a Pursued Disclosed Target, which orthologue is identified by or on behalf of Exelixis pursuant to work under the Mode of Action Program or [*] Pursued Disclosed Target [*] at the time of such use by BMS .

1.40 "Mammalian Target" means any Novel Target, Unlinked Related Target, Known Target, Safety Target, Mammalian Disclosed Target or Transition Target (at any time).

1.41 "Mode of Action Program" means that collaborative research program undertaken by the Parties pursuant to Articles 3 and 4.

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

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1.43 "Net Sales" means the amount invoiced or otherwise billed by BMS or its Affiliate or licensee for sales or other commercial disposition of a Licensed 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: (i) 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; (ii) credits or allowances actually granted upon rejections or returns of Licensed Products, including for recalls or damaged goods; (iii) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Licensed Products, to the extent billed; (iv) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of a Licensed Product; (v) bad debts relating to sales of Licensed Products that are actually written off by BMS in accordance with generally accepted accounting principles, consistently applied, during the applicable royalty calculation period, and (vi) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Licensed Products, including without limitation 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 Licensed 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 [*] products sold within such bundled arrangement for the applicable accounting period. In case of any dispute as to the [*], the determination of same shall be calculated and certified by BMS' independent public accountants, whose decision shall be binding.

A sale of a Licensed Product is deemed to occur upon the earliest of invoicing or transfer of title in the Licensed Product to the Third Party purchaser. In the event that BMS, after reasonable efforts, cannot calculate accurately the Net Sales of a sublicensee in a particular country, the Parties will 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 Licensed Product to a Third Party distributor of such Licensed Product in a given country shall be considered a sale to a Third Party customer. Any Licensed 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 Licensed 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 Licensed 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 Licensed Product portion of the end-user product and/or service when such Licensed Product is sold separately during the applicable accounting period in

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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 Licensed 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 Licensed Product in each such country shall be determined by mutual agreement reached in good faith by the Parties prior to the end of the accounting period in question based on an equitable method of determining same that takes into account, on a country by country basis, variations in potency, the relative contribution of each active agent, component or service, as the case may be, in the combination, and relative value to the end user of each active agent, component or service, as the case may be.

Notwithstanding the foregoing, it is agreed that drug delivery vehicles, adjuvants, and excipients shall not be deemed to be "active ingredients" or "active functional elements," the presence of which in a Licensed Product would be deemed to create a combination product subject to the terms of the preceding paragraph.

1.44 "New Indication" means, with respect to a particular drug product that is Controlled by BMS or its Affiliates and is in development or has already received Regulatory Approval, any indication that:

(a) is not an indication that, at the time BMS provided to Exelixis the BMS Compound, pursuant to Section 4.1 or 4.3, was used to identify the particular Target referred to in subsection (b) below, either (i) BMS or its Affiliate or licensee was in the process of conducting development or had received Regulatory Approval for such BMS product, or (ii) is reasonably related, based on the known or believed mechanism of action of such BMS product, to the indication(s) for which such BMS product is then being tested in development or being marketed pursuant to Regulatory Approvals or that is contained in BMS' development plans for such BMS product or that would reasonably be anticipated for such BMS product based on publicly available information or information then known to BMS with respect to the known or believed mechanism of action of such product (or the active compound therein); and

(b) is discovered or identified by or on behalf of BMS or its Affiliate or sublicensee during research performed through the material use to any extent of either:

(i) a Product Target, or a mammalian orthologue thereof, or any DNA sequence information relating to such Target or mammalian orthologue, or any other Research Results that Remain Confidential at the time of such use; or

(ii) Information developed by BMS or its Affiliate or sublicensee by material use of a Product Target, or a mammalian orthologue thereof, or any DNA sequence information relating to such Target or mammalian orthologue, or any other Research Results that Remain Confidential at the time of such use.

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1.45 "Novel Target" means a mammalian orthologue of a Selected Target, which orthologue (a) was identified by or on behalf of Exelixis pursuant to work conducted under the Mode of Action Program [*] BMS Compound [*] Selected Target [*] Novel Targets [*] Unlinked Related [*], Known Targets [*] Confirmed Targets.

1.46 "Novel Target Patent" means a Patent Controlled by Exelixis that claims at least one Novel Target (or its use) first discovered by Exelixis during the Research Term under the Mode of Action Program, or that claims a Gene Product or other Biotherapeutic Product based upon or containing such a Novel Target (or its manufacture or use), but excluding inventions of Exelixis made during any Independent Research.

1.47 "Patent" means (i) 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 has not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, or been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement), including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof and (ii) pending applications for letters patent that are being actively prosecuted (but not in any event for more than five (5) years from the date of filing) and which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority for whatever reason (and from which no appeal is or can be taken), and/or abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written consent, including without limitation any continuation, division or continuation-in-part thereof and any provisional applications.

1.48 "Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority, or any other form of entity not specifically listed herein.

1.49 "Pharmacogenomic Product" means a product that is primarily used to select between two or more therapeutic or prophylactic regimens for a human, wherein at least one such therapeutic or prophylactic regimen involves a compound that could be used to treat and/or prevent a disease, and where the selected regimen is judged based on the use of the pharmacogenomic product to be of most likely benefit and/or to do the least harm to a patient, and provided that such selection is made based on the genotype of such human at certain genetic loci (including by detection of certain protein products indicative of the necessary genotype) as determined by use of such product to detect either (i) sequence differences in different alleles of a Mammalian Target, or (ii) the presence or absence of a certain Mammalian Target, or (iii) the presence or absence of the protein product of a certain Mammalian Target.

1.50 "Phase III Clinical Trials" means those trials on sufficient numbers of patients that are designed to establish that a drug is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with the drug or label expansion of such drug.

1.51 "Pre-Associated Target" means:

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(a) a mammalian orthologue of a Selected Target, which orthologue (i) was identified by or on behalf of Exelixis pursuant to work under the Mode of Action Program [*] Selected Target [*] Selected Target as a Candidate Target, [*] BMS Compound [*] Selected Target, [*] BMS Compound [*]; or

(b) a Related Target that, at the time of identification of such Related Target by BMS, is [*]BMS Compound[*]Selected Target[*]Pursued Disclosed [*]Related Target,[*]BMS Compound[*]Related Target.

1.52 "Preclinical Lead Profile" or "PLP" [*].

1.53 "Pre-existing Inventions" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, made, created or invented by a Party, its employees or its agents, or otherwise Controlled by the Party, prior to the Effective Date.

1.54 "Product" means a Licensed Product or a BMS Product.

1.55 "Product Target" means a Selected Target [*] Pursued Disclosed Target [*].

1.56 "Pursued Disclosed Target" means a Disclosed Target that has been selected as set forth in Section 4.8(b), or that is deemed to be a Pursued Disclosed Target pursuant to Section 4.8(b)(v)(2).

1.57 "Quality Target" means a Candidate Target (a) that was identified by or on behalf of Exelixis pursuant to work under the Mode of Action Program; (b) [*] Candidate Target [*] BMS Compound [*] such Candidate Target; [*] mammalian orthologue.

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

1.59 "Related Pathway" means a biochemical pathway that interacts biochemically with a given pathway which interaction is identified by Exelixis pursuant to work conducted under the Mode of Action Program or by or on behalf of BMS or its Affiliate or sublicensee through the use to any material extent of any Target disclosed hereunder or any mammalian orthologue identified by the material use of such Target or DNA sequence information relating thereto, or any other Research Results that Remain Confidential at the time of such use.

1.60 "Related Target" means:

(a) [*] mammalian orthologue [*] Selected Target [*] Disclosed Target, which orthologue was identified by or on behalf of Exelixis pursuant to work under the Mode of Action Program [*] Disclosed Target [*] Disclosed Target, [*]; or

(b) a mammalian orthologue [*] Selected Target [*] Disclosed Target, [*] Selected Target [*] Disclosed Target [*] mammalian orthologue [*].

[*] "Related Target" [*] mammalian orthologue [*] Selected Target [*] Disclosed Target, [*] BMS Compound [*] Selected Target [*] Disclosed Target, [*] mammalian target [*].

1.61 "Remain(s) Confidential" means, with respect to particular Research Results used by or on behalf of BMS or its Affiliate or sublicensee, that such Research Results, at the

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time of such use, were not then in the public domain and were not then known to BMS or any of its Affiliates or licensees as a result of (1) knowledge possessed by BMS or any of its Affiliates prior to disclosure of the Research Results to BMS by Exelixis, (2) disclosure by a Third Party entitled to disclose same without restriction as to confidentiality, or (3) independent development by employees or contractors of BMS or any of its Affiliates who did not have access to any Research Results.

1.62 "Research Plan" means the plan that sets forth the research work to be performed by Exelixis and BMS in conducting the Mode of Action Program.

1.63 "Research Results" means the data and other results generated by Exelixis under the Mode of Action Program.

1.64 "Research Term" means the period during which research activities of Exelixis under the Mode of Action Program shall be conducted, as set forth in Section 3.2.

1.65 "Safety Compound" means any compound that (a) has a molecular weight less than or equal to [*], and (b) was discovered by or on behalf of BMS or its Affiliate or sublicensee through the material use of a Safety Target, any DNA sequence information relating thereto, or any other Information developed through the material use of such Safety Target.

1.66 "Safety Product" means any therapeutic or prophylactic product for treatment of humans that comprises or incorporates a Safety Compound, including any formulation or mode of delivery thereof.

1.67 "Safety Target" means a mammalian orthologue of a Candidate Target or Pursued Disclosed Target [*] BMS Compound [*] (a) was identified by or on behalf Exelixis pursuant to work under the Mode of Action Program [*] Candidate Target or Pursued Disclosed Target [*].

1.68 "Second Generation Product" means, with respect to a particular Licensed Product that has achieved Regulatory Approval in a Major Market (the "Original Licensed Product"), any Licensed Product that contains a different active ingredient from that in the Original Licensed Product and that is directed against the same Mammalian Target as the Original Licensed Product, which is developed by or on behalf of BMS or its Affiliate or sublicensee as an improvement upon or potential successor to the Original Licensed Product. For clarity, it is understood that "Second Generation Product" shall not include new formulations, presentations, salts, or modes of delivery of the active ingredient contained in the Original Licensed Product.

1.69 "Selected Target" means a Candidate Target that has been selected as set forth in Section 4.6(a), or that is deemed to be a Selected Target as provided in Section 4.8(a)(v)(2).

1.70 "Sole Inventions" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, that are made, discovered or developed solely by a Party and its employees or agents pursuant to work performed in the Collaboration.

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1.71 "Target" is any invertebrate target identified by Exelixis during the Research Term under the Mode of Action Program based on analysis of a BMS Compound in Exelixis' model genetic systems. A Target may include, without limitation, a Candidate Target, Disclosed Target, Selected Target, Pursued Disclosed Target, Product Target or Abandoned Target.

1.72 "Technology Sharing Program" means the program described in Article 5.

1.73 "Third Party" means any entity other than (i) Exelixis, (ii) BMS or (iii) an Affiliate of either of them.

1.74 "Transition Target" means, with respect to [*] Mammalian Target [*] "Novel Target" [*] "Unlinked Related Target", [*] Known Target for the purposes of the economics and other rights and obligations under the Agreement, under one of the circumstances set forth below:

(a) if, prior to the date that is [*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target, [*] Novel Target or Unlinked Related Target [*] Known Target; or

(b) if, after the date that is [*] after the date that such Novel Target or Unlinked Related Target was initially identified under the Agreement, [*] Novel Target or Unlinked Related Target [*] with respect to such Novel Target or Unlinked Related Target, then the following shall apply:

[*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target [*];

(i) [*] Collaboration Compound, [*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target [*] Collaboration Compound [*] Novel Target or Unlinked Related Target [*];

(ii) [*] Collaboration Compound, [*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target [*] Collaboration Compound [*] Known Target; and

(iii) [*] Collaboration Compound, [*] Novel Target or Unlinked Related Target [*] Novel Target or Unlinked Related Target [*] Collaboration Compound [*] Confirmed Target.

As used herein, a [*] Collaboration Compound [*] Novel Target or Unlinked Related Target [*].

1.75 "Unlinked Related Target" means a Related Target [*] BMS Compound [*] a Pursued Disclosed Target [*].

1.76 "Valid Claim" means an issued claim under an issued patent within the Patent Rights, which has not (i) expired or been canceled, (ii) been declared invalid by an unreversed and unappealable decision of a court or other appropriate body of competent jurisdiction, (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, and/or (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written agreement.

2. Management of the Collaboration

2.1 Overall Management Structure. The Parties agree to establish a multi-level committee structure to manage and direct the Collaboration and the relationship of the Parties in pursuing the research and development goals of this Agreement. The committee structure is intended to facilitate decision making and management of the various Collaboration activities of the Parties, and each Party agrees to use good faith, cooperative efforts to facilitate and assist the efforts of such committees. The overall management of the Collaboration with respect to work performed by Exelixis under the Mode of Action Program shall be vested in the Joint Management Team (the "JMT"), with responsibility, as further discussed in Section 2.2, for

establishing the strategic direction of the Collaboration and for managing and directing the research efforts of the Parties under the Collaboration. The Technology Sharing Program shall be managed by two individuals, one each designated by BMS and Exelixis, which individuals shall report to the JMT. The day-to-day management and direction of the Mode of Action Program conducted at Exelixis shall be managed by the Joint Scientific Committee (the "JSC"), which shall report to and be managed by the JMT. The JSC shall cease to exist after its second meeting after the termination of the Research Term (unless otherwise extended by unanimous consent of all members of the JSC). Any dispute that cannot be resolved by the JSC for matters that come before it shall be resolved by the JMT.

2.2 Joint Management Team.

(a) Membership. The Joint Management Team (the "JMT") shall be composed of four members, two members appointed by each Party. Within thirty (30) days after the Effective Date, each Party shall appoint two representatives from its senior management team to the JMT. At least one representative from Exelixis shall be Head of Research or a mutually agreeable designate; at least one representative from BMS shall be its Vice President for Applied Genomic Research or a mutually agreeable designate. With the exception of the Party's Head of Research, each Party may replace its JMT representatives at any time upon written notice to the other Party. BMS will designate one of its representatives as Chairperson of the JMT. The Chairperson shall be responsible for scheduling meetings, preparing and circulating an agenda in advance of each meeting, and preparing and issuing minutes of each meeting within thirty (30) days thereafter.

(b) Responsibilities. During the Research Term of this Agreement, the JMT shall meet a minimum of two times per year as provided in Section 2.4; thereafter, the JMT shall meet at the request of either party, which request may be made by each party not more once in each twelve-month period following the termination of the Research Program, unless otherwise agreed to by unanimous consent of all members of the JMT. Except as provided in subsection (c) below, the JMT shall operate by consensus and in accordance with the principles set forth in this Article 2. It shall determine the overall strategy for the Collaboration and shall be make all major business and strategic decisions. The JMT shall supervise and direct the JSC, evaluate the progress of the Research Plan and monitor compliance with the diligence provisions set forth in Sections 4.9 and 4.10, and it will make the final decisions regarding: (i) allocation of FTEs for the Collaboration, (ii) significant modifications of the Research Plan, (iii) transfer of technology under the Technology Sharing Program; (iv) the strategy for the protection of intellectual property arising from the Collaboration; and (v) determination of whether particular Candidate Targets are Quality Targets. The JMT will also serve as the initial forum for dispute resolution as set forth in Section 14.1. To the extent necessary to carry out its responsibilities under the Research Plan, a Party's JMT members shall be granted access to the other Party's relevant Confidential Information relevant to the Collaboration. Thus, it may be that members of the JMT, in assessing modifications to the Research Program, assessing the Research Results, or making determinations as required in this Section 2.2, may need to be granted access to higher levels of the proprietary or Confidential Information of the other Party than is provided to the JSC or to the employees of such Party working on the Collaboration. The JMT shall discuss in good faith and agree on the level of such access that is needed to achieve the goals and intent of the Parties.

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(c) Determination of Certain Matters. BMS shall have the tie-breaking vote in all matters that come before the JMT (including without limitation whether a Candidate Target is a Quality Target); provided, however, that: (1) the Parties agree to refer the any such matter, for which the JMT is unable to agree, to the senior officers referred to in Section 14.1(a) and to follow the informal dispute resolution procedure in Section 14.1(a) (but without the requirement in said section of submitting the matter to arbitration if said senior officers cannot reach mutual agreement within the time frame set forth therein) before BMS may exercise its tie-breaking vote, and (2) the unanimous consent of all members of the JMT shall be required for any dispute or disagreement the resolution of which would require the use by Exelixis of more FTEs than BMS is then supporting hereunder or which would materially conflict with Exelixis' obligations hereunder.

2.3 Joint Scientific Committee.

(a) Membership. The Joint Scientific Committee (the "JSC") shall be composed of four members. Within thirty (30) days after the Effective Date, each Party shall appoint two representatives to the JSC, one such representative being the individual at the Party with primary responsibility for the day-to-day management and execution of the Research Plan. Exelixis' other representative shall be its Head of Research or such person's designee. The JSC will report directly to the JMT and shall take its direction from the JMT. Each Party may replace its appointed JSC representatives at any time upon written notice to the other Party. Exelixis shall designate one of its representatives as Chairperson of the JSC. The Chairperson shall be responsible for scheduling meetings, preparing and circulating an agenda in advance of each meeting, and preparing and issuing minutes of each meeting within thirty (30) days thereafter.

(b) Responsibilities. During the Research Term and for two quarters thereafter, the JSC shall meet on a quarterly basis as provided in Section 2.4. The JSC shall operate by consensus and in accordance with the principles set forth in this Article 2. It shall be responsible for the planning and execution of the Research Plan. At its meetings, the JSC shall review the progress of the Research Plan and consider modifying the Research Plan. At the next JMT meeting, the JSC shall summarize for the JMT the progress of the Research Plan since the last JMT meeting, bring to the attention of the JMT any overarching issues or significant changes in a Research Plan, and address any issues raised by the JMT at its previous meeting. The JSC shall also prioritize projects within the Research Plan as set forth in Article 4.

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

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

3. Overview of the Mode of Action Program

3.1 Goals. The general goals and intent of the Mode of Action Program are to apply the Exelixis technology to: (a) the identification of the molecular targets and/or biochemical pathways modulated by BMS Compounds, (b) the discovery of Candidate Targets that may be useful as tools for the development of drugs useful in the prevention, treatment or cure of human disease, and (c) the discovery, development and commercialization of Licensed Products and/or additional indications for BMS Products.

3.2 Research Term. The Research Term shall commence on the Effective Date and shall continue until the date three (3) years after the Effective Date, or such other date on which the Research Term terminates pursuant to an early termination under Section 3.2(a) or (b), or expires after an extension under Section 3.2(c). Any termination of the Agreement pursuant to Section 11.2 shall terminate the Research Term as of the date of such termination. The FTE funding commitments of BMS and Exelixis set forth in Section 3.4 and the payment obligations of BMS set forth in Section 8.2 shall remain in force until the termination of the Research Term.

(a) If Exelixis has not provided BMS with at least [*] Quality Targets by the date that is thirty (30) days prior to first anniversary of the Effective Date, BMS may, in its sole and absolute discretion, either (i) terminate this Agreement as provided below in this Section 3.2(a), or (ii) if BMS does not elect to terminate per clause (i) above, extend the Research Term by ninety (90) days by written notification to Exelixis in order to allow Exelixis additional time to provide [*] Quality Targets by the date that is sixty (60) days after the first anniversary of the Effective Date. If BMS so decides to terminate the Research Term, such termination shall be effective fifteen (15) days after the date of BMS' written notification thereof, and BMS shall have no obligation to make any Research funding payment that would otherwise have become due after the date that notice of termination is given. If BMS elects not to terminate the Research Term as provided in subsection (a)(i), such Research Term shall continue for an additional ninety (90) days as provided in Section 3.2(b).

(b) If BMS has the right to an election under Section 3.2(a), and elected under Section 3.2(a)(ii) to extend the Research Term until the date that is sixty (60) days after the first anniversary of the Effective Date, and if Exelixis has not provided BMS with at least [*] Quality Targets by the date that is sixty (60) days after the first anniversary of the Effective Date, BMS may, in its sole and absolute discretion, either (i) terminate this Agreement, or (ii) continue to fund the Mode of Action Program hereunder for the remainder of the Research Term at the rate of [*]. If BMS decides to terminate the Research Term, it shall give written notice by no later than the seventy-fifth (75th) day after the first anniversary date, and such notice of termination shall be effective fifteen (15) days after the date of BMS' written notification thereof. In the event of termination, BMS shall have no obligation to make any Research funding payment that would otherwise have become due after the date that notice of termination is given. If BMS does not elect to terminate as permitted under subclause (b)(i) above, then the Research Term shall continue, subject to Article 11 hereof, for the full three years, at a funded rate of [*] at Exelixis.

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(c) If BMS has not terminated the Research Term as permitted in Sections 3.2(a) or (b), the Parties may mutually agree in writing, no later than sixty (60) days prior to the date that the Research Term, as set forth in this Section 3.2, would otherwise expire, to extend the Research Term for one (1) additional year beyond such initial three (3) year term. The Parties may agree to multiple such one (1)-year extensions of the Research Term. Each such extension shall be under the terms of this Agreement, subject to any adjustment agreed to in writing by the Parties of the FTE funding commitments of BMS and Exelixis set forth in Section 3.4.

3.3 Research Plans. The initial Research Plan for the Mode of Action Program has been approved by the Parties concurrent with the execution of this Agreement. During the Research Term, the JSC may propose amendments to the Research Plan, based upon the results achieved in the Mode of Action Program. Any such proposed amendments shall be reviewed and approved by the JMT, and the amended Research Plan, as approved by the JMT, shall thereafter be in effect and control the Parties' activities under the Mode of Action Program.

3.4 FTE Commitments.

(a) Subject to Section 3.4(d), for the first year of the Research Term, BMS shall fund research under the Mode of Action Program for [*].

(b) Subject to Section 3.4(d), if Exelixis provides BMS with [*] Quality Targets by the date [*] of the Effective Date, then, subject to Article 11, from such first anniversary until the termination of the Research Term, BMS shall fund research under the Mode of Action Program for [*].

(c) Subject to Section 3.4(d), if Exelixis does not provide BMS with [*] Quality Targets by the date [*] of the Effective Date and if BMS elects pursuant to Section 3.2(b) to extend for [*] the date by which BMS could terminate the Research Term under Section 3.2(a), then after such [*], BMS' research funding obligations under the Mode of Action Program shall be as follows:

(i) BMS shall fund a minimum of [*] until the date that is [*] of the Effective Date; and

(ii) In the event that Exelixis provides BMS with [*] Quality Targets by the date that is [*] the [*] the Effective Date, BMS shall fund [*] from such date until the termination of the Research Term; and

(iii) In the event that Exelixis does not provide BMS with [*] Quality Targets by the date that is [*] the [*] the Effective Date, BMS may elect to continue the Mode of Action Program through the end of the Research Term but in such event shall fund [*] from such date until the termination of the Research Term.

(d) At any time during the Research Term, the JMT may adjust the number of FTEs dedicated to the Mode of Action Program for a minimum period of one (1) year. The resulting number of FTEs shall not exceed [*] nor fall below the [*], as applicable, without the written consent of Exelixis. BMS shall fund all FTEs allocated by the JMT. Exelixis shall have

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a reasonable time in which to locate resources to fill any additional FTE positions created by the JMT.

3.5 Conduct of Research. The Parties shall use Diligent Efforts to conduct their respective tasks, as assigned under the Research Plan, throughout the Mode of Action Program and shall conduct the Mode of Action Program 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 efficiently and expeditiously.

3.6 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.

3.7 Reports and Disclosure of Research Results. During the Research Term, each Party shall, no less than once per quarter, submit to the other Party and the JSC a written progress report summarizing the work performed under the Collaboration in relation to the Research Plan and the goals of the Mode of Action Program and the Research Results obtained therefrom. In particular, but without limiting the generality of the foregoing, BMS shall provide in such reports the identity, and Information relating to, of each Mammalian Target identified hereunder, excluding all Related Targets, and shall indicate the identification (e.g., by the BMS compound control number) of Collaboration Compounds with sufficient activity to justify further research or development work on such compound (and BMS shall also disclose the Mammalian Target that such compound directly modulates, excluding Related Targets, but shall not be obligated to disclose compound structures or information that would assist in structural identification). If reasonably necessary for a Party to perform its work under the Collaboration or to exercise its rights under the Agreement, such Party may request that the other Party provide more detailed information and data regarding such results reported by such other Party, and such other Party shall promptly provide the requesting Party with information and data as is reasonably related to such request. All such reports shall be considered Confidential Information of the Party providing same.

3.8 Preserving Confidentiality of Certain Research Results. Exelixis agrees that it shall use commercially reasonable efforts (including not less than those efforts that it uses to protect its own confidential information of the same importance) not to disclose to any Third Party any Research Results of Exelixis that relate directly to any Selected Target or Pursued Disclosed Target (or any Mammalian Target related to any such Selected Target or Pursued Disclosed Target), provided that the foregoing shall not prevent Exelixis from disclosing any such information in confidence (on terms consistent with those set forth in Article 10 herein but for a period of not less than [*]) to any other licensee solely for use outside the Field, but subject to the limitations in Section 6.3(a).

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4. Mode of Action Program

4.1 Provision of BMS Compounds. BMS will provide Exelixis with [*] BMS Compounds within [*] after the Effective Date, for use by Exelixis in the Mode of Action Program. BMS shall make known to Exelixis all BMS Compounds that are part of BMS Products. BMS shall not reveal the identity or structure of any BMS Compound to Exelixis, but it may provide Exelixis with information concerning the putative function of an BMS Compound or other such information as may help Exelixis perform its duties under the Mode of Action Program (which information shall be treated as BMS Confidential Information). Following approval and allocation of sufficient FTE resources by the JMT, BMS may provide additional BMS Compound sets to Exelixis from time-to-time during the Research Term for use by Exelixis in the Mode of Action Program.

(a) In the event that, subsequent to providing a BMS Compound to Exelixis, but prior to the identification by Exelixis under the Mode of Action Program of any Target modulated by such BMS Compound, BMS learns that such BMS Compound modulates a particular invertebrate or vertebrate target either: (i) from public disclosures; or (b) from internal BMS research in an area other than mode of action research using C. elegans or Drosophila, then BMS may, by providing written notice to Exelixis substantiating the basis of BMS' learning of such target, withdraw such BMS Compound from the Mode of Action Program, and Exelixis shall cease work thereon. BMS shall not use any Research Results relating to such BMS Compound, but shall have no obligation to Exelixis based on the use of any Information learned by BMS independently.

4.2 Stage I - Feasibility Evaluation. Within [*] of receiving a particular BMS Compound from BMS, Exelixis shall evaluate the feasibility of identifying Target(s) for such BMS Compound. Such Stage I research shall include optimization of the delivery of such BMS Compound to a model system organism and analysis of any phenotype arising in said model system organism as a result of BMS Compound delivery. Exelixis shall report the data arising from such Stage I research to the JSC.

4.3 Provision and Testing of Analogues. In the event that the Stage I data for a particular BMS Compound indicates that it will not be feasible for Exelixis to identify Target(s) of such BMS Compound, the JSC may approve and allocate sufficient resources for Exelixis from the pool of funded FTEs to perform Stage I research on one or more Analogues of such BMS Compound that may be provided by BMS for such purpose. Within [*] of receiving a particular Analogue from BMS, Exelixis shall evaluate the feasibility of identifying Target(s) for such Analogue. Such Stage I research shall include optimization of the delivery of such Analogue to a model system organism and analysis of any phenotype arising in said model system organism as a result of Analogue delivery. Exelixis shall report the data arising from such Stage I research to the JSC.

4.4 Stage II - Target Identification. The JSC shall review the Stage I data for each BMS Compound, decide whether Exelixis should perform Stage II research on such BMS Compound, and prioritize any such Stage II research relative to the other work to be performed by Exelixis under the Mode of Action Program. Exelixis shall proceed in an orderly fashion, based on such prioritization and the number of FTEs then committed to the Mode of Action

Program, to perform research to identify Target(s) of each such BMS Compound selected by the JSC for Stage II work. Such research may include: (i) experiments in which existing [*] BMS Compound [*]; (ii) experiments in which [*] BMS Compound [*]; and (iii) performance of [*] BMS Compound [*]. Exelixis shall report to the JSC the data arising from such Stage II research and the identity of any Target then known by Exelixis to be a Disclosed Target.

4.5 Stage III - Identification of Candidate Targets. The JSC shall review all Stage II data for each BMS Compound, select no more than [*] Targets (excluding any Targets for which Exelixis determines that, as of the Effective Date, it had an exclusivity obligation to another party that prevents disclosure of such Target [*] to BMS hereunder) per BMS Compound for molecular analysis by Exelixis, and prioritize any such Stage III research relative to the other work to be performed by Exelixis under the Mode of Action Program. Subject to Section 4.7, Exelixis shall proceed in an orderly fashion, based on the JSC's prioritization and the number of FTEs then committed to the Mode of Action Program, to identify the [*]. Exelixis will also undertake a good faith [*] mammalian orthologue(s) of such Targets. Exelixis will submit all such data generated under the previous two (2) sentences to the JSC along with a statement setting forth whether each such Target is a Disclosed Target or if Exelixis believes that such Target qualifies as a Candidate Target (with the JSC to determine which Targets are Candidate Targets). Exelixis shall retain all rights Controlled by it relating to a Target that is not a Disclosed Target and does not fulfill the criteria for a Candidate Target, and such Targets shall not be subject to any terms of this Agreement.

4.6 Collaborative Work. Upon mutual agreement between the Parties, BMS may collaborate with Exelixis on Stage I, Stage II and Stage III activities with respect to a particular BMS Compound, wherein BMS may perform some of the Mode of Action Program work on such BMS Compound. In such an event, any research results generated by BMS pursuant to such collaborative work shall be deemed the confidential Research Results of Exelixis for purposes of Candidate Target identification and identification mammalian orthologues thereof.

4.7 Limitation on Exelixis Collaborative Work. If Exelixis determines that, with respect to a particular Target Exelixis identifies under the Mode of Action Program, Exelixis is unable to conduct further work on such Target hereunder due to then-existing obligations to a Third Party, Exelixis shall not be obligated, notwithstanding the terms of Sections 4.4 and/or 4.5, to perform any further work on such Target that would violate such obligations, but will disclose such Target to BMS and all Research Results relating thereto obtained by Exelixis prior to the date that it ceases further work on such Target hereunder.

4.8 Selection of Targets.

(a) Candidate Targets.

(i) During the [*] period following Exelixis' submission of data regarding a particular Candidate Target to the JSC pursuant to Section 4.5, BMS shall use Diligent Efforts to seek to identify at least [*] mammalian orthologue of such Candidate Target, and BMS may perform other research to help it evaluate whether to select such Candidate Target as a Selected Target. Any results of such research work with respect to such Candidate Target (and mammalian orthologues thereof) may be used by BMS only for evaluation, unless and until BMS selects the Candidate Target as a

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Selected Target. If BMS identifies at least [*] mammalian orthologue of such Candidate Target during such [*] period, then BMS must provide Exelixis with written notification, prior to the end of such [*] period, of its decision to select such Candidate Target as a Selected Target before BMS or its sublicensees may perform any other work on the Candidate Target following the end of such [*] period.

(ii) If, despite its good faith, Diligent Efforts during the [*] period following Exelixis' submission of data regarding a particular Candidate Target to the JSC pursuant to Section 4.5, BMS has been unable to find at least [*] mammalian orthologue of such Candidate Target, then BMS shall have an additional [*] in which to use good faith, Diligent Efforts to seek to identify at least [*] mammalian orthologue of such Candidate Target and, if it so elects, to select such Candidate Target as a Selected Target by providing written notice thereof to Exelixis.

(iii) If BMS fails to select such Candidate Target as a Selected Target, within the [*] period set forth in subsection (i) above and, if applicable, the additional [*] period set forth in subsection (ii) above, then such Candidate Target shall thereafter be deemed an "Abandoned Target," and Exelixis shall have the rights and obligations set forth in Sections 6.3(a) and 6.4. BMS covenants that it shall not perform any further research on such Target or [*] mammalian orthologue [*] identified by either Party under the Collaboration, and shall not use any such Target or any Research Results relating to such Target [*] mammalian orthologue [*], except as permitted in clauses (iv) or (v) below.

(iv) If, after BMS has abandoned a particular Abandoned Target pursuant to clause (a)(iii) above:

(1) BMS or any of its Affiliates learns, [*] under the Collaboration, that such Abandoned Target [*] mammalian orthologue [*] is directly inhibited, agonized or otherwise modulated by a compound in the same class of compounds as the BMS Compound that Exelixis tested in the Mode of Action Program to identify the Candidate Target that became such Abandoned Target; and

(2) BMS or such Affiliate [*] any material use of any of the Research Results that Remain Confidential at such time [*] mammalian orthologues by BMS or its Affiliates that Remain Confidential;

then BMS shall thereafter [*] such Abandoned Target and/or mammalian orthologues thereof for [*] to Exelixis under this Agreement, provided that BMS (or its Affiliate or licensee) does not [*] to such Abandoned Target [*] that Remain Confidential at the time of such use, or any [*] mammalian orthologues by BMS or its Affiliates (unless and until such [*] by BMS or its Affiliate).

(v) With respect to any particular Abandoned Target that BMS abandoned pursuant to clause (a)(iii) above, BMS may thereafter [*] under the Agreement on such target and mammalian orthologues thereof.

(1) Promptly after such [*] with respect to a particular Abandoned Target, Exelixis shall inform BMS which of the following circumstances applies: (A) Exelixis has already exclusively licensed such Abandoned Target [*] mammalian orthologue [*] to a third party; or (B) Exelixis is in actual license negotiations (i.e., after preparation of a term sheet) with regard to

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granting a third party exclusive rights to such Abandoned Target [*] mammalian orthologue [*] (provided that if such negotiations terminate without entering into such a license, then Exelixis shall inform BMS that such Abandoned Target is again available); or (C) Exelixis has not licensed such Abandoned Target (and/or [*] mammalian orthologue [*]) to a third party, or has only granted non-exclusive license rights with respect thereto, or is using such Target in an ongoing internal research program.

(2) If subclause (C) in subsection (v)(1) above obtains, BMS shall inform Exelixis within [*] whether BMS still desires to recommence work on such target. If BMS does desire to recommence work, then such target shall thereafter no longer be an Abandoned Target and the applicable subclause of the following shall apply: (A) if such target [*] mammalian orthologue [*] was not licensed by Exelixis to a third party, and not pursued internally by Exelixis, then such target shall be treated as a Selected Target for all purposes hereunder, with all rights and obligations of BMS and Exelixis that apply to a Selected Target; (B) if such target [*] mammalian orthologue [*] was non-exclusively licensed by Exelixis to a third party, or is the subject of ongoing internal research by Exelixis, then such target shall be treated as a Pursued Disclosed Target for all purposes hereunder, with all rights and obligations of BMS and Exelixis that apply to a Pursued Disclosed Target, and with the additional limitation that Exelixis shall not further disclose to Third Parties any Research Results relating to such target.

(vi) With respect to each Selected Target, BMS shall have the rights set forth in Section 6.1 and the obligations set forth in Section 4.8, and Exelixis shall have the rights and obligations set forth in Sections 6.3(a) and 6.4.

(b) Disclosed Targets.

(i) During the [*] period following Exelixis' submission of data regarding a particular Disclosed Target to the JSC pursuant to Section 4.5, BMS shall use Disclosed Efforts to seek to identify at least [*] mammalian orthologue of such Disclosed Target, and BMS may perform other research to help it evaluate whether to select such Disclosed Target as a Pursued Disclosed Target. Any results of such research work with respect to such Disclosed Target [*] mammalian orthologue [*] may be used by BMS only for evaluation, unless and until BMS selects the Disclosed Target as a Pursued Disclosed Target. If BMS identifies at least [*] mammalian orthologue of such Disclosed Target during such [*] period, then BMS must provide Exelixis with written notification, prior to the end of such [*] period, of its decision to select such Disclosed Target as a Pursued Disclosed Target before BMS or its sublicensees may perform any other work on the Disclosed Target following the end of such [*] period.

(ii) If, despite its good faith, Diligent Efforts during the [*] period following Exelixis' submission of data regarding a particular Disclosed Target to the JSC pursuant to Section 4.5, BMS has been unable to find at least [*] mammalian orthologue of such Disclosed Target, then BMS shall have an additional [*] in which to use good faith, Diligent Efforts to seek to identify at least [*] mammalian orthologue of such Disclosed Target and, if it so elects, to select such Disclosed Target as a Pursued Disclosed Target by providing written notice thereof to Exelixis.

(iii) If BMS fails to select such Disclosed Target as a Pursued Disclosed Target (or, if applicable, a Product Target), within the [*] set forth in subsection (i) above and, if applicable, the additional [*] set forth in subsection (ii) above, then such

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Disclosed Target shall thereafter be deemed an "Abandoned Target," and Exelixis shall have the rights and obligations set forth in Sections 6.3(a) and 6.4. BMS covenants that it shall not perform any further research on such Target [*] mammalian orthologue [*] identified under the Collaboration, and shall not use any such Disclosed Target, or any Research Results relating to such Disclosed Target, to [*] mammalian orthologue [*], except as permitted in clause (iv) or (v) below.

(iv) If, after BMS has abandoned a particular Abandoned Target pursuant to clause (b)(iii) above:

(1) BMS or any of its Affiliates learns, [*] under the Collaboration, that such Abandoned Target [*] mammalian orthologue [*] is directly inhibited, agonized or otherwise modulated by a compound in the same class of compounds as the BMS Compound that Exelixis tested in the Mode of Action Program to identify the Disclosed Target that became such Abandoned Target; and

(2) BMS or its Affiliate [*] any material use of any of the Research Results that Remain Confidential at such time or any Information that was developed by use of such Research Results by BMS or its Affiliates that Remain Confidential at such time;

then BMS shall thereafter [*] such Abandoned Target [*] for [*] to Exelixis under this Agreement, provided that BMS (or its Affiliate or licensee) does not [*] to such Abandoned Target or [*] mammalian orthologue [*] that Remain Confidential at the time of such use, or any [*] or mammalian orthologues by BMS or its Affiliates (unless and until such [*] by BMS or its Affiliate).

(v) With respect to any particular Abandoned Target that BMS abandoned pursuant to clause (b)(iii) above, BMS may thereafter [*] under the Agreement on such target and mammalian orthologues thereof.

(1) Promptly after such written request with respect to a particular Abandoned Target, Exelixis shall inform BMS which of the following circumstances applies: (A) Exelixis has already exclusively licensed such Abandoned Target [*] mammalian orthologue [*] to a third party; or (B) Exelixis is in actual license negotiations (i.e., after preparation of a term sheet) with regard to granting a third party exclusive rights to such Abandoned Target and/or mammalian orthologues thereof (provided that if such negotiations terminate without entering into such a license, then Exelixis shall inform BMS that such Abandoned Target is again available hereunder); or (C) Exelixis has only granted non-exclusive license rights with respect thereto, or is using such Target in an ongoing internal research program.

(2) If subclause (C) in subsection (v)(1) above obtains, then such target shall thereafter no longer be an Abandoned Target [*] a Pursued Disclosed Target for all purposes hereunder, with all rights and obligations of BMS and Exelixis that apply to a Pursued Disclosed Target, and with the additional limitation that Exelixis shall not further disclose to Third Parties any Research Results relating to such target.

(vi) With respect to each Pursued Disclosed Target, BMS shall have the rights set forth in Section 6.1 and the obligations set forth in Section 4.8, and Exelixis shall have the rights and obligations set forth in Sections 6.3(a) and 6.4.

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4.9 Selected Target Diligence.

(a) For each Selected Target, BMS shall use good faith, Diligent Efforts as follows:

(i) to develop assays to assess the activity of compounds against at least one (or more) of the following: any Novel Target, Unlinked Related Target, Safety Target, Conceptual Target or Pre-Associated Target, relating to such Selected Target;

(ii) to use such assays to discover Collaboration Compounds directed at any of the Mammalian Targets referred to in subsection (a) above; and

(iii) if BMS discovers a Collaboration Compound as provided in subsection (b) above and approves such Collaboration Compound as a Preclinical Lead Profile to use Diligent Efforts to develop and commercialize (which may include sublicensing) such Collaboration Compound as a Licensed Product.

(b) The Parties agree that BMS shall have fulfilled its Diligent Efforts under such subsection 4.9(a), as to a particular Selected Target, if: (1) [*] in an assay, within [*] after selection of such Selected Target, with respect to any Novel Target, Unlinked Related Target, Safety Target, Conceptual Target, or Pre-Associated Target that is related to such Selected Target; and (2) BMS shall have [*] of such Mammalian Targets described in subclause (1) above, within [*] after initiation of such [*], and shall have [*] Collaboration Compound [*] within [*] after the initiation of such [*]. The preceding sentence shall constitute a safe harbor as to the demonstration of Diligent Efforts by BMS, and shall not be construed to limit or preclude any other showing of Diligent Efforts by BMS based on actual facts and circumstances.

4.10 Other Diligence Obligations.

(a) Where a Gene Product exists, or reasonably may be pursued, with respect to a Selected Target (i.e., is based upon a mammalian orthologue of such Selected Target), then, separate from the diligence obligations set forth in Section 4.9, BMS must use good faith, Diligent Efforts to [*] Gene Product.

(b) Where a Biotherapeutic Product can be developed with respect to a Selected Target (i.e., is based upon a mammalian orthologue of such Selected Target), then, separate from the diligence obligations set forth in Section 4.10(a), BMS must use good faith, Diligent Efforts to [*] Biotherapeutic Product [*] Selected Target.

4.11 Target Abandonment. BMS may [*] at any time during the term of the Agreement notify Exelixis in writing that it has [*] Selected Target [*] Pursued Disclosed Target [*] Mammalian Targets [*] Selected Target [*] Pursued Disclosed Target [*]. Such notification shall have the following effects: (a) such [*] Selected Target [*] Pursued Target [*] an Abandoned Target, (b) BMS shall [*] with respect to such Target, (c) the licenses set forth in Section 6.1 [*] Collaboration Compounds [*] Pursued Disclosed Target, (d) all rights granted by Exelixis in the Exelixis-generated Research Results [*], (e) the license set forth in Section 6.3(b) [*], and (f) any Collaboration Compounds identified prior to the date BMS gives notice of its election under this Section 4.11 [*] Selected Target [*] Collaboration Compounds [*] Selected Target [*] Mammalian Target [*]. Subsequently, if [*] Selected Target [*] Pursued Disclosed Target [*] Mammalian Targets [*] based on such Selected Target or Pursued Disclosed Target (ii) or makes any [*] Mammalian Targets [*] Pursued Disclosed Target Compound [*] Selected Target [*] Pursued Disclosed Target [*] an Abandoned Target for the purposes set forth above.

4.12 Failure of Diligence.

(a) If BMS fails to fulfill its obligations set forth in Section 4.9(a) with respect to a particular Selected Target, it [*] Selected Target [*] Selected Target [*] Mammalian Targets [*] that is in the process of being resolved under the dispute resolution procedures set forth in Section 14.1, become [*] Selected Target [*] Pursued Disclosed Target [*].

(b) If BMS fails to fulfill its obligations set forth in Section 4.10(a) with respect to a particular Selected Target, it [*] Selected Target [*] Selected Target [*] that is in the process of being resolved under the dispute resolution procedures set forth in Section 14.1, [*] Selected Target [*] Products relating to such Selected Target.

(c) If BMS fails to fulfill its obligations set forth in Section 4.10(b) with respect to a particular Selected Target, it [*] Selected Target [*] Selected Target [*] that is in the process of being resolved under the dispute resolution procedures set forth in Section 14.1, become [*] Biotherapeutic Products [*] Selected Target [*] Biotherapeutic Products [*] Selected Target [*] .

(d) [*], and BMS shall not be liable for any damages of any type with respect to any such breach or abandonment.

4.13 Pursuit of New Indications for BMS Products. BMS may pursue New Indications for a BMS drug product by selecting, as a "Product Target" for such use, a Selected Target or Pursued Disclosed Target, and using one or more of the mammalian orthologues of such Selected Target or Pursued Disclosed Target, which is or has been identified by or on behalf of BMS (or its Affiliate or sublicensee) through the material use of such Target or its DNA sequence, or any other Research Results relating thereto that Remain Confidential, to search for such different uses of or indications for such BMS product. With respect to each Product Target, BMS shall have the rights set forth in Section 6.1 and the obligations set forth in Section 8.6. If BMS uses a Selected Target or Pursued Disclosed Target in this manner to seek to identify New Indications, such Target shall be referred to as a "Product Target" for such purposes (but shall remain a Selected Target or Pursued Disclosed Target, as applicable, for any use in screening for active compounds).

4.14 Exclusion Based on Use of Mammalian Targets that [*]. The following provisions shall apply to use by BMS or its Affiliates or sublicensees of certain Known Targets, and/or Information developed based on use of such Targets, in order to identify compounds that activate, inhibit or otherwise modulate such targets:

(a) With respect to a particular Pre-Associated Target, if there is [*] BMS Compound [*] BMS Compound [*] in the disease area of interest to BMS with respect to its identification of such Pre-Associated Target, then commencing on the date that is [*] Pre-Associated Target [*] Pre-Associated Target [*] Collaboration Compounds [*] be subject to the terms of this Agreement, but provided, however, that (1) any [*] Pre-Associated Target [*] Collaboration Compounds [*] Collaboration Compounds [*] Pre-Associated Target [*] Collaboration Compounds [*] Collaboration Compounds [*] be subject to milestone and royalty payments applicable to Pre-Associated Targets;

(b) With respect to a particular Conceptual Target, if there is [*] BMS Compound [*] Conceptual Target) has activity against such Conceptual Target [*] in the disease area of interest to BMS with respect to its identification of such Conceptual Target, then commencing on the date that is [*] Conceptual Target, or based upon the use to any material extent of Information derived from use of such Conceptual Target (or its DNA sequence) [*] Collaboration Compounds [*] be subject to the terms of this Agreement, but provided, however, that (1) any [*] to such Conceptual Target [*] Collaboration Compounds [*] Collaboration Compounds [*] Collaboration Compounds [*] be subject to milestone and royalty payments applicable to Conceptual Targets;

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(c) With respect to a particular Mammalian Disclosed Target, if there is [*] BMS Compounds [*] Mammalian Disclosed Target [*] Mammalian Disclosed Target [*] in the disease area of interest to BMS with respect to its identification of such Mammalian Disclosed Target, then commencing on the date that is [*] Mammalian Disclosed Target [*] Mammalian Disclosed Target [*] Collaboration Compounds [*] be subject to the terms of this Agreement, but provided, however, that (1) any [*] Mammalian Disclosed Target [*] Collaboration Compounds [*] Collaboration Compounds [*] Mammalian Disclosed Target [*] Collaboration Compounds [*] Collaboration Compounds [*] be subject to milestone and royalty payments applicable to Mammalian Disclosed Targets; and

(d) With respect to a particular Safety Target, if there is [*] BMS Compound [*] Safety Target [*] Safety Target [*] in the disease area of interest to BMS with respect to Safety Target, then commencing on the date that is [*] Safety Target [*] Collaboration Compounds [*] subject to the terms of this Agreement, but provided, however, that (1) any [*] Collaboration Compounds [*] Collaboration Compounds [*] Safety Target [*] Collaboration Compounds [*] Collaboration Compounds [*] be subject to milestone and royalty payments applicable to Safety Targets.

(e) For purposes of this Section 4.14, a "Derivative" shall mean a compound that has the same, or a substantially similar, Active Substructure as a particular Collaboration Compound, where an "Active Substructure" means those portions of such Collaboration Compound that contribute materially to the activity of such compound against the applicable Mammalian Target.

4.15 Exelixis Exclusivity Obligations. If at any time during the Research Term, Exelixis discovers that a particular Target is identical to a molecule for which it has an exclusivity obligation pursuant to a written agreement between Exelixis and a Third Party, Exelixis shall thereafter only perform work on such Target under the Mode of Action Program to the extent such work is not prohibited by such agreement, but subject to the following provisions in this Section 4.14 and provided, that, with respect to the identification of any particular Target, the foregoing shall not prevent Exelixis from disclosing the Target to BMS or any Research Results obtained by Exelixis with respect thereto. Exelixis covenants that in any future "mode of action" agreement that Exelixis enters into with a Third Party, such Third Party agreement shall not prevent Exelixis from disclosing to BMS any particular Target identified under the Mode of Action Program for use in the Field and to perform any of the work contemplated hereunder with respect to such Target. With respect to any other written collaborative research agreement Exelixis enters into with a Third Party, such agreement shall [*] Selected Target, Pursued Disclosed Target or Product Target) any particular Target (or its nucleic acid sequence) identified under the Mode of Action Program for use in the Field, [*] from doing further work on such Target.

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

4.17 Reports. Separate from the reports to be provided under Section 3.7, every [*] during the term of the Agreement, BMS will submit to Exelixis and the JSC a written progress report summarizing the research and development work performed on (a) each Selected Target, Pursued Disclosed Target, Product Target and Mammalian Target and (b) on each New Indication, it being understood that the purpose of such reports shall be to enable Exelixis to

determine if BMS is fulfilling its diligence and payment obligations under this Agreement. Such reports shall include (without limitation) the identity of all Mammalian Targets identified (excluding Related Targets), the identification of Related Targets (without disclosing the actual identity thereof), and the identification (without disclosing the structure) of Collaboration Compounds that have sufficient activity to justify further research and development work with respect thereto (and BMS shall identify the Mammalian Target against which such Collaboration Compound has activity), and summaries of the work conducted with respect thereto. The foregoing shall not require that BMS disclose any Confidential Information of BMS regarding the identity of (or any information that would lead to the identification by Exelixis of) any specific Related Target or Collaboration Compound identified by BMS, materials or processes used in any assays, structures of any compounds, and research or development plans. All such reports provided by BMS shall be treated as Confidential Information of BMS.

5. Technology Sharing Program

5.1 Transfer of Exelixis Core Technology.

(a) Exelixis shall transfer to BMS, on an orderly basis, the Exelixis Core Technology (including the Exelixis know-how directly relating thereto) and copies of the Exelixis Core Technology Patents. The timing of transfer of Exelixis Core Technology shall be in accordance with the schedule set forth in Exhibit C attached hereto, which exhibit may be modified as appropriate by the JMT. All Exelixis Core Technology (including any Improvement Inventions thereto that Exelixis, in its sole discretion, makes) shall be deemed to have been accepted by BMS upon receipt, and BMS hereby waives all rights of revocation.

(b) In accordance with the delivery schedule set forth in Exhibit C attached hereto and any modifications thereof, Exelixis will deliver to BMS the FlyTag Database at Exelixis' expense. The FlyTag Database shall be delivered in electronic format, or in such other suitable format as selected by Exelixis and reasonably acceptable to BMS. The FlyTag Database shall be deemed to have been accepted by BMS upon receipt, and BMS hereby waives all rights of revocation.

(c) Nothing herein shall be construed to require Exelixis to make any Improvement Inventions to the Exelixis Core Technology, or, except as provided in Section 5.7(a), to provide training, maintenance, installation, advice, debugging or other support with regard to the use of, or the correction of any problems associated with, the Exelixis Core Technology or any Exelixis Improvement Inventions. If BMS elects to [*] provided by Exelixis, such items shall be deemed to have been accepted by BMS upon the same terms and conditions as apply to its use of the Exelixis Core Technology hereunder.

5.2 Transfer of BMS Core Technology; Transfer of Source Code; Error Corrections.

(a) BMS shall transfer to Exelixis, on an orderly basis, the BMS Core Technology (including the BMS know-how directly relating thereto) and copies of the BMS Core Technology Patents. The timing of transfer of BMS Core Technology shall be in accordance with the schedule set forth in Exhibit B attached hereto, which exhibit may be modified as appropriate by the JMT. All BMS Core Technology (including any Improvement

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Inventions thereto) shall be deemed to have been accepted by Exelixis upon receipt, and Exelixis hereby waives all rights of revocation.

(b) In accordance with the delivery schedule set forth in Exhibit B attached hereto and any modifications thereof, BMS will deliver to Exelixis the BMS Software at BMS' expense. The software included in the BMS Core Technology (the "BMS Software") shall be delivered in electronic format, or in such other suitable format as selected by BMS and reasonably acceptable to Exelixis. All BMS Software (including any Improvement Inventions relating thereto except as otherwise provided in subclause (i) below) shall be deemed to have been accepted by Exelixis upon receipt, and Exelixis hereby waives all rights of revocation.

(i) In the event that BMS develops internally, in its sole discretion, any Improvement Inventions comprising updates, new versions, or enhancements that directly relate to the BMS Core Technology (including without limitation the BMS Software) during the Research Term and that are owned or Controlled by BMS, it shall provide each such update, new version or enhancement to Exelixis within thirty (30) days after such enhancement, update or new version is made available to all BMS scientists generally. Exelixis shall have the right to review any such Improvement Invention prior to incorporation into Exelixis' internal chemistry technology, and Exelixis may, after a reasonable period of such internal review, determine that it does not wish to have a license to any particular Improvement Invention to the BMS Core Technology (including to the BMS Software) provided by BMS hereunder, in which case Exelixis shall return to BMS or destroy all copies of such Improvement Invention, and such Improvement Invention shall not be licensed to Exelixis and shall be excluded from the definition of "BMS Core Technology" for all purposes hereunder. As to any such Improvement Invention that Exelixis decides to incorporate, Exelixis shall be responsible for incorporating such update, new version, or enhancement into its own software environment and BMS shall have no obligation, express or implied, to perform any services to assist Exelixis in incorporating same.

(ii) If BMS acquires software from a Third Party during the Research Term that is directly related to the BMS Software or is otherwise used in the BMS Core Technology, BMS will, subject to any confidentiality obligations it may have to such Third Party, inform Exelixis through the JMT of the availability of same, but shall have no obligation to provide such new software program to Exelixis hereunder as part of the BMS Core Technology or as any Improvement Invention thereto, but BMS agrees to cooperate with Exelixis and provide reasonable assistance, [*], in Exelixis' efforts to obtain a license to such software, if Exelixis requests. Nothing herein shall be construed to require BMS to make any enhancements, updates or new versions of the BMS Software or, except as provided in Sections 5.2(e) and 5.7(b), to provide training, maintenance, installation, advice, debugging or other support with regard to the use of, or the correction of any problems associated with, the BMS Software or any BMS Improvement Inventions relating to the BMS Software. Each Party shall be solely responsible for providing its own maintenance and support for the BMS Software, except as otherwise provided in this Section 5.2. If Exelixis elects to use any updates, enhancements, new versions, bug fixes or error corrections provided by BMS, such items shall be deemed to have been accepted by Exelixis upon the same terms and conditions as apply to its use of the BMS Software hereunder.

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(c) Exelixis understands and agrees that certain software and equipment comprising the BMS Core Technology as of the Effective Date are licensed or obtained from Third Parties and that BMS shall have no obligation to acquire, sublicense, or obtain same to, for or on behalf of Exelixis, except for such sublicense rights as can be granted without additional cost to BMS or its Affiliates and without violating the terms of any license agreement that BMS or any of its Affiliates may have with a Third Party, but BMS agrees to disclose to Exelixis the names and suppliers or licensors of such software and equipment and to cooperate with Exelixis and provide reasonable assistance, at Exelixis' expense, in Exelixis' efforts to obtain a license to such software or equipment, if Exelixis so requests.

(d) During the Research Term, BMS will provide to Exelixis, in object code form and, after the time that BMS has provided to Exelixis under subsection (e) the source code for the BMS Software, in source code form, any error corrections or bug fixes to the BMS Software that BMS Controls and makes and distributes internally to its users for its own use of the BMS Software (or any part thereof). In addition, BMS will endeavor to provide to Exelixis during the Research Term, [*], error corrections and bug fixes to any applications software provided by BMS as part of the BMS Core Technology or any BMS Improvement Invention, but only if, and to the extent that: (1) the source code for such software is available to BMS and is owned by or licensed to BMS in a manner such that BMS can make and distribute such corrections and fixes; (2) the error detected in the software is attributable solely to the application software itself and not in any way to any software not supplied by BMS (including without limitation operating system or database engine) or any equipment used or purchased by Exelixis; (3) the error is not attributable to operator error, misuse or negligence by Exelixis, failure by Exelixis to install software or equipment in accordance with applicable specifications, or failure to comply with applicable and appropriate instructions provided by BMS; (4) Exelixis fully cooperates with BMS in reporting all necessary information and data so that BMS may reproduce the error at BMS' facilities; (5) is not software for which Exelixis has received source code pursuant to subparagraph (e) below; and (6) BMS also provides the error correction or bug fix generally to its own internal users. BMS will be reimbursed for its fully-burdened costs to conduct or provide, at Exelixis' request, error corrections or bug fixes with respect to any such applications software where it is subsequently discovered that the request does not meet the standards of the preceding sentence. BMS DOES NOT GUARANTEE OR PROMISE IN ANY WAY THAT BMS WILL BE SUCCESSFUL IN MAKING AN ERROR CORRECTION OR BUG FIX OR THAT ANY CORRECTION OR BUG FIX WILL MEET EXELIXIS' RESEARCH OR BUSINESS NEEDS, AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A GIVEN PURPOSE OR USE WITH RESPECT TO ANY SUCH ERROR CORRECTION OR BUG FIX OR THAT BMS WILL BE SUCCESSFUL IN MAKING AN ERROR CORRECTION OR BUG FIX OR THAT ANY ERROR CORRECTION OR BUG FIX WILL MEET EXELIXIS' RESEARCH OR BUSINESS NEEDS.

(e) BMS shall make the source code that it Controls for any software included in the BMS Core Technology or BMS Improvement Inventions available to Exelixis promptly upon Exelixis' request. Upon such request (which may not be made unless Exelixis has accepted the software), BMS shall provide to Exelixis, in electronic or other mutually agreed format, the

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requested source code as BMS then Controls that relates to any software included in the BMS Core Technology or, where accepted by Exelixis, the BMS Improvement Inventions, and shall also provide and all documentation related to such source code. It is understood and agreed that, after providing particular source code to Exelixis, BMS shall not be responsible for providing Exelixis bug fixes and error corrections to such software that are requested by Exelixis (but shall still provide any such bug fixes and error corrections made by BMS independently, as provided in subsection (d)), and that any other Improvement Inventions made by BMS to such software for which Exelixis previously received the source code shall, if accepted by Exelixis, also be provided to Exelixis in both object code and source code. Prior to an Exelixis request for source code, BMS need not provide such source code, except where BMS deems it necessary to provide source code and compiles it in situ, rather than making stand alone installers for compiled code, in which event BMS may install the source code, compile it in situ, and then delete the source code.

(f) Exelixis understands and agrees that its confidentiality obligations with respect to the BMS Core Technology, including software and documentation provided by BMS, that comprises BMS Confidential Information shall continue [*].

(g) Exelixis understands and agrees that certain drawings (e.g., CAD drawings and assembly drawings for fabricated parts) and blueprints contained in the BMS Core Technology relating to equipment design will, where Controlled by BMS, be provided "AS IS", and that Exelixis will receive copies of same. If BMS creates and Controls improved drawings or blueprints during the Research Term, copies of these will be provided to Exelixis. Exelixis further understands that BMS has fabricated for itself certain parts where BMS has not prepared the assembly drawings for Third Party fabrication. During the Research Term, BMS will make these parts for Exelixis at Exelixis' expense [*] until such time as BMS prepares the assembly drawings and Exelixis is able to have these parts fabricated by Third Parties.

(h) Exelixis acknowledges that BMS has provided it with a list of equipment and software supplies that Exelixis will need to purchase or license in order to use the BMS/HTC System (as set forth on Exhibit B), and that Exelixis has had opportunity to inquire of BMS as to what its specific needs will be and has received satisfactory answers to same. Exelixis acknowledges that it has had adequate opportunity to review the BMS Core Technology with BMS. Exelixis understands that certain of the equipment used by BMS within the BMS Core Technology is manufactured for BMS by machine shops based on specifications, drawing and blueprints provided by BMS or developed by such machine shops. BMS will reasonably cooperate during the Research Term and at Exelixis' expense with any efforts of Exelixis to use such machine shops for the manufacture of the same equipment for Exelixis and will reasonable efforts to persuade such machine shops to make any drawings possessed by them available for use by Exelixis on the same terms as the same may be made available for use by BMS.

(i) Nothing herein shall be construed to require BMS to make any Improvement Inventions to the BMS Core Technology, or, except as provided in Sections 5.2(e) and 5.7(b), to provide training, maintenance, installation, advice, debugging or other support with regard to the use of, or the correction of any problems associated with, the BMS Core Technology or any BMS Improvement Inventions. If Exelixis elects to use any BMS Improvement Inventions provided by BMS, such items shall be deemed to have been accepted

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by Exelixis upon the same terms and conditions as apply to its use of the BMS Core Technology hereunder.

(j) Notwithstanding the other provisions of this Section 5.2, if Exelixis undergoes a Major Control Change (as defined below) prior to the end of the Research Term, then BMS shall have no further obligation to disclose, provide, transfer or license to Exelixis any new Improvement Inventions to the BMS Core Technology that BMS may make, including without limitation any updates or error corrections or improvements to the BMS Software.

(i) As used in this Agreement, "Major Control Change" shall mean a completed transaction (or related series of transactions) pursuant to which Exelixis merges or consolidates with Qualifying Pharmaceutical Entity (or Affiliate of such entity), or voting stock of Exelixis is acquired by a Qualifying Pharmaceutical Entity (or an Affiliate of such entity) such that Exelixis becomes an Affiliate of such Qualifying Pharmaceutical Entity, or all or substantially all of the assets of Exelixis' business relating to the BMS Core Technology are acquired by a Qualifying Pharmaceutical Entity, or an Affiliate of such entity. A "Qualifying Pharmaceutical Entity" means a company with annual consolidated worldwide net sales from the sale of prescription drugs in excess of One Billion Dollars (US$1,000,000,000).

5.3 Technology Licenses To BMS.

(a) Subject to the terms of this Agreement, Exelixis hereby grants BMS a limited, non-exclusive, non-transferable, worldwide, perpetual (subject to termination under Section 3.2(a) or Article 11) license to use and practice the Exelixis Core Technology, Exelixis Core Technology Patents, and any Improvement Inventions made solely by Exelixis to the BMS Core Technology solely for its own internal research and discovery efforts in the Field, and subject to the limitations in this Section 5.3 and Section 5.4(a) of this Agreement. BMS may use the results and products of its permitted practice of the Exelixis Core Technology, the Exelixis Core Technology Patents, and any Improvement Inventions made solely by Exelixis to the BMS Core Technology for all commercial purposes. BMS' use of Exelixis' Drosophila technology under the foregoing license is subject to the following limitations: (i) no more than [*] may utilize such technology during the "Research Term" (as defined in the agreement between Exelixis and a certain partner) in the U.S. [*]; (ii) no work may be performed on certain genes or proteins that, as of the Effective Date, are the focus of research being pursued under a collaboration between Exelixis and a certain partner for the duration of such "Research Term" with such certain partner; and (iii) BMS may not commence research utilizing such technology in the fields of [*] before [*]. Exelixis covenants that it shall inform BMS upon expiration or termination of the "Research Term" referred to in subclause (i) above.

(b) Subject to the terms of this Agreement, Exelixis hereby grants to BMS a limited, non-exclusive, non-transferable, world-wide, perpetual (subject to termination under Section 3.2(a) or Article 11) license to use, adapt, reproduce, modify, localize, and create derivative works of the FlyTag Database, provided that (i) all such uses of the FlyTag Database are solely for BMS' internal or collaborative research purposes, (ii) are used in the same manner, and subject to the same terms and conditions, as apply to the FlyTag Database, and (iii) are subject to the limitations in this Section 5.3 and Section 5.4(b) of this Agreement. The foregoing license includes the right to make copies of the FlyTag Database for the purposes of the exercise of such license, including without limitation appropriate numbers of copies for BMS' internal back-up and archival purposes, provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings as when originally delivered by Exelixis. The FlyTag Database may only be used by authorized employees or contractors of BMS at the facilities owned or leased by BMS (except that authorized employees and contractors of BMS and its Affiliates shall be entitled to access the FlyTag Database over BMS' Intranet or remotely from outside such facilities), and such use shall be limited to the uses licensed to BMS under the first sentence of this Section 5.3(b). All rights, title and interests in and to the FlyTag Database licensed hereunder, and any copies, translations or compilations thereof which may be made or permitted to be made hereunder by BMS are and shall remain the exclusive property of Exelixis, except for such data as BMS may have entered into the database following receipt of the FlyTag Database from Exelixis and derivative works of the Fly Tag Database, which data and derivative works, (excluding any Exelixis information or code therein) shall remain the exclusive property of BMS (and in which BMS shall retain all rights, title and interests), and BMS shall not be obligated to provide or disclose such data to Exelixis during or following the termination of this Agreement. For purposes of the foregoing, "derivative works" means any computer program that may be developed containing any part of the software database, regardless of the form of the resulting code, the media it is carried on, or its intended use. For clarity, it is understood that Exelixis grants to BMS hereunder no right or license under or to any improvements or additions to the FlyTag Database made after the Effective Date, other than corrections of sequence errors that Exelixis may identify or become aware of.

(c) The licenses granted in subsections (a) and (b) above will, subject to the applicable provisions of Article 11, continue beyond the expiration or termination of the Research Term.

(d) The license rights granted in subsections (a) and (b) above may not be sublicensed to a Third Party without the prior written consent of Exelixis. BMS covenants that it will not transfer or disclose any such Exelixis Core Technology, Exelixis Core Technology Patents or FlyTag Database to any Third Party except as part of such permitted sublicenses and only subject to limitations consistent with the above restrictions and those in Section 5.4. BMS may transfer or disclose any such Exelixis Core Technology, Exelixis Core Technology Patents or FlyTag Database to any of its Affiliates without the prior consent of Exelixis provided that such transfer or disclosure occurs pursuant to an agreement that subjects such Affiliate to all relevant limitations in this Agreement, including without limitation, the restrictions set forth in this Section 5.3 and Section 5.4. BMS hereby guarantees the compliance of each of its Affiliates with all such restrictions and limitations on the use of such Exelixis Core Technology (including know-how relating thereto), Exelixis core Technology Patents or FlyTag Database transferred or disclosed to such Affiliate, and any such failure to comply with such restrictions and limitations shall be deemed a breach by BMS of such obligations.

5.4 Limitations on BMS License.

(a) BMS understands and agrees that Exelixis retains all its rights to use all technology, Information and intellectual property rights related to Exelixis Core Technology for its own purposes and to license or disclose such technology, Information and intellectual property rights to Third Parties without restriction, subject only to the right and the licenses granted to BMS in Section 5.3 of this Agreement. BMS covenants that it and its Affiliates shall not use or practice the Exelixis Core Technology, Exelixis Core Technology Patents or FlyTag Database for any use or purpose except as expressly permitted in Section 5.3. BMS further covenants that BMS and its Affiliates will not sell or otherwise transfer to a Third Party or commercialize any Exelixis Core Technology or any technology incorporating Exelixis Core Technology, except as permitted in Section 5.3, but excluding from the foregoing limitation any technology that both (i) is discovered or synthesized by BMS or its Affiliates without material reliance on or material use of any Confidential Information of Exelixis disclosed to BMS pertaining to Exelixis' Core Technology, and (ii) that does not infringe a Valid Claim of any Exelixis Core Technology Patents licensed to BMS hereunder.

(b) BMS may not: (i) distribute in any manner the FlyTag Database or any derivative work of any portion of the FlyTag Database, except as expressly permitted in this Agreement; (ii) publicly disclose, publicly perform or publicly display the FlyTag Database; (iii) use, copy, compile, adapt, translate the FlyTag Database except as expressly permitted in this Agreement; (iv) sell, lease, loan, trade, transfer (including over a network including the Internet, but excluding the Intranet used by BMS and its Affiliates solely to the extent permitted in Section 5.3(b)), sublicense, market or publish the FlyTag Database except as expressly permitted in this Agreement; or (v) copy the documentation, except as expressly permitted in this Agreement. BMS acknowledges and agrees that the FlyTag Database is highly confidential and warrants the imposition of appropriate security precautions at least as strict as those implemented for its own similar proprietary or confidential information.

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5.5 Technology Licenses To Exelixis.

(a) Subject to the terms of this Agreement, BMS hereby grants Exelixis a limited, non-exclusive, non-transferable, worldwide, perpetual (subject to termination under Section 3.2(a) or Article 11) license to use and practice the BMS Core Technology, BMS Core Technology Patents, and any Improvement Inventions made solely by BMS to the Exelixis Core Technology (but excluding any improvements or additions to the FlyTag Database made after the Effective Date other than corrections of errors in the sequence information that are made or determined by BMS or its Affiliate) solely for its own internal research and discovery efforts, and subject to the limitations in this Section 5.5 and Section 5.6 of this Agreement. Exelixis may use the results and products of its permitted practice of the BMS Core Technology, the BMS Core Technology Patents, and any Improvement Inventions made solely by BMS to the Exelixis Core Technology for all commercial purposes. Exelixis acknowledges that the Bohdan mini-reactors must be purchased from Bohdan and cannot be manufactured by or for Exelixis.

(b) Subject to the terms of this Agreement, BMS hereby grants to Exelixis a limited, non-exclusive, non-transferable, world-wide, perpetual (subject to termination under Section 3.2(a) or Article 11) license, solely within Exelixis' organization and facilities: to use, adapt, reproduce, modify, localize, and create derivative works of the BMS Software, and to compile the source code into object code form of the BMS Software, provided (i) that all such uses of the BMS Software are solely for Exelixis' internal or collaborative research purposes (and provided that no such collaborators have access to the BMS Software), (ii) are used in the same manner, and subject to the same terms and conditions, as apply to the BMS Software, and (iii) are subject to the limitations in this Section 5.5 and Sections 5.2 and 5.6(b) of this Agreement. The foregoing license includes the right to make copies of the BMS Software for the purposes of the exercise of such license, including without limitation appropriate numbers of copies for Exelixis' internal back-up and archival purposes, provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings as when originally delivered by BMS. All rights, title and interests in and to the BMS Software licensed hereunder, and any copies, translations or compilations thereof which may be made or permitted to be made hereunder by Exelixis are and shall remain the exclusive property of BMS. [*] any derivative works of the BMS Software made by or on behalf of Exelixis (but excluding any of the actual BMS Software code in such derivative works). Further Exelixis shall not have the right to license the BMS Source Code contained in any such derivative works made by or on behalf of Exelixis. For purposes of the foregoing, "derivative works" means any computer program that may be developed containing any part of the software, regardless of the form of the resulting code, the media it is carried on, or its intended use.

(c) The licenses granted in subsections (a) and (b) above will, subject to the applicable provisions of Article 11, continue beyond the expiration or termination of the Research Term.

(d) The license rights granted in subsections (a) and (b) above may not be sublicensed to a Third Party without the prior written consent of BMS. Exelixis covenants that it will not transfer or disclose any such BMS Core Technology (including know-how relating thereto), BMS Core Technology Patents or BMS Software to any Third Party except as part of such permitted sublicenses and only subject to limitations consistent with the above restrictions

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and those in this Sections 5.5 and Section 5.6. Exelixis may transfer or disclose any BMS Know-How, BMS Patents or BMS Software to any of its Affiliates provided that such transfer or disclosure occurs pursuant to an agreement that subjects such Affiliate to all relevant limitations in this Agreement, including without limitation, the restrictions set forth in this Section 5.5 and Section 5.6. Exelixis hereby guarantees the compliance of each of its Affiliates with all such restrictions and limitations on the use of the BMS Core Technology (including without limitation the BMS know-how relating thereto), BMS Core Technology Patents or BMS Software transferred or disclosed to such Affiliate, and any such failure to comply with such restrictions and limitations shall be deemed a breach by Exelixis of such obligations.

(e) If, at any time prior to the date (the "End Date") that is [*] Exelixis receives from BMS the last BMS Improvement Invention to the BMS Software that is provided by BMS under Section 5.2(b) (but excluding from the foregoing any such BMS Improvement Invention that Exelixis determines not to accept, under the terms of Section 5.2(b)(i), and which is thereby excluded from the definition of BMS Core Technology), Exelixis undergoes a Major Control Change (as defined in Section 5.2(i)), then:

(i) Exelixis shall ensure, and shall demonstrate same to BMS' reasonable satisfaction upon BMS' reasonable request from time to time thereafter until the End Date, that prior to the End Date: (A) employees of [*] (or intellectual property relating thereto) that, at the particular time, comprises Restricted BMS Core Technology (as defined below); (B) [*] (or intellectual property relating thereto) that, at the particular time, qualifies as Restricted BMS Core Technology; and (C) [*] in excess of [*] of the FTEs that were utilizing such BMS Core Technology just prior to such transaction, without the prior written consent of BMS;

(ii) If Exelixis materially fails to comply with the requirements of subclause (i) above at any time prior to the End Date, then, subject to the dispute resolution provisions of Section 14.1, BMS may terminate all of the rights and licenses granted to Exelixis under this Article 5. The obligations of Exelixis, and rights of BMS to terminate the rights and licenses of Exelixis, under this Section 5.5(e) with respect to the obligations under subclause (i) above shall terminate and be of no further effect as of the End Date.

(iii) For purposes of this Section 5.5(e), a particular item of Information or intellectual property right within the BMS Core Technology (which includes the Improvement Inventions thereto made by BMS and transferred to Exelixis (without rejection) under Section 5.2) shall be "Restricted BMS Core Technology" from the date such item of Information (or intellectual property right) is actually received by Exelixis until the third anniversary of such date; after such third anniversary, such item of Information shall [*] shall, however, remain governed by the terms and conditions of this Agreement as would apply to any other Exelixis Affiliate, including without limitation, Sections 5.2 and 5.6 hereof.

5.6 Limitations on Exelixis License.

(a) Exelixis understands and agrees that BMS retains all its rights to use all technology, Information and intellectual property rights for its own purposes related to BMS Core Technology and to license or disclose such technology, Information and intellectual property rights to Third Parties without restriction, subject only to the right and the licenses granted to Exelixis in Section 5.5 of this Agreement. Exelixis covenants that it and its Affiliates shall not use or practice the BMS Know-How, BMS Patents or BMS Software for any use or purpose except as expressly permitted in Section 5.5. Exelixis further covenants that Exelixis

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and its Affiliates will not sell or otherwise transfer to a Third Party or commercialize any BMS Core Technology or any technology derived from BMS Core Technology, except as permitted in Section 5.5, but excluding from the foregoing limitation any technology that is discovered or synthesized by Exelixis or its Affiliates completely independent of any activity permitted under this Agreement and without reliance on any Confidential Information of BMS disclosed to Exelixis.

(b) Exelixis may not: (i) distribute in any manner any of the BMS Software or any derivative work of any portion of the BMS Software, except as expressly permitted in this Agreement; (ii) publicly disclose, publicly perform or publicly display the BMS Software; (iii) use, copy, compile, adapt, translate the BMS Software except as expressly permitted in this Agreement; (iv) sell, lease, loan, trade, transfer (including over a network including the Internet), sublicense, market or publish the BMS Software except as expressly permitted in this Agreement; or (v) copy the documentation, except as expressly permitted in this Agreement. Exelixis acknowledges and agrees that the source code of the BMS Software is highly confidential and warrants the imposition of appropriate security precautions at least as strict as those implemented for its own similar proprietary or confidential information.

5.7 Provision of Training; Disclaimers.

(a) Exelixis hereby agrees to provide specified BMS employees with training regarding the use of the Exelixis Core Technology at no charge other than that set forth in Section 8.1. Such training shall be provided at Exelixis' facilities, unless otherwise agreed by the Parties, by reasonably qualified employees or consultants hired and provided at the discretion of Exelixis. All salary, benefits, costs and expenses of any BMS employees who participate in such training program shall be paid for by BMS. All BMS employees who attend Exelixis' facilities shall be restricted from access to any Exelixis facilities or locations other than those necessary for completing the technology transfer and shall be subject to appropriate and reasonable limitations and restrictions to protect access to any Exelixis' proprietary or confidential information not related to this Agreement. Such training will be limited to a reasonable amount necessary to enable a person reasonably skilled in the area to assimilate the technology being provided.

(b) BMS hereby agrees to provide specified Exelixis employees with training regarding the use of the BMS Core Technology at no charge. Such training shall be provided at BMS' facilities, unless otherwise agreed by the Parties, by reasonably qualified employees or consultants hired and provided at the discretion of BMS. All salary, benefits, costs and expenses of any Exelixis employees who participate in such training program shall be paid for by Exelixis. All Exelixis employees who attend BMS' facilities shall be restricted from access to any BMS facilities or locations other than those necessary for completing the technology transfer and training and shall be subject to appropriate and reasonable limitations and restrictions to protect access to any BMS' proprietary or confidential information not related to this Agreement. Such training will be limited to a reasonable amount necessary to enable a person reasonably skilled in the area to assimilate the technology being provided.

(c) EACH PARTY REPRESENTS AND WARRANTS TO THE OTHER THAT IT HAS THE RIGHT TO SUPPLY THE CORE TECHNOLOGY SUPPLIED BY IT

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FOR USE BY THE OTHER PARTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THE CORE TECHNOLOGY AND IMPROVEMENT INVENTIONS LICENSED TO IT BY THE OTHER PARTY ARE BEING SUPPLIED "AS IS" AND "WITH ALL FAULTS". EXCEPT FOR THE FIRST SENTENCE OF THIS PARAGRAPH AND AS MAY BE EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT, THE LICENSING PARTY MAKES AND EXTENDS NO, AND THE PARTY RECEIVING THE OTHER PARTY'S CORE TECHNOLOGY WAIVES ANY AND ALL, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE LICENSING PARTY'S CORE TECHNOLOGY AND ANY IMPROVEMENT INVENTIONS PROVIDED BY THE LICENSING PARTY, INCLUDING WITHOUT LIMITATION (1) IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE, (2) ANY WARRANTIES PERTAINING TO ABSENCE OF INFRINGEMENT OF THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND (3) ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, THAT THE OPERATION OF ANY SOFTWARE PROVIDED WILL BE UNINTERRUPTED OR ERROR-FREE AND WILL NOT CORRUPT ANY DATA, OR THAT ANY DEFECTS IN SOFTWARE PROVIDED ARE CORRECTABLE OR WILL BE CORRECTED.

NO SOFTWARE LICENSOR HEREUNDER SHALL BE LIABLE TO THE LICENSEE FOR ANY CLAIM, CAUSE OF ACTION, LOSS, EXPENSE, COST, LIABILITY OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION ARISING OUT OF, INVOLVING OR CONNECTED WITH (1) THE DEFICIENCY OR INADEQUACY OF THE LICENSED SOFTWARE FOR ANY PURPOSE, WHETHER OR NOT KNOWN OR DISCLOSED TO ANY SOFTWARE LICENSOR; (2) THE USE OR PERFORMANCE OF THE LICENSED SOFTWARE OR ANY FILES, DATA OR COMPUTER SYSTEMS RELATED THERETO OR USED IN CONNECTION THEREWITH; (3) ANY INTERRUPTION, DAMAGE TO, OR LOSS OF SERVICE OR USE OF THE LICENSED SOFTWARE OR ANY DATA, FILES, SOFTWARE, HARDWARE OR OTHER EQUIPMENT USED IN CONNECTION THEREWITH; (4) ANY FAILURE OF THE LICENSED MATERIAL; (5) ANY INFRINGEMENT OR VIOLATION OF THE PATENT RIGHTS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES; OR (6) ANY DIRECT, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER LOSS OR DAMAGE OF ANY KIND OR NATURE (INCLUDING WITHOUT LIMITATION LOST PROFITS, SALES OR BUSINESS) ARISING OUT OF THE USE OF THE SOFTWARE OR DATA OBTAINED FROM SUCH USE, NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL OR LIMITED REMEDY AND WHETHER OR NOT ANY SOFTWARE OWNER MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

5.8 Non-Solicitation. During the Research Term and for [*] thereafter, neither party will solicit or hire any employees of the other party or its Affiliates involved, in the case of BMS, in its combinatorial chemistry (including software development) or drug discovery programs (including bioinformatics), and in the case of Exelixis, in its mode of action discovery programs.

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6. Licenses and Related Rights

6.1 Licenses to BMS.

(a) Research Results. Subject to the terms of this Agreement, Exelixis hereby grants BMS an exclusive (subject to Sections 4.12 and 7.2), worldwide, royalty-bearing license (with the right to sublicense) to use Research Results pertaining to Selected Targets, Product Targets, Mammalian Targets and Pursued Disclosed Targets for research and drug discovery and development in the Field, and to research, develop, import, use, sell, offer for sell, and commercialize Collaboration Compounds, Licensed Products and New Indications in the Field.

(b) Target Patents. Subject to the terms of this Agreement, Exelixis hereby grants BMS a non-exclusive, worldwide, royalty-bearing license (with the right to sublicense) under any Patents that are Controlled by Exelixis or its Affiliates and claim any of the Research Results and/or any Selected Targets, Pursued Disclosed Targets or Mammalian Targets, solely to discover, research and develop Collaboration Compounds, Licensed Products, and New Indications in the Field, and to research, develop, import, use, sell, offer for sell, and commercialize Licensed Products and New Indications in the Field.

(c) Novel Target Patents. Subject to the terms of this Agreement, Exelixis hereby grants BMS an exclusive (subject to Sections 4.12 and 7.2), worldwide, royalty-bearing license (with the right to sublicense) under any and all Novel Target Patents that, but for the license granted hereunder, would be infringed by the manufacture, use or sale of Gene Products and other Biotherapeutics, solely to discover, research, develop, import, use, sell, offer for sell, and commercialize Gene Products and Biotherapeutic Products.

6.2 License Limitations and Retained Rights; Retained Rights Restrictions.

(a) License Limitations and Retained Rights. Notwithstanding the license granted in Section 6.1(a), Exelixis retains [*] Selected Targets, Products, and Pursued Disclosed Targets [* } and to use the Research Results generated by Exelixis pertaining to Abandoned Targets both within and outside the Field. BMS hereby covenants that, except in furtherance of its internal research in the Field, BMS and its Affiliates will not use the [*] Selected Targets, Product Targets, and Pursued Disclosed Targets [*], and that BMS and its Affiliates will not practice any Exelixis Patents licensed to BMS under Section 6.1 except as expressly permitted under the terms of such Section.

(b) Retained Rights Restrictions. Notwithstanding that the license rights granted to BMS under Section 6.1(b) are non-exclusive and any provision that might imply to the contrary hereunder, Exelixis shall not be entitled: (1) [*] Selected Target, Pursued Disclosed Target or Mammalian Target [*], and (2) [*] Mammalian Target [*] mammalian orthologues of a Selected Target or Pursued Disclosed Target [*] mammalian orthologues [*] mammalian orthologues [*].

6.3 Licenses to Exelixis.

(a) Outside of Field. Subject to the terms of the Agreement, BMS hereby grants to Exelixis an exclusive, worldwide, royalty-free license (with the right to sublicense) under the [*] (and the intellectual property rights appurtenant thereto) that are made [*] and that relate solely to the composition of matter or utility of a Selected Target, Pursued Disclosed Target, and Product Target [*] Mammalian Targets [*] Related Targets, solely to discover, identify and research [*] solely for use outside the Field and solely to develop, make, have made, use, sell, offer to sell, have sold and import products comprising or incorporating [*] for any use or purpose outside the Field. For clarity it is understood that BMS and its Affiliates shall retain the

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right to use [*] (and the intellectual property rights appurtenant thereto) outside the Field, solely for its internal research purposes. Exelixis will not sublicense BMS' rights to Third Parties under such Inventions that relate to the composition or utility of a particular Selected Target, Pursued Disclosed Target, Product Target [*] mammalian orthologue [*], for non-pesticide applications (but not other applications outside the Field), until [*] after selection by BMS of [*] by BMS or becomes known to Third Parties to be [*] of interest. Exelixis will not sublicense to any Third Parties BMS' rights under any Invention made by BMS covering the [*] Mammalian Target [*] Selected Target, Pursued Disclosed Target, or Product Target for any purpose outside the Field until the earlier of the date (1) that [*] after disclosure of the Invention to Exelixis. For sake of clarity, the preceding sentence does not, without limitation, cover or include rights under any Inventions or patents owned or controlled by BMS pertaining to any [*] mammalian orthologues thereof, compounds or their uses, screening assays and their uses, biomaterials used to conduct screening (other than the Selected Target, Pursued Disclosed Target, [*] Product Target [*] Mammalian Targets [*] Related Targets relating thereto, as the case may be), know-how or techniques (including without limitation screening techniques and know-how), and processes (including without limitation manufacturing techniques or processes). Exelixis hereby covenants that it and its Affiliates will not practice any of the BMS Patent rights licensed to it under this Section 6.3(a) except as expressly permitted by the terms hereof.

(b) Abandoned Targets. Subject to the terms of the Agreement, BMS hereby grants to Exelixis a semi-exclusive, worldwide, royalty-free license (with the right to sublicense) under the Sole Inventions of BMS and under BMS' interest in the Joint Inventions (and the intellectual property rights appurtenant thereto) that are made by BMS during the Research Term and [*] an Abandoned Target [*] Abandoned Target [*] Mammalian Targets [*] Related Targets [*] Abandoned Target [*] Abandoned Target [*] Mammalian Target: (i) to discover, identify and research [*] Abandoned Target [*]; (ii) to develop, make, have made, use, sell, offer to sell, have sold and import [*] Abandoned Target [*]; and (iii) to develop, make, have made, use, sell, offer to sell, have sold and import, [*] Abandoned Target. For sake of clarity, the preceding sentence does not cover or include rights under any [*] Related Targets [*] Abandoned Targets or Mammalian Targets [*] Related Targets [*] Abandoned Target [*] Mammalian Targets [*]. Exelixis hereby covenants that it and its Affiliates will not practice any of the BMS Patent rights licensed to it under this Section 6.3(b) except as expressly permitted by the terms hereof.

(c) Breach of Diligence Obligations. Effective upon the date that BMS fails to fulfill its diligence obligations set forth in Section 4.9 or 4.10, as the case may be (or, if BMS disputes such failure, if and upon the date that such matter is finally resolved pursuant to Section 14.1 in Exelixis' favor), with respect to a particular Selected Target, BMS hereby grants Exelixis a non-exclusive, worldwide, royalty-free license (with the right to sublicense), under the Sole Inventions (and the intellectual property rights appurtenant thereto) of BMS created by BMS using such Selected Target and/or a Mammalian Target (excluding Related Targets) of such Selected Target that are made by BMS during the Research Term and that relate solely to the composition of matter (both nucleic acid and protein products thereof) or utility of [*] Selected Target [*] Mammalian Target [*] Related Targets, solely to discover, develop, make, have made, use, sell, offer to sell and have sold compounds active against [*] Gene Products [*] Biotherapeutic Products [*] Selected Target [*] Mammalian Target [*] Related Targets (in the case of breach of Section 4.10). For sake of clarity, the preceding sentence does not cover or include rights under any Inventions or patents owned or controlled by BMS pertaining to any Collaboration Compounds, Biotherapeutic Products discovered by BMS, know-how or techniques (including without limitation screening techniques and know-how), and processes (including without limitation manufacturing techniques or processes). Exelixis hereby covenants that it and its Affiliates will not practice any of the BMS Patent rights licensed to it under this Section 6.3(c) except as expressly permitted by the terms hereof.

6.4 Right of First Negotiation. Upon the earlier of the conclusion of Phase II clinical trials on, or Exelixis' decision to invite a Third Party to submit a written offer to acquire a license to develop and commercialize, any Gene Product or other Biotherapeutic Product developed by Exelixis pursuant to exercise of its license rights under Section 6.3(c) or 6.3(b)(iii), Exelixis shall inform BMS in writing of same, and BMS shall have the opportunity to negotiate

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with Exelixis to acquire a license to develop and commercialize such Gene Product or other Biotherapeutic Product. BMS shall have [*] following receipt of such written notice in which to inform Exelixis in writing that it is interested in acquiring such a license. Thereafter, the Parties shall negotiate in good faith for [*] to reach agreement on the terms of a license agreement which shall be set forth in either an executed license agreement or an executed legally binding heads of agreement, which terms shall include, upon execution of the definitive written agreement, the payment by BMS to Exelixis equal to [*] costs incurred by Exelixis after the effective date of the license set forth in Section 6.3(c) or 6.3(b)(iii) with respect to such Gene Product or other Biotherapeutic Product. If BMS fails to notify Exelixis of its interest or the Parties fail to execute a license agreement within the applicable period, then BMS shall have no rights with respect to such product and Exelixis shall have unrestricted rights to pursue [*] such Gene Product or other Biotherapeutic Product or to license such rights to such Gene Product or other Biotherapeutic Product to a Third Party.

7. Exclusivity

7.1 BMS.

(a) BMS agrees that, during the Research Term, the Pharmaceutical Research Institute of BMS will, if it wishes to collaborate with any commercial Third Party for the [*], give Exelixis the first right to negotiate for the right to perform the collaborative work that BMS would require of such Third Party. Exelixis shall have [*] following receipt of notice from BMS in writing as to same (and describing the work to be required of Exelixis) in which to inform BMS in writing that it is interested in performing such work. Thereafter, Exelixis and BMS shall negotiate in good faith for [*] to reach agreement on the terms of a collaboration which shall be set forth in either an executed collaboration agreement or an executed legally binding heads of agreement. If Exelixis fails to notify BMS of its interest or Exelixis and BMS fail to execute a collaboration agreement within the applicable period, then BMS may freely engage a Third Party to perform such work, provided that the foregoing does not give BMS any right to sublicense any such Third Party to use any Exelixis Core Technology. The foregoing shall not preclude BMS in any way during or following the Research Term from (i) performing internal research of any type in [*], (ii) from engaging consultants, or (iii) from sponsoring or collaborating with academic Third Parties with respect to research of any type in [*]; provided that such research and activities under (i)-(iii) comply with the limitations of the license set forth in Section 5.2.

(b) During the Research Term, if BMS intends to engage any Third Party to perform [*], BMS shall give good faith consideration as to whether Exelixis [*] would be an appropriate party to perform such work. To keep BMS informed of their respective genomic research capabilities, each of Exelixis and Artemis shall be permitted, if they so choose, to make a presentation at JSC meetings, no more frequently than semi-annually, of such current research capabilities.

7.2 Exelixis. Except as otherwise provided in Section 6.3, Exelixis will not knowingly grant a Third Party access to the Research Results relating to a Selected Target, Product Target or Disclosed Target. Notwithstanding the previous sentence, although Exelixis shall use Diligent Efforts to maintain exclusivity, in view of the nature of the Exelixis technology, it is impossible for Exelixis to assure exclusivity with respect to the individual

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elements of that Exelixis generates, delivers and licenses to BMS under this Agreement in the following two situations:

(a) Exelixis may be engaged by a Third Party to identify the target of a compound under an arrangement whereby the identity of the compound is unknown to Exelixis. Provided that Exelixis does not use any Confidential Information of BMS or Research Results in such research, Exelixis may reveal to the Third Party and the Third Party shall be entitled to use, for any purpose, all information generated by Exelixis with respect to the target. Exelixis will promptly notify BMS in writing each time that a Target is disclosed to the Third Party pursuant to such work.

(b) Exelixis may perform Independent Research upon molecules that are Selected Targets, Pursued Disclosed Targets or Product Targets, provided that such Targets had been identified by Exelixis in Independent Research and provided further that Exelixis does not use Confidential Information of BMS or Research Results in identifying such Targets or in the subsequent Independent Research on such Target. If such Independent Research is funded by a Third Party, separate experiments would be performed for the Mode of Action Program and said Independent Research, and Exelixis would not share the Research Results of or other Information (whether generated by BMS or Exelixis) generated under the Mode of Action Program with any Third Party involved in the Independent Research nor would Exelixis share the results of or other information concerning the Independent Research with BMS or the JSC. In such case, Exelixis would be free to disclose and license the results of such Independent Research to such Third Party.

(c) The exclusivity of the license rights granted to BMS in Section 6.1(b) shall be subject to the grant of licenses to Third Parties consistent with paragraphs (a) and (b) of this Section 7.2. Upon request of the JMT, Exelixis shall consult with the JMT from time to time regarding its procedures for seeking to avoid overlapping research activities on behalf of multiple Third Parties.

7.3 BMS License to [*]. In the event that BMS receives a license to either or both of the [*] (or their foreign counterparts) that BMS is able to sublicense to Exelixis, BMS shall promptly notify Exelixis of same and shall describe the terms and conditions that Exelixis will need to comply with in order to obtain a sublicense under [*]. Such terms and conditions may require the payment of fees and other compensation [*] (or reimbursement to BMS for fees and other compensation required by it to be paid [*]) for the grant of a sublicense, but otherwise any grant of such a sublicense shall be structured so as [*]. If BMS seeks a license to the above patents, it agrees to request the right from [*] to such patents on reasonable terms; provided, that it is understood and agreed that nothing in the foregoing shall require BMS, expressly or impliedly: (A) [*] under any of the foregoing patents as a condition of any license sought or obtained by it; or (B) in order to obtain sublicensable rights or to grant a sublicense thereunder to Exelixis (if sublicensable rights can be obtained), to limit BMS' own rights, or assume any obligations or burdens (including without limitation making any payments) that it cannot pass through upon grant of a sublicense to Exelixis, in addition to or different from those that BMS would otherwise have made, granted or assumed if it had obtained a non-sublicensable license to the foregoing patent(s). If Exelixis indicates to BMS, within thirty (30) days after BMS has notified Exelixis of the terms and conditions required for a sublicense to the [*], that Exelixis

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would like to take a sublicense, then the Parties will use diligent, good faith efforts to finalize and execute a written sublicense as promptly as practicable thereafter incorporating such terms. If Exelixis indicates that it does not wish to take a sublicense on such terms, then BMS shall have no further obligation to Exelixis with respect to the grant of a sublicense to [*]. BMS agrees that, if it receives an exclusive license to any of the above-referenced ArQule patents, it will take such exclusive license only if [*].

8. Compensation

8.1 Technology Access Fee. In partial consideration for the rights and licenses granted to BMS by Exelixis in Article 5, BMS to pay Exelixis [*] upon the Effective Date and [*] on the first anniversary of the Effective Date. [*].

8.2 Research Support. During the Research Term, BMS will make quarterly advance payments to Exelixis equal to [*] for that quarter as set forth in Section 3.4. Any research support payments made by BMS to Exelixis hereunder shall be noncreditable and nonrefundable.

8.3 Milestone Payments for Selected Targets and Pursued Disclosed Targets.

(a) For each Selected Target, BMS shall pay Exelixis [*] on the date that BMS commences screening of any Mammalian Target related to such Selected Target.

(b) For each Pursued Disclosed Target, BMS shall pay Exelixis [*] on the date that BMS commences screening of any Mammalian Target related to such Pursued Disclosed Target.

8.4 Milestone Payments for Compound Products. BMS shall make to Exelixis the following milestone payments for Compound Products:

(a) Novel Target. For each Compound Product comprising or incorporating a Collaboration Compound that directly and selectively inhibits, activates or otherwise modulates the activity of a Novel Target or its encoded protein, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for any Collaboration Compound having activity with respect to a particular Novel Target;

(ii) [*] upon filing of an IND for such a Compound Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Compound Product;

(iv) [*] upon filing of an NDA for such a Compound Product; and

(v) [*] upon the first Regulatory Approval in any Major Market for such a Compound Product.

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(b) Unlinked Related Target. For each Compound Product comprising or incorporating a Collaboration Compound that directly and selectively inhibits, activates or otherwise modulates the activity of an Unlinked Related Target or its encoded protein, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for any Collaboration Compound having activity with respect to a particular Unlinked Related Target;

(ii) [*] upon filing of an IND for such a Compound Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Compound Product;

(iv) [*] upon filing of an NDA for such a Compound Product; and

(v) [*] upon the first Regulatory Approval in any Major Market for such a Compound Product.

(c) Known Target. For each Compound Product comprising or incorporating a Collaboration Compound that directly or selectively inhibits, activates or otherwise modulates the activity of a Known Target or its encoded protein, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for any Collaboration Compound having activity with respect to a particular Known Target;

(ii) [*] upon filing of an IND for such a Compound Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Compound Product;

(iv) [*] upon filing of an NDA for such a Compound Product;

(v) [*] upon the first Regulatory Approval in any Major Market for such a Compound Product; and

(vi) [*] upon the first achievement of [*] in Net Sales in any one calendar year for such a Compound Product.

For clarity, it is understood that, with respect to a Compound Product that is active against a Known Target that is Pre-Associated Target, BMS owes milestones under this subsection 8.4(c) only on Compound Products that contain compounds [*] BMS Compound that was used to identify the Target from which such Pre-Associated Target was identified. For purposes of the foregoing, [*] BMS Compound [*] as such BMS Compound.

8.5 Milestone Payments for Safety Products. For each Safety Product, BMS shall make to Exelixis the milestone payments set forth below within [*] events: (a) [*] upon

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

approval of the first Preclinical Lead Profile for any Safety Compound developed by use of a particular Safety Target; (b) [*] upon filing of an IND for a Safety Product; (c) [*] upon initiation of Phase III Clinical Trials for a Safety Product; (d) [*] upon filing of an NDA for a Safety Product; and (e) [*] upon the first Regulatory Approval in any Major Market for a Safety Product.

8.6 Milestone Payments for New Indications for BMS Products. For each BMS Product, BMS shall make to Exelixis the following milestone payments set forth below within [*] of the achievement of each of the following events: (a) [*] upon filing the first NDA in a Major Market for any New Indication for a BMS Product; and (b) [*] upon approval of such NDA in a Major Market.

8.7 Milestone Payments for Gene Products. BMS shall make to Exelixis the following milestone payments for Gene Products:

(a) Novel Target. For each Gene Product comprising or incorporating the gene product of a Novel Target [*], BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for a Gene Product comprising or incorporating a particular Novel Target;

(ii) [*] upon filing of an IND for such a Gene Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Gene Product;

(iv) [*] upon filing of an NDA for such a Gene Product; and

(v) [*] upon the first Regulatory Approval in any Major Market for such a Gene Product.

(b) Unlinked Related Target. For each Gene Product comprising or incorporating the gene product of a Unlinked Related Target [*], BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for a Gene Product comprising or incorporating a particular Unlinked Related Target;

(ii) [*] upon filing of an IND for such a Gene Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Gene Product;

(iv) [*] upon filing of an NDA for such a Gene Product; and

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(v) [*] upon the first Regulatory Approval in any Major Market for such a Gene Product.

8.8 Milestone Payments for Biotherapeutic Products. BMS shall make to Exelixis the following milestone payments for Biotherapeutic Products:

(a) Novel Target. For each Biotherapeutic Product comprising or incorporating an antibody against a Novel Target or an antisense compound based upon a Novel Target sequence, or based upon the sequence of a Novel Target, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for a Biotherapeutic Product related a particular Novel Target;

(ii) [*] upon filing of an IND for such a Biotherapeutic Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Biotherapeutic Product;

(iv) [*] upon filing of an NDA for such a Biotherapeutic Product; and

(v) [*] upon the first Regulatory Approval in any Major Market for such a Biotherapeutic Product.

(b) Unlinked Related Target. For each Biotherapeutic Product comprising or incorporating an antibody against an Unlinked Related Target or an antisense compound based upon an Unlinked Related Target sequence, or based upon the sequence of an Unlinked Related Target, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon approval of the first Preclinical Lead Profile for a Biotherapeutic Product related a particular Unlinked Related Target;

(ii) [*] upon filing of an IND for such a Biotherapeutic Product;

(iii) [*] upon initiation of Phase III Clinical Trials for such a Biotherapeutic Product;

(iv) [*] upon filing of an NDA for such a Biotherapeutic Product; and

(v) [*] upon the first Regulatory Approval in any Major Market for such a Biotherapeutic Product.

8.9 Milestone Payments for Diagnostic Products and Pharmacogenomic. BMS shall make to Exelixis the following milestone payments for Diagnostic Products and Pharmacogenomic Products:

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(a) Novel Target. For each Diagnostic Product or Pharmacogenomic Product that is based upon the detection of the presence or absence of, or sequence differences in different alleles of, a Novel Target, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon initiation of first clinical trial for such a Diagnostic Product or Pharmacogenomic Product;

(ii) [*] upon filing of an Product License Application (or related regulatory approval application) for such a Diagnostic Product or Pharmacogenomic Product; and

(iii) [*] upon the first Regulatory Approval of such a Diagnostic Product or Pharmacogenomic Product in any Major Market.)

(b) Unlinked Related Target. For each Diagnostic Product or Pharmacogenomic Product that is based upon the detection of the presence or absence of, or sequence differences in different alleles of, an Unlinked Related Target, BMS shall make to Exelixis the milestone payments set forth below within [*] of the achievement of each of the following events:

(i) [*] upon initiation of first clinical trial for such a Diagnostic Product or Pharmacogenomic Product;

(ii) [*] upon filing of an Product License Application (or related regulatory approval application) for such a Diagnostic Product or Pharmacogenomic Product; and

(iii) [*] upon the first Regulatory Approval of such a Diagnostic Product or Pharmacogenomic Product in any Major Market.

8.10 Milestone Payments for Back-Up Compounds. For each Backup Compound that is in development by BMS (or its Affiliate or sublicensee), BMS shall only be obliged to make to Exelixis any applicable milestone payments set forth in Sections 8.3-8.9 that were not made to Exelixis with respect to [*] such Backup Compound. However, if [*], achieves Regulatory Approval, and BMS (or its Affiliate or sublicensee) continues thereafter to conduct development of the such Backup Compound, then [*].

8.11 Milestone Payments for [*] Products. For each [*] Product that is developed by BMS (or its Affiliate or sublicensee), BMS shall not be obliged to make any milestone payments to Exelixis under Sections 8.3 through 8.9 unless and until the first Regulatory Approval of [*] in any Major Market. Upon any such Regulatory Approval of [*], BMS shall pay to Exelixis the sum of all milestone payments owed under Sections 8.3 through 8.9 for milestone events achieved by [*], within [*] of such Regulatory Approval, that, in the absence of this Section 8.11, BMS would have been obliged to make to Exelixis prior to such first Regulatory Approval of [*]; provided, however, that if the [*] that received Regulatory Approval in any such Major Market has [*] receives such Regulatory Approval in any such

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Major Market [*]. Thereafter any applicable milestone payments for such additional [*] shall be paid by BMS during the time frame specified in Sections 8.3-8.9, as applicable.

8.12 Royalty Payments for Compound Products. BMS shall pay Exelixis certain royalty payments for Compound Products as set forth below.

(a) Novel Target. For each Compound Product comprising or incorporating a Collaboration Compound that, directly and selectively, inhibits, activates or otherwise modulates the activity of a Novel Target or its encoded protein, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Compound Product.

(b) Unlinked Related Target. For each Compound Product comprising or incorporating a Collaboration Compound that, directly and selectively, inhibits, activates or otherwise modulates the activity of an Unlinked Related Target or its encoded protein, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Compound Product.

(c) Known Target. For each Compound Product comprising or incorporating a Collaboration Compound that, directly and selectively, inhibits, activates or otherwise modulates the activity of a Known Target or its encoded protein, BMS shall pay Exelixis royalties as a percentage of the Net Sales of such Compound Product, where the percentage applied depends on amount of annual Net Sales of the Compound Product as follows:

Amount of Net Sales from [*]	[*]
Amount of Net Sales that is greater than [*]	[*]

For clarity, it is understood that, for Compound Products that are active against Known Targets that are Pre-Associated Targets, BMS owes royalties only on such Compound Products that contain compounds [*] BMS Compound [*] from which such Pre-Associated Target was identified. For purposes of the foregoing, [*] BMS Compound [*] as such BMS Compound.

(d) Transition Target. For each Compound Product comprising or incorporating a Collaboration Compound that, directly and selectively, inhibits, activates or otherwise modulates the activity of a Transition Target or its encoded protein, BMS shall pay Exelixis a royalty at the applicable royalty rate set forth below:

(i) For each Compound Product comprising or incorporating a Collaboration Compound the activity of which with respect to a Transition Target or its encoded protein was discovered using a Known Target that had been a Novel Target, the royalty shall be [*] of the first [*] in Net Sales in a year, and [*] of any Net Sales in such year in excess of [*]; and

(ii) For each Compound Product comprising or incorporating a Collaboration Compound the activity of which with respect to a Transition Target or its encoded protein was discovered using a Known Target that had been an Unlinked Related Target, the royalty shall be [*] of the first [*] in Net Sales in a year, and [*] of any Net Sales in such year in excess of [*].

8.13 Royalty Payments for Safety Products. For each Safety Product, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Safety Product.

8.14 Royalty Payments for Gene Products. BMS shall pay Exelixis certain royalty payments for Gene Products as set forth below.

(a) Novel Target. For each Gene Product comprising or incorporating the gene product of a Novel Target or a mutein or fusion protein based thereon, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Gene Product.

(b) Related Target. For each Gene Product comprising or incorporating the gene product of a Related Target [*], BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Gene Product.

8.15 Royalty Payments for Biotherapeutic Products. BMS shall pay Exelixis certain royalty payments for Biotherapeutic Products as set forth below.

(a) Novel Target. For each Biotherapeutic Product comprising or incorporating an antibody against a Novel Target or an antisense compound based upon a Novel Target sequence, or based upon the sequence of a Novel Target, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Biotherapeutic Product, but subject to reduction by [*] of royalties actually paid by BMS to a Third Party for license rights required to sell such Biotherapeutic Product, but in no event shall the royalty paid to Exelixis be less than [*] of the Net Sales of such Biotherapeutic Product.

(b) Unlinked Related Target. For each Biotherapeutic Product comprising or incorporating an antibody against an Unlinked Related Target or an antisense compound based upon an Unlinked Related Target sequence, or based upon the sequence of an Unlinked Related Target, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of such Biotherapeutic Product, but subject to reduction by [*] of royalties actually paid by BMS to a Third Party for license rights required to sell such Biotherapeutic Product, but in no event shall the royalty paid to Exelixis be less than [*] of the Net Sales of such Biotherapeutic Product.

(c) Known Target. For each Biotherapeutic Product comprising or incorporating an antibody against a Known Target or an antisense compound based upon a Known Target sequence, or based upon the sequence of a Known Target, BMS shall pay Exelixis royalties as a percentage of the Net Sales of such Biotherapeutic Product, where the percentage applied depends on amount of annual Net Sales of the Biotherapeutic Product as follows:

Amount of Net Sales from [*]	[*]
Amount of Net Sales that is greater than [*]	[*]

8.16 Royalty Payments for Diagnostic Products. BMS shall pay Exelixis certain royalty payments for Diagnostic Products as set forth below.

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(a) Novel Target. For each Diagnostic Product that is based upon the detection of [*] of, a Novel Target, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of each such Diagnostic Product.

(b) Unlinked Related Target. For each Diagnostic Product that is based upon the detection of [*] of, an Unlinked Related Target, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of each such Diagnostic Product.

8.17 Royalty Payments for Pharmacogenomic Products. BMS shall pay Exelixis certain royalty payments for Diagnostic Products as set forth below.

(a) Novel Target. For each Pharmacogenomic Product that is based upon the detection of [*] of, a Novel Target, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of each such Pharmacogenomic Product.

(b) Unlinked Related Target. For each Diagnostic Product that is based upon the detection of [*] of, an Unlinked Related Target, BMS shall pay Exelixis a royalty equal to [*] of the Net Sales of each such Pharmacogenomic Product.

8.18 Fixed Royalty Rates and Final Royalty Payments.

(a) Except as provided in the subsection 8.18(b) below, the royalty rates set forth in Sections 8.12-8.17 shall not be subject to adjustment or reduction for any reason.

(b) If a particular Diagnostic Product or Pharmacogenomic Product is based upon the [*] Novel Targets and/or Unlinked Related Targets (or their expressed proteins or antigens thereto), as well as of mammalian targets that are not discovered as part of this Agreement (such product being referred to herein as a "Multiple Marker Product"), then the royalty payable to Exelixis for such Multiple Marker Product under this Agreement shall be determined by first calculating the royalty owed under Section 8.16 or 8.17 (as applicable) for such Multiple Marker Product, and then multiplying that amount by [*] Novel Targets [*] Unlinked Related Targets [*] Novel Targets, Unlinked Related Targets [*]. For clarity, it is understood and agreed that the Net Sales of a particular Diagnostic Product or Pharmacogenomic Product that is a Multiple Marker Product shall not be adjusted by the adjustment mechanism set forth in Section 1.43 for "combined products".

(c) For sake of clarity and avoidance of doubt, it is understood and agreed that no milestones and royalties are payable under this Agreement upon: (1) any BMS product wherein the active ingredient is a compound that directly and selectively inhibits, activates or otherwise modulates a Confirmed Target; or (2) any Compound Product comprising or incorporating a Collaboration Compound that, although it may, by an indirect mechanism, have the effect of inhibiting, activating or otherwise modulating [*] Mammalian Target [*] Mammalian Target [*]; and (3) any BMS product that contains a Collaboration Compound that inhibits, activates or otherwise modulates [*] Related Target [*] Unlinked Related Target, a Pre-Associated Target, Conceptual Target, or Mammalian Disclosed Target [*].

8.19 Term of Royalties. Exelixis' right to receive royalties under Sections 8.12-8.17 shall commence on a country-by-country basis upon the first commercial sale of such Licensed Product in a particular country and shall expire on a country-by-country basis at the later of (1) the date that is ten (10) years after First Commercial Sale in such country, or (2) the date that all

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composition of matter patents on such Licensed Product expire, become unenforceable or are declared invalid by a court or tribunal of competent jurisdiction from which no appeal is or can be taken. Upon expiration of the royalty obligation with respect to a Licensed Product in a country, BMS shall retain the right to make, use and sell such Licensed Product in such country thereafter, without further compensation to Exelixis with respect to sales thereof in such country.

8.20 Quarterly Royalty Payment and Reports. Royalties under Sections 8.12-8.17 shall accrue at the time of invoice or, if earlier, transfer of title of the applicable Licensed Products. All royalty amounts that accrue during a particular calendar quarter shall be paid quarterly within [*] of the end of the relevant calendar quarter. Each royalty payment shall be accompanied by a statement stating the number, description, and aggregate gross invoiced price and the calculation of Net Sales, by country, of each Licensed Product sold during the relevant calendar quarter.

8.21 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, in U.S. dollars. All payments made by BMS under this Article 8 shall be nonrefundable and, unless expressly provided otherwise, noncreditable.

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

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

8.24 Sublicenses. In the event BMS grants licenses or sublicenses to others to sell Licensed Products which are subject to royalties under any of Sections 8.12-8.16, such licenses or sublicenses shall include an obligation for the licensee or sublicensee to account for and report its sales of Licensed Products on the same basis as if such sales were Net Sales by BMS, and BMS shall pay to Exelixis, with respect to such sales, royalties as if such sales of the licensee or sublicensee were Net Sales of BMS.

8.25 Foreign Exchange. The rate of exchange to be used in computing Net Sales and the amount of currency equivalent in United States dollars due Exelixis shall be made at the rate of exchange quoted as of the end of the day on the last business day of the applicable royalty period (calendar quarter period) in the Wall Street Journal.

8.26 Records; Inspection. BMS shall keep complete and accurate records pertaining to the sale or other disposition of the Licensed Products commercialized hereunder by BMS and its Affiliates, in sufficient detail to permit Exelixis to confirm the accuracy of all payments due hereunder. For a period of [*] after the royalty period to which the records relate, Exelixis shall have the right to cause an independent, certified public accountant reasonably acceptable to BMS

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(and who has executed a confidentiality agreement with BMS reasonably acceptable to BMS) to audit such records to confirm the Net Sales and royalty payments; provided, however, that such auditor shall not disclose BMS' confidential information to Exelixis, except to the extent such disclosure is necessary to verify the amount of royalties and other payments due under this Agreement. In no event may such accountant disclose the names of specific customers, price lists, or the prices charged by BMS to specific customers. A copy of any report provided by such accountant shall be provided to BMS at the time that it is provided to Exelixis. Such audits may be exercised no more than once a year, within [*] after the royalty period to which such records relate, upon a mutually acceptable date(s) and upon not less than [*] advance notice to BMS, and shall be conducted during normal business hours. Any amounts shown to be owing by such audits shall be paid immediately with interest in the amount of [*] per month (or the maximum amount permitted by law, if less) from the date first owed until paid. Exelixis shall bear the full cost of such audit unless such audit discloses a variance in the amounts paid by BMS of more than [*] from the amount of royalties and/or other payments actually owed. In such case, BMS shall reimburse Exelixis for its out-of-pocket costs to such Third Party for conducting such audit. The terms of this Section 7.4 shall survive any termination or expiration of this Agreement for a period of [*]. Nothing in this Section shall be construed to allow such accountant to review research records of BMS and its Affiliates.

9. Intellectual Property

9.1 Ownership.

(a) Each Party shall own the entire right, title and interest in and to any and all of its Pre-existing Inventions, and Patents covering such Pre-existing Inventions.

(b) Each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents covering such Sole Inventions. BMS and Exelixis shall each own an undivided one-half interest in and to any and all Joint Inventions and Joint Patents, with inventorship to be determined under the patent laws of the United States. BMS and Exelixis as joint owners each shall have the right to grant licenses under Joint Patents, but subject to the exclusive license rights granted by one Party to another hereunder.

(c) Exelixis shall own the entire right, title and interest in and to any and all Improvement Inventions made by Exelixis, either to the Exelixis Core Technology or the BMS Core Technology, and Patents covering such Improvement Inventions. BMS shall own the entire right, title and interest in and to any and all Improvement Inventions made by BMS, either to the BMS Core Technology or the Exelixis Core Technology, and Patents covering such Improvement Inventions.

9.2 Disclosure. Each Party shall submit a written report to the JMT within sixty (60) days of the end of each quarter describing any Sole Invention, Joint Invention or Improvement Invention arising during the prior quarter during the Research Term in the course of the Collaboration which it believes may be patentable and to which the other Party is granted an exclusive or non-exclusive license under this Agreement. The JMT shall decide whether to file a patent application for a Joint Invention as discussed in Section 9.3(b).

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9.3 Patent Prosecution and Maintenance; Abandonment.

(a) Pre-existing, Sole and Improvement Inventions. Except as otherwise provided below in this Section 9.3, each Party shall retain control over and bear all expenses associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Patents claiming its Pre-existing Inventions, its Sole Inventions and those Improvement Inventions that it solely owns and shall have the sole right and absolute discretion to abandon same and to take all decisions with respect to filing, prosecution, maintenance and abandonment of same.

(b) Joint Inventions. The JMT shall establish the patent strategy for all Joint Inventions and supervise and direct the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of all Patents covering Joint Inventions. The JMT shall provide each Party with (i) drafts of any new patent application that covers a Joint Invention prior to filing that application, allowing adequate time for review and comment by the Party if possible; provided, however, the JMT shall not be obligated to delay the filing of any patent application; and (ii) copies of all correspondence from any and all patent offices concerning patent applications covering Joint Inventions and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. BMS shall have the first right, but not the obligation, to file, prosecute and maintain Joint Patents claiming particular Joint Inventions that constitute Improvement Inventions to the BMS Core Technology or that are licensed to BMS under Section 6.1 hereof in such countries as selected by BMS. BMS shall reasonably consider any recommendations provided by Exelixis regarding patent filing, prosecution, and/or maintenance of any such patents pertaining thereto, but the final decision as to filing, prosecution, maintenance and abandonment matters shall rest with BMS. In the event that Exelixis desires that BMS file and prosecute a patent application claiming such a Joint Invention, and BMS does not file such a patent application within [*] of such request, or decides to abandon prosecution of such a filed application or maintenance of an issued Joint Patent, then Exelixis may thereafter file, prosecute (including any interferences, reissue proceedings and reexaminations) and/or maintain at Exelixis' expense and in the name of Exelixis and BMS the patent(s) claiming such particular Joint Inventions, and BMS agrees to cooperate reasonably with Exelixis in such efforts. Exelixis shall have the first right, but not the obligation, to file, prosecute and maintain Joint Patents claiming particular Joint Inventions that constitute Improvement Inventions to the Exelixis Core Technology in such countries as selected by Exelixis. Exelixis shall reasonably consider any recommendations provided by BMS regarding patent filing, prosecution, and/or maintenance of any such patents pertaining thereto, but the final decision as to filing, prosecution (including any interferences, reissue proceedings and reexaminations) maintenance and abandonment matters shall rest with Exelixis. In the event that BMS desires that Exelixis file and prosecute a patent application claiming such a Joint Invention, and Exelixis does not file such a patent application within [*] of such request, or decides to abandon prosecution of such a filed application or maintenance of an issued Joint Patent, then BMS may thereafter file, prosecute (including any interferences, reissue proceedings and reexaminations) and/or maintain [*] and in the name of Exelixis and BMS the patent(s) claiming such particular Joint Inventions, and Exelixis agrees to cooperate reasonably with BMS in such efforts.

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(c) Selected and Product Target Exelixis Sole Inventions. For Sole Inventions made by Exelixis relating to the composition or use of any Selected Targets or Product Targets that, although non-exclusively licensed to BMS under Article 6, have not yet become Pursued Disclosed Targets or upon which Exelixis has commenced Independent Research within the Field as permitted under the Agreement, the following shall apply:

(i) Exelixis shall have the first right, but not the obligation, to file, prosecute and maintain the Patents claiming such Inventions. Exelixis shall reasonably consider any recommendations provided by BMS regarding patent filing, prosecution (including any interferences, reissue proceedings and reexaminations), and/or maintenance of such Patents for uses within the Field, but the final decision as to filing, prosecution, maintenance, and abandonment matters shall rest with Exelixis; provided, however, that if Exelixis declines to file, prosecute or maintain a Patent in a given country, BMS may elect to become the controlling Party by taking over, in the name of Exelixis and, subject to Section 9.3(b), at BMS' sole expense thereafter, the filing, prosecution (including any interferences, reissue proceedings and reexaminations), and maintenance of any such patent application or patent covering such Invention in any country, in which event the final decision as to filing and/or prosecution matters shall rest with BMS.

(ii) With respect to such Patents for which Exelixis remains the controlling Party under this Section 9.3(c), Exelixis shall be responsible for any out-of-pocket costs incurred by it, and BMS [*] after presentation of an invoice and appropriate substantiation of the costs incurred, for all [*] of such [*] by Exelixis to Third Parties after the Effective Date with respect to the filing, prosecution and maintenance of such Patents [*] until such time as BMS no longer has any de facto exclusive license rights under this Agreement to a given Selected Target as a result of such Target becoming a Pursued Disclosed Target or Exelixis having commenced Independent Research on such Target within the Field as permitted in the Agreement or as a result of a conversion of such rights to semi-exclusive or non-exclusive in accordance with the terms of Sections 4.11, 4.12, 6.3(b), and/or 6.3(c) as the case may be, at which time, [*] after such date with respect to any Patents in any country covering the composition or use of such Pursued Disclosed Target. With respect to those Patents where BMS is the controlling Party under this Section 9.3(c), [*] and Exelixis shall reimburse BMS, within sixty (60) days after presentation of an invoice and appropriate substantiation of the costs incurred, for fifty percent (50%) of such out-of-pocket costs incurred by BMS to Third Parties after the Effective Date with respect to the filing, prosecution and maintenance of such Patents ("Costs") until such time BMS no longer has any de facto exclusive license rights within the Field under this Agreement to a given Selected Target as a result of such Target becoming a Pursued Disclosed Target or Exelixis having commenced Independent Research on such Target within the Field as permitted in the Agreement or as a result of a conversion of such rights to semi-exclusive or non-exclusive in accordance with the terms of Sections 4.11, 4.12, 6.3(b), and/or 6.3(c) as the case may be, at which time, BMS shall no longer be the controlling Party and shall transfer responsibility for the filing, prosecution, and maintenance of such Patents to Exelixis, and after such transfer Exelixis shall be responsible for one hundred percent (100%) of the Costs incurred thereafter with respect to any Patents in any country covering the composition or use of such Pursued Disclosed Target.

(iii) Notwithstanding the foregoing, BMS may [*], as provided above, with respect to any particular patent application or issued patent within the Exelixis Patents that claims a given Invention, on a country-by-country basis, in which case such patent application or

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patent in such country(ies) shall thereafter be excluded from the Exelixis Patents licensed to BMS hereunder for all purposes under this Agreement.

(d) Pursued Disclosed Target Exelixis Sole Inventions. For Sole Inventions made by Exelixis relating to the composition or use of any Pursued Disclosed Targets, the following shall apply:

(i) Exelixis shall have the first right, but not the obligation, to file, prosecute and maintain the Patents claiming such Inventions. Exelixis shall reasonably consider any recommendations provided by BMS regarding patent filing, prosecution (including any interferences, reissue proceedings and reexaminations), and/or maintenance of such Patents for uses within the Field, but the final decision as to filing, prosecution, maintenance, and abandonment matters shall rest with Exelixis; provided, however, that if Exelixis declines to file, prosecute or maintain a Patent in a given country, BMS may elect to become the controlling Party by taking over, in the name of Exelixis and [*] thereafter, the filing, prosecution (including any interferences, reissue proceedings and reexaminations), and maintenance of any such patent application or patent covering such Invention in any country, in which event the final decision as to filing and/or prosecution matters shall rest with BMS.

(ii) Where Exelixis is the controlling Party, Exelixis shall be responsible for any Costs incurred by it, without contribution by BMS. [*] and Exelixis shall reimburse BMS, within sixty (60) days after presentation of an invoice and appropriate substantiation of the costs incurred, for all one hundred percent (100%) of such out-of-pocket costs [*] after the Effective Date with respect to the filing, prosecution and maintenance of such Patents ("Costs").

(e) Novel Target Exelixis Sole Inventions. For Sole Inventions made by Exelixis relating to the composition or use of any Novel Targets that are exclusively licensed to BMS under Section 6.1(c), the following shall apply: BMS shall have the first right, but not the obligation, to file, prosecute (including any interferences, reissue proceedings and reexaminations) and maintain Patents claiming such Inventions, [*] and in the name of Exelixis, in such countries as selected by BMS. BMS shall reasonably consider any recommendations provided by Exelixis regarding patent filing, prosecution, and/or maintenance of any such patents pertaining thereto, but the final decision as to filing, prosecution, maintenance and abandonment matters shall rest with BMS. In the event that Exelixis desires that BMS file and prosecute a patent application claiming a particular Invention in a given country, and BMS does not file such a patent application within one hundred twenty (120) days of such request, or decides to abandon prosecution of such a filed application or maintenance of an issued Patent in a given country, then Exelixis may thereafter file, prosecute (including any interferences, reissue proceedings and reexaminations) and/or maintain, at Exelixis' expense and in the name of Exelixis, the patent(s) claiming such particular Inventions in such country, in which case such patent application or patent in such country(ies) shall thereafter be excluded from the Exelixis Patents licensed to BMS hereunder for all purposes under this Agreement.

The foregoing provisions of subsection (e) are subject to the following: If BMS' rights under Section 6.1(c) have been terminated or converted to semi-exclusive or non-exclusive in accordance with the terms of this Agreement, then, regardless of which Party was previously the controlling Party, Exelixis shall thereafter have the right, but not the obligation, to file, prosecute (including any interferences, reissue proceedings and reexaminations), and/or maintain, at Exelixis' expense and

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in its name, such patent applications and patents relating to such converted rights, without contribution or reimbursement from BMS.

(f) BMS Patents Licensed to Exelixis. For BMS Patents that are licensed to Exelixis under Sections 6.3(a), 6.3(b) and/or 6.3(c) based on BMS' Sole Inventions, the following shall apply:

(i) BMS shall retain the first right, but not the obligation, to file, prosecute and maintain the Patents claiming such Inventions. BMS shall reasonably consider any recommendations provided by Exelixis regarding patent filing, prosecution (including any interferences, reissue proceedings and reexaminations), and/or maintenance of such Patents for uses within the Field, but the final decision as to filing, prosecution, maintenance, and abandonment matters shall rest with BMS; provided, however, that if BMS declines, or fails by any date that is sixty (60) days before an applicable due date or date where rights would be lost, to file, prosecute or maintain a Patent in a given country, Exelixis may elect to become the controlling Party by taking over, in the name of BMS and at Exelixis' sole expense thereafter, the filing, prosecution (including any interferences, reissue proceedings and reexaminations), and maintenance of any such patent application or patent covering such Invention in any country, in which event the final decision as to filing and/or prosecution matters shall rest with Exelixis.

(ii) With respect to such Patents licensed to Exelixis under Sections 6.3(b) or 6.3(c) for which BMS remains the controlling Party, Exelixis shall reimburse BMS within sixty (60) days after presentation of an invoice and appropriate substantiation of the out-of-pocket costs, for seventy-five percent (75%) of such out-of-pocket costs incurred by BMS to Third Parties prior to and after the Effective Date that such Patent was licensed to Exelixis, until such time, if any, as BMS may elect pursuant to Section 4.11 to continue to pursue or recommences pursuit of an Abandoned Target or may elect to continue to pursue a Novel Target (with respect to a Biotherapeutic Product only), at which time [*] Exelixis reimbursing BMS for fifty percent (50%) of the out-of-pocket costs incurred by BMS thereafter). Where Exelixis is the controlling Party, Exelixis shall be solely responsible for any out-pocket costs incurred by it, until such time, if any, as [*] pursuant to Section 4.11 to continue to pursue, or recommences pursuit of an Abandoned Target or as [*] to continue to pursue a Novel Target (with respect to a Biotherapeutic Product only), at which time [*] before and thereafter (unless BMS elects to reassume control of such prosecution, in which case Exelixis shall reimburse BMS for twenty-five (25%) of the out-of-pocket costs incurred by BMS thereafter.

(iii) With respect to such Patents licensed to Exelixis under Section 6.3(a) for which BMS remains the controlling Party, Exelixis shall reimburse BMS, within sixity (60) days after presentation of an invoice and appropriate substantiation of the out-of-pocket costs, for fifty percent (50%) of such out-of-pocket costs incurred by BMS to Third Parties prior to and after the Effective Date that such Patent was licensed to Exelixis. Where Exelixis is the controlling Party, Exelixis shall be solely responsible for any out-of-pocket costs incurred by it, but, within [*].

(iv) Notwithstanding the foregoing provisions of this Section 9.3(f), Exelixis may decline to pay BMS for such costs for which Exelixis may be responsible, as provided above, with respect to any particular patent application or issued patent within the BMS Patents that claims a given Sole Invention of BMS, on a country-by-country basis, in which case such patent application or patent in such country(ies) shall thereafter be excluded from [*] hereunder for all purposes under this Agreement.

(g) Cooperation. The controlling Party under Sections 9.3(b), (c), (d) (e) and (f) as the case may be, shall provide the non-controlling Party with copies of all documents, correspondence and referenced materials filed or received by the controlling Party in prosecuting and maintaining the applicable patents and Joint Patents controlled by it where (i) the controlling Party is obligated to consult with or to consider recommendations by the non-controlling Party

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regarding such prosecution, (ii) rights under the applicable Patent are granted to the non-controlling Party hereunder, or (iii) the non-controlling Party potentially has the right to assume control of the filing or prosecution of such Patent under the conditions set forth in such Section. Such copies shall be provided promptly after receipt, with respect to communications to or from applicable patent authorities, and sufficiently in advance of the controlling Party's filing or otherwise communicating any such documents to allow the non-controlling Party reasonable time to review such materials and comment thereon prior to filing. The non-controlling Party will provide the controlling Party all reasonable assistance, at the controlling Party's expense, in prosecuting and maintaining such patents. All counsel used by the controlling Party for filing, prosecuting and maintaining such applications shall be subject to the approval of the non-controlling Party (not to be unreasonably withheld), and the Parties will endeavor to select competent, cost-effective counsel for same.

9.4 Enforcement of Patent Rights.

(a) Each Party shall have the sole right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to infringement by a Third Party of one or more issued Patents covering such Party's Pre-existing Inventions or those Improvement Inventions solely owned by such Party pursuant to Section 9.1(c). Each Party shall have the sole right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to infringement by a Third Party of one or more issued Patents covering such Party's Pre-existing Inventions or those Improvement Inventions solely owned by such Party pursuant to Section 9.1(c).

(b) Except as provided in Section 9.4(d), if any issued Patent covering a Sole Invention of Exelixis is infringed by Third Party activity, and if (1) such infringement will, or can reasonably be expected to, result in loss of sales of an existing Licensed Product, or (2) is a Patent as to which BMS is controlling the maintenance thereof under Section 9.3, then BMS shall have the first right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to such infringement by counsel of its own choice, and Exelixis shall have the right to participate in such action and to be represented by counsel of its own choice. If BMS fails to bring an action or proceeding within ninety (90) days after having received written notice of such infringement from Exelixis, then Exelixis shall have the right, but not the obligation, to bring and control any such action by counsel of its own choice, and BMS shall have the right to participate in such action and to be represented by counsel of its own choice.

(c) Except as provided in Section 9.4(d), if either Party becomes aware of any Third Party activity that infringes an issued Patent covering a Joint Invention, then that Party shall give prompt written notice to the other Party within thirty (30) days after knowledge of such infringement comes to the attention of, in the case of BMS, its in-house patent counsel and, in the case of Exelixis, its senior management. If BMS is then controlling the maintenance of such Patent, BMS shall have the first right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to such infringement by counsel of its own choice, and Exelixis shall have the right to participate in such action and to be represented by counsel of its own choice. If BMS fails to bring an action or proceeding within a period of ninety (90) days after receipt of such notice, then Exelixis shall have the right, but not the obligation, to bring and control any such action by counsel of its own choice, and BMS shall have the right to participate

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in such action and to be represented by counsel of its own choice. If Exelixis is then controlling the maintenance of such Patent, then the parties rights and obligations under the preceding two sentences shall be switched, mutatis mutandis.

(d) BMS shall have the sole right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to infringement by a Third Party of one or more issued patents owned or Controlled solely by BMS or its Affiliates covering the manufacture, use, or sale of any BMS Product or Licensed Product, and shall be entitled to prosecute and manage all proceedings relating to same (including all decisions relative to litigation, appeal or settlement) in its sole and absolute discretion [*].

(e) If either Party brings any such action or proceeding under Section 9.4(b) or 9.4(c), the other Party agrees (but only where, in the case of a Patent covering an Exelixis Sole Invention, such Party, if not the controlling Party, is the licensor of such Patent) to be joined as a party plaintiff and to give the first Party reasonable assistance and authority to control, file and prosecute the suit as necessary. Each Party shall bear its own costs and expenses for any action or proceeding brought under this Section 9.4. Any damages or other monetary awards recovered shall be applied first to reimburse the reasonable costs and expenses of the Parties in connection with such litigation, and the balance shall be [*], and (2) where Exelixis is the controlling party, but BMS has reimbursed Exelixis for some portion of the Costs of prosecution, filing or maintaining such Patent in a given country of infringement, [*]. No settlement or consent judgment or other voluntary final disposition of a suit under Section 9.4(b) or 9.4(c) may be entered into by a Party that is controlling the action in a manner that materially adversely affects the rights of the other Party or would require payment of any amounts by such other Party to a Third Party, without the consent of such other Party.

(f) If either Party becomes aware of any Third Party activity that infringes a BMS Patent licensed to Exelixis under Section 6.3, then that Party shall give prompt written notice to the other Party within thirty (30) days after knowledge of such infringement comes to the attention of, in the case of BMS, its in-house patent counsel and, in the case of Exelixis, its senior management. If Exelixis is then controlling the maintenance of such Patent, Exelixis shall have the first right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to such infringement by counsel of its own choice, and BMS shall have the right to participate in such action and to be represented by counsel of its own choice. If Exelixis fails to bring an action or proceeding within a period of ninety (90) days after receipt of such notice, then BMS shall have the right, but not the obligation, to bring and control any such action by counsel of its own choice, and Exelixis shall have the right to participate in such action and to be represented by counsel of its own choice. If BMS is then controlling the maintenance of such Patent, then the parties rights and obligations under the preceding two sentences shall be switched, mutatis mutandis. If either Party brings any such action or proceeding, the other Party agrees to be joined as a party plaintiff and to give the first Party reasonable assistance and authority to control, file and prosecute the suit as necessary. Each Party shall bear its own costs and expenses for any action or proceeding brought under this Section 9.4(f). Any damages or other monetary awards recovered shall be applied first to reimburse the reasonable costs and expenses of the Parties in connection with such litigation, and the balance [*].

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9.5 Copyright Registrations. Copyrights and copyright registrations on copyrightable subject matter shall be filed, prosecuted, defended, and maintained, and the Parties shall have the right to pursue infringers of any copyrights owned or Controlled by it, in substantially the same manner as the Parties have allocated such responsibilities, and the expenses therefor, for patent rights under this Article 9.

10. Confidentiality

10.1 Nondisclosure of Confidential Information. All Information disclosed by one Party to the other Party pursuant to this Agreement shall be "Confidential Information" for all purposes hereunder. The Parties agree that during the term of this Agreement, and for a period of [*] after this Agreement expires or terminates, a Party receiving Confidential Information of the other Party will (i) use commercially reasonable efforts to maintain in confidence such Confidential Information (but not less than those efforts as such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value) and not to disclose such Confidential Information to any Third Party without prior written consent of the other Party, except for disclosures made in confidence to any Third Party under terms consistent with this Agreement and made in furtherance of this Agreement or of rights granted to a Party hereunder, and (ii) not use such other Party's Confidential Information for any purpose except those permitted by this Agreement.

10.2 Exceptions. The obligations in Section 10.1 shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent proof:

(a) Is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

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

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

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

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

10.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances:

(a) Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Licensed Products;

(b) Regulatory filings;

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(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental regulations; and

(e) Disclosure, in connection with the performance of this Agreement (including conducting preclinical or clinical trials of Licensed Products) and where not prohibited by this Agreement, to Affiliates, sublicensees, research collaborators, employees, contractors, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 10 (but with the duration to be limited to not less than [*] from date of disclosure).

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 10. In addition, a copy of this Agreement may be filed by Exelixis with the Securities and Exchange Commission in connection with any public offering of Exelixis securities. In connection with any such filing, Exelixis shall endeavor to obtain confidential treatment of economic and trade secret information to the maximum practical extent. Further, Exelixis agrees to consult with BMS on the provisions of this Agreement to be redacted in any filings made by Exelixis with the United States Securities and Exchange Commission or as otherwise required by law.

In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

10.4 Termination of Prior Agreements. This Agreement supersedes the Mutual Confidential Disclosure Agreement between Exelixis and BMS dated November 24, 1998. All Information exchanged between the Parties under those earlier Agreements shall be deemed Confidential Information and shall be subject to the terms of this Article 10 and shall, if patentable, be treated as a Pre-existing Invention of the disclosing Party.

10.5 Publicity. The Parties agree to make a public announcement of the execution of this Agreement promptly after its execution by both parties through a release in the form attached as Exhibit D. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; provided, however, that any disclosure which is required by law as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

10.6 Publications. Neither Party shall publish or present the results of studies carried out under this Agreement without the opportunity for prior review by the other Party. Subject to Section 10.3, each Party agrees to provide the other Party the opportunity to review any proposed abstracts, manuscripts or presentations (including verbal presentations) which relate to any Selected Target, Pursued Disclosed Target, Product Target and/or any Mammalian Target

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directly relating thereto, or, until such Product is in Phase II development, a Product at least thirty (30) days 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 (not to exceed sixty (60) days) to secure patent protection for any material in such publication which it believes to be patentable; provided, however, that Exelixis shall not have any right to review and approve any such publications made by BMS and its academic collaborators/investigators to the extent directly concerning post-clinical, clinical, or pre-clinical results pertaining to a Collaboration Compound or Licensed Product, or to the extent relating solely to any Unlinked Related Target. Both Parties understand that a reasonable commercial strategy may require delay of publication of information or filing of patent applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JMT will review such requests and recommend subsequent action. Neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to Section 10.1. Nothing contained in this Section 10.6 shall prohibit the inclusion of Confidential Information of the other Party generated by either Party during the Research Term as part of the Collaboration that is necessary for a patent application to be filed by a Party, so long as the nonfiling Party is given a reasonable opportunity to review the information to be included prior to submission of such patent application; provided, that neither party may use in such filings any Confidential Information of the other Party generated prior to the Effective Date or, in the case of Exelixis, any BMS Confidential Information disclosed to it that was not obtained through the material use of Exelixis-generated Confidential Information (and that remained confidential to Exelixis at the time of use by BMS). Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JMT.

11. Term and Termination

11.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until terminated in accordance with the terms hereof or by mutual written agreement. Termination of the Research Term shall not constitute termination of this Agreement.

11.2 Termination for Material Breach.

(a) If either Party believes that the other is in material breach of this Agreement (including without limitation any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In any such notice, the non-breaching Party shall identify in detail the basis for breach and identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. The allegedly breaching Party shall have ninety (90) days to either cure such breach or, if cure cannot be reasonably effected within such ninety (90) day period, to deliver to the other Party a plan for curing such breach which is reasonably sufficient to effect a cure. Such a plan shall set forth a program for achieving cure as rapidly as practicable. Following delivery of such plan, the breaching Party shall use Diligent Efforts to carry out the plan and cure the breach.

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If the Party receiving notice of breach fails to cure such breach within the [*], 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 declare a breach hereunder upon [*] advance written notice; provided, that:

(1) Exelixis may not exercise termination under this Section 11.2, with respect to matters covered by Sections 4.9 or 4.10 hereof;

(2) If such breach is specific as to a given Collaboration Compound or Licensed Product, such termination shall not be as to the whole agreement, but only as to such license rights as granted hereunder to BMS with respect to such Collaboration Compound or Licensed Product;

(3) If such breach is specific to given Patent rights licensed by a Party to the breaching Party under Article 6 hereof, then such termination shall not be as to the whole agreement but only as to such licensed rights as pertain to such Patent; and

(4) If such breach is specific to a right licensed to, or an obligation assumed by, the breaching Party with respect to the licensing Party's Core Technology under Article 5 hereof, then the licensing Party shall not have the right to terminate, unless either (A) such breach is a willful and intentional breach or grossly negligent breach of the non-disclosure obligations or limitations on the scope of the licensee's license rights, or (B) in the case of any other curable, material breach of a right licensed to, or an obligation assumed by, the breaching Party with respect to the licensing Party's Core Technology under Article 5 hereof, such breaching Party fails to take diligent steps to cure such breach after notice thereof, in which case such termination shall not be as to the whole agreement but only as to the rights licensed to the other Party with respect to the licensing Party's Core Technology as to which the licensee Party committed and (if applicable) failed to cure the breach; and

(5) If such breach involves an alleged failure to pay a milestone payment or royalty amount believed by Exelixis to be owed by BMS, but BMS in good faith disputes such payment obligations, and an arbitration was held to resolve the dispute which arbitration ruled that such amount (or some other amount) is owed by BMS, then this Agreement may not be terminated by Exelixis unless BMS fails to pay such amount as determined to be owed under such arbitration within thirty (30) days after the date of such arbitration ruling.

(b) If a Party gives notice of termination under this Section 11.2 and the other Party disputes whether such notice was proper, then the issue of whether this Agreement has been terminated shall be resolved in accordance with Section 14.1. If as a result of such dispute resolution process it is determined that the notice of termination was proper, then such termination shall be deemed to have been effective thirty (30) days following the date of the notice of termination. If as a result of such dispute resolution process it is determined that the notice of termination was improper, then no termination shall have occurred and this Agreement shall have remained in effect.

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11.3 Change in Control. If, during the Research Term, Exelixis or any Exelixis Affiliate controlling Exelixis, experiences a "pharmaceutical change in control" (as defined below), then BMS shall have the right to terminate the Research Program at anytime thereafter, effective upon not less than six (6) months' prior written notice to Exelixis (or its successor). Exelixis shall continue to perform its duties under the Mode of Action Program and this Agreement during such notice period. Other than such payments, BMS shall have [*] payment obligations or liability to Exelixis with respect to the termination of the Research Term, except for such milestone and royalty obligations as BMS may otherwise have thereafter under this Agreement with respect to the development and commercialization of Collaboration Compounds and Licensed Products and New Indications.

For purposes of this Agreement, the term "pharmaceutical change in control" shall mean any sale of voting securities, any sale of assets, or any merger, consolidation or similar transaction which, directly or indirectly, (i) transfers over fifty percent (50%) of the assets of Exelixis which relate to the subject matter of this Agreement to any "Qualifying Pharmaceutical Entity" (as defined in Section 5.5(e) hereof) or any of its Affiliates, or (ii) results in any Qualifying Pharmaceutical Entity or any of its Affilliates becoming the beneficial owner, directly or indirectly, of more than fifty percent (50%) of those securities of Exelixis entitled to vote for the election of the directors of Exelixis.

11.4 Effect of Termination; Survival.

(a) Upon any termination by Exelixis of this Agreement (or the applicable aspect or portion thereof) pursuant to Section 11.2:

(i) all rights and licenses granted by Exelixis to BMS under Article 5 and 6 will terminate, except where termination of such licenses and covenants is qualified and limited by sections 11.2(a)(1)-(5) hereof, in which event BMS shall retain the rights and licenses not terminated; and

(ii) BMS shall, within sixty (60) days of such termination, return all Confidential Information of Exelixis pertaining to the terminated rights and licenses, and Exelixis shall return all BMS Compounds provided to it that relate to such terminated rights; and

(iii) BMS shall cease to use any Research Results, Exelixis Patents or other Confidential Information of Exelixis that comprise or relate to such terminated rights, except to the extent reasonably required by BMS in order to continue to develop and commercialize any Collaboration Compounds and Licensed Products then in development subject to the payment by BMS of any milestones and royalties that would otherwise be due on same; provided that, notwithstanding the foregoing, in the event BMS has twice materially breached its payment obligations with respect to milestones and/or royalties due on a particular Collaboration Compound or Licensed Product and has failed to cure same within the notice period set forth in Section 11.2, then effective immediately upon the third such material breach not cured within such cure period, all of BMS' rights to such Collaboration Compound or Licensed Product shall terminate, and BMS shall immediately cease commercializing such Collaboration Compound or Licensed Product and cease using the related Research Results, Exelixis Patents and other Confidential Information of Exelixis with respect to commercializing such Collaboration Compound or Licensed Product;

(iv) Exelixis may continue to use the rights licensed to it under Articles 5 and 6 hereof in accordance with, and subject to the terms and conditions of, this Agreement; and

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(v) Exelixis shall not be obligated to disclose or license to BMS any Improvement Inventions made thereafter by it to the Exelixis Core Technology or BMS Core Technology after such termination date.

(b) Upon any termination of this Agreement by BMS pursuant to Section 11.2:

(i) all licenses granted by BMS to Exelixis under Articles 5 and 6 will terminate, except where termination of such licenses and covenants is qualified and limited by sections 11.2(a)(1)-(5) hereof, in which event Exelixis shall retain the rights and licenses not terminated;

(ii) Exelixis shall, within sixty (60) days of such termination, return all Confidential Information of BMS pertaining to the terminated rights and licenses, and Exelixis shall return all BMS Compounds provided to it that relate to such terminated rights;

(iii) Exelixis and its (sub)licensees may continue to use outside the Field any data and research results obtained by it from the use prior to termination of the licensed rights that are terminated hereunder and may continue to develop and commercialize any compounds (and products incorporating same) thereafter outside the Field based on the exercise of such rights outside the Field prior to termination, provided that Exelixis and its (sub)licensees do not infringe any Valid Claims of any BMS Patents or use, except to the extent relating to any unterminated rights and licenses and except as otherwise permitted under this Agreement, any Confidential Information of BMS or Exelixis-generated Research Results in doing so; and

(iv) BMS' rights under Articles 5 and 6 shall survive, and BMS may continue to use such rights licensed to it in accordance with, and subject to the terms and conditions of, this Agreement, and provided further that, with respect to exercise of the rights granted under Article 6, BMS complies with the payment terms and conditions of Article 8 of this Agreement; and

(v) BMS shall not be obligated to disclose or license to Exelixis any Improvement Inventions made thereafter by it to the Exelixis Core Technology or BMS Core Technology after such termination date.

(c) Upon termination of the Research Term as provided in Section 11.3:

(i) Exelixis shall return all BMS Compounds provided to it;

(ii) BMS' and Exelixis' rights under Articles 5 and 6 shall survive, and BMS and Exelixis each may continue to use such rights licensed to it in accordance with, and subject to the terms and conditions of, this Agreement; and

(iii) Neither Party shall be obligated to disclose or license to the other Party any Improvement Inventions made thereafter by it to its Core Technology or the other Party's Core Technology after such termination date.

(d) Upon any termination of this Agreement by BMS pursuant to Section 3.2:

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(i) all licenses granted by each Party to the other Party under Article 6 will terminate;

(ii) Each Party shall, within sixty (60) days of such termination, return all Confidential Information of the other Party pertaining to the terminated rights and licenses, and Exelixis shall return all BMS Compounds provided to it;

(iii) BMS shall cease all use of any Targets and other Research Results disclosed by Exelixis and any mammalian orthologues of such Targets identified by use of such Collaboration information, unless and until such mammalian orthologues, and their relevance to the applicable BMS Compounds, are disclosed publicly or to BMS by a Third Party or are independently discovered by BMS employees without use of such Research Results; and

(iv) Neither Party shall be obligated to disclose or license to the other Party any Improvement Inventions made thereafter by it to its Core Technology or the other Party's Core Technology after such termination date.

(e) In the event of termination of this Agreement pursuant to Section 11.2, 11.3 or 3.2, the following provisions of this Agreement shall survive: Articles 1, 9, 10, 13 and 14 and Sections 3.6, 3.7 (last sentence), 3.8, 4.15, 4.17 (last sentence), 5.7(c), 5.8, 11.4(f), 12.1, 12.3, 12.4 and 12.5, as well as those other provisions of this Agreement as are necessary to give effect to any surviving rights and licenses described in Section 11.4 hereof.

(f) In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

12. Representations and Covenants

12.1 Mutual Authority. Exelixis and BMS each represents and warrants to the other that (i) it has the authority and right to enter into and perform this Agreement, (ii) this Agreement is a legal and valid obligation binding upon it and is enforceable in accordance with its terms, subject to applicable limitations on such enforcement based on bankruptcy laws and other debtors' rights, and (iii) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement or instrument to which it is or becomes a party or by which it is or becomes bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it.

12.2 Rights in Technology. During the term of this Agreement, each Party will use commercially reasonable efforts not to diminish the rights under its Pre-existing Inventions, Sole Inventions or Joint Inventions granted to each other herein, including without limitation by not committing or permitting any acts or omissions which would cause the breach of any agreements between itself and Third Parties which provide for intellectual property rights applicable to the development, manufacture, use or sale of Licensed Products. Each Party agrees to provide promptly the other Party with notice of any such alleged breach. As of the Effective Date, each

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Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

12.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates, provided, however, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates in research under this Agreement or with respect to Collaboration Compounds, (i) the restrictions of this Agreement which apply to the activities of a Party with respect to Selected Targets and Collaboration Compounds shall apply equally to the activities of such Affiliate, and (ii) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in Article 6) as if such intellectual property had been developed by the Party.

12.4 Exelixis Representations and Warranties. Exelixis represents and warrants to BMS that as of the Effective Date:

(a) Exelixis is the owner and/or licensee of the Exelixis Core Technology and of those patents listed on Exhibit C, and that, to the knowledge of the officers of Exelixis, Exelixis has not entered into any agreement that prohibits Exelixis from using or licensing same as contemplated in this Agreement.

(b) To the knowledge of the officers of Exelixis, (1) the performance by Exelixis of the activities contemplated for it under this Agreement, including without limitation the use of any of its technologies, software developed by it, any compounds or biomaterials (other than the BMS Compounds), any patents Controlled by it (including without limitation the patents listed on Exhibit C), and any know-how in the conduct of the Mode of Action Program and (2) the rights and licenses to be granted by it hereunder, will not infringe any patents, and with respect to the FlyTag Database, any copyrights, owned by Third Parties.

(c) There is no action, suit or proceeding pending or, to the knowledge of the officers of Exelixis, that has been threatened in writing by any Third Party against Exelixis which, if adversely determined, would have a material adverse effect upon the ability of Exelixis to use, or license to BMS as contemplated hereunder, any technologies, any software developed by it, any compounds or biomaterials (other than the BMS Compounds), and any know-how, including the without limitation the FlyTag Database and the patents listed on Exhibit C, to perform its obligations under this Agreement.

(d) The Exelixis Core Technology has not been developed or obtained by Exelixis in violation of any contractual or fiduciary obligation to which Exelixis, any predecessor-in-interest or, to its knowledge, any of its or their employees is or was a party or by misappropriation of the trade secrets of any Third Party.

(e) To the knowledge of the officers of Exelixis, the issued claims under the Patents listed on Exhibit C are not dominated, as of the Effective Date, by any issued patents of any Third Party in the United States.

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(f) To the knowledge of the officers of Exelixis, with respect to any Patent, copyright or know-how rights relating to C. elegans or Drosophila that are contained within the Exelixis Core Technology listed on Exhibit C (including without limitation any aspect of the FlyTag Database) that are licensed to Exelixis, Exelixis is not restricted or prevented from licensing such rights to BMS as contemplated in Article 5, except for the restrictions set forth expressly in Section 5.3.

12.5 BMS Representations and Warranties. BMS represents and warrants to Exelixis that as of the Effective Date:

(a) BMS is the owner and/or licensee of the BMS Core Technology and of those patents listed on Exhibit B-1, and that, to the knowledge of the officers of BMS, BMS has not entered into any agreement that prohibits BMS from using or licensing same as contemplated in this Agreement.

(b) Except as otherwise provided on Exhibit E, to the knowledge of the officers of BMS: (1) the performance by BMS of the activities contemplated for it under this Agreement, including without limitation the use of any of its technologies, software developed by it, any compounds or biomaterials, any patents Controlled by it (including without limitation the patents listed on Exhibit B-1), and any know-how in the conduct of the Mode of Action Program and (2) the rights and licenses to be granted by it hereunder, will not infringe any patents, and with respect to the BMS Software, any copyrights, owned by Third Parties.

(c) There is no action, suit or proceeding pending or, to the knowledge of the officers of BMS, that has been threatened in writing by any Third Party against BMS which, if adversely determined, would have a material adverse effect upon the ability of BMS to use, or license to Exelixis as contemplated hereunder, any technologies, any software developed by it, any compounds or biomaterials, and any know-how, including the without limitation the BMS Software and the patents listed on Exhibit B-1 to perform its obligations under this Agreement.

(d) The BMS Core Technology has not been developed or obtained by BMS in violation of any contractual or fiduciary obligation to which BMS, any predecessor-in-interest or, to its knowledge, any of its or their employees is or was a party or by misappropriation of the trade secrets of any Third Party.

(e) Except as otherwise provided on Exhibit E, to the knowledge of the officers of BMS, the issued claims under the Patents listed on Exhibit B-1 are not dominated, as of the Effective Date, by any issued patents of any Third Party in the United States.

13. Indemnification and Limitation of Liability

13.1 Mutual Indemnification. Subject to Sections 13.2, 13.3 and 13.4, each Party hereby agrees to indemnify, defend and hold the other Party, its Affiliates, its licensees, and its and their officers, directors, employees, consultants, contractors, sublicensees and agents (collectively, the "Indemnitees") harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Indemnitee as to any such Claim (as defined in this Section 13.1) until

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the indemnifying Party has acknowledged that it will provide indemnification hereunder with respect to such Claim as provided below, (collectively, "Damages") resulting from claims, suits, proceedings or causes of action ("Claims") brought by such Third Party against such Indemnitee based on: (a) a breach of warranty by the indemnifying Party contained in this Agreement; (b) breach of this Agreement or applicable law by such indemnifying Party; (c) negligence or willful misconduct of a Party, its Affiliates or (sub)licensees, or their respective employees, contractors or agents in the performance of this Agreement; and/or (d) breach of a contractual or fiduciary obligation owed by it to a Third Party (including without limitation misappropriation of trade secrets).

13.2 Indemnification by BMS. BMS agrees to indemnify, defend and hold Exelixis, its Affiliates, and its and their officers, directors, employees, consultants, contractors, and agents (collectively, the "Exelixis Indemnitees") harmless from and against any and all damages, losses, liabilities or other amounts payable by any of them to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Exelixis Indemnitee as to any such Claim (as defined in this Section 13.2) until BMS has acknowledged that it will provide indemnification hereunder with respect to such Claim as provided below, (collectively, "Damages") resulting from claims, suits, proceedings or causes of action ("Claims") brought by such Third Party based on: (i) [*] in connection therewith, but excluding any claim relating to [*] (except as provided in (iv) below); (ii) [*] Selected Target or Pursued Disclosed Target, or any Mammalian Target [*]; (iii) personal injury or death relating to or arising out of the [*] Selected Targets, Pursued Disclosed Targets, Mammalian Targets, Collaboration Compounds, Licensed Products, BMS Products, Gene Products; Biotherapeutic Products [*] by or on behalf of BMS or its Affiliates, agents or sublicensees; (iv) [*] Collaboration Compounds, Licensed Products, BMS Products, Gene Products, Biotherapeutic Products [*]; (v) [*] BMS Compounds [*]; and (vi) [*].

13.3 Indemnification by Exelixis. Exelixis agrees to indemnify, defend and hold BMS, its Affiliates, and its and their officers, directors, employees, consultants, contractors, and agents (collectively, the "BMS Indemnitees") harmless from and against any and all damages, losses, liabilities or other amounts payable by any of them to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such BMS Indemnitee as to any such Claim (as defined in this Section 13.3) until Exelixis has acknowledged that it will provide indemnification hereunder with respect to such Claim as provided below, (collectively, "Damages") resulting from claims, suits, proceedings or causes of action ("Claims") brought by any such Third Party based on (i) [*] Selected Target, Pursued Disclosed Target, or Candidate Target, or any any Mammalian Target [*], including without limitation, for both subparagraphs (A) and (B), [*] BMS Compound [*]; (ii) [*]; (iii) personal injury or death relating to or arising out of the [*] Selected Targets; Pursued Disclosed Targets; Mammalian Targets; [*] Selected Targets, Pursued Disclosed Targets, and Mammalian Targets; Gene Products; Biotherapeutic Products; [*]; (iv) [*] Selected Targets; Pursued Disclosed Targets; Mammalian Targets; [*] Selected Targets, Pursued Disclosed Targets, Product Targets; and Mammalian Targets; Gene Products; Biotherapeutic Products; [*]; and (v) [*].

13.4 Conditions to Indemnification. As used herein, "Indemnitee" shall mean a party entitled to indemnification under the terms of Sections 13.1, 13.2 or 13.3, as applicable. It shall be a condition precedent to an Indemnitee's right to seek indemnification under such Sections 13.1, 13.2 or 13.3:

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

(ii) shall, if the indemnifying Party acknowledges that such Claim falls within the scope of its indemnification obligations hereunder, permit the indemnifying Party to

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assume direction and control of the defense, litigation, settlement, appeal or other disposition of the Claim (including the right to settle the claim solely for monetary consideration); provided, that the indemnifying Party shall seek the prior written consent (not to be unreasonably withheld or delayed) of any such Indemnitee as to any settlement which would materially diminish or materially adversely affect the scope, exclusivity or duration of any Exelixis Patents licensed to BMS under this Agreement (except that BMS may sublicense such rights if in accordance with this Agreement without the consent of Exelixis), would require any payment by such Indemnitee, would require an admission of legal wrongdoing in any way on the part of an Indemnitee, or would effect an amendment of this Agreement; and

(iii) shall fully cooperate (including providing access to and copies of pertinent records and making available for testimony relevant individuals subject to its control) as reasonably requested by, and at the expense of, the indemnifying Party in the defense of the Claim.

Provided that an Indemnitee has complied with the foregoing, the indemnifying Party shall provide attorneys reasonably acceptable to the Indemnitee to defend against any such Claim. Subject to the foregoing, an Indemnitee may participate in any proceedings involving such Claim using attorneys of its/his/her choice and at its/his/her expense. In no event may an Indemnitee settle or compromise any Claim for which it/he/she intends to seek indemnification from the indemnifying Party hereunder without the prior written consent of the indemnifying Party, or the indemnification provided under such Sections 13.1, 13.2 or 13.3, as the case may be, as to such Claim shall be null and void.

13.5 Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 13.1, EXCEPT FOR BREACHES OF SECTIONS 3.8, 4.11 (AS TO THE USE OF LICENSES GRANTED THEREIN TO EXELIXIS), 4.12, 6.1, 6.2, 6.3, 7.2, 12.1, AND 12.2, AND ARTICLES 5, 9 AND 10 HEREOF, AND EXCEPT FOR ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT. For clarification, the foregoing sentence shall not be interpreted to limit or to expand the express rights specifically granted in the sections of this Agreement.

13.6 Core Technology Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, THE BMS CORE TECHNOLOGY PROVIDED HEREUNDER IS PROVIDED "AS IS", AND BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ITS CORE TECHNOLOGY. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, THE EXELIXIS CORE TECHNOLOGY PROVIDED HEREUNDER IS PROVIDED "AS IS", AND EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING

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WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ITS CORE TECHNOLOGY.

13.7 Collaboration Disclaimer. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, BMS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, TARGETS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY BMS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO EXELIXIS PURSUANT TO THE TERMS OF THIS AGREEMENT. EXCEPT AS PROVIDED IN ARTICLE 12 ABOVE, EXELIXIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY RESEARCH RESULTS, TARGETS, DATA, OR INVENTIONS (AND ANY PATENT RIGHTS OBTAINED THEREON) IDENTIFIED, MADE OR GENERATED BY EXELIXIS AS PART OF THE COLLABORATION OR OTHERWISE MADE AVAILABLE TO BMS PURSUANT TO THE TERMS OF THIS AGREEMENT.

14. Miscellaneous

14.1 Dispute Resolution.

(a) In the event of any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, other than a dispute addressed in Section 14.3, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Joint Management Team, and, if not resolved by the JMT, by referring the disputed matter to the respective Chief Executive Officer of Exelixis and the Senior Vice President - Drug Discovery Research of BMS. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within 20 days after such notice, such representatives of the Parties shall meet for attempted resolution by good faith negotiations. If such personnel are unable to resolve such dispute within thirty (30) days of initiating such negotiations, such dispute shall be finally resolved by binding arbitration under Section 14.1(b).

(b) Any such arbitration shall be held in San Francisco, California, according to the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association. Any arbitration herewith shall be conducted in the English language. The arbitration shall be conducted by one arbitrator who is knowledgeable in the subject matter which is at issue in the dispute and who is selected by mutual agreement of the Parties or, failing such agreement, shall be selected according to the AAA rules. The Parties shall have such discovery rights as the

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arbitrator may allow, consistent with the goal of limiting the cost and time which the Parties must expend for discovery (and provided that the arbitrator shall permit such discovery he/she deems necessary to permit an equitable resolution of the dispute), but in no event broader than that discovery permitted under the Federal Rules of Civil Procedure. In conducting the arbitration, the arbitrator shall apply the California Rules of Evidence, and shall be able to decree any and all relief of an equitable nature, including but not limited to such relief as a temporary restraining order, a preliminary injunction, a permanent injunction, or replevin of property, as well as specific performance. The arbitrator shall also be able to award direct, indirect and, where permitted by this Agreement, consequential damages, but shall not award any other form of damage (e.g., punitive or exemplary damages). The reasonable fees and expenses, of the arbitrators, along with the reasonable legal fees and expenses of the prevailing Party (including all expert witness fees and expenses), the fees and expenses of a court reporter, and any expenses for a hearing room, shall be paid as follows: If the arbitrators rule in favor of one Party on all disputed issues in the arbitration, the losing Party shall pay one hundred percent (100%) of such fees and expenses; if the arbitrators rule in favor of one Party on some issues and the other Party on other issues, the arbitrators shall issue with the rulings a written determination as to how such fees and expenses shall be allocated between the Parties. The arbitrators shall allocate fees and expenses in a way that bears a reasonable relationship to the outcome of the arbitration, with the Party prevailing on more issues, or on issues of greater value or gravity, recovering a relatively larger share of its legal fees and expenses. The decision of the arbitrators shall be final and may be entered, sued on or enforced by the Party in whose favor it runs in any court of competent jurisdiction at the option of such Party. Whether a claim, dispute or other matter in question would be barred by the applicable statute of limitations, which statute of limitations also shall apply to any claim or disputes subject to arbitration under this Section, shall be determined by binding arbitration pursuant to this Section.

14.2 Governing Law. Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of California, without regard to conflicts of law rules.

14.3 Certain Disputes. Notwithstanding anything to the contrary in Section 14.1, either Party may seek immediate injunctive or other interim relief, without resort to the procedures set forth in Section 14.1(a) or (b), from any court of competent jurisdiction with respect any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of any Patent rights, copyrights, trade secrets, or trademark rights owned or Controlled by a party or its Affiliates or relating to any breach of Sections hereof.

14.4 Entire Agreement; Amendment. 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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14.5 Export Control. This Agreement is made subject to any restrictions concerning the export of Products or technical information from the United States of America or other countries which may be imposed upon or related to Exelixis or BMS from time to time. Each Party agrees that it will not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any Products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity.

14.6 Bankruptcy.

(a) All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the U.S. Code ("Title 11"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "Bankrupt Party") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitation, a Title 11 Trustee) shall, at the election of the Bankrupt Party made within 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 and without limitation, providing to the non-Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them as to which the non-Bankrupt Party has rights 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 as to which the non-Bankrupt Party has rights.

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitations, a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them as to which the non-Bankrupt Party has rights immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 14.6, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies

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now or hereafter existing at law or in equity (including, without limitation, Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including, without limitation, under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties. Any intellectual property provided pursuant to the provisions of this Section 14.6 shall be subject to the licenses set forth elsewhere in this Agreement and the payment obligations of this Agreement, which shall be deemed to be royalties for purposes of Title 11.

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

14.8 Notices. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail, postage prepaid, express delivery service or personally delivered. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For Exelixis: Exelixis Pharmaceuticals, Inc.
260 Littlefield Avenue
South San Francisco, CA 94080
Attention: Chief Executive Officer

With a copy to: Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Barclay James Kamb, Esq.

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

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

14.9 Consents Not Unreasonably Withheld or Delayed. Whenever provision is made in this Agreement for either Party to secure the consent or approval of the other, that consent or approval shall, except as otherwise expressly provided, not unreasonably be withheld or delayed, and whenever in this Agreement provisions are made for one Party to object to or disapprove a matter, such objection or disapproval shall not unreasonably be exercised.

14.10 Maintenance of Records. Each Party shall keep and maintain all records required by law or regulation with respect to Licensed Products or BMS Products.

14.11 United States Dollars. References in this Agreement to "Dollars" or "$" shall mean the legal tender of the United States of America.

14.12 No Strict Construction. This Agreement has been prepared jointly and shall not be strictly construed against either Party.

14.13 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except that a Party may make such an assignment of the Agreement without the other Party's consent to an Affiliate or to a successor to all or substantially all of the business of such Party, whether in a merger, sale of stock, sale of assets or other similar transaction, provided that any such permitted successor or assignee of rights and/or obligations hereunder shall have first, either by operation of law or in a writing to the other Party, expressly assumed performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 14.13 shall be null and void and of no legal effect.

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

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

14.16 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

14.17 Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to

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invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

14.18 Ambiguities. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

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

14.20 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.

In Witness Whereof, the Parties have executed this Agreement in duplicate originals by their proper officers as of the date and year first above written.

Bristol-Myers Squibb Company	Exelixis Pharmaceuticals, Inc.
By: /s/ E. Sigal Elliot Sigal, M.D.	By: /s/ George Scangos
Title: Sr. Vice President Early Discovery & Applied Technology	Title: Chief Executive Officer
Date: September 14, 1999	Date: September 14, 1999

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EXHIBIT A

EXAMPLES OF CONCEPTUAL AND PREASSOCIATED TARGETS

The following is intended to illustrate how a Conceptual or Preassociated Target might arise:

Conceptual Targets

[*]

Preassociated Targets

[*]

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Exhibit B

BRISTOL-MYERS SQUIBB
COMBINATORIAL LEAD OPTIMIZATION TECHNOLOGY
TECHNOLOGY TRANSFER TO EXELIXIS

I. OVERVIEW.

BMS CDD shall transfer to Exelixis [*].

II. SCOPE OF ENABLEMENT.

[*]

. [*]

An outline of the BMS/HTC software capabilities is appended below: In addition, BMS will provide Exelixis with generic descriptions of all [*] and use of same that are of interest to BMS (whether or not disclosed in BMS patents or publications).

III. MILESTONES

The parties will use reasonable efforts to effect (in the case of Exelixis, this will include obtaining and installing in advance necessary equipment and licenses from Third Parties) following timetable for transfer of BMS/HTC (it being understood that, if Exelixis is ready to receive the items below more quickly, BMS will use reasonable efforts to accommodate such advances in the schedule):

3 Months after signing: [*]

6 Months after signing: [*]

2 Months after signing: [*]

IV. BMS/HTC SOFTWARE CAPABILITIES

a. [*]

2. [*]

[*]

V. PATENTS

Patents filed with respect to the BMS Core Technology are described in Exhibit B-1 attached hereto.

VI. OTHER MATTERS

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

Exhibit B-1

PATENTS ON BMS CORE TECHNOLOGY

Patent Status of BMS First Generation Combinatorial Reactor

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

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

Patent Status of BMS Second Generation Combinatorial Reactor

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

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

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Exhibit C

EXELIXIS CORE TECHNOLOGY

(Hard copy of US Patent No. 4,670,388 and four Flytag Release slides also attached)

Technology transfer to BMS

[*]

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Exhibit C

EPI Model System Genetic Technology Proposed Technology Transfer to BMS

I. OVERVIEW.

[*].

II. SCOPE OF ENABLEMENT.

[*].

Subject to the terms of any Agreements EPI may have with Third Parties (including without limitation confidentiality restrictions), which EPI will identify for BMS, EPI will provide to BMS the following components of the EPI genetics, genomics and computational biology platform:

. [*]

III. MILESTONES.

The parties will use reasonable efforts to effect (in the case of BMS, this will include obtaining and installing in advance necessary equipment and licenses from Third Parties) the following timetable for transfer of developed technology (it being understood that, if BMS is ready to receive the items below more quickly, Exelixis will use reasonable efforts to accommodate such advances in the schedule):

Upon Signing: [*].

6 Months after Signing: [*].

9 Months after Signing: [*].

12 Months after Signing: [*].

IV. DEFINITION OF FLYTAG(TM) DATABASE

[*].

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Exelixis Pharmaceuticals, Inc.

FlyTag Release 5.0

Assembly Summary 26405-27073

[*]

Assembly: 27045

Tiling pattern

[*]

BLAST hits

[*]

Text search

[*]

U.S. Patent number 4,670,388, granted June 2, 1987, to Carnegie Institution of Washington, Washington, D.C., inventors Gerald M. Rubin and Allan C. Spradling, "Method of Incorporating DNA into Genome of Drosophila", is herein incorporated by reference to the Internet full-text patent database at the United States Patent and Trademark Office Internet website, www.uspto.gov.

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Exhibit D

FORM OF PRESS RELEASE

FOR IMMEDIATE RELEASE

CONTACT: Sylvia D. Sharockman
Bristol-Myers Squibb Company
609-252-3390

George Scangos, Ph.D.
Chief Executive Officer
Exelixis Pharmaceuticals, Inc.
650-825-2201

Tony Russo, Ph.D.
Noonan/Russo Communications, Inc.
212-696-4455

BRISTOL MYERS SQUIBB COMPANY AND EXELIXIS PHARMACEUTICALS ANNOUNCE GENOMICS RESEARCH ALLIANCE

Collaboration to Focus on the Identification of Novel Targets for New Medicines

(PRINCETON, N.J. and SOUTH SAN FRANCISCO, C.A., September 15, 1999) - Bristol-Myers Squibb Company (NYSE:BMY) and Exelixis Pharmaceuticals, Inc. today announced they have entered into a three-year research collaboration to identify novel targets for new medicines using model system genetics. Exelixis will utilize its proprietary technology to determine the molecular targets of compounds provided by Bristol-Myers Squibb. As part of the collaboration, Bristol-Myers Squibb and Exelixis will share certain core technologies in genomics and lead optimization.

Under the terms of the agreement, Bristol-Myers Squibb will provide Exelixis with research funding and additional payments subject to the achievement of research and commercialization milestones. Exelixis, a leading model systems genetics, genomics and informatics company, will contribute to the work of Bristol-Myers Squibb's internal Department of Applied Genomics. Both companies have programs in model system genetics, the study of organisms such as yeast, worms (C.

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elegans) and fruit flies (Drosophila), to better understand disease genetics in humans. Many genes and gene functions present in these model systems are conserved in humans, but are much easier to study in these simpler genetic systems.

"Our strategy is to externally align and internally integrate, meaning that we partner with companies, like Exelixis, that offer the most promising technology and approaches in specialized areas, " said Elliott Sigal, M.D., Ph.D., senior vice president, Early Discovery and Applied Technology, Bristol-Myers Squibb. "Then, our scientists can apply this knowledge across our pipeline of new compounds so we can bring the most innovative medicines forward."

Commenting on the partnership, Geoffrey Duyk, M.D., Ph.D., chief scientific officer, Exelixis, said, "This collaboration with Bristol-Myers Squibb leverages our ability to use our target-based model genetic systems to rapidly identify pharmaceutical targets. The Mechanism of Action (MOA) Program, the foundation of which is based on employing our core expertise in genetics, was built upon our successful work in agriculture. However, we soon realized that the pharmaceutical industry could also benefit from an efficient, rapid approach to determine the mechanism of action of compounds. We anticipate that this will be the first in a series of collaborations focused on the research derived from our MOA Program."

As part of the collaboration, Bristol-Myers Squibb and Exelixis will exchange certain core technologies in genomics and lead optimization. Bristol-Myers Squibb will acquire Exelixis technology including a sublicense to the patented P-element technology, tools to manipulate genes in Drosophila and C. elegans, and access to the company's Drosophila proprietary EST database, FlyTag. Exelixis will acquire proprietary BMS lead optimization technology. Exelixis will utilize this technology together with other assets to further develop their own internal discovery efforts.

"The lead optimization technology obtained from BMS is a powerful complement to the technology recently acquired from MetaXen. The acquisition of this technology is an important step towards building a world-class drug discovery capability at Exelixis. The technology exchange with

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BMS is a very interesting aspect to our relationship that will have significant benefits for both companies." stated George Scangos, Ph.D., president and chief executive officer, Exelixis.

Exelixis Pharmaceuticals, Inc., together through its alliance with Artemis Pharmaceuticals, represent the premiere model system genetics organization focused on the identification and validation of novel screening targets and proteins for the pharmaceutical, diagnostic, agricultural, and animal health industries. Their PathFinder Technology utilizes a systematic genetics approach in model organisms including Drosophila, C. elegans, zebrafish and mice to identify critical genes in disease and physiological pathways, determine functional relationships and select optimal targets for intervention. Exelixis research programs include the areas of CNS, inflammation, metabolic disease, oncology, and agricultural biotechnology.

Bristol-Myers Squibb is a diversified worldwide health and personal care company whose principal businesses are pharmaceuticals, consumer medicines, beauty care, nutritionals, and medical devices. It is a leading maker of innovative therapies for cardiovascular, metabolic and infectious diseases, central nervous system and dermatological disorders, and cancer. The company is a leader in consumer medicines, orthopaedic devices, ostomy care, wound management, nutritional supplements, infant formulas, and hair and skin care products.

# # #

Visit Bristol-Myers Squibb on the World Wide Web at http://www.bms.com

Information about Exelixis including news releases is available on the Company's website at http://www.exelixis.com

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Exhibit E

BMS Disclosed Patents

[*].

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EXHIBIT 10.14

COLLABORATION AGREEMENT

This Collaboration Agreement (the "Agreement") is dated as of February 26, 1999 by and between EXELIXIS PHARMACEUTICALS, INC., a Delaware corporation having its principal place of business at 260 Littlefield Avenue, South San Francisco, California, USA 94080 ("Exelixis"), and PHARMACIA & UPJOHN AB, a corporation organized and existing under the laws of Sweden having a place of business at Lindhagensgatan 133, S-112 87 Stockholm, Sweden ("P&U"), to become effective on the date specified in Section 13.1 (the "Effective Date"). Exelixis and P&U are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recitals

A. P&U is a multinational health care company that has expertise and capability in developing and marketing human pharmaceuticals and has research and development programs in the areas of, inter alia, metabolic syndrome and Alzheimer's disease.

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

C. P&U and Exelixis desire to establish a collaboration to apply such Exelixis technology and expertise to the identification and characterization of biochemical pathways and targets in specific research areas relevant to metabolic syndrome and Alzheimer's disease, and to provide for the development and commercialization of novel prophylactic and therapeutic products based on such research.

D. P&U is making a concomitant investment in Exelixis pursuant to a Stock Purchase Agreement (the "Stock Purchase Agreement") and a Note Purchase Agreement (the "Note Purchase Agreement"), each of which is executed concurrent with the execution of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

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

1.1 "Abandoned Target" means a Target not being pursued for the reasons set forth in Section 4.4.

1.2 "Affiliate" means, with respect to a particular Party, a person, corporation, partnership, or other entity that controls, is controlled by or is under common control with such Party. For the purposes of the definition in this Section 1.2, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise. The Parties agree that Artemis Pharmaceuticals GmbH is an Affiliate of Exelixis except for purposes of Section 13.14.

1.3 "Alzheimer's Disease" means senile dementia associated with characteristic neuropathology including without limitation amyloid plaques, neurofibrillary tangles, and atrophy.

1.4 "Annual FTE Rate" means the amount to be paid over one year by P&U to Exelixis to support one FTE. The Annual FTE Rate will be [*] per year for calendar year 1999. For each subsequent calendar year, this rate will be [*]

1.5 "Applicable Field" means the Field of the Research Program in which a particular Selected Target was identified.

1.6 "Candidate Target" [*]

1.7 "Central Nervous System Research" means research concerning [*].

1.8 "Collaboration" means all the research-related activities performed by or on behalf of Exelixis or P&U pursuant to the Research Programs under this Agreement.

1.9 "Collaboration Compound" means any molecule that (a) has a molecular weight less than or equal to [*], (b) has the ability to inhibit, activate or otherwise modulate the activity of a Selected Target or its encoded protein and (c) is discovered, identified or synthesized by or on behalf of P&U or its Affiliate or sublicensee.

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

1.11 "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: (i) 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, (ii) set and consistently seek to achieve specific and meaningful objectives for carrying out such obligations, and (iii) consistently make and implement decisions and allocate resources designed to advance progress with respect to such objectives.

1.12 "Field" means either (a) the Field of Alzheimer's Disease or (b) the Field of Metabolic Syndrome.

1.13 "Field of Alzheimer's Disease" means all areas of research based on a mutually acceptable definition of a clinical indication, biochemical pathway or biological process [*].

1.14 "Field of Metabolic Syndrome" means all areas of research based on a mutually acceptable definition of a clinical indication, biochemical pathway or biological process [*].

1.15 "FTE" means the equivalent of one researcher working full time for or on behalf of Exelixis for one 12-month period.

1.16 "Genetic Assay" means an in vivo system of elucidating, for the purpose of Candidate Target identification, the functions of the Genetic Entry Point and of other genes or gene products in the same or related pathway, such analysis involving: (a) comparing [*] with [*], and (b) using such comparison to determine whether [*].

1.17 "Genetic Entry Point" means the gene or gene product that is the focus of a Genetic Screen or Genetic Assay.

1.18 "Genetic Screen" means a systematic analysis, for the purpose of Candidate Target identification, of the functions of the Genetic Entry Point and of other genes or gene products in the same or related pathway, such analysis involving: [*].

1.19 "Homolog" means a gene or gene product that has [*] homology to a Selected Target.

1.20 "Independent Research" means research that is conducted by Exelixis outside the scope of this Agreement either independently or pursuant to an agreement with a Third Party that (i) is not in conflict with Article 6 or (ii) is permitted by Sections 5.3 and 5.4.

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

1.22 "Joint Inventions" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, made jointly by employees or agents of both Parties pursuant to work conducted in the Research Program.

1.23 "Joint Management Team" or "JMT" means the committee described in Section 2.2.

1.24 "Joint Patent Committee" or "JPC" means the committee described in Section 2.4.

1.25 "Joint Scientific Committee" or "JSC" means one of the committees described in Section 2.3.

1.26 "Major Market" means the United States, Canada, the United Kingdom, Japan, France, Germany, Italy, Spain or Sweden.

1.27 "Net Sales" means the amount billed by P&U or its Affiliate or sublicensee for sales of a Product to a Third Party purchaser, less the following to the extent actually allowed or incurred with respect to such sales: (i) discounts, including cash discounts (including quantity discounts), 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 (provided that if any such discounts or reductions are based on sales to the customer of multiple products, the amount of such discount or reduction that may be allocated to the Products sold shall be on the basis of a methodology approved by the JMT); (ii) credits or allowances actually granted upon rejections or returns of Products, including for recalls or damaged goods; (iii) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Products, to the extent billed; and (iv) taxes, duties or other governmental charges levied on, absorbed or otherwise imposed on sale of Products, including without limitation value-added taxes, or other governmental charges otherwise measured by the billing amount, when included in billing, as adjusted for rebates and refunds, and specifically excluding taxes based on net income of the seller, and all of the foregoing to the extent calculated in accordance with generally accepted accounting principles consistently applied throughout the party's organization.

1.28 "Patent" means (i) 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, including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, renewal or any like filing thereof and (ii) pending applications for letters patent, including without limitation any continuation, division or continuation-in-part thereof and any provisional applications.

1.29 "Pre-existing Technologies" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, made, created or invented by a Party, its employees or its agents prior to the Effective Date.

1.30 "Product" means any human therapeutic or prophylactic product that comprises or incorporates a Collaboration Compound, but excluding products where (i) [*] and (ii) [*].

1.31 "Regulatory Approval" means any and all approvals (including supplements, amendments, pre- and post-approvals, pricing and reimbursement approvals), licenses,

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registrations or authorizations of any national, supra-national (e.g., the European Commission or the Council of the European Union), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, that are necessary for the manufacture, distribution, use or sale of a Product in a regulatory jurisdiction.

1.32 "Research Program" means, with respect to a particular Field, all current or terminated Research Projects relating to such Field.

1.33 "Research Project" means the planning, execution, and analysis of a research project focused on a particular area of research within a Field based on a mutually acceptable definition of a clinical indication, biochemical pathway or biological process or related clinical indications, biochemical pathways or biological processes. A Research Project will typically be defined by [*] and will be initiated with [*].

1.34 "Research Plan" means the plan that sets forth the research work to be performed by Exelixis and P&U in the course of a particular Research Program.

1.35 "Research Term" means the period during which research activities of the Parties under the Collaboration shall be conducted, as set forth in Section 3.2.

1.36 "Selected Target" means a Candidate Target that has been selected as set forth in Section 4.1. As used in this Agreement, rights and obligations of the Parties with respect to a particular Selected Target shall also apply to [*].

1.37 "Sole Inventions" means any and all inventions, developments, results, know-how and other Information, and all intellectual property relating thereto, made, discovered or developed solely by a Party and its employees or agents pursuant to work performed in the Collaboration under the Agreement.

1.38 "Target" means any gene or gene product that is identified in the course of a Research Program and that may include, without limitation, a Candidate Target, Selected Target or Abandoned Target.

1.39 "Third Party" means any entity other than (i) Exelixis, (ii) P&U or (iii) an Affiliate of either of them.

1.40 "Third Party Contract Research" means research conducted for the benefit of the Collaboration, approved and managed by the JMT as set forth in Section 3.9, and funded by P&U as set forth in Section 7.3.

1.41 "Top 20 Pharmaceutical Company" means a Third Party listed in Exhibit A, which the Parties agree to revise in good faith as needed during the term of the Agreement.

2. MANAGEMENT OF THE COLLABORATION

2.1 Overall Management Structure. The Parties agree to establish a multi-level committee structure to manage and direct the Collaboration and the relationship of the Parties in pursuing the research and development goals of this Agreement. The committee structure is intended to facilitate decision making and management of the various Collaboration activities of the Parties, and each Party agrees to use good faith, cooperative efforts to facilitate and assist the

efforts of such committees. The overall management of the Collaboration shall be vested in the Joint Management Team (the "JMT"), with responsibility, as further discussed in Section 2.2, for establishing the strategic direction of the Collaboration and for managing and directing the research efforts of the Parties under the Collaboration. The day-to-day management and direction of each Research Program shall be managed by a Joint Scientific Committee (a "JSC") dedicated to each such Research Program, and the Joint Scientific Committees shall report to and be managed by the JMT. In addition, the Parties shall establish a Joint Patent Committee (the "JPC"), reporting to the JMT, which shall be responsible for managing and directing the securing of appropriate intellectual property protection for the Sole Inventions and Joint Inventions arising from the Collaboration. Each JSC shall cease to exist after its second meeting after the termination of the Research Term, but the JMT and the JPC shall continue to meet throughout the term of the Agreement.

2.2 Joint Management Team.

(a) Membership. The Joint Management Team (the "JMT") shall be composed of six members, three members appointed by each Party. Within 30 days after the Effective Date, each Party shall appoint three representatives from its senior management team to the JMT; at least one representative from each Party shall also be the Party's Head of Research or a mutually agreeable designate. With the exception of the Party's Head of Research, each Party may replace its JMT representatives at any time upon written notice to the other Party. P&U will designate one of its representatives as Chairperson of the JMT. The Chairperson shall be responsible for scheduling meetings, preparing and circulating an agenda in advance of each meeting, and preparing and issuing minutes of each meeting within 30 days thereafter.

(b) Responsibilities. During the term of this Agreement, the JMT shall meet a minimum of two times per year as provided in Section 2.5. The JMT shall operate by [*] and in accordance with the principles set forth in this Article 2. It shall determine the overall strategy for the Collaboration and shall be make all major business and strategic decisions. The JMT shall evaluate the progress of the Research Programs and monitor compliance with the diligence provisions set forth in Section 4.2, and it will make the final decisions regarding: (i) significant modification of a Research Program or Research Plan, (ii) approval of Third Party Contract Research proposed by a JSC; and (iii) approval of expenditures proposed by the JPC regarding the management of Collaboration intellectual property portfolio. To the extent necessary to carry out its responsibilities, the JMT members shall be granted access to the other Party's relevant confidential information. In particular, it is expected that members of the JMT, in assessing modifications to a Research Program, shall be granted access to higher levels of the proprietary or confidential information of the other Party than is provided to the other committees or to the employees of such Party working on the Collaboration. The JMT shall discuss in good faith and agree on the level of such access that is needed to achieve the goals and intent of the Parties.

2.3 Joint Scientific Committees.

(a) Membership. For each Research Program, the Parties shall establish a separate Joint Scientific Committee (a "JSC") composed of four representatives, two members appointed by each of the Parties. One representative from each Party on a JSC shall be the

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individual at the Party with primary responsibility for the day-to-day management and execution of the Research Program. Exelixis' other representative shall be its Head of Research or such person's designee; P&U's other representative shall be the person who heads research in the therapeutic area of the Research Program or such person's designee. Each JSC will report directly to the JMT and shall take its direction from the JMT. Each Party may replace its appointed JSC representatives at any time upon written notice to the other Party. Exelixis shall designate one of its representatives as Chairperson of the JSC, and P&U shall designate one of its representatives as Vice-Chairperson. The Chairperson shall be responsible for scheduling meetings and preparing and circulating an agenda in advance of each meeting. The Vice-Chairperson shall be responsible for preparing and issuing minutes of each meeting within 30 days thereafter.

(b) Responsibilities. During the Research Term and for two quarters thereafter, each JSC shall meet on a quarterly basis as provided in Section 2.5. Each JSC shall operate by consensus and in accordance with the principles set forth in this Article 2. It shall be responsible for the planning and execution of the Research Program. At its meetings, the JSC shall review the progress of current Research Projects and consider adopting new Research Projects and modifying or canceling current Research Projects. At the next JMT meeting, the JSC shall summarize for the JMT the progress of the Research Program since the last JMT meeting, bring to the attention of the JMT any overarching issues or significant changes in a Research Program, address any issues raised by the JMT at its previous meeting, and present Third Party Contract Research proposals, if any. The JSC shall also decide whether to select a Candidate Target as a Selected Target pursuant to Section 4.1. Leaders of individual Research Projects will be encouraged to communicate with the JSC as appropriate to facilitate the successful execution of their respective Research Projects. In addition, each JSC will represent the initial forum for conflict resolution regarding the research under the Collaboration as set forth in Section 2.6.

2.4 Joint Patent Committee. The Joint Patent Committee (the "JPC"), in consultation with the JMT, will devise a strategy for the protection of intellectual property arising from the Collaboration. This committee will consist of one member from each Party's senior management team or the Party's designated alternate. The P&U representative will serve as the Chairperson of the JPC. The JPC shall report directly to the JMT. During the term of this Agreement, the JPC will meet at least once per year, as provided in Section 2.5, and may hold additional meetings at the request of either Party.

2.5 Meetings. The Parties shall endeavor to schedule meetings of the JMT, JPC, and the JSCs at least one year in advance. Meetings for the JSCs shall be held on the same day or consecutive days in New Jersey or, with the consent of P&U, in San Francisco. When possible, the meetings of the JMT and JPC should occur at the same location as the JSC meetings, with the JMT meeting occurring after the meetings of the JSCs and the JPC, if applicable. With the consent of the representatives of each Party serving on a particular committee, other representatives of each Party may attend meetings of that committee as nonvoting observers. A meeting of a committee may be held by audio or video teleconference with the consent of each Party, provided that at least half of the minimum number of meetings for that committee shall be held in person. Meetings of a committee shall be effective only if at least one representative of

each Party is present or participating. Each Party shall be responsible for all of its own expenses of participating in the committee meetings.

2.6 Research-Related Dispute Resolution. Any dispute regarding the research under the Collaboration that may arise during the Research Term shall be brought to the attention of the applicable JSC, and the JSC shall attempt in good faith to achieve a resolution. If the JSC is unable to resolve the dispute, it shall present the dispute to the JMT. If the JMT is unable to resolve the dispute despite the good faith efforts of its members, then P&U shall have the authority to make a final decision. This Section 2.6 shall not apply to disputes regarding the allocation of FTEs following P&U's termination of a Research Program pursuant to Section 3.5.

2.7 Obligations of Parties. Exelixis and P&U shall provide the JSCs, JPC and JMT and their authorized representatives with reasonable access during regular business hours to all records, documents, and Information relating to the Collaboration which any 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 P&U, as the case may be, may withhold access thereto to the extent necessary to satisfy such obligation.

2.8 Collaboration Guidelines.

(a) General. In all matters related to the Collaboration, the Parties shall be guided by standards of reasonableness in economic terms and fairness to each of the Parties, striving to balance as best they can the legitimate interests and concerns of the Parties, to further the Research Programs and to realize the economic potential of the Products.

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

3. RESEARCH PROGRAMS

3.1 Overview. The general goals and intent of the Collaboration are to apply the Exelixis technology to discovering Candidate Targets that may be useful as tools for the discovery and development of drugs useful in the prevention, treatment or cure of Metabolic Syndrome or Alzheimer's Disease. The Collaboration will consist of two Research Programs, one in the Field of Metabolic Syndrome and the other in the Field of Alzheimer's Disease. Each Research Program will involve a number of specific Research Projects, each focused on a [*]. Exelixis hereby covenants that it will apply in its performance of work under the Research Programs: (a) all of its relevant technology now existing or developed during the Collaboration (including Third Party technology as to which Exelixis holds a license permitting its use in the Research Programs) and (b) any data Controlled by Exelixis, including without limitation [*], useful to the Research Programs.

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3.2 Research Term. The Research Term shall commence on the Effective Date and shall continue until terminated as set forth in this Section 3.2 or until the Agreement is terminated pursuant to Section 10.2. The FTE funding commitments of P&U and Exelixis set forth in Section 3.4 and the payment obligations of P&U set forth in Sections 7.3 and 7.4 shall remain in force until the termination of the Research Term. If there are no Selected Targets as of the termination of the Research Term, this Agreement shall then expire pursuant to Section 10.1.

(a) Each Party shall have the right, exercisable no later than 30 days prior to the date two and a half years after the Effective Date, to terminate the Research Term by providing written notification thereof to the other Party. If a Party decides to terminate the Research Term, such termination shall be effective on the third anniversary of the Effective Date. If neither Party decides to terminate the Research Term, such Research Term shall continue at least until the fifth anniversary of the Effective Date.

(b) If neither Party decides pursuant to Section 3.2(a) to terminate the Research term, each Party shall have the right, exercisable no later than 30 days prior to the fourth anniversary of the Effective Date, to terminate the Research Term by providing written notification thereof to the other Party. If a Party decides to terminate the Research Term, such termination shall be effective on the fifth anniversary of the Effective Date. If neither Party decides to terminate the Research Term, such Research Term shall continue at least until the sixth anniversary of the Effective Date.

(c) Starting with the fifth anniversary of the Effective Date and continuing on each anniversary for so long as neither Party decided on the previous anniversary to terminate the Research Term, at each Party shall have the right, exercisable no later than 30 days prior to that anniversary of the Effective Date, to terminate the Research Term by providing written notification thereof to the other Party. If a Party decides to terminate the Research Term, such termination shall be effective on the next anniversary of the Effective Date. If neither Party decides to terminate the Research Term, such Research Term shall continue for at least two years beyond the anniversary associated with such failure to decide.

(d) If Geoffrey Duyk ceases to be employed by Exelixis at any time during the Research Term, Exelixis will use Diligent Efforts to find a replacement acceptable to P&U. If no replacement acceptable to P&U is identified within six months of the departure of Geoffrey Duyk, then P&U shall have the right to terminate the Research Term by providing written notification thereof to Exelixis. Such termination shall be effective three months after such notification is received by Exelixis.

(e) If Third Party technology rights come to the attention of the Parties after the Effective Date which prevent Exelixis from carrying out the Research Programs in a practical manner, then P&U shall have the right to terminate the Research Term on six (6) months advance notice to Exelixis. If the Third Party technology rights in question apply to a particular Research Program, but not both, then the Parties shall endeavor to substitute a new Research Program under Section 3.5 rather than terminate the Research Term. If the Parties fail to agree upon a new Research Program within four (4) months of the initiation of such discussions, then P&U shall then have the right to terminate the Research Term on three (3) months advance notice to Exelixis.

3.3 Research Plans. Initial Research Plans for the Research Programs in the Field of Metabolic Disease and the Field of Alzheimer's Disease have been approved by the Parties concurrent with the execution of this Agreement. Each Research Plan may be amended by the

applicable JSC, during the course of a particular Research Program, based upon the results achieved in the Research Program. Any such amendments shall be reviewed and approved by the JMT, and the amended Research Plan shall thereafter be in effect.

3.4 FTE Commitments.

(a) For the first three years of the Research Term, P&U shall fund research under this Agreement for the number of Exelixis FTEs set forth in Table 1. The Parties anticipate that, in the first year of the Research Term, [*]

[*]

(b) From the third anniversary of the Effective Date until the termination of the Research Term, there shall be no less than [*] FTEs in the Research Program in Alzheimer's Disease and [*] FTEs in the Research Program in Metabolic Syndrome as determined by the JMT. P&U shall fund [*] such FTEs.

(c) At any time during the Research Term, P&U may fund, at the Annual FTE Rate, up to [*] additional FTEs (or more with the consent of Exelixis) for a minimum commitment of one year (but not more than an aggregate of [*] FTEs), such FTEs to be allocated between the Research Programs at the discretion of the JMT. Exelixis shall have a reasonable time in which to locate resources to fill such FTE positions.

3.5 Termination of a Research Program. At any time during the Research Term after [*], P&U may terminate a Research Program by providing written notice thereof to Exelixis, the JMT and the applicable JSC. Termination of the Research Program shall be effective [*] following such notice, and it shall have no effect on the total number of FTEs funded by P&U. The Parties shall mutually agree in writing whether to transfer the FTEs allocated for the terminated Research Program to (i) current or new Research Project(s) in the remaining Research Program, (ii) a new Research Program within the field of Central Nervous System Research or the Field of Metabolic Syndrome or (iii) a new Research Program in another field (such as aspects of [*]) upon such terms as are mutually agreed by the Parties, such agreement not to be unreasonably withheld. In no case shall a new Research Project(s) or a new Research Program be based upon or an extension of Independent Research. If the Parties choose option (i), then the JMT shall amend the applicable Research Plan to include any additional Research Projects. If the Parties choose option (ii), then they shall agree to a new Research Plan and they will in good faith amend the applicable definitions and the other relevant provisions of this Agreement to conform it to such changes in research. If the JMT does not receive written, mutually agreed-upon instructions from the Parties prior to the termination effective date, the JMT will automatically transfer the FTEs allocated for the terminated Research Program to one or more current Research Projects in the remaining Research Program.

3.6 Conduct of Research. The Parties shall use Diligent Efforts to conduct their respective tasks, as assigned under the Research Plans, 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 efficiently and expeditiously.

3.7 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 have the right to review and copy such records of the other Party at reasonable times to the extent necessary for such Party to conduct its research or other obligations under the Agreement.

3.8 Reports. During the Research Term, each Party shall report to the JSCs no less than once per quarter and will periodically submit to the other Party and the relevant JSC a written progress report summarizing the work performed under each Research Program in relation to the Research Plan and goals of the Research Program. The Parties agree that the Information to be delivered by Exelixis to P&U in these reports shall include, without limitation, sequence information and associated annotations about targets, but shall not include the Exelixis Flytag(TM) database or other Exelixis databases generated outside of the Research Programs.

3.9 Third Party Contract Research. At any time during the Research Term, a JSC may formulate a proposal for Third Party Contract Research that would further the goals of the Research Plan for the applicable Field. The JSC shall present such proposal to the JMT at the next meeting of the JMT and the JMT shall decide whether to approve such Third Party Contract Research. P&U will fund such Third Party Contract Research as set forth in Section 7.3. All Third Party Contract Research shall be managed by the JMT and shall occur pursuant to contractual arrangements that are mutually agreeable to the Parties and that allocate intellectual property rights in a manner that is consistent with the allocation of rights provided for under this Agreement with respect to research performed by Exelixis under this Collaboration.

3.10 Use of In-Licensed Technology. Attached hereto as Exhibit B is an identification of all Third Party technology which as of the Effective Date Exelixis expects to use in the course of the Research Programs (excluding general use research tools licensed by Exelixis on a nonexclusive basis and not pertaining specifically to any genes of interest in the Research Programs), together with the identity of the Third Party which to the best knowledge of Exelixis is the owner of such technology. Exelixis represents and warrants to P&U that [*]. Exelixis shall maintain [*] so long as such technology is required for its performance of the Research Programs. If Exelixis desires to apply any additional Third Party technology to its performance of the Research Programs (again excluding general use research tools of the nature described above), it shall give prior written notice to the JMT and shall satisfy the JMT that it holds a valid license thereunder prior to the use of such additional Third Party technology in a Research Program.

4. SELECTION, PURSUIT AND ABANDONMENT OF TARGETS

4.1 Selection of Targets. Exelixis shall present to the applicable JSC at its quarterly meeting the data concerning each Candidate Target identified in the course of a particular Research Program during the previous research period. At its next quarterly meeting, the JSC shall decide whether to select such Candidate Target as a Selected Target. During the period between the meeting at which a Candidate Target is presented by Exelixis and the meeting at

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which the JSC decides whether to select such Candidate Target, P&U may search for mammalian orthologues of such Candidate Target. No other work may be performed by or on behalf of P&U or its sublicensees on the Candidate Target unless and until it is selected by the JSC as a Selected Target. Within [*] of the selection of a Selected Target, P&U shall [*]. With respect to each Selected Target, P&U shall have the rights set forth in Sections 5.1 and 5.4(a) and the obligations set forth in Section 4.2 and Exelixis shall have the rights and obligations set forth in Sections 5.3 and 5.4(a).

4.2 Pursuit of Selected Targets. P&U must use good faith Diligent Efforts to validate Selected Targets, develop assays to assess the activity of Selected Targets, use assays to discover Collaboration Compounds directed at particular Selected Targets, develop and commercialize [*] Product per Selected Target, and pay the applicable royalties set forth in Section 7.5. P&U's diligence obligations under this Section 4.2 for the period prior to the initiation of an active research and development program for a Collaboration Compound active against a particular Selected Target will be deemed satisfied if P&U: (i) develops a screening assay for the activity of a Selected Target and initiates screening for modulators of the activity of the Selected Target within [*] of the date on which the JSC selected such Selected Target, provided that, upon reasonable request by P&U, the JMT shall grant up to an additional [*] and (ii) initiates a program of lead optimization and/or medicinal chemistry around lead compounds active in such assay within [*] of the date on which P&U initiates screening for modulators of the activity of such Selected Target.

4.3 Sharing of Biological Data. P&U shall provide Exelixis with copies of all data generated by or on behalf of P&U or its Affiliate or sublicensee in the course of validating a Selected Target, characterizing the biological function of a Selected Target or identifying other genes or proteins that interact with a Selected Target. Exelixis may use such data for any purpose other than developing for use in the Applicable Field products comprising or incorporating small molecule compounds directed at such Selected Target.

4.4 Target Abandonment.

(a) A Selected Target will become an Abandoned Target if any of the following circumstances arise: (i) such Target is selected by the applicable JSC as a Selected Target but P&U fails to [*]; (ii) P&U designates it for abandonment pursuant to Section 4.4(b); (iii) P&U uses a Selected Target for any purpose other than that permitted in Section 5.1; or (iv) P&U fails to fulfill its obligations set forth in Section 4.2 with respect to such Selected Target. P&U shall lose all rights set forth in this Agreement with respect to each Selected Target that becomes an Abandoned Target hereunder, unless such abandonment is then the subject of an unresolved dispute that is in the process of being resolved under the dispute resolution procedures set forth in Section 13.2.

(b) If there are more than [*] Selected Targets on [*], P&U shall reduce the number of Selected Targets to [*] by designating as Abandoned Targets a number of Selected Targets equal to the number in excess of [*]. If there are more than [*] Selected Targets on [*], P&U shall reduce the number of Selected Targets to [*] by designating as Abandoned Targets a number of Selected Targets equal to the number in excess of [*].

4.5 Targets Other Than Selected Targets. Exelixis shall retain all rights to any Target that (i) does not fulfill the criteria for a Candidate Target or (ii) is not selected by the applicable JSC as a Selected Target, and such Targets shall not be subject to any terms of this Agreement other than those set forth in Section 5.4(b).

4.6 Records. P&U shall maintain complete and accurate records of all scientific and development work conducted on Selected Targets, Collaboration Compounds and Products and all results, data and developments made pursuant to its research and development efforts under this Agreement. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Prior to the filing of a New Drug Application for a particular Product, Exelixis shall have the right to review and copy the records regarding that Product at reasonable times to the extent necessary for Exelixis to evaluate P&U's compliance with its diligence obligations set forth in Section 4.2.

4.7 Reports. Every six months during the term of the Agreement, P&U will submit to Exelixis and the JMT a written progress report summarizing the research and development work performed on each Selected Target.

5. LICENSES AND RELATED RIGHTS

5.1 License to P&U. Subject to the terms of this Agreement, Exelixis hereby grants P&U an exclusive, worldwide, royalty-bearing license (with the right to sublicense) under the Pre-existing Technologies and Sole Inventions Controlled by Exelixis and under Exelixis' interest in the Joint Inventions (i) to use each Selected Target to search for Collaboration Compounds directed at such Selected Target for activity within the Applicable Field, (ii) to develop, for use in the Applicable Field, Products comprising or incorporating such Collaboration Compounds, (iii) to develop, following [*], such Product for any human indication, and (iv) to make, have made, use, sell, offer to sell and have sold such Products.

5.2 License Limitations. P&U hereby covenants that it will not use a Selected Target, Collaboration Compound or Product for a purpose other than that permitted in Section 5.1 except the foregoing restriction shall not prevent P&U from being able to perform independent research on Collaboration Compounds for activity against targets other than Selected Targets or Homologs, or to develop, make, have made, use, sell, offer to sell and have sold products comprising or incorporating a Collaboration Compound where (i) the only intended use of such product is due primarily to the activity of such Collaboration Compound against a target discovered by P&U outside the scope of the Agreement and (ii) such activity is not the modulation of activity of a Homolog and does not otherwise directly affect a pathway of the Selected Target against which such Collaboration Compound is also active. For example, but not by way of limitation, P&U covenants that (i) it will not use a Selected Target to search for a Collaboration Compound for incorporation in a Product to be used outside the Applicable Field, and (ii) prior to its initiation of a clinical trial of a Product for the Applicable Field, it will not perform preclinical experiments or conduct clinical trials on that Product for an indication outside the Applicable Field. Exelixis acknowledges that once P&U has commenced human clinical trials of a Product, P&U shall thereafter have the right to develop such Product for any and all indications (including without limitation the pursuit of preclinical research for the purpose of determining potential additional uses).

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5.3 License to Exelixis.

(a) Selected Targets. P&U hereby grants to Exelixis an exclusive, worldwide, royalty-free license (with the right to sublicense) under the Sole Inventions of P&U and under P&U's interest in the Joint Inventions to use each Selected Target to: (i) search for small molecule compounds directed at such Selected Target solely for use outside the Applicable Field; (ii) develop, for use outside the Applicable Field, products comprising or incorporating such small molecule compounds; (iii) make, have made, use, sell, offer to sell, have sold and import such products; (iv) develop, make, have made, use, sell, offer to sell, have sold and import products based on the Selected Target for all agricultural and non-human applications; and (v) develop, make, have made, use, sell, offer to sell, have sold and import, for use in any field, any other products not meeting the definition of a Product, including without limitation therapeutic protein products (including secreted proteins or peptides and therapeutic antibodies), antisense products, vaccine products, gene therapy products or diagnostic products based on the Selected Target.

(b) Abandoned Targets. P&U hereby grants to Exelixis an exclusive, worldwide, royalty-free license (with the right to sublicense) under the Sole Inventions of P&U and under P&U's interest in the Joint Inventions to use each Abandoned Target: (i) to search for small molecule compounds directed at such Abandoned Target and to develop, make, have made, use, sell, offer to sell, have sold and import products comprising or incorporating such small molecule compounds; (ii) to develop, make, have made, use, sell, offer to sell, have sold and import products based on the Abandoned Target for all agricultural and non-human applications; and (iii) to develop, make, have made, use, sell, offer to sell, have sold and import, for use in any field, therapeutic protein products (including secreted proteins or peptides and therapeutic antibodies), antisense products, vaccine products, gene therapy products or diagnostic products based on the Abandoned Target. P&U hereby covenants that it will not develop or commercialize any compounds isolated with respect to an Abandoned Target and grants to Exelixis the right of first negotiation for a license to such compounds. P&U also grants to Exelixis a nonexclusive license to all intellectual property Controlled by P&U related to the use of assays to screen for modifiers of an Abandoned Target.

5.4 P&U's Rights of First Negotiation.

(a) Selected Targets. Prior to offering any Third Party the opportunity to acquire a license to develop and commercialize a [*] identified by Exelixis pursuant to its rights under [*]or a [*], Exelixis shall provide P&U with the opportunity to consider whether it wishes to acquire such a license. P&U shall have [*] following such offer in which to inform Exelixis in writing that it is interested in acquiring such a license. Thereafter, the Parties shall negotiate in good faith for [*] to reach agreement on the terms of a license agreement which shall be set forth in either an executed license agreement or an executed legally binding heads of agreement. If P&U fails to notify Exelixis of its interest or the Parties fail to execute a license agreement within the applicable period, then P&U shall have no rights with respect to such use of said Selected Target and Exelixis shall have unrestricted rights to pursue (without compensation to P&U) these applications of the Selected Target, including, but not limited to, conducting Independent Research on said Selected Target and developing or commercializing products incorporating, based upon or identified using said Selected Target. The foregoing

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rights shall terminate for each Selected Target [*] after the date the JSC selected that Selected Target.

(b) Targets Not Selected. With respect to a Target that is presented to the JSC as a Candidate Target but is not selected by the JSC as a Selected Target, prior to [*] wherein Exelixis [*] would pursue such Target with the intent of developing, for use in the Applicable Field, products incorporating small molecules, Exelixis shall provide P&U with the opportunity to consider whether it wishes to acquire such a license. P&U shall have [*] following such offer in which to inform Exelixis in writing that it is interested in acquiring such a license. Thereafter, the Parties shall negotiate in good faith for [*] to reach agreement on the terms of a license agreement which shall be set forth in either an executed license agreement or an executed legally binding heads of agreement. If P&U fails to notify Exelixis of its interest or the Parties fail to execute a license agreement or a legally binding heads of agreement within the applicable period, then P&U shall have no further rights with respect to said Target and Exelixis shall have unrestricted rights to pursue (without compensation to P&U) the Target, including, but not limited to, conducting Independent Research on said Target and developing or commercializing products incorporating, based upon or identified using said Target. The foregoing rights shall terminate for each Target [*] after the date the JSC decided not to select it as a Selected Target.

5.5 Exelixis Undertaking To Grant Necessary Sublicenses. The licenses granted by Exelixis herein do not include sublicenses under technology licensed to Exelixis by Third Parties. In the event P&U concludes, during the Research Term or within three years thereafter, that it is necessary or desirable for P&U to obtain a sublicense under particular Third Party technology then Controlled by Exelixis in order to search for Collaboration Compounds directed at a Selected Target or to develop, manufacture or sell Products comprising or incorporating such Collaboration Compounds, P&U shall so advise Exelixis and Exelixis shall grant P&U a sublicense under the Third Party technology in question, subject to negotiation of a mutually agreeable sublicense agreement. Such sublicense shall specify the particular targets to be pursued by P&U, shall [*], and shall contain other terms and conditions necessary to constitute the grant of a valid sublicense. The sublicense to P&U shall automatically terminate if P&U ceases its discovery, development or commercialization program within the scope of the sublicense.

6. EXCLUSIVITY

6.1 P&U. Except as provided in this Section 6.1, during the Research Term, P&U will work exclusively with Exelixis for research, information and services in the Fields using genetics or molecular biology in model organism systems. If Exelixis is not willing to provide such research, information or services or is not capable of initiating such work within six months of a request by P&U, then P&U may procure such research, information or services from a Third Party. The exclusivity obligation set forth in this Section 6.1 does not apply to work performed internally by P&U or pursuant to a pre-existing collaboration between P&U and a non-profit research or academic institution.

6.2 Exelixis. Except as otherwise provided in Sections 5.3 and 5.4, during the Research Term Exelixis will not perform Independent Research directed at [*]. Notwithstanding the previous sentence, although Exelixis shall use Diligent Efforts to maintain exclusivity, in view of the nature of the Exelixis technology, it is impossible for Exelixis to

assure exclusivity with respect to the individual elements of data that Exelixis generates, delivers and licenses to P&U hereunder. Two examples of overlapping research are presented below to demonstrate the principles by which Exelixis will resolve such issues:

(a) Exelixis may start Independent Research involving [*], and subsequently discover that the Independent Research involves [*]. Under these circumstances, Exelixis may continue such Independent Research independent of the Collaboration. If such Independent Research is funded by a Third Party, separate experiments would be performed for the Collaboration and the Independent Research, and Exelixis would not share the results of or other Information concerning the Collaboration with any Third Party involved in the Independent Research nor would Exelixis share the results of or other information concerning the Independent Research with P&U or the JMT, JPC or any of the JSCs. In such case, Exelixis would be free to disclose and license the results of such Independent Research to such Third Party, provided, however, that Exelixis would not be entitled to grant any license to a Third Party to use a target that had been first identified in a Research Program, and had not yet been designated as an Abandoned Target, to search for small molecules (i.e., molecular weight of less than or equal to [*]) for use within the Field. Such Third Party license shall not necessarily restrict such Third Party's development of a pharmaceutical product once [*] (i.e., the Third Party license may contain provisions comparable to those set forth in Section 5.2 of this Agreement).

(b) Exelixis may be engaged by a Third Party to identify the target of a compound under an arrangement whereby the identity of the compound is unknown to Exelixis. Exelixis will reveal the identity of the target to the Third Party and the Third Party shall be entitled to use that information for any purpose. If the target is [*], Exelixis will inform the Third Party that, on account of its exclusivity obligations to another party, Exelixis is unable to perform further work on this target.

The exclusivity of the license granted to P&U in Section 5.1 shall be subject to the grant of licenses to Third Parties consistent with paragraphs (a) and (b) of this Section 6.2. Upon request of the JMT, Exelixis shall consult with the JMT from time to time regarding its procedures for seeking to avoid overlapping research activities on behalf of multiple Third Parties.

7. COMPENSATION

7.1 License Fee. P&U shall pay Exelixis a license fee of $5 million as follows: $3 million on the Effective Date and $2 million on the first anniversary of the Effective Date. Without limiting the rights of P&U under Section 10.2, any license fee payments made by P&U to Exelixis pursuant to this Section 7.1 shall be noncreditable and nonrefundable.

7.2 Equity and Note Purchase. Pursuant to the separate Stock Purchase Agreement and Note Purchase Agreement entered into concurrent with this Agreement, P&U shall make a $7.5 million equity investment in Exelixis and shall purchase a $7.5 million promissory note which shall convert into Exelixis equity securities upon terms specified therein. The terms of such stock and note purchase shall be governed exclusively by such other agreements and related documents executed pursuant thereto.

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7.3 Research Support. During the Research Term, P&U will make quarterly advance payments to Exelixis equal to one-quarter of the Annual FTE Rate multiplied by the number of P&U-funded FTEs for that quarter as set forth in Table 1 and Section 3.4. During the Research Term, P&U will also fund, on an as-needed basis, up to [*] per year of Third Party Contract Research approved by the JMT pursuant to Section 3.9. Without limiting the rights of P&U under Section 10.2, any research support payments made by P&U to Exelixis hereunder shall be noncreditable and nonrefundable.

7.4 Milestone Payments. Within [*], P&U shall make the applicable milestone payment to Exelixis as set forth below. Without limiting the rights of P&U under Section 10.2, any milestone payments made by P&U to Exelixis hereunder shall be noncreditable and nonrefundable.

(a) For [*] of this Agreement (that is, until [*], P&U shall pay [*] for [*]. No payment shall be required for [*].

(b) Starting with [*] of the Research Term and continuing until [*], P&U's milestone payment obligations shall be as follows:

(i) If [*] and [*], P&U shall pay [*]. Such milestone payments shall continue until [*]. Thereafter, P&U shall pay [*].

(ii) If [*] or [*], P&U shall pay [*] for each Selected Target.

7.5 Royalty Payments. Exelixis shall receive a running royalty on Net Sales of Products at the royalty rates stated below. Except as set forth in Section 7.7, these royalty rates shall not be subject to adjustment or reduction for any reason.

(a) [*] Product. For [*], P&U will pay royalties to Exelixis at the following rates [*]:

Annual Net Sales of Product	Royalty Rate
[*]	[*]
[*]	[*]
[*]	[*]

(b) Other Products. For each Product other than [*], P&U will pay royalties to Exelixis at the following rates:

Annual Net Sales of Product	Royalty Rate
[*]	[*]
[*]	[*]
[*]	[*]

(c) Example. By way of example, if in a particular calendar year, P&U sells two Products, with one Product having [*] and the other Product having [*], then P&U shall make royalty payments to Exelixis during that year totaling [*] with respect to the first Product and [*] with respect to the second Product.

All royalty payments to Exelixis hereunder shall be noncreditable and nonrefundable. For the purposes of royalty payments, all dosage forms and formulations containing the same Collaboration Compound shall be deemed a single Product. The measure of annual sales set forth in this Section 7.5 shall be the sum of Net Sales of a particular Product in all countries, and the royalty rate indicated shall apply to all Net Sales for that Product during the calendar year.

7.6 Quarterly Payments. All royalties due under Section 7.5 shall be paid quarterly, on a country-by-country basis, within [*] of the end of the relevant quarter. Royalties shall be calculated for each of the first three calendar quarters of a calendar year on the basis of the royalty rate actually earned in the previous calendar year. (For the first calendar year of sales under this Agreement, the royalty rate to be used for purposes of royalty payments for the first three calendar quarters shall be [*].) At the end of the calendar year, P&U shall calculate the royalties due for the year as a whole, using the actual royalty rate applicable based on that year's sales, and shall pay to Exelixis all royalties due for that year, less amounts previously paid in the first three quarterly payments.

7.7 Term of Royalties. Exelixis' right to receive royalties under Section 7.5 shall expire on a country-by-country basis upon the later of (i) fifteen years from the first commercial sale of such Product in such country, or (ii) expiration of the last to expire Patent in such country [*]. If (ii) occurs prior to (i), then P&U's royalty payments under Section 7.5 shall be [*] for the remainder of such fifteen-year period following the expiration of such last to expire Patent.

7.8 Royalty Payment Reports. All royalty payments under this Agreement shall be made to Exelixis or its designee quarterly within [*] following the end of each calendar quarter for which royalties are due. 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, P&U will (i) deduct those taxes from the remittable payment, (ii) pay the taxes to the proper taxing authority, and (iii) send evidence of the obligation together with proof of tax payment to Exelixis within 60 days 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 P&U grants licenses or sublicenses to others to sell Products which are subject to royalties under Section 7.5, 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 P&U, and P&U shall pay to

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Exelixis, with respect to such sales, royalties as if such sales of the licensee or sublicensee were Net Sales of P&U.

7.13 Foreign Exchange. Conversion of sales recorded in local currencies to U.S. dollars will be performed in a manner consistent with P&U's 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. P&U 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 three years following the end of the calendar quarter to which they pertain. Such records will open for inspection during such three year 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 5% of the royalty amount stated for any period covered by the inspection is established in the course of such inspection, whereupon all costs relating to the inspection for such period and any unpaid amounts (plus interest) that are discovered will be paid promptly by P&U.

8. INTELLECTUAL PROPERTY

8.1 Ownership.

(a) Each Party shall own the entire right, title and interest in and to any and all of its Pre-existing Technologies, and Patents covering such Pre-existing Technologies.

(b) Each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents covering such Sole Inventions. P&U and Exelixis shall each own an undivided one-half interest in and to any and all Joint Inventions and Patents and other intellectual property rights claiming or covering or appurtenant to such Joint Inventions (the "Joint Patents"), with inventorship to be determined under the patent laws of the United States. P&U and Exelixis as joint owners each shall have the right to grant licenses under such Joint Patents, but only to the extent as provided for in this Agreement.

8.2 Disclosure. Each Party shall submit a written report to the JPC within 60 days of the end of each quarter describing any Sole Invention or Joint Invention arising during the prior quarter in the course of the Collaboration which it believes may be patentable. The JPC, in consultation with the JMT, shall decide whether to file a patent application for a Joint Invention, as discussed in Section 8.3(b).

8.3 Patent Prosecution and Maintenance; Abandonment.

(a) Pre-existing Technologies. Each Party shall retain control over and bear all expenses associated with the filing, prosecution and maintenance of all Patents claiming its Pre-existing Technologies.

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(b) Sole Inventions and Joint Inventions. The JPC shall establish the patent strategy for all Joint Inventions arising from the Collaboration. Each Party shall direct the filing, prosecution and maintenance of all Patents covering its Sole Inventions consistent with such strategy. The JPC shall supervise and direct the filing, prosecution and maintenance of all Patents covering Joint Inventions. The JPC shall provide each Party with (i) drafts of any new patent application that covers a Joint Invention prior to filing that application, allowing adequate time for review and comment by the Party if possible; provided, however, the JPC shall not be obligated to delay the filing of any patent application; and (ii) copies of all correspondence from any and all patent offices concerning patent applications covering Joint Inventions and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. P&U shall bear the expenses associated with the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of Patents covering [*]. P&U may elect not to pay any such costs and expenses with respect to a Patent covering [*], provided that P&U notifies Exelixis not less than two months before any relevant deadline. If Exelixis assumes the expenses associated with the Patent, Exelixis will [*].

8.4 Enforcement of Patent Rights.

(a) Except at set forth in this Section 8.4, each Party shall have the sole right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to infringement by a Third Party of one or more issued Patents covering the Party's Pre-existing Technologies.

(b) At any time during the Research Term, if either Party becomes aware of [*] that is performed by a Third Party commercial entity [*] and that appears to utilize [*], such Party shall inform the other Party in writing within thirty (30) days after having knowledge of such research. Following consultation within thirty (30) days of such notice, the following conditions shall apply:

(i) If the [*] is being performed [*], neither Party shall have any obligation to take any action with respect to such research. If either Party believes it has a basis for a suit against such Third Party arising from such research, it may proceed on its own accord and at its sole expense.

(ii) [*] Exelixis shall retain the right to grant sublicenses [*] under the [*] technology owned or Controlled by it under the following circumstances:

(1) No single sublicensee shall be entitled to have more than [*] persons at any time (measured on an FTE basis) performing [*] within [*];

(2) Each such sublicense shall prohibit the sublicensee from performing [*];

(3) Exelixis shall not initiate any new discussions with any Third Party regarding a sublicense [*] until [*] after the Effective Date;

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(4) Exelixis may grant a sublicense [*] to the Third Party with which Exelixis entered negotiations for a sublicense prior to the Effective Date, provided such sublicensee would not thereby be permitted to conduct [*] until at least [*] after the Effective Date; and

(5) Prior to the grant by Exelixis of any sublicense that fulfills the criteria set forth in Section 8.4(b)(ii)(1)-(4), Exelixis shall inform the JMT of its intent to grant such a sublicense, provided that Exelixis shall not be required to identify the intended sublicensee and that the JMT shall not have any right to interfere with the grant of such a sublicense by Exelixis.

Following [*], Exelixis may freely grant sublicenses for [*].

(iii) If the [*] in question is being performed [*], then Exelixis, if requested by P&U, shall [*] use Diligent Efforts to stop the conduct of such [*] including, if necessary, the commencement and prosecution of litigation against [*] in accordance with the applicable Federal Rules of Civil Procedure. Litigation commenced under this Section 8.4(b)(iii) shall be [*], provided that [*]. Any recovery from such litigation shall be applied first to reimburse each Party for its out-of-pocket costs of the litigation, and the balance shall be [*]. Following consultation with P&U, Exelixis may end such litigation at any time but Exelixis shall not consent to a settlement of such dispute in a manner that permits [*], without the consent of P&U, except for the grant of a license permitted under Section 8.4(b)(ii). This Section 8.4(b)(iii) shall expire [*], at which point Exelixis shall have exclusive control over any litigation that previously commenced pursuant to this Section 8.4(b)(iii).

(iv) If the [*] in question is being performed [*], then Exelixis, upon written request by P&U, shall [*], use Diligent Efforts to stop the conduct of such commercial research within the Fields and, if necessary and requested in writing by P&U, shall bring litigation in accordance with the applicable Federal Rules of Civil Procedure against such Third Party to stop the [*]. Such litigation shall be managed by Exelixis using outside counsel approved by P&U. Prior to the initiation of a litigation under this Section 8.4(b)(iv), the Parties must agree to a budget for such litigation that the outside counsel selected as lead counsel deems a reasonable budget. [*] responsible for all expenses incurred during such litigation (including reimbursement of [*] within 30 days after submission of each invoice together with reasonable supporting documentation) not in excess of such budget. If [*] becomes aware at any time that the litigation expenses are likely to exceed such budget, it shall notify [*] and provide [*] with the opportunity to approve an increased budget. [*] shall be responsible for all expenses incurred during such litigation that are in excess of the increased budget or, if no increased budget is approved by [*], the original budget. Any recovery shall be applied first to reimburse each Party for its out-of-pocket costs of the litigation, and the balance shall be [*]. If such recovery is [*], then such recovery shall be [*]. P&U shall also indemnify and hold harmless Exelixis for any costs or losses arising from claims brought against it by the Third Party in the course of litigation commenced under this Section 8.4(b)(iv), except to the extent Exelixis had been aware of a factual basis for counterclaims from the Third Party which it had failed to bring to the attention of P&U prior to the commencement of the suit. Exelixis shall have the right to be represented by counsel of its choice and to control its defense of such claims. If Exelixis continues a litigation initiated under this Section 8.4(b)(iv) despite instructions from P&U to end

such litigation, then, provided the Third Party in such litigation did not refuse to sign a mutual release in which no party to the litigation was required to provide another party with monetary or other compensation, Exelixis shall indemnify and hold harmless P&U for any costs or losses arising from claims brought against it by the defendant(s) in the course of such litigation and any recovery from such litigation shall be for the sole benefit of Exelixis.

(v) As used above, a [*] shall mean a [*]. This Section 8.4(b) shall have no effect with respect to research being conducted by non-commercial entities, or being conducted solely [*], or being conducted [*]. Any litigation to enforce patents Controlled by Exelixis by reason of license agreements shall be subject to the terms and conditions of such license agreements, including without limitation rights of the licensor to conduct or to consent to such litigation.

(c) If any issued Patent covering [*] is infringed by Third Party activity that [*], then Exelixis shall have the primary right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to such infringement by counsel of its own choice and P&U shall have the right to participate in such action and to be represented by counsel of its own choice. If Exelixis fails to bring an action or proceeding within [*] after having knowledge of that infringement, then P&U shall have the right, but not the obligation, to bring and control any such action by counsel of its own choice, and Exelixis shall have the right to participate in such action and to be represented by counsel of its own choice.

(d) If either Party becomes aware of any Third Party activity that infringes an issued Patent covering [*], then that Party shall give prompt written notice to the other Party within thirty (30) days after having knowledge of such infringement. P&U shall have the primary right, but not the obligation, to institute, prosecute or control any action or proceeding with respect to such infringement by counsel of its own choice and Exelixis shall have the right to participate in such action and to be represented by counsel of its own choice. If P&U fails to bring an action or proceeding within a period of [*] after such notice, then Exelixis shall have the right, but not the obligation, to bring and control any such action by counsel of its own choice, and P&U shall have the right to participate in such action and to be represented by counsel of its own choice.

(e) If either Party brings any such action or proceeding hereunder, the other Party agrees to be joined as a party plaintiff and to give the first Party reasonable assistance and authority to control, file and prosecute the suit as necessary. Except [*], each Party shall bear its own costs and expenses for any action or proceeding brought under this Section 8.4. Any damages or other monetary awards recovered shall be applied first to reimburse the reasonable costs and expenses of the Parties in connection with such litigation, and except [*], the balance shall be retained by the Party which controlled the litigation. No settlement or consent judgment or other voluntary final disposition of a suit under Section 8.4(c) or 8.4(d) may be entered into without the [*].

8.5 Defense of Third Party Claims.

(a) If a claim is brought by a Third Party that any activity related to the Collaboration or a Product infringes the intellectual property rights of such Third Party, each

Party will give prompt written notice to the other Party of such claim. If the Third Party claim arises from Exelixis' activities under the Collaboration, Exelixis shall control and bear the expense of its own defense and, except as set forth in Section 8.5(b), Exelixis shall defend, indemnify and hold harmless P&U, which shall include costs or judgments whether for money or equitable relief, and reasonable legal expenses and reasonable attorney's fees. Exelixis shall not enter into a settlement agreement with such Third Party without the written consent of P&U, which shall not be unreasonably withheld. If the Third Party claim arises from P&U's activities under the Agreement or from a Product, P&U shall control and bear the expense of its own defense and P&U shall defend, indemnify and hold harmless Exelixis, which shall include costs or judgments whether for money or equitable relief, and reasonable legal expenses and reasonable attorney's fees. P&U shall not enter into a settlement agreement with such Third Party without the written consent of Exelixis, which shall not be unreasonably withheld.

(b) The indemnity obligation of Exelixis under Section 8.5(a) shall not apply to alleged infringement of Third Party technology rights by Exelixis in the course of performing work under this Agreement where (i) prior to the conduct of such work Exelixis submitted to the JMT a written description of the Third Party technology in question and the work that Exelixis proposed to conduct, (ii) the JMT approved Exelixis' conduct of such work, and (iii) the alleged infringement arose by reason of such work. In such case, each Party shall be responsible for its own defense of such Third Party claims, at its own expense and without indemnification by the other Party. In any event, neither Party shall be required to conduct any work under this Agreement which it believes may infringe Third Party rights. In the event Third Party rights effectively prevent Exelisis from carrying out the Research Programs in a practical manner, P&U shall have the right to terminate the Research Term pursuant to Section 3.2(e). In the event the Third Party claim arises from the manufacture, sale or use of a Product by P&U or its licensee, the indemnity obligations of P&U under Section 8.5(a) shall apply, and Exelixis shall not have any indemnity obligation to P&U in respect of such claims.

9. CONFIDENTIALITY

9.1 Nondisclosure of Confidential Information. All Information disclosed by one Party to the other Party pursuant to this Agreement shall be "Confidential Information." The Parties agree that during the term of this Agreement, and for a period of five years after this Agreement expires or terminates, a Party receiving Confidential Information of the other Party will (i) maintain in confidence such Confidential Information to the same extent such Party maintains its own proprietary industrial information of similar kind and value (but at a minimum each Party shall use commercially reasonable efforts), (ii) not disclose such Confidential Information to any Third Party without prior written consent of the other Party, except for disclosures made in confidence to any Third Party pursuant to Third Party Contract Research or other arrangements approved by the JMT, and (iii) not use such Confidential Information for any purpose except those permitted by this Agreement.

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

(a) Is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

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

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

(d) Has been published by a Third Party; or

(e) Has been independently developed by the receiving Party without the aid, application or use of Confidential Information.

9.3 Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances:

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

(b) Regulatory filings;

(c) Prosecuting or defending litigation;

(d) Complying with applicable governmental regulations; and

(e) Disclosure, in connection with the performance of this Agreement, to Affiliates, 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 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 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 9. In addition, a copy of this Agreement may be filed by Exelixis with the Securities and Exchange Commission in connection with any public offering of Exelixis securities. In connection with any such filing, Exelixis shall endeavor to obtain confidential treatment of economic and trade secret information.

In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

9.4 Termination of Prior Agreements. This Agreement supersedes the Mutual Nondisclosure Agreement between Exelixis and P&U dated October 8, 1997 and the Mutual Nondisclosure Agreement between Exelixis and Pharmacia & Upjohn, Inc. dated July 15, 1998. All Information exchanged between the Parties under those earlier Agreements shall be deemed Confidential Information and shall be subject to the terms of this Article 9 and shall be included within the definition of Pre-existing Technologies.

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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 C. Any other publication, news release or other public announcement relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; provided, however, that any disclosure which is required by law as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

9.6 Publications. Neither Party shall publish or present the results of studies carried out under this Agreement without the opportunity for prior review by the other Party. Subject to Section 9.3, each Party agrees to provide the other Party the opportunity to review any proposed abstracts, manuscripts or presentations (including verbal presentations) which relate to any Selected Target or Product at least 30 days 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 JPC will review such requests and recommend subsequent action. Neither Party shall have the right to publish or present Confidential Information of the other Party which is subject to Section 9.1. Nothing contained in this Section 9.6 shall prohibit the inclusion of information necessary for a patent application, except for Confidential Information of the nonfiling Party, provided the nonfiling Party is given a reasonable opportunity to review the information to be included prior to submission of such patent application. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JMT.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect until the earlier of: (i) the time, not prior to the expiration of the Research Term, at which there are no Selected Targets and (ii) the expiration of the last royalty payment obligation with respect to any Product, as provided in Section 7.7. Termination of the Research Term shall not constitute termination of this Agreement unless no Selected Targets then exist.

10.2 Termination for Material Breach.

(a) If either Party believes that the other is in material breach of this Agreement (including without limitation any material breach of a representation or warranty made in this Agreement), then the non-breaching Party may deliver notice of such breach to the other Party. In such notice the non-breaching Party shall identify the actions or conduct that such Party would consider to be an acceptable cure of such breach. The allegedly breaching Party shall have [*] to either cure such breach or, if cure cannot be reasonably effected within such [*] period, to deliver to the other Party a plan for curing such breach which is reasonably sufficient to effect a cure. Such a plan shall set forth a program for achieving cure as rapidly as

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practicable. Following delivery of such plan, the breaching Party shall use Diligent Efforts to carry out the plan and cure the breach.

(b) If the Party receiving notice of breach fails to cure such breach within the [*] period, 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 declare a breach hereunder upon [*] advance written notice.

(c) If a Party gives notice of termination under this Section 10.2 and the other Party disputes whether such notice was proper, then the issue of whether this Agreement has been terminated shall be resolved in accordance with Section 13.2. If as a result of such dispute resolution process it is determined that the notice of termination was proper, then such termination shall be deemed to have been effective [*] following the date of the notice of termination. If as a result of such dispute resolution process it is determined that the notice of termination was improper, then no termination shall have occurred and this Agreement shall have remained in effect.

10.3 Effect of Termination; Survival.

(a) In the event of termination of this Agreement for any reason other than material breach pursuant to Section 10.2, the following provisions of this Agreement shall survive: Article 1, Article 4 (except Section 4.1), Article 5, Article 8, Article 9, Section 11.3, Article 12 and Article 13.

(b) In the event of termination of this Agreement pursuant to Section 10.2, the provisions of this Agreement referenced in Section 10.3(a) shall survive, provided, however, that any 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 royalties set forth herein.

(c) In any event, termination of this Agreement shall not relieve the Parties of any liability which accrued hereunder prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation.

11. REPRESENTATIONS AND COVENANTS

11.1 Mutual Authority. Exelixis and P&U each represents and warrants to the other that (i) it has the authority and right to enter into and perform this Agreement and (ii) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement to which it is or becomes a party or by which it is or becomes bound. Exelixis represents and warrants that [*].

11.2 Rights in Technology. As of the Effective Date, each of Exelixis and P&U has sufficient right in and to its Pre-existing Technologies, free and clear of any liens or encumbrances, to grant the rights set forth in this Agreement. During the term of this

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Agreement, each Party will use Diligent Efforts not to diminish the rights under its Pre-existing Technologies, Sole Inventions or Joint Inventions granted to each other herein, including without limitation by not committing or permitting any acts or omissions which would cause the breach of any agreements between itself and Third Parties which provide for intellectual property rights applicable to the development, manufacture, use or sale of Products. Each Party agrees to provide promptly the other Party with notice of any such alleged breach. As of the Effective Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

11.3 Performance by Affiliates. The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates, provided, however, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a Party participates in research under this Agreement or with respect to Collaboration Compounds, (i) the restrictions of this Agreement which apply to the activities of a Party with respect to Selected Targets and Collaboration Compounds shall apply equally to the activities of such Affiliate, and (ii) the Party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property developed by such Affiliate shall be governed by the provisions of this Agreement (and subject to the licenses set forth in Article 5) as if such intellectual property had been developed by the Party. Notwithstanding the foregoing, [*] shall not apply to Artemis Pharmaceuticals GmbH ("Artemis"). Prior to the performance of any work under the Collaboration by Artemis, Exelixis shall enter into a license agreement with Artemis providing for P&U to receive rights under resulting Artemis discoveries consistent with the terms of this Agreement, which license agreement shall be in a form reasonably acceptable to P&U.

11.4 [*]. Except as disclosed to P&U, Exelixis represents and warrants that, [*].

11.5 [*]. Exelixis represents and warrants that, [*].

12. INDEMNIFICATION AND LIMITATION OF LIABILITY

12.1 Indemnification.

(a) P&U hereby agrees to defend and hold harmless Exelixis and its agents and employees from and against any and all suits, claims, actions, demands, liabilities, expenses and/or loss, including reasonable legal expenses and reasonable attorneys' fees ("Losses") resulting directly or indirectly from the manufacture, use, handling, storage, sale or other disposition of chemical agents, Selected Targets, Collaboration Compounds or Products by P&U or its Affiliates, agents or sublicensees except to the extent such Losses result from the negligence or wrongdoing of Exelixis.

(b) In the event that Exelixis is seeking indemnification under Section 12.1(a), it shall inform P&U of a claim as soon as reasonably practicable after it receives notice of the claim, shall permit P&U to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration), and shall cooperate as requested by P&U (at the expense of P&U) in the defense of the claim.

12.2 Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 12.1, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. For clarification, the foregoing sentence shall not be interpreted to limit or to expand the express rights specifically granted in the sections of this Agreement.

13. MISCELLANEOUS

13.1 Effective Date. This Agreement shall become effective upon the closing of the purchase by P&U of (i) 2,500,000 shares of Exelixis Series D Preferred Stock pursuant to the Stock Purchase Agreement and (ii) a $7.5 million promissory note pursuant to the Note Purchase Agreement. The date on which this Agreement becomes effective under this Section 13.1 shall be the "Effective Date." If for any reason such closings do not occur on or before March 1, 1999, then this Agreement shall become automatically null and void, and shall have no further force or effect, without any further action by either Party.

13.2 Dispute Resolution. In the event of any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, other than a dispute addressed in Section 2.6 or Section 13.4, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the respective heads of research of each Party and, if not resolved by the research heads, by referring the disputed matter to the respective Chief Executive Officers of each Party. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within 20 days after such notice, such representatives of the Parties shall meet for attempted resolution by good faith negotiations. If such personnel are unable to resolve such dispute within 30 days of their first meeting of such negotiations, either Party may seek to have such dispute resolved in any United States federal court of competent jurisdiction and appropriate venue. The Parties hereby consent to jurisdiction in the United States federal courts. If, notwithstanding such consent, United States federal courts would not have proper jurisdiction over a dispute, then such dispute may be submitted to any state court in the United States with proper jurisdiction and venue. The Parties agree that, except as provided in Section 13.4, any dispute under this Agreement shall be submitted exclusively to a state or federal court in the United States.

13.3 Governing Law. Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of Delaware, as applied to agreements executed and performed entirely in the State of Delaware by residents of the State of Delaware, without regard to conflicts of law rules.

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

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13.5 Entire Agreement; Amendment. 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.

13.6 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 P&U from time to time. Each Party agrees that it will not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity.

13.7 Bankruptcy.

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

(b) If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitations, a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non-Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt

Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 13.7, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

(c) All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including, without limitation, Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including, without limitation, under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including without limitation for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of licensed products and (ii) the right to contract directly with any Third Party described in (i) in this sentence to complete the contracted work. Any intellectual property provided pursuant to the provisions of this Section 13.7 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.

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

13.9 Notices. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail, postage prepaid, express delivery service or personally delivered. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

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For Exelixis: Exelixis Pharmaceuticals, Inc.
260 Littlefield Avenue
South San Francisco, CA 94080
Attention: Chief Executive Officer

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

For P&U: Pharmacia & Upjohn
95 Corporate Drive
Bridgewater, NJ 08807
Attention: General Counsel

With a copy to: Pharmacia & Upjohn AB
Lindhagensgatan 133, S-112 87
Stockholm, Sweden
Attention: Associate General Counsel

13.10 Consents Not Unreasonably Withheld or Delayed. Whenever provision is made in this Agreement for either Party to secure the consent or approval of the other, that consent or approval shall not unreasonably be withheld or delayed, and whenever in this Agreement provisions are made for one Party to object to or disapprove a matter, such objection or disapproval shall not unreasonably be exercised.

13.11 Maintenance of Records. Each Party shall keep and maintain all records required by law or regulation with respect to Products and shall make copies of such records available to the other Party upon request.

13.12 United States Dollars. References in this Agreement to "Dollars" or "$" shall mean the legal tender of the United States of America.

13.13 No Strict Construction. This Agreement has been prepared jointly and shall not be strictly construed against either Party.

13.14 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except a Party may make such an assignment without the other Party's consent to an Affiliate or to a successor to substantially all of the business of such Party, whether in a merger, sale of stock, sale of assets or other transaction. Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other Party, expressly assume performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 13.14 shall be null and void and of no legal effect.

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13.15 Hardship. If, during the term of the Agreement, performance of the Agreement should lead to unreasonable hardship for one or other Party taking the interests of both Parties into account both Parties shall endeavor to agree in good faith to amend the Agreement in the light of the change in circumstances.

13.16 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.

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

13.18 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.

13.19 Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

13.20 Ambiguities. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

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

13.22 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.

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

PHARMACIA & UPJOHN AB	EXELIXIS PHARMACEUTICALS, INC.
By: /s/ Goran A. Ando Attorney-in-Fact	By: /s/ George A. Scangos, Ph.D.
Title: Executive Vice President, Pharmacia & Upjohn, Inc.	Title: President & CEO
Date: Feb. 23, 1999	Date: Feb. 18, 1999

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EXHIBIT A

TOP 20 PHARMACEUTICAL COMPANIES

Merck & Co., Inc.
Johnson & Johnson
Novartis Group
Bristol-Myers Squibb Co.
American Home Products Corp./Monsanto Co.
Glaxo Wellcome Plc.
SmithKline Beecham Plc.
Pfizer, Inc.
Abbott Laboratories
Roche Holding Ltd.
Hoechst Group
Eli Lilly and Co.
Bayer Group
Schering-Plough Corp.
Pharmacia & Upjohn, Inc.
Warner-Lambert Co.
BASF Group
Baxter International, Inc.
Astra AB
Rhone-Poulenc S.A.

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EXHIBIT B

THIRD PARTY TECHNOLOGY

TECHNOLOGY/1/	LICENSOR	AGREEMENT TITLE	AGREEMENT DATE
[*]	[*]	Letter Agreement	[*]
[*]	[*]	License Agreement	[*]
		Amendment to License Agreement	[*]
[*]	[*]	License Agreement	[*]
		Amendment to License Agreement	[*]
[*]	[*]	Non-Exclusive License Agreement for Internal Research Use Only	[*]
[*]	[*]	License Agreement	[*]
[*]	[*]	License Agreement	[*]
[*]	[*]	License Agreement	[*]
[*]	[*]	License Agreement	[*]

- ---

/1/ A general description of the technology licensed by Exelixis. Please see cited license agreement(s) for more detailed information regarding the scope of Exelixis' rights with respect to such technology.
/2/ [*]

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EXHIBIT C

PRESS RELEASE

DRAFT- 2/23/99

EXELIXIS PHARMACEUTICALS AND PHARMACIA & UPJOHN FORM RESEARCH COLLABORATION

Collaborative Research Agreement to Focus on the Identification of Novel Targets in the Areas of Alzheimer's Disease and Metabolic Syndrome.

South San Francisco, CA and Bridgewater, NJ, February 24, 1999 - Exelixis Pharmaceuticals, Inc. and Pharmacia & Upjohn, Inc. announced today the signing of a five-year research collaboration focused on the identification of novel targets for small molecule therapeutics in the areas of Alzheimer's disease and Metabolic Syndrome, including diabetes and obesity.

Exelixis will utilize its proprietary PathFinder(TM) Technology coupled with genomic and computational biology technologies to identify and validate novel targets for drug discovery. It is anticipated that Exelixis' affiliate, Artemis Pharmaceuticals GmbH, will also participate in the collaboration.

"This collaboration with P&U is our first in what we anticipate will be a series of relationships with major pharmaceutical companies," said George Scangos, Ph.D. President and Chief Executive Officer of Exelixis. "Pharmacia & Upjohn's investment in the broad-based technology platform and intellectual capital provided by Exelixis is an endorsement of our ability to focus the power of genetics and genomics towards the acceleration of drug discovery."

Added Geoffrey Duyk, M.D., Ph.D. Chief Scientific Officer at Exelixis: :"Genetic tools offer the most definitive biological test of the therapeutic potential of modulating the activity of a candidate target. Targets selected on this basis will increase the likelihood that compounds directed against the target will result in an effective new therapeutic agent."

"The ability to efficiently and accurately identify controlling genes in disease and physiologic pathways is a critical success factor in drug discovery," said Goran Ando, M.D., Executive Vice President and President of Research and Development at Pharmacia & Upjohn "Exelixis is well qualified to complement Pharmacia & Upjohn drug discovery expertise in this regard."

Under the terms of the agreement, Exelixis will receive substantial committed funding in the form of research support, upfront payment and equity during the initial five-year term. Exelixis also will potentially receive milestone payments, as well as royalties based on the future sales of products arising from the collaboration. A portion of Pharmacia & Upjohn's equity investment in Exelixis will be made after Exelixis' Initial Public Offering. Financial details of the agreement were not disclosed.

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Within the collaboration, and subject to certain rights of P&U, Exelixis has retained the rights to develop small molecule therapeutics outside the field of the sponsored research as well as in the field(s) of research for targets not selected by Pharmacia & Upjohn. In addition, Exelixis retains all rights with respect to agriculture, animal health, and, subject to certain rights of P&U, rights for the development of potential biotherapeutic products arising from the collaboration.

Exelixis Pharmaceuticals, Inc., together with its affiliate, Artemis Pharmaceuticals GmbH, represent the premiere model system genetics biopharmaceutical organization focused on the identification and validation of novel screening targets and proteins for the pharmaceutical, diagnostic, agricultural, and animal health industries. Their PathFinder(TM) Technology utilizes a systematic genetics approach in model organisms including Drosophila, C. elegans, zebrafish and mice to identify critical genes in disease and physiological pathways, determine functional relationships and select optimal targets for intervention. Exelixis' drug discovery programs include the areas of CNS, inflammation, metabolic disease, and oncology. Information about Exelixis including news releases are available on the Company's website at: http//www.exelixis.com.

Pharmacia & Upjohn is a global innovation driven pharmaceutical and health care company. Pharmacia & Upjohn's products, services and employees demonstrate its commitment to improve wellness and quality of life for people around the world.

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EXHIBIT 10.15

FIRST AMENDMENT TO COLLABORATION AGREEMENT

This First Amendment to the Collaboration Agreement (this "Amendment") is entered into as of October __, 1999 by and between EXELIXIS PHARMACEUTICALS, Inc., a Delaware corporation having its principal place of business at 260 Littlefield Avenue, South San Francisco, California, USA 94080 ("Exelixis"), and PHARMACIA & UPJOHN AB, a corporation organized and existing under the laws of Sweden having a place of business at Lindhagensgatan 133, S-112 87 Stockholm, Sweden ("P&U").

Recitals

A. Exelixis and P&U have previously entered into the Collaboration Agreement dated February 26, 1999 (the "Agreement"). All capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Agreement.

B. In accordance with Section 13.5 of the Agreement, Exelixis and P&U desire to amend the Agreement to expand the Collaboration to include mode of action projects in the Fields and to cover certain investigational materials provided by P&U to Exelixis for use in the Collaboration.

NOW, THEREFORE, Exelixis and P&U agree that the Agreement shall be amended as provided below:

1. The following defined terms shall replace the corresponding, current defined terms in Article 1 of the Agreement (DEFINITIONS) or, as the case may be, be inserted as new defined terms in such Article 1:

"Candidate Target" [*]

""Collaboration Compound" means any molecule, other than a P&U Compound, that (a) has a molecular weight less than or equal to [*], (b) has the ability to inhibit, activate or otherwise modulate the activity of a Mammalian Target or its encoded protein and (c) is discovered, identified or synthesized by or on behalf of P&U or its Affiliate or sublicensee.

"Exclusive Selected Target" means any Candidate Target, other than a Restricted Target, that has been selected as set forth in Section 4.1 of the Agreement.

"Invertebrate Target" is any Target from an invertebrate organism.

"Investigational Materials" means (i) tangible samples of drugs, chemicals, biologicals and the like ("Basic Materials"), (ii) any P&U Compound, (iii) unmodified descendants from Basic Materials, such as virus from virus, cell from cell, or organism from organism ("Progeny"), (iv) substances isolated from Basic Materials or Progeny which constitute an unmodified functional subunit thereof, (v) products expressed by Basic Materials or Progeny (e.g., proteins expressed by DNA/RNA, monoclonal antibodies secreted by a hybridoma cell line, antibiotic substances elicited from organisms, and the like), (vi) substances created by Exelixis which contain/incorporate Basic Materials or Progeny or functional subunits thereof or (vii) substances/chemical entities created by altering any of the foregoing.

"Known Target" means a Mammalian Target which is, at the time P&U provides the applicable P&U Compound to Exelixis, known to be or believed, based on reasonable scientific evidence, to be the target for activity of such P&U Compound.

"Mammalian Target" [*]

"Mode of Action Project(s)" has the meaning assigned to it in Section 3.11.

"Non-Exclusive Selected Target" means any Restricted Target that has been selected as set forth in Section 4.1 of the Agreement.

"Novel Target" means any Mammalian Target that is not a Known Target.

"P&U Compound" means a molecule that P&U reasonably believes has therapeutic potential in the Field of Metabolic Syndrome or in the Field of Alzheimer's Disease and that is provided by P&U to Exelixis for a Mode of Action Project in such Field.

"Product" means any human therapeutic or prophylactic product that comprises or incorporates a Collaboration Compound that inhibits, activates or otherwise modulates the activity of a Novel Target, but excluding products where (i) [*] and (ii) [*].

"Research Project" means the planning, execution, and analysis of a research project, including without limitation, Mode of Action Projects, focused on a particular area of research within a Field based on a mutually acceptable definition of a clinical indication, biochemical pathway or biological process or related clinical indications, biochemical pathways or biological processes. A Research Project will typically be defined by (a) [*] and will be initiated with [*], or (b) in the case of a Mode of Action Project, a P&U Compound.

"Research Results" means the data and other results generated by Exelixis in the course of a Mode of Action Project.

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"Restricted Target" means any Candidate Target for which, on account of Exelixis' obligations to a Third Party with respect to such Target: (a) Exelixis cannot grant an exclusive license to P&U for such Target and/or (b) Exelixis cannot perform any further work within the Collaboration on such Target once the identity of such Target becomes known to Exelixis.

"Royalty-Free Product" means any human therapeutic or prophylactic product that (a) comprises or incorporates a Collaboration Compound that inhibits, activates or otherwise modulates the activity of a Known Target and (b) does not comprise or incorporate a Collaboration Compound that inhibits, activates or otherwise modulates the activity of a Novel Target.

"Selected Target" means an Exclusive Selected Target or a Non-Exclusive Selected Target.

"Target" is any gene or gene product identified in the course of the Collaboration or using results generated during the Collaboration, including without limitation, an Invertebrate Target, Candidate Target, Selected Target, Abandoned Target, Mammalian Target, Novel Target or Known Target."

2. The third sentence in Section 3.1 of the Agreement shall be replaced with the following:

"Each Research Program will involve a number of specific Research Projects, each focused on either (a) [*] or (b) in the case of a Mode of Action Project, a particular P&U Compound for conducting experiments to identify genes, proteins and controlling factors involved in a model organism's response to such P&U Compound."

3. A new Section 3.11 shall be inserted in to the Agreement as follows:

"3.11 Mode of Action Projects.

(a) The Parties intend to undertake certain "mode of action" projects ("Mode of Action Projects") to identify Targets related to the action of P&U Compounds for use in discovery and development of small molecule drugs to treat humans. Each JSC shall recommend to the JMT and the JMT shall determine the number of FTEs to be allocated, [*], to the performance of Mode of Action Projects in such Research Program. The total number of FTEs allocated to the performance of Mode of Action Projects under the Collaboration shall not exceed [*] without the approval of the Parties.

(b) For each Mode of Action Project, P&U shall provide to Exelixis a P&U Compound in a coded, "blind" format without any structural information. P&U shall make known to Exelixis the Applicable Field for each P&U Compound at the time of delivery of such P&U Compound.

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(c) P&U shall inform Exelixis prior to the start of any Mode of Action Project if the P&U Compound investigated in such Mode of Action Project has a Mammalian Target that is a Known Target, and P&U shall concurrently file documents in escrow with its Legal Department that set forth the identity of such Known Target. During the Research Term, Exelixis shall not be obliged to work on more than [*] which have Mammalian Targets that are Known Targets.

(d) Exelixis shall initially evaluate the feasibility of identifying Invertebrate Target(s) for each P&U Compound that it receives. Such initial research shall include optimization of the delivery of such P&U Compound to a model system organism and analysis of any phenotype arising in said model system organism as a result of P&U Compound delivery. Exelixis shall report the data arising from such initial research to the JSC.

(e) The JSC shall review the initial data for each P&U Compound, decide whether Exelixis should perform further research on such P&U Compound, and prioritize any such further research relative to the other work to be performed by Exelixis under the Research Program. Exelixis shall proceed in an orderly fashion, based on such prioritization and the number of FTEs then committed to the Mode of Action Projects, to perform research to identify Invertebrate Target(s) of each such P&U Compound selected by the JSC for further work. Such research may include: (i) experiments in which [*]; (ii) experiments in which [*]; and (iii) performance of [*]. Exelixis shall report to the JSC the data arising from such further research and the identity of any Invertebrate Target then known by Exelixis to be a Restricted Target.

(f) The JSC shall review all additional data for each P&U Compound, select no more than [*] Invertebrate Targets (other than Restricted Targets) per P&U Compound for molecular analysis by Exelixis, and prioritize any such molecular research relative to the other work to be performed by Exelixis under the Research Program. Exelixis shall proceed in an orderly fashion, based on the JSC's prioritization and the number of FTEs then committed to the Mode of Action Projects, to: (i) identify the nucleic acid sequence encoding each such Invertebrate Target selected by the JSC (unless such sequence is already publicly available); and (ii) undertake a good faith search of publicly available databases for the mammalian orthologue(s) of such Invertebrate Targets.

(g) Except as set forth in this Section 3.11(g), the Parties' rights and obligations regarding any Target arising from a Mode of Action Project shall be identical to that for any Target arising from a Research Project other than a Mode of Action Project. In the event that Exelixis discovers that a Target identified in a Mode of Action Project is a Restricted Target, Exelixis shall immediately cease all work on such Restricted Target. Any Restricted Target selected pursuant to Section 4.1 shall be deemed a Non-Exclusive Selected Target, and P&U shall have the rights set forth in Sections 5.1(b) and 5.1(c) with respect to such Non-Exclusive Selected Target. Any Target other than a Restricted Target that is selected pursuant to Section 4.1 shall be deemed an Exclusive Selected Target,

and P&U shall have the rights set forth in Sections 5.1(a) and 5.1(b) with respect to such Exclusive Selected Target. The milestone and royalty obligations set forth in Sections 7.4 and 7.5 shall apply equally to Exclusive Selected Targets and Non-Exclusive Selected Targets and all Products arising therefrom."

4. Section 4.2 of the Agreement shall be replaced with the following:

"4.2 Pursuit of Selected Targets. P&U must use good faith Diligent Efforts to validate Exclusive Selected Targets or their Mammalian Targets, develop assays to assess the activity of Exclusive Selected Targets or their Mammalian Targets, use assays to discover Collaboration Compounds directed at particular Exclusive Selected Targets or their Mammalian Targets, develop and commercialize [*] Product per Exclusive Selected Target, and pay the applicable royalties set forth in Section 7.5. P&U's diligence obligations under this Section 4.2 for the period prior to the initiation of an active research and development program for a Collaboration Compound active against a particular Exclusive Selected Target or one of its Mammalian Targets will be deemed satisfied if P&U: (i) develops a screening assay for the activity of an Exclusive Selected Target or one of its Mammalian Targets and initiates screening for modulators of the activity of the Exclusive Selected Target or one of its Mammalian Targets within [*] of the date on which the JSC selected such Exclusive Selected Target, provided that, upon reasonable request by P&U, the JMT shall grant up to an additional [*] and (ii) initiates a program of lead optimization and/or medicinal chemistry around lead compounds active in such assay within [*] of the date on which P&U initiates screening for modulators of the activity of such Exclusive Selected Target or one of its Mammalian Targets."

5. Section 4.3 of the Agreement shall be replaced with the following:

"4.3 Sharing of Biological Data. P&U shall provide Exelixis with copies of all data generated by or on behalf of P&U or its Affiliate or sublicensee in the course of validating a Selected Target or a Mammalian Target, characterizing the biological function of a Selected Target or a Mammalian Target or identifying other genes or proteins that interact with a Selected Target or a Mammalian Target. Exelixis may use such data for any purpose other than developing for use in the Applicable Field products comprising or incorporating small molecule compounds directed at such Selected Target or such Mammalian Target."

6. Section 4.4(a) of the Agreement shall be replaced with the following:

"4.4 Target Abandonment.

(a) [*]"

7. Section 4.5 of the Agreement shall be replaced with the following:

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"4.5 Targets Other Than Selected Targets. Exelixis shall retain all rights to any Target that (i) does not fulfill the criteria for a Candidate Target, (ii) is not selected by the applicable JSC as a Selected Target, and such Targets shall not be subject to any terms of this Agreement other than those set forth in Section 5.4(b), or (iii) is not a Mammalian Target."

8. Section 4.6 of the Agreement shall be amended by inserting "Mammalian Targets," in the first sentence between "Selected Targets," and "Collaboration Compounds".

9. Section 4.7 of the Agreement shall be amended by inserting "Mammalian Target" after "Selected Target".

10. A new Section 4.8 shall be inserted in to the Agreement as follows:

"4.8 Investigational Materials.

(a) The transfer of Investigational Materials from P&U to Exelixis is essential to the success of the Collaboration. The Investigational Materials are and at all times will remain the property of P&U. Nothing in this Agreement or the transfer of the Investigational Materials hereunder shall be construed to grant an express or implied license to the Investigational Materials to Exelixis. Exelixis' rights hereunder shall be limited to the right to use the Investigational Materials solely for the purposes of this Agreement. P&U warrants that [*].

(b) Exelixis agrees, upon the written request by P&U, to accept those Investigational Materials that are P&U Compounds without knowledge of their identity or structures, and not to undertake to determine the identity or structure of any such Investigational Materials.

(c) Exelixis agrees that the Investigational Materials are a part of P&U's Confidential Information and as such are subject to the obligations of confidentiality provided in Article 9 of this Agreement. Exelixis will at all times retain control of the Investigational Materials and will provide the Investigational Materials only to Exelixis employees who are directly involved in providing services under this Agreement. Exelixis shall not transfer or disclose to any Third Party any Investigational Materials without the prior written consent of P&U.

(d) P&U shall provide Exelixis with information in P&U's possession regarding the safe handling of the Investigational Materials and laws and regulations that apply to the use and/or disposal of the Investigational Materials, including without limitation those regarding biological materials such as NIH or equivalent guidelines for work with recombinant DNA.

(e) THE INVESTIGATIONAL MATERIALS ARE EXPERIMENTAL IN NATURE AND ARE PROVIDED WITHOUT ANY WARRANTY AS TO THEIR SAFETY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

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(f) Without limiting the warranty provided by P&U in subsection (a) above, acceptance of the Investigational Materials will constitute Exelixis' acceptance of all liability for any damages or injuries resulting from Exelixis' possession or use of the Investigational Materials in a manner that (i) does not comply with the safe handling information provided by P&U or (ii) is negligent or wrongful.

(g) Exelixis agrees to return or destroy any unused Investigational Materials in accordance with written instructions from P&U."

11. Section 5.1 of the Agreement shall be replaced with the following:

"5.1 License to P&U.

(a) Subject to the terms of this Agreement, Exelixis hereby grants P&U an exclusive, worldwide, royalty-bearing license (with the right to sublicense) under the Pre-existing Technologies and Sole Inventions Controlled by Exelixis and under Exelixis' interest in the Joint Inventions (i) to use each Exclusive Selected Target and its Mammalian Target(s) to search for Collaboration Compounds directed at such Mammalian Target(s) for activity within the Applicable Field, (ii) to develop, for use in the Applicable Field, Products and Royalty-Free Products comprising or incorporating such Collaboration Compounds, (iii) to develop, following [*], such Product or Royalty-Free Product for any human indication, and (iv) to make, have made, use, sell, offer to sell and have sold such Products and Royalty-Free Products.

(b) Subject to the terms of this Agreement, Exelixis hereby grants P&U an exclusive, worldwide, royalty-bearing license (with the right to sublicense) to use the Research Results pertaining to Selected Targets in the Applicable Field.

(c) Subject to the terms of this Agreement, Exelixis hereby grants P&U a nonexclusive, worldwide, royalty-bearing license (with the right to sublicense) under the Pre-existing Technologies and Sole Inventions, in each case to the extent Controlled, at the time of Target selection, by Exelixis, and under Exelixis' interest in the Joint Inventions (i) to use each Non-Exclusive Selected Target and its Mammalian Target(s) to search for Collaboration Compounds directed at such Mammalian Target(s) for activity within the Applicable Field, (ii) to develop, for use in the Applicable Field, Products and Royalty-Free Products comprising or incorporating such Collaboration Compounds, (iii) to develop, following [*], such Product or Royalty-Free Product for any human indication, and (iv) to make, have made, use, sell, offer to sell and have sold such Products and Royalty-Free Products."

12. Section 5.2 of the Agreement shall be amended by (i) inserting "Mammalian Target," after the first occurrence of "Selected Target," in the first sentence, (ii) inserting ", Mammalian Targets" after "Selected Targets" in the first sentence, (iii) replacing the

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second occurrence of "Selected Target" in the first sentence with "Mammalian Target", and (iv) inserting "or Mammalian Target" after "Selected Target in the second sentence.

13. Section 5.3(a) of the Agreement shall be amended by inserting "and/or its Mammalian Target(s)" after each occurrence of "Selected Target".

14. Section 5.4(a) of the Agreement shall be amended by inserting "or Mammalian Target" after each occurrence of "Selected Target" in every sentence but the final sentence. In the final sentence, "and its Mammalian Target(s)" shall be inserted after the first occurrence of "Selected Target".

15. The second sentence of Section 5.5 of the Agreement shall be amended by replacing "Selected Target" by "Mammalian Target".

16. The last paragraph of Section 6.2 of the Agreement shall be replaced with the following:

"The exclusivity of the licenses granted to P&U in Sections 5.1(a) and 5.1(b) shall be subject to the grant of licenses to Third Parties consistent with paragraphs (a) and (b) of this Section 6.2. Upon request of the JMT, Exelixis shall consult with the JMT from time to time regarding its procedures for seeking to avoid overlapping research activities on behalf of multiple Third Parties. The Parties acknowledge and agree that the restrictions set forth in this Section 6.2 shall not apply to any Mode of Action Project."

17. Section 7.4 of the Agreement shall be amended by inserting "[*]" in the first sentence after "Selected Target,".

18. Section 7.5 of the Agreement shall be amended by inserting the following after the last sentence of the last paragraph thereof:

"The royalty payments set forth in this Section 7.5 shall apply to every Product, regardless of whether it arose from an Exclusive Selected Target or a Non-Exclusive Selected Target. The Parties agree that P&U shall not be obliged to make royalty payments to Exelixis for Royalty-Free Products."

19. The second sentence of Section 9.6 of the Agreement shall be amended by inserting ", Mammalian Target" between "Selected Target" and "or Product".

20. The second sentence of Section 11.3 of the Agreement shall be amended by inserting ", Mammalian Targets" between "Selected Targets" and "and Collaboration Compounds".

21. Section 12.1(a) of the Agreement shall be replaced with the following:

"12.1 Indemnification.

(a) P&U hereby agrees to defend and hold harmless Exelixis and its agents and employees from and against any and all suits, claims, actions,

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demands, liabilities, expenses and/or loss, including reasonable legal expenses and reasonable attorneys' fees ("Losses") resulting directly or indirectly from (i) the manufacture, use, handling, storage, sale or other disposition of chemical agents, Selected Targets, Mammalian Targets, Collaboration Compounds or Products by P&U or its Affiliates, agents or sublicensees except to the extent such Losses result from the negligence or wrongdoing of Exelixis, (ii) Exelixis' infringement of an intellectual property right of a Third Party through Exelixis' use of the Investigational Materials, or (iii) Exelixis' possession, use or disposal of the Investigational Materials in compliance with the safe handling information provided by P&U, except to the extent such Losses result from the negligence or wrongdoing of Exelixis."

The parties agree that this Amendment shall take effect retroactively as of the Effective Date of the Agreement (as defined in Section 13.1 of the Agreement).

Except as amended hereby, the Agreement shall remain in full force and effect.

EXELIXIS PHARMACEUTICALS, INC.	PHARMACIA & UPJOHN AB
By: /s/ George A. Scangos, Ph.D.	By: /s/ Goran A. Ando
Name: George A. Scangos, Ph.D.	Name: Goran A. Ando
Title: President & CEO	Title: Attorney-in-Fact [Executive Vice President, Pharmacia & Upjohn, Inc.]

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EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated January 31, 2000, except as to the fifth paragraph of Note 1 which is as of April 7, 2000, relating to the financial statements of Exelixis, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

San Jose, California
April 7, 2000

EXHIBIT 23.2

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated February 10, 1999, relating to the financial statements of MetaXen, LLC, which appears in the Exelixis, Inc. Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

San Jose, California
April 7, 2000